

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

**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2022

OR

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

From the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-38819

**SUPER LEAGUE GAMING, INC.**

(Exact name of small business issuer as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation or  
organization)

47-1990734  
(IRS Employer Identification No.)

2912 Colorado Ave., Suite #203  
Santa Monica, California 90404  
(Address of principal executive offices)

Company: (802) 294-2754; Investor Relations: 949-574-3860  
(Issuer's telephone number)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	SLGG	NASDAQ Capital Market

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

The aggregate market value of the common stock of the registrant held by non-affiliates of the registrant on June 30, 2022, the last business day of the registrant's second fiscal quarter was approximately \$26,440,000.

As of March 30, 2023, there were 37,605,973 shares of the registrant's common stock, \$0.001 par value, issued and outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Items 10, 11, 12, 13 and 14 of Part III incorporate by reference certain information from Super League Gaming, Inc.'s definitive proxy statement, to be filed with the Securities and Exchange Commission on or before April 30, 2023.

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References in this Annual Report on Form 10-K to “Super League Gaming, Inc.,” “Super League,” “Company,” “we,” “us,” “our,” or similar references mean Super League Gaming, Inc. References to the “SEC” refer to the U.S. Securities and Exchange Commission.

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this “Report”) contains forward-looking statements that involve substantial risks and uncertainties. The forward-looking statements are contained principally in the sections of this Report entitled “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business,” but are also contained elsewhere in this Report. In some cases, you can identify forward-looking statements by the words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “objective,” “ongoing,” “plan,” “predict,” “project,” “potential,” “should,” “will,” or “would,” or the negative of these terms, or other comparable terminology intended to identify statements about the future. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. Although we believe that we have a reasonable basis for each forward-looking statement contained in this Report, we caution you that these statements are based on a combination of facts and factors currently known by us and our expectations of the future, about which we cannot be certain. Forward-looking statements include statements about:

- overall strength and stability of general economic conditions and of the electronic video game sports (“esports”) industry in the United States and globally;
- changes in consumer demand for, and acceptance of, our services and the games that we license for our tournaments and other experiences, as well as online gaming in general;
- changes in the competitive environment, including adoption of technologies, services and products that compete with our own;
- our ability to generate consistent revenue;
- our ability to effectively execute our business plan;
- changes in the price of streaming services, licensing fees, and network infrastructure, hosting and maintenance;
- changes in laws or regulations governing our business and operations;
- our ability to maintain adequate liquidity and financing sources and an appropriate level of debt on terms favorable to us;
- our ability to effectively market our services;
- costs and risks associated with litigation;
- our ability to obtain and protect our existing intellectual property protections, including patents, trademarks and copyrights;
- our ability to obtain and enter into new licensing agreements with game publishers and owners;
- changes in accounting principles, or their application or interpretation, and our ability to make estimates and the assumptions underlying the estimates, which could have an effect on earnings;
- interest rates and the credit markets; and
- other risks described from time to time in periodic and current reports that we file with the SEC.

This list of factors that may affect future performance and the accuracy of forward-looking statements is illustrative, but not exhaustive. New risk factors and uncertainties not described here or elsewhere in this Report, including in the sections entitled “Risk Factors,” may emerge from time to time. Moreover, because we operate in a competitive and rapidly changing environment, it is not possible for our management to predict all risk factors and uncertainties, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. The forward-looking statements are also subject to the risks and uncertainties specific to our Company, including but not limited to the fact that we have a limited operating history as a public company. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this Report may not occur, and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

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You should not rely upon forward-looking statements as predictions of future events. Although we believe the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance and events and circumstances reflected in the forward-looking statements will be achieved or occur. Moreover, neither we nor any other person assume responsibility for the accuracy and completeness of the forward-looking statements. Except as required by applicable law, including the securities laws of the United States, we do not intend to update any of the forward-looking statements to conform these statements to actual results.

You should read this Report, any documents referenced herein and those documents filed as exhibits to this Report with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect.

**Use of Market and Industry Data**

This Report includes market and industry data that we have obtained from third party sources, including industry publications, as well as industry data prepared by our management on the basis of its knowledge of and experience in the industries in which we operate (including our management's estimates and assumptions relating to such industries based on that knowledge). Management has developed its knowledge of such industries through its experience and participation in these industries. While our management believes the third-party sources referred to in this Report are reliable, neither we nor our management have independently verified any of the data from such sources referred to in this Report or ascertained the underlying economic assumptions relied upon by such sources. Furthermore, references in this Report to any publications, reports, surveys or articles prepared by third parties should not be construed as depicting the complete findings of the entire publication, report, survey or article. The information in any such publication, report, survey or article is not incorporated by reference in this Report.

Forecasts and other forward-looking information obtained from these sources involve risks and uncertainties and are subject to change based on various factors, including those discussed in sections entitled "Forward-Looking Statements," "Item 1A. Risk Factors" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in this Report.

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## PART I

### Item 1. Business

#### Overview

Super League Gaming, Inc. (Nasdaq: SLGG) (“Super League,” the “Company,” “we,” “us” or “our”) is a leading publisher of games, monetization tools and content channels across metaverse gaming platforms that empower developers, energize players, and entertain fans. The Company’s solutions provide incomparable access to an audience consisting of players in the largest global metaverse game environments, fans of hundreds of thousands of gaming influencers, and viewers of gameplay content across major social media and digital video platforms. Fueled by proprietary and patented technology systems, the Company’s platform includes access to vibrant in-game communities, a leading metaverse advertising platform, a network of highly viewed channels and original shows on Instagram, TikTok, Snap, YouTube, and Twitch, cloud-based livestream production tools, and an award-winning esports invitational tournament series. Super League’s properties deliver powerful opportunities for brands and advertisers to achieve impactful insights and marketing outcomes with gamers of all ages.

We generate revenue from (i) innovative advertising including immersive game world and experience publishing and in-game media products, (ii) direct to consumer offers, including in-game items, e-commerce, game passes and ticketing and digital collectibles, and (iii) content and technology through the production and distribution of our own, advertiser and third-party content. We operate in one reportable segment to reflect the way management and our chief operating decision maker review and assess the performance of the business.

#### Our Strategy

We believe that virtual world platforms are where the next generation lives and are a launchpad of unlimited new interactive worlds and content. In a world of blended physical-to-digital lives and smarter, more immersive screens, consumer expectations are increasing for more customized and personalized digital experiences, changing the way consumers will socialize, play, create, collaborate, shop, learn and work.

While our roots are in open gaming platforms where interactive worlds were first spawned, we believe our success is in the creation, growth, and monetization of digital experiences across the wider immersive web landscape. Super League’s vision is to build the most comprehensive immersive web publishing engine and driver of the next generation of digital platform businesses and experiences.

Built on a powerful foundation of unmatched capabilities, solutions and software platforms that have driven consistent success for innovative brand experiences, creator growth and monetization, and significant consumer engagement, our scalable, vertically-integrated engine offers:

- Successful owned and third-party publishing worlds, experiences and destinations;
- Innovative marketing solutions for brands and developers; and
- Valued tools and services for creators and developers.

#### Our Business

As an early-mover creating engaging experiences inside of metaverse, or “open world,” game platforms since 2015, Super League has converted our deep understanding of young gamers into significant audience reach in virtual world gaming platforms. We believe we have successfully iterated our business model through these market insights, and our organic and inorganic growth to establish scale and ultimately drive our monetization strategies. Our strong and growing product-market fit currently reaches over 100 million monthly unique players in Roblox, Minecraft and Fortnite and generates over one billion monthly impressions. Our software supports the creation and operation of our owned and third-party metaverse gaming worlds and experiences, along with creator tools and analytics underpinned by a creator economy. These tools enable Super League to access these extended audiences with our innovative in-game and in-stream ad products, and allow our game designers and content creators to participate in our advertising economy. Our analytics suite provides Super League, brands and advertisers, and game developers data that informs campaign measurement and insights, along with enhanced game design. Beyond our primary advertising revenue stream, we have the opportunity to extend further downstream in the metaverse gaming worlds we operate, and generate direct to consumer revenues. In addition, our platform, and our capability to produce compelling gaming-centric video and livestream broadcasts drives viewership to our own and our brand partner’s digital channels, and generates content production and syndication revenues from third party partners.

Specifically, Super League’s digital experience and media products provide a wide range of solutions for brands and advertisers. From branded in-game experiences, through to custom content and media, Super League can provide end-to-end solutions for brands to acquire customers, deepen brand affinity and deliver campaign performance with innovative advertising inventory. As Super League has scaled in both metaverse player and viewing audience reach, we have experienced growth in both the average revenue size of advertiser programs, along with a strong percentage of repeat buyers, while upholding our premium cost per impressions (“CPM”) advertising rates and margins, further validating a new premium social marketing channel for advertisers to reach elusive Generation Z and Alpha gamers. Additionally, our capability and proprietary technology is now being applied to new virtual world platforms beyond our core offering and is proving to be an enterprise solution for our owned and branded digital experiences that are less temporal and campaign-centric, generating revenue opportunities that are more diversified, annual in nature and less impacted by traditional advertising seasonality.

## Digital Properties and Offerings

Our gaming content and media network is underpinned by our proprietary tech and applied to much of our owned and operated consumer properties as well. Our consumer facing digital properties include:

**Minehut:** Attracting younger gamers and creators, Minehut is an "always on" social and gaming portal and one of the largest server farms for advanced, avid Minecraft players in the world. Within Minehut is a vibrant community in which players create their own Minecraft worlds to share, socialize and play with friends in addition to Super League operated communal game lobbies for enhanced gaming and social experiences that serve as a portal for branded experiences and advertising.

**Mineville & Pixel Paradise:** Through a relationship with Microsoft, the owner of Minecraft, we operate two additional Minecraft server worlds for more casual players enjoying the game on consoles and tablets. Two of only seven partner servers with Microsoft that, while "free to play," monetize the players through in-game micro transactions, such as gameplay passes and durable goods which run through the Microsoft marketplace.

**Super League Arcade & ABX:** Our more recently launched owned and operated game worlds in Roblox, these open-world games are targeted to more competitive esports gamers and anime enthusiasts respectively. These game worlds attract targeted players and offer a channel for brands and advertisers, along with in-game player transactions, such as gameplay passes and durable goods through the Roblox marketplace.

**Framerate:** Framerate is a fast-growing social video network in gaming, generating tens of millions of monthly views, with multiple channels across social media, namely Instagram and Tik Tok. Targeting more young-adult gamers and creators, Framerate enables gamers to submit their own user-generated highlight reel for recognition, and channels for us to package and monetize to meet advertisers' objectives.

Our brand partner and creator facing digital properties include:

**Super Games:** One of the preeminent game creation resources in virtual world game platforms, our Super Games publishing capability provides bespoke game development and custom game experiences within our owned and affiliate game worlds and is a power source connecting our developer network to our brand partners.

**Super Biz:** Our proprietary suite of metaverse media products and analytics connecting brands and advertisers to hundreds of Roblox games and our extensive Minecraft audiences. Through our technology, we partner with game developers to bring innovative ad inventory and custom brand experiences into game worlds, allowing developers to participate in our advertising economy and benefit from our analytics to continually enhance player experience.

**Super Studios:** Super Studios is our fully virtual production studio providing state-of-the-art, scalable solutions for video, television, and branded content, powered by our patented Super View technology, offering a browser-based, fully remote control room solution. Whether for the creation and broadcast of premium content, or monitoring productions from remote locations, Super Studios and Super View are an innovative, affordable solution to deliver compelling content to meet advertiser objectives and generate additional sources of revenue.

**Super Mob:** Our experience and accessible pool of gaming influencers, both on and off platform, allows us to offer a full 360-solution for brands and advertisers. This advertising amplification not only allows us to maximize campaign objectives, but also to obtain a greater share of advertisers' wallets with our end-to-end solution, increasing our related revenue generating opportunities.

## **Monetization**

### ***Innovative Advertising***

The highly sought-after Generation Z and Alpha audience is increasingly difficult for brands to reach due to the fragmentation of content distribution channels, ad-blocking technology and a sentiment against overt marketing and promotion. Our ability to uniquely aggregate a diverse, global user base across young age ranges, skill levels and game genres and embed direct, authentic branded product placement creates a base of high-quality, premium advertising inventory attractive to brands and advertisers. We stand for inclusive, fair and fun gameplay and entertainment and believe that our brand is at the forefront of the new, more social and creation-centric gaming experience, providing a positive access point for both endemic and non-endemic brands to reach these mainstream audiences.

We have experienced significant organic and inorganic growth in our audience, further expanding our premium advertising inventory, increasing deal-sizes and strong repeat buying across the advertiser verticals of retail, entertainment, toys, fashion, consumer packaged goods, and automotive. We further developed our in-house direct sales capability to monetize our domestic experiential and media inventory and launched a global network of resellers to sell our international media inventory on our behalf.

Our various advertiser offerings include:

- Dedicated, on-platform experiential spaces;
- Custom integrations into existing, popular games;
- In-game media placement including digital billboards, 3-D ad products, portals and catalogue units;
- In-game branded digital goods;
- Display and video advertising;
- Social amplification through influencer partnerships;
- In-stream and in-video custom and banner ad products;
- Entertainment and competitive play broadcasts, on-demand clips and other custom content;
- Brand lift studies, performance reporting and advanced analytics; and
- Children’s Online Privacy and Protection Act (“COPPA”) compliant and kidSAFE-verified inventory.



***Direct to Consumer***

Direct to consumer revenues are comprised of revenues generated from the growing number of Minecraft and Roblox virtual gaming worlds we operate. An increasing part of our revenue diversification strategy, consumer monetization includes in-game items, e-commerce, game passes and ticketing, and digital collectibles.

***Content & Technology***

As part of our strategy to provide an end-to-end solution for advertiser objectives, Super Studios and Super View augment our advertiser offer to take a greater share of campaign dollars. Additionally, we leverage our technology and capability to generate content production revenues with third-parties and support our ability to syndicate and monetize our sizable library of our own and player-generated entertainment content.

***Industry***

According to Statista (2022), there are over 3 billion gamers on the planet and more than 500 million monthly active players in metaverse, open-world game platforms, namely Roblox, Minecraft and Fortnite. Generation Z spends 7.2 hours per week hanging out with friends in immersive spaces, two times more than in real life per the Newzoo Gen Z & Alpha report (2022), which is relevant to advertisers. Per Newzoo (2022), immersive content warrants a 252% higher engagement rate, and 33% of 13 to 39 year olds say their virtual life influences their real-world life interests.

Other notable trends that amplify these statistics:

- The rise of metaverse, open-world gaming as preferred social channels that go way beyond the traditional concept of gaming;
- The democratization of content creation, launching self-produced social content platforms and new creator economies;
- The further disaggregation of content and increasing underperformance of traditional digital advertising channels forcing advertisers to find new solutions;
- With smarter screens, an increasing consumer expectation for more personalized, customized and interactive web experiences;
- Cross-generational reach of gaming as a lifestyle trend placing it at the intersection of pop culture, cutting broadly across dimensions, and;
- Younger generations live a blended life where digital and physical personas are viewed as one, driving cross-over consumer preference.

## **Our Scalable Technology Platform**

Our platform is focused on the creator and player journey and provides innovative ways for brands and advertisers to engage with audiences of gaming enthusiasts. We access players and creators through our vast network of digital game worlds and content channels and then drive them into branded digital experiences through our media products and creator tools. Our proprietary cloud-based platform serves three core functions (i) advertising technology (ii) metaverse game experience and tournament technology, and (iii) fully remote production and livestream broadcast technology. Furthermore, our platform enables digital tools for scale, including, but not limited to, data services, event creation and management, ecommerce, advertising technology, COPPA compliance, search engine optimization, and email and mobile marketing.

Our advertising technology, both in the size of monetizable ad products and the creator tool suite, was materially expanded with the acquisitions of Bloxbiz Co. (doing business as, and hereinafter referred to as “Super Biz”) and Bannerfy, Ltd. (rebranded to “Super Biz”) during the year ended December 31, 2021 (“Fiscal Year 2021”). In addition to Super League’s original owned and operated consumer reach, including, but not limited to, Minehut, our Roblox games worlds and Framerate, advertisers can now reach tens of millions of monthly metaverse players in-game through our distributed game world network and hundreds of millions of viewers in-stream distributed across social media channels including YouTube, TikTok and Instagram. This, coupled with custom brand integrations and content, powerful campaign analytics and insights and compliance, offers an immersive and high-performing marketing channel for brands and advertisers. Specifically, our turnkey metaverse ad products are a progressive and differentiated way for advertisers to embed natively into games through dynamic digital billboards, interactive 3-D characters, and portals to access their target audience by enhancing the gaming experience without interrupting the play itself. These are high-performing ad units; for example, our digital billboard impressions are ten seconds of cumulative view time offering a best-in-class benchmark for in-game advertising. In addition, we ensure viewability with advanced technology that observes if ads are on screen, unobstructed, meet a screen coverage threshold, and other requirements set by Interactive Advertising Bureau (“IAB”) which translates into our premium CPM business model.

Additionally, a core differentiator for Super League is our ability to deliver Roblox metaverse game worlds and experiences along with bespoke tournaments and entertainment content through our Super Studio’s game technology and capability. Beyond our hundreds of Roblox partner game worlds, we have deepened our internal capability to create compelling gaming and custom metaverse Minecraft experiences for our player bases in our Minehut, Mineville and Pixel Paradise properties, as well as extending that capability to virtual world platforms such as Fortnite and The Sandbox.

Finally, from our earliest inception we utilized a local hardware solution to create interactive physical spaces for in-person gaming experiences. In doing so, we created a second-screen perspective that would make the experience more immersive for players and entertaining for spectators, much like professional sporting events, resulting in our Super Studios capability powered by Super View, our patented, fully-remote visualization, production and broadcast technology. Super View automates and scales various gameplay processes and functions that would otherwise need to be accomplished manually. These processes and functions primarily include ways to ensure that visualizations of gameplay and other value-added data and graphics are both captured and delivered efficiently and timely supported by computer vision to glean key events, graphics and data from the game screen. Since COVID-19, we have augmented our virtual control room with remote monitoring and communications and enhanced broadcast-level graphics, for an end-to-end, cloud-based production system built around Super View’s proprietary workflow.

## **Our Growth Strategy**

Our core strategy is to further monetize the audience reach we have built on existing metaverse, or “open-world” game platforms and begin applying that smart backbone to other virtual world engines for extended reach and diversification of revenues. We have several leverage points including:

- Deepen our owned metaverse game worlds to grow direct to consumer revenues.
- Grow our publishing, media and creator tool suite to expand audience and further drive average advertiser deal-size.
- Expand and optimize our global network of sales partnerships to further monetize our international audience reach.
- Increase domestic sales force effectiveness resulting in higher salesperson throughput and net revenue.
- Move beyond our advertising model by applying our end-to-end immersive experience and media engine to new platforms for ownable and third-party intellectual property for greater control and share of the consumer experience, digital economy, digital to physical crossover, and first-party data.

## **Intellectual Property and Patents**

Similar to other interactive entertainment and esports companies, our business depends heavily on the creation, acquisition, licensing, use and protection of intellectual property. We have developed and own various intellectual properties, including pending and issued trademarks, patents, and copyrights. We also have obtained licenses to valuable intellectual property with game publishers. We leverage these licenses and service agreements to operate online and location-based competitions, and in parallel, use them to generate a wide array of content.

As of the date of this Report, we have one pending patent application and five issued patents, and various trademark applications, most of which are granted and some of which are currently pending, covering our technologies and brands, as more specifically set forth below. We intend to file additional applications for the grant of patents and registration of our trademarks in the United States and foreign jurisdictions as our business expands. Our issued patents relate to methods of visualization of gameplay across a wide array of game titles for the purpose of content creation and broadcasting. These visualizations manifest as web streams with related textual, graphical, and video content targeted for consumption by audiences across various streaming and VOD platforms such as Twitch and YouTube. To achieve these visualizations, we leverage patent protected technology that places “camera” characters into certain games alongside the competing players, and use the perspective of the ‘camera’ character to provide unique views into the action. We also have pending patent applications for certain bleeding edge virtualization methods that allow us to generate, at scale, many concurrent visualizations from the cloud.

To protect our intellectual property, we rely on a combination of patent applications, published and issued patents, copyrights, pending and issued trademarks, confidentiality provisions and procedures, other contractual provisions, trade secret laws, and restrictions on disclosure. We intend to vigorously protect our technology and proprietary rights; however, no assurances can be given that our efforts will be successful. Even if our efforts are successful, we may incur significant costs in defending our rights. From time to time, third parties may initiate litigation against us, alleging infringement of their proprietary rights or claiming they have not infringed our intellectual property rights. See the section entitled “Risk Factors” for additional information regarding the risks we face with respect to litigation related to intellectual property claims.

## **Our Corporate Values and Company Culture**

Super League is a creator-first company, a credo embraced by every employee. We are committed to empowering our creators, energizing our players and entertaining fans through our vibrant and immersive gameplay experiences, innovative creator tools and viewing entertainment. Because we have successfully built our own metaverse gaming worlds and content network over the course of several years, we deeply understand the ecosystem of players and creators and what it takes to help brands and advertisers navigate this this new social channel in an authentic and engaging way. Our corporate brand values are:

- We fearlessly pioneer.
- We excite creativity.
- We ignite connections.
- We live where we play.

## **Seasonality**

Our revenue fluctuates quarterly and is generally higher in the second half of our fiscal year, with the fourth quarter typically representing our highest revenue quarter each year. Advertising spending is traditionally seasonally strong in the second half of each year, reflecting the impact of seasonal back to school, game release and holiday season advertising spending by brands and advertisers. We believe that this seasonality in advertising spending affects our quarterly results, which generally reflect relatively higher advertising revenue in second half of each year, compared to the first half of the year.

## **Employees and Labor Relations**

As of December 31, 2022, we had 101 full-time and full-time equivalent employees. Additionally, we occasionally enter into service agreements with independent contractors, on an as-needed basis, to perform certain services. As of December 31, 2022, four of our full-time employees were subject to fixed-term employment agreements with us, and all other employees served at-will pursuant to the terms set forth in their offer letters.

We believe that we maintain a good working relationship with our employees, and we have not experienced any labor disputes. None of our employees are represented by labor unions.

## **Governmental Regulation**

Our online gaming platforms, which target individuals ranging from elementary school age children to adults, are subject to laws and regulations relating to privacy and child protection. Through our website, online platforms and in person gaming activities we may monitor and collect certain information about child users of these forums. A variety of laws and regulations have been adopted in recent years aimed at protecting children using the internet, such as COPPA. COPPA sets forth, among other things, a number of restrictions related to what information may be collected with respect to children under the age of 13, as the kinds of content that website operators may present to children under such age. There are also a variety of laws and regulations governing individual privacy and the protection and use of information collected from individuals, particularly in relation to an individual’s personally identifiable information (e.g., credit card numbers). We employ a kick-out procedure during user registration whereby anyone identifying themselves as being under the age of 13 during the process is not allowed to register for a player account on our website or participate in any of our online experiences or tournaments without linking their account to that of a parent or guardian.

In addition, as a part of our experiences, we offer prizes and/or gifts as incentives to play. The federal Deceptive Mail Prevention and Enforcement Act and certain state prize, gift or sweepstakes statutes may apply to certain experiences we run from time to time, and other federal and state consumer protection laws applicable to online collection, use and dissemination of data, and the presentation of website or other electronic content, may require us to comply with certain standards for notice, choice, security and access. We believe that we are in compliance with any applicable law or regulation when we run these experiences.

#### **Cost of Compliance with Environmental Laws**

We have not incurred any costs associated with compliance with environmental regulations, nor do we anticipate any future costs associated with environmental compliance; however, no assurances can be given that we will not incur such costs in the future.

#### **ITEM 1A. RISK FACTORS**

##### **RISK FACTORS**

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below, as well as the other information in this Report, including our financial statements and the related notes thereto and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” before deciding whether to invest in our common stock. The occurrence of any of the events or developments described below could harm our business, financial condition, operating results, and growth prospects. In such an event, the market price of our common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.*

#### **Risk Factor Summary**

Our business operations are subject to numerous risks and uncertainties, including those outside of our control, that could cause our business, financial condition or operating results to be harmed, including risks regarding the following:

##### *Risks Related to Our Business and Industry*

- our significant past operating losses and any inability to maintain profitability or accurately predict fluctuations in the future;
- a rapidly developing and relatively new market;
- inability to sustain or manage our growth, or otherwise implement our business strategies;
- loss of advertising revenue;
- inability to maintain an effective revenue model;
- reduction in activity by material clients and/or vendors;
- ineffective marketing and/or advertising efforts;
- our ability to maintain and promote our company culture;
- competition in our industry;
- ability to attract, maintain, and retain licenses for popular games on our platforms;
- ability to enter into definitive license agreements with certain game publishers;

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- ability to maintain and acquire new users and creators;
- our ability to maintain, enhance, and promote our brand;
- negative perceptions about our brand, platform, content, leagues, tournaments, and/or competitions;
- anticipating and adopting changes to new technologies, business strategies, and/or methods;
- actual or perceived security breaches, as well as errors, vulnerabilities or defects in our software and/or products, and in software and/or products of third-party providers;
- reliance on server functionality;
- the interoperability of our products and services across third-party services and systems;
- security breaches and cyber threats;
- system failures, outages, and/or disruption due to certain events and interruptions by man-made problems;
- our ability to hire, retain and motivate highly skilled personnel; and
- our reliance on assumptions and estimates to calculate certain key metrics.

### *Regulatory and Legal*

- complex and evolving U.S. and foreign laws and regulations;
- changes in tax laws or regulations regarding us or our customers;
- decreased levels of traffic due to intensified government regulation of the Internet industry;
- liability in the event of a violation of privacy regulations, data privacy laws, and/or child protection laws;
- lawsuits or liability arising as a result of the Company providing its products and/or services; and
- lawsuits or liability as a result of content published through our products and services.

### *Intellectual Property and Technology*

- current and future litigation related to intellectual property rights;
- our failure to protect our intellectual property rights; and
- piracy, unauthorized copying, and other forms of intellectual property infringement.

### *Governance Risks and Risks Related to Our Common Stock*

- provisions of Delaware law and our certificate of incorporation and bylaws could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us;
- low trading volume of our common stock;
- the volatility of the trading price of our common stock;
- our policy of not paying cash dividends on our common stock;

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- lessened disclosure requirements due to our status as an emerging growth company; and
- increased share-based compensation expense due to granted equity awards.

*General Risk Factors*

- actual or threatened epidemics, pandemics, outbreaks, or other public health crises;
- changes in the state of the U.S. economy and a return to volatile or recessionary conditions; and
- risks generally associated with the entertainment industry.

**Risks Related to Our Business and Industry**

*We have incurred significant losses since our inception, and we may continue to experience losses in the future.*

Including a noncash goodwill impairment charge of \$50.3 million recorded during the year ended December 31, 2022, the Company incurred net losses of \$85.5 million and \$20.7 million during the years ended December 31, 2022 and 2021, respectively. Noncash expense totaled \$60.6 million and \$5.7 million for the years ended December 31, 2022 and 2021, respectively. As of December 31, 2022, we had an accumulated deficit of \$210.7 million (including fiscal year 2022 noncash goodwill impairment charges of \$50.3 million). We cannot predict if we will achieve profitability soon or at all. We expect to continue to expend substantial financial and other resources on, among other things:

- investments to expand and enhance our esports technology platform and technology infrastructure, make improvements to the scalability, availability and security of our platform, and develop new offerings;
- sales and marketing, including expanding our customer acquisition and sales organization and marketing programs, and expanding our programs directed at increasing our brand awareness among current and new customers;
- investments in bandwidth to support our video streaming functionality;
- contract labor costs and other costs to host our leagues and tournaments;
- costs to retain and attract users and creators and license first tier game titles, grow our online user community and generally expand our business operations;
- hiring additional employees;
- expansion of our operations and infrastructure, both domestically and internationally; and
- general administration, including legal, accounting and other costs related to being a public company.

We may not generate sufficient revenue to offset such costs to achieve or sustain profitability in the future. We expect to continue to invest heavily in our operations, our online and in person experiences, and business development related to game publishers, advertisers, sponsors and user acquisition, to maintain as well as accelerate our market position, support anticipated future growth and to meet our expanded reporting and compliance obligations as a public company.

We intend to continue implementing our business strategy with the expectation that there will be no material adverse developments in our business, liquidity or capital requirements. If one or more of these factors do not occur as expected, it could have a material adverse impact on our activities, including (i) reduction or delay of our business activities, (ii) forced sales of material assets, (iii) defaults on our obligations, or (iv) insolvency. Our planned investments may not result in increased revenue or growth of our business. We cannot assure you that we will be able to generate revenue sufficient to offset our expected cost increases and planned investments in our business and platform. If we fail to achieve and sustain profitability, then we may not be able to achieve our business plan, fund our business or continue as a going concern. Our independent registered public accountants have expressed that substantial doubt exists as to the Company's ability to continue as a going concern.

***Our business is highly competitive and subject to rapid changes. We face significant competition to attract and retain our users, developers, and creators that we anticipate will continue to intensify. Should we fail to attract and retain users, developers, and creators, our business and results of operations may suffer.***

We compete for both users, developers, and creators. We compete to attract and retain our users' attention on the basis of our content and user experiences. We compete for users and their engagement hours with global technology leaders such as Amazon, Apple, Meta Platforms, Google, Microsoft, and Tencent, global entertainment companies such as Comcast, Disney, and ViacomCBS, online content platforms including Netflix, Spotify, and YouTube, as well as social platforms such as Facebook, Instagram, Pinterest, and Snap.

We rely on developers to create the content that leads to and maintains user engagement (including maintaining the quality of experiences). We compete to attract and retain developers by providing developers the tools to easily build, publish, operate, and monetize content. We compete for developers and engineering talent with gaming and metaverse platforms such as Epic Games, Unity, Meta Platforms, and Valve Corporation, which also give developers the ability to create or distribute interactive content.

We do not have any agreements with our developers that require them to continue to use our platform for any time period. In the future, if we are unable to continue to provide value to these developers and they have alternative methods to publish and commercialize their offerings, they may not continue to provide content to our platform. Should we fail to provide compelling advantages to continued use of our ecosystem to developers, they may elect to develop content on competing interactive entertainment platforms. If a significant number of our developers no longer provide content, we may experience an overall reduction in the quality of our experiences, which could adversely affect users' interest in our platform and lead to a loss of revenue opportunities and harm our results of operations.

Many of our existing competitors have, and some of our potential competitors could have, substantial competitive advantages, such as:

- larger sales and marketing budgets and resources;
- broader and more established relationships with users, developers, and creators;
- greater resources to make acquisitions and enter into strategic partnerships;
- lower labor and research and development costs;
- larger and more mature intellectual property portfolios; and
- substantially greater financial, technical, and other resources.

We expect competition to continue to increase in the future. Conditions in our market could change rapidly and significantly as a result of technological advancements, the emergence of new entrants into the market, partnering or acquisitions by our competitors, continuing market consolidation, or changing developer, creator and user preferences, which can be difficult to predict or prepare for. Our competitors vary in size, and some may have substantially broader and more diverse offerings or may be able to adopt more lucrative payment policies or structures for developers. Failure to adequately identify and adapt to these competitive pricing pressures could negatively impact our business.

***We may not be able to sustain our rapid growth, effectively manage our anticipated future growth or implement our business strategies.***

We have a limited operating history as a gaming-focused content and entertainment platform, and have experienced substantial growth in the last 12 months due, in large part, to the acquisitions we completed during the year ended December 31, 2021. However, recent growth rates may not be indicative of our future performance due to our limited operating history and the rapid evolution of our business model. We may not be able to achieve similar results or accelerate growth at the same rate as we have organically or following the completion of our recent acquisitions and we may not achieve our expected results, all of which may have a material and adverse impact on our financial condition and results of operations.

In addition, our rapid growth and expansion have placed, and continue to place, significant strain on our management and resources. This level of significant growth may not be sustainable or achievable at all in the future. We believe that our continued growth will depend on many factors, including our ability to develop new sources of revenues, diversify monetization methods including our direct to consumer offerings, attract and retain competitive gamers and creators, increase engagement, continue developing innovative technologies, tournaments and competitions in response to shifting demand in online gaming, increase brand awareness, and expand into new markets. We cannot assure you that we will achieve any of the above, and our failure to do so may materially and adversely affect our business and results of operations.

***We are subject to risks associated with operating in a rapidly developing industry and a relatively new market.***

Many elements of our business are unique, evolving and relatively unproven. Our business and prospects depend on the continuing development of gaming-focused entertainment and content creation. The market for gaming-related content has grown significantly in recent years and continues to rapidly develop, which may present significant challenges. Our business relies upon our ability to cultivate and grow a robust community of creators and audience members, and our ability to successfully monetize such community through digital subscriptions, and advertising and sponsorship opportunities. In addition, our continued growth depends, in part, on our ability to respond to rapid technological evolution, continued shifts in gamer trends and demands, frequent introductions of new games and titles and the constant emergence of new industry standards and practices. Developing and integrating new games, titles, content, products, services or infrastructure could be expensive and time-consuming, and these efforts may not yield the benefits we expect to achieve at all. We cannot assure you that we will succeed in any of these aspects or that the esports gaming industry will continue to grow as rapidly as it has in the past.



***We generate a significant portion of our revenues from advertising and sponsorships. If we fail to attract more advertisers and sponsors to our platform, or if advertisers or sponsors are less willing to advertise with or sponsor us, our revenues may be adversely affected.***

We generate a growing portion of our revenues from advertising within our platform and through our service offerings, sponsorship of our league tournaments, and the operation of our live streaming gaming platform, which we expect to further develop and expand in the near future as online viewership across our content platforms continues to expand. Our revenues from advertising and sponsorship partly depend on the continual development of the online advertising industry and advertisers' willingness to allocate budgets to online advertising in the gaming and content streaming industry. In addition, companies that decide to advertise or promote online may utilize more established methods or channels, such as more established internet portals or search engines, over advertising on our platform. If the online advertising and sponsorship market does not continue to grow, or if we are unable to capture and retain a sufficient share of that market, our ability to increase our current level of advertising and sponsorship revenue and our profitability and prospects may be materially and adversely affected.

Furthermore, our core and long-term priority of optimizing the user experience and satisfaction may limit our platform's ability to generate revenues from advertising and sponsorship. For example, in order to provide our users and creators with an uninterrupted experience, we do not place significant amounts of advertising on our streaming interface or insert pop-up advertisements during streaming. While this decision could adversely affect our operating results in the short-term, we believe it enables us to provide a superior gamer experience on our platform, which will help us expand and maintain our current base of users and creators and enhance our monetization potential in the long-term. However, this philosophy of putting our users and creators first may also negatively impact our relationships with advertisers, sponsors or other third parties, and may not result in the long-term benefits that we expect, in which case the success of our business and operating results could be harmed.

***Our revenue model may not remain effective and we cannot guarantee that our future monetization strategies will be successfully implemented or generate sustainable revenues and profit.***

We generate revenues from advertising within our platform and through our service offerings, and through the operation of our live streaming platform using a revenue model whereby users and creators can get free access to certain live streaming content, and gamers and creators pay fees to compete in league competition. We have generated, and expect to continue to generate, a substantial portion of revenues using this revenue model in the near term. We are, however, particularly focused on implementing a direct to consumer model for our expanding user base. Although our business has experienced significant growth in recent years, there is no guarantee that our direct to consumer packages will gain significant traction to maximize our growth rate in the future, as the demand for our offerings may change, decrease substantially or dissipate, or we may fail to anticipate and serve user demands effectively.

***The loss of or a substantial reduction in activity by one or more of our largest customers and/or vendors could materially and adversely affect our business, financial condition and results of operations.***

For the year ended December 31, 2022 ("Fiscal Year 2022") and Fiscal Year 2021, one customer accounted for 8% and one customer accounted for 12% of revenue, respectively. At December 31, 2022, three customers accounted for 33% of accounts receivable. At December 31, 2021, three customers accounted for 35% of accounts receivable. At December 31, 2022, one vendor accounted for 10% of accounts payable. At December 31, 2021, one vendor accounted for 21% of accounts payable.

The loss of or a substantial reduction in activity by one or more of our largest customers and/or vendors could materially and adversely affect our business, financial condition and results of operations.

***Our marketing and advertising efforts may fail to resonate with gamers and creators.***

Our service offerings are marketed through a diverse spectrum of advertising and promotional programs such as online and mobile advertising, marketing through websites, event sponsorship and direct communications with our user community including via email, blogs and other electronic means. An increasing portion of our marketing activity is taking place on social media platforms that are either outside, or not totally within, our direct control. Changes to user preferences, marketing regulations, privacy and data protection laws, technology changes or service disruptions may negatively impact our ability to reach target users and creators. Our ability to market our service offerings is dependent in part upon the success of these programs. If the marketing for our service offerings fails to resonate and expand with both the gamer and metaverse community, or if advertising rates or other media placement costs increase, our business and operating results could be harmed.

***We have a unique community culture that is vital to our success. Our operations may be materially and adversely affected if we fail to maintain this community culture as we expand in our addressable user communities.***

We have cultivated an interactive and vibrant online social user community centered around online gaming and content creation. We ensure a superior user experience by continuously improving the user interface and features of our platform along with offering a multitude of user experiences with first tier service offerings. We believe that maintaining and promoting a vibrant community culture is critical to retaining and expanding our user community. We have taken multiple initiatives to preserve our community culture and values. Despite our efforts, we may be unable to maintain our community culture and cease to be the preferred platform for our target users and creators as we expand our footprint, which would be detrimental to our business operations.

***The online gaming industry is very “hit” driven. We may not have access to “hit” games or titles.***

Select game titles dominate competitive online gaming, and many new games titles are regularly introduced in each major industry segment (console, mobile and PC free-to-download). Despite the number of new entrants, only a very few “hit” titles account for a significant portion of total revenue in each segment.

The size and engagement level of our users are critical to our success and are closely linked to the quality and popularity of the game publishers with which we have licenses. Game publishers on our platform, including those who have entered into license agreements with us, may leave us for other gaming platforms which may offer better competition, and terms and conditions than we do. Furthermore, we may lose our licenses with certain game publishers if we fail to generate the number of gamers and creators to our amateur tournaments and competitions expected by such publishers. In addition, if popular game publishers cease to license their games to us, or our live streams fail to attract gamers and creators, we may experience a decline in gamer traffic, direct to consumer opportunities and engagement, which may have a material and adverse impact on our results of operations and financial conditions.

Although we have entered into multi-year agreements with certain publishers, if we fail to license multiple additional “hit” games or any of our existing licensed game publishers with which we currently have a license decide to breach the license agreement or choose not to continue with us once the term of the license agreement expires, the popularity of our tournaments, competitions and content generated across our platforms may decline and the number of our users and creators may decrease, which could materially and adversely affect our results of operations and financial condition.

***We have not entered into definitive license agreements with certain game publishers that we currently have relationships with, and we may never do so.***

We currently do not have definitive license agreements in place with game publishers for the use of certain of the game titled played on our platform, as these publishers currently permit us to integrate the specifications of the game title with our technology. We may not ever enter into license agreements with these parties in the future, instead continuing our relationship with these game publishers without a license agreement. These game publishers may unilaterally choose to discontinue their relationship with the Company, thereby preventing us from offering experiences on our platform using their game titles, as the case may be. Should those game publishers choose not to allow us to offer experiences involving their respective game titles to our users, the popularity of our amateur city leagues, tournaments and competitions may decline and the number of our users and creators may decrease, which could materially and adversely affect our results of operations and financial condition.

***If we fail to keep our existing users and creators highly engaged, to acquire new users and creators, to successfully implement a direct to consumer model for our user community, our business, profitability and prospects may be adversely affected.***

Our success depends on our ability to maintain and grow the number of users and creators using our platform, and keeping our users and creators highly engaged. Of particular importance is the successful deployment and expansion of our direct to consumer model to our user community for purposes of creating predictable recurring revenues.

In order to attract, retain and engage users and creators and remain competitive, we must continue to develop and expand our product offerings, including internationally, produce engaging tournaments and competitions, successfully license the newest “hit” esports games and titles, implement new technologies and strategies, improve features of our platform and stimulate interactions in our user community.

A decline in the number of our users and creators in our ecosystem may adversely affect the engagement level of our users and creators, the vibrancy of our user community, or the popularity of our platform, which may in turn reduce our monetization opportunities, and have a material and adverse effect on our business, financial condition and results of operations. If we are unable to attract and retain, or convert users and creators into direct to consumer-based paying users and creators, our revenues may decline, and our results of operations and financial condition may suffer.

We cannot assure you that our platform will remain sufficiently popular with users and creators to offset the costs incurred to operate and expand it. It is vital to our operations that we remain sensitive and responsive to evolving user preferences and offer first-tier content that attracts our users and creators. We must also keep providing users and creators with new features and functions to enable superior content viewing, and social interaction. Further, we will need to continue to develop and improve our platform and to enhance our brand awareness, which may require us to incur substantial costs and expenses. If such increased costs and expenses do not effectively translate into an improved user experience and direct to consumer-based, long-term engagement, our results of operations may be materially and adversely affected.

***The ability to grow our business is dependent in part on the success and availability of mass media channels developed by third parties, as well as our ability to develop commercially successful content.***

The success of our business is driven in part by the commercial success and adequate supply of third-party mass media channels for which we may distribute our content, including Twitch, YouTube and ESL.tv. Our success also depends on our ability to accurately predict which channels and platforms will be successful with the online gaming community, our ability to develop commercially successful content and distribute via SLG.TV, which is presently available on Twitch, amateur tournaments and competition for these channels and gaming platforms and our ability to effectively manage the transition of our users and creators from one generation or demographic to the next. Additionally, we may enter into certain exclusive licensing arrangements that affect our ability to deliver or market our live and on-demand content on certain channels and platforms. A channel or platform may not succeed as expected or new channels or platforms may take market share and users and creators away from platforms for which we have devoted significant resources. If demand for the channels or platforms for which we are developing is lower than our expectations, we may be unable to fully recover the investments we have made, and our financial performance may be harmed. Alternatively, a channel or platform for which we have not devoted significant resources could be more successful than we initially anticipated, causing us to not be able to take advantage of meaningful revenue opportunities.

***If we fail to maintain and enhance our brand or if we incur excessive expenses in this effort, our business, results of operations and prospects may be materially and adversely affected.***

We believe that maintaining and enhancing our brand is of significant importance to the success of our business. A well-recognized brand is important to increasing the number of users and creators and the level of engagement of our overall user community which is critical in enhancing our attractiveness to advertisers and sponsors. Since we operate in a highly competitive market, brand maintenance and enhancement directly affect our ability to maintain and enhance our market position.

Although we have developed our brand through word of mouth referrals, key strategic partners and our esports game publisher licensors, as we expand, we may conduct various marketing and brand promotion activities using various methods to continue promoting our brand. We cannot assure you, however, that these activities will be successful or that we will be able to achieve the brand promotion effect we expect.

In addition, any negative publicity in relation to our service offerings, or operations, regardless of its veracity, could harm our brands and reputation. Negative publicity or public complaints from users and creators may harm our reputation, and if complaints against us are not addressed to their satisfaction, our reputation and our market position could be significantly harmed, which may materially and adversely affect our business, results of operations and prospects.

***Negative perceptions about our brand, platforms, tournaments or competitions and/or business practices may damage our business and increase the costs incurred in addressing gamer concerns.***

Expectations regarding the quality, performance and integrity of our service offerings are high. Users and creators may be critical of our brand, platform, content, service offerings, tournaments or competitions and/or business practices for a wide variety of reasons. These negative user reactions may not be foreseeable or within our control to manage effectively, including user reactions to content via social media or other outlets, components and services, or objections to certain of our business practices. Negative user sentiment about our business practices also can lead to investigations from regulatory agencies and consumer groups, as well as litigation, which, regardless of their outcome, may be costly, damaging to our reputation and harm our business.

***Technology changes rapidly in our business and if we fail to anticipate or successfully implement new technologies or adopt new business strategies, technologies or methods, the quality, timeliness and competitiveness of our offered services may suffer.***

Rapid technology changes require us to anticipate, sometimes years in advance, which technologies we must develop, implement and take advantage of in order to be and remain competitive in both the content-creation and delivery market, as well as the esports gaming market. We have invested, and in the future may invest, in new business strategies including within metaverse gaming, a direct to consumer model, technologies, products, or games or first-tier game titles to continue to persistently engage the user and deliver the best user experience. Such endeavors may involve significant risks and uncertainties, and no assurance can be given that the technology we choose to adopt and the features that we pursue will be successful. If we do not successfully implement these new technologies, our reputation may be materially adversely affected and our financial condition and operating results may be impacted. We also may miss opportunities to adopt technology, or develop technologies, products, or services that become popular with users and creators, which could adversely affect our financial results. It may take significant time and resources to shift our focus to such technologies, putting us at a competitive disadvantage.

Our development process usually starts with particular user experiences in mind, and a range of technical development and feature goals that we hope to be able to achieve. We may not be able to achieve these goals, or our competitors may be able to achieve them more quickly and effectively than we can based on having greater operating capital and personnel resources. If we cannot achieve our technology goals within the original development schedule, then we may delay their release until these goals can be achieved, which may delay or reduce revenue and increase our development expenses. Alternatively, we may be required to significantly increase the resources employed in research and development in an attempt to accelerate our development of new technologies, either to preserve our launch schedule or to keep up with our competitors, which would increase our development expenses.

***Our new services and changes to existing services could fail to attract or retain users or generate revenue and profits.***

Our ability to retain, increase, and engage our user base and to increase our revenue depends heavily on our ability to continue to evolve our existing services and to develop successful new services, both independently and in conjunction with developers or other third parties. We may introduce significant changes to our existing services or acquire or introduce new and unproven services, including using technologies with which we have little or no prior development or operating experience. For example, we do not have significant experience with virtual or augmented reality technology, which may adversely affect our ability to successfully develop and market our offerings within these technologies. We continue to incur substantial costs, and we may not be successful in generating profits, in connection with these efforts. In addition, the introduction of new services, or changes to existing services, may result in new or enhanced governmental or regulatory scrutiny, litigation, or other complications that could adversely affect our business and financial results. We have also invested, and expect to continue to invest, significant resources in growing our service offerings to support increasing usage of such products. If our new or enhanced services fail to engage users, marketers, or developers, or if our business plans are unsuccessful, we may fail to attract or retain users or to generate sufficient revenue, operating margin, or other value to justify our investments, and our business may be adversely affected.

***We may not be successful in our metaverse gaming strategy and investments, which could adversely affect our business, reputation, or financial results.***

We believe the metaverse, an embodied internet where people have immersive experiences beyond two-dimensional screens, is the next evolution in social technology. Our business strategy focuses on offerings within metaverse gaming. We expect this will be a complex, evolving, and long-term initiative that will involve the development of new and emerging technologies, continued investment in privacy, safety, and security efforts, and collaboration with other companies, developers, partners, and other participants. However, the metaverse may not develop in accordance with our expectations, and market acceptance of features, products, or services we build for the metaverse is uncertain. In addition, we have limited experience with virtual and augmented reality technology, which may enable other companies to compete more effectively than us. We may be unsuccessful in our research and product development efforts, including if we are unable to develop relationships with key participants in metaverse gaming or develop products that operate effectively with metaverse gaming technologies, products, systems, networks, or standards. Our metaverse gaming efforts may also divert resources and management attention from other areas of our business. In addition, as our metaverse gaming efforts evolve, we may be subject to a variety of existing or new laws and regulations in the United States and international jurisdictions, including in the areas of privacy and e-commerce, which may delay or impede the development of our products and services, increase our operating costs, require significant management time and attention, or otherwise harm our business. As a result of these or other factors, our metaverse gaming strategy and investments may not be successful in the foreseeable future, or at all, which could adversely affect our business, reputation, or financial results.

***We focus our business on our developers, creators, and users, and acting in their interests in the long-term may conflict with the short-term expectations of analysts and investors.***

A significant part of our business strategy and culture is to focus on long-term growth and developer, creator, and user experience over short-term financial results. We expect our expenses to continue to increase in the future as we broaden our developer, creator, and user community, as developers, creators, and users increase the amount and types of content they make available on our platform and the content they consume, as we continue to seek ways to increase payments to our developers, and as we develop and further enhance our platform, expand our technical infrastructure, and hire additional employees to support our expanding operations. As a result, in the near- and medium-term, we may continue to operate at a loss, or our near- and medium-term profitability may be lower than it would be if our strategy were to maximize near- and medium-term profitability. We expect to continue making significant expenditures to grow our platform and develop new features, integrations, capabilities, and enhancements to our platform for the benefit of our developers, creators, and users. Such expenditures may not result in improved business results or profitability over the long-term. If we are ultimately unable to achieve or improve profitability at the level or during the time frame anticipated by securities or industry analysts, investors and our stockholders, the trading price of our common stock may decline.

***We may experience security breaches and cyber threats.***

We continually face cyber risks and threats that seek to damage, disrupt or gain access to our networks and our platform, supporting infrastructure, intellectual property and other assets. In addition, we rely on technological infrastructure, including third party cloud hosting and broadband, provided by third party business partners to support the in person and online functionality of our platform. These business partners are also subject to cyber risks and threats. Such cyber risks and threats may be difficult to detect. Both our partners and we have implemented certain systems and processes to guard against cyber risks and to help protect our data and systems. However, the techniques that may be used to obtain unauthorized access or disable, degrade, exploit or sabotage our networks and platform change frequently and often are not detected. Our systems and processes, and the systems and processes of our third-party business partners, may not be adequate. Any failure to prevent or mitigate security breaches or cyber risks, or respond adequately to a security breach or cyber risk, could result in interruptions to our platform, degrade the user experience, cause users and creators to lose confidence in our gaming platform and cease utilizing it, as well as significant legal and financial exposure. This could harm our business and reputation, disrupt our relationships with partners and diminish our competitive position.

Successful exploitation of our networks and platform can have other negative effects upon the user experience we offer. In particular, the virtual economies that exist in certain of our licensed game publishers' games and developers' outside platforms, such as Roblox, are subject to abuse, exploitation and other forms of fraudulent activity that can negatively impact our business. Virtual economies involve the use of virtual currency and/or virtual assets that can be used or redeemed by a user within a particular online game or service.

***Our business could be adversely affected if our data privacy and security practices are not adequate, or perceived as being inadequate, to prevent data breaches, or by the application of data privacy and security laws generally.***

In the course of our business, we may collect, process, store and use gamer and other information, including personally identifiable information, passwords and credit card information, the latter of which is subject to PCI-DSS compliance. Although we take measures to protect this information from unauthorized access, acquisition, disclosure and misuse, our security controls, policies and practices may not be able to prevent the improper or unauthorized access, acquisition or disclosure of such information. The unauthorized access, acquisition or disclosure of this information, or a perception that we do not adequately secure this information could result in legal liability, costly remedial measures, governmental and regulatory investigations, harm our profitability and reputation and cause our financial results to be materially affected. In addition, third party vendors and business partners receive access to information that we collect. These vendors and business partners may not prevent data security breaches with respect to the information we provide them or fully enforce our policies, contractual obligations and disclosures regarding the collection, use, storage, transfer and retention of personal data. A data security breach of one of our vendors or business partners could cause reputational harm to them and/or negatively impact our ability to maintain the credibility of our user community.

Data privacy, data protection, localization, security and consumer-protection laws are evolving, and the interpretation and application of these laws in the United States, Europe (including compliance with the General Data Protection Regulation), and elsewhere often are uncertain, contradictory and changing. It is possible that these laws may be interpreted or applied in a manner that is averse to us or otherwise inconsistent with our practices, which could result in litigation, regulatory investigations and potential legal liability or require us to change our practices in a manner adverse to our business. As a result, our reputation and brand may be harmed, we could incur substantial costs, and we could lose both users and creators and revenue.

***We depend on servers to operate our service offerings with online features and our proprietary online platform. If we were to lose server functionality for any reason, our business may be negatively impacted.***

Our business relies on the continuous operation of servers, some of which are owned and operated by third parties. Although we strive to maintain more than sufficient server capacity, and provide for active redundancy in the event of limited hardware failure, any broad-based catastrophic server malfunction, a significant service-disrupting attack or intrusion by hackers that circumvents security measures, a failure of disaster recovery service or the failure of a company on which we are relying for server capacity to provide that capacity for whatever reason could degrade or interrupt the functionality of our platform, and could prevent the operation of our platform for both in-person and online user experiences.

We also rely on networks operated by third parties to support content on our platform, including networks owned and operated by game publishers. An extended interruption to any of these services could adversely affect the use of our platform, which would have a negative impact on our business.

Further, insufficient server capacity could also negatively impact our business. Conversely, if we overestimate the amount of server capacity required by our business, we may incur additional operating costs.

***Our advertising revenue is dependent on targeting and measurement tools that incorporate data signals from user activity on websites and services that we do not control, and changes to the regulatory environment, third-party mobile operating systems and browsers, and our own products have impacted, and we expect will continue to impact, the availability of such signals, which will adversely affect our advertising revenue.***

We rely on data signals from user activity on websites and services that we do not control in order to deliver relevant and effective ads to our users. Our advertising revenue is dependent on targeting and measurement tools that incorporate these signals, and any changes in our ability to use such signals will adversely affect our business. For example, legislative and regulatory developments, such as the European Union's General Data Protection Regulation ("GDPR"), and the California Consumer Privacy Act ("CCPA"), have impacted, and we expect will continue to impact, our ability to use such signals in our ad products. In particular, we may see an increasing number of users opt to control certain types of ad targeting, which may increase further with expanded control over certain third-party data as part of our compliance with these laws and regulations, and we may have to introduce product changes that limit data signal use for certain users in California following adoption of the CCPA. Regulatory guidance or decisions or new legislation in these or other jurisdictions may require us to make additional changes to our products in the future that further reduce our ability to use these signals. In addition, mobile operating system and browser providers, such as Apple and Google, have implemented product changes and/or announced future plans to limit the ability of websites and application developers to collect and use these signals to target and measure advertising. These developments may limit our ability to target and measure the effectiveness of ads across platforms and may negatively impact our advertising revenue. If we are unable to mitigate these developments as they take further effect in the future, our targeting and measurement capabilities may be materially and adversely affected, which would in turn significantly impact our future revenue growth.

***Our online platform and services offered through our platform may contain defects.***

Our online platform and the services offered through our platform are extremely complex and are difficult to develop and distribute. We have quality controls in place to detect defects in our platform before they are released. Nonetheless, these quality controls are subject to human error, overriding, and reasonable resource or technical constraints. Further, we have not undertaken independent third-party testing, verification or analysis of our platform and associated systems and controls. Therefore, our platform and quality controls and preventative measures we have implemented may not be effective in detecting all defects in our platform. In the event a significant defect in our platform and associated systems and controls is realized, we could be required to offer refunds, suspend the availability of our service offerings, or expend significant resources to cure the defect, each of which could significantly harm our business and operating results.

***We may experience system failures, outages and/or disruptions of the functionality of our platform. Such failures, delays and other problems could harm our reputation and business, cause us to lose customers and expose us to customer liability.***

We may experience system failures, outages and/or disruptions of our infrastructure, including information technology system failures and network disruptions, cloud hosting and broadband availability at in person and online experiences. Our operations could be interrupted or degraded by any damage to or failure of:

- our computer software or hardware, or our customers' or suppliers' computer software or hardware;
- our network, our customers' networks or our suppliers' networks; or
- our connections and outsourced service arrangements with third parties.

Our systems and operations are also vulnerable to damage or interruption from:

- power loss, transmission cable cuts and other telecommunications and utility failures;
- hurricanes, fires, earthquakes, floods and other natural disasters;
- a terrorist attack in the U.S. or in another country in which we operate;
- interruption of service arising from facility migrations, resulting from changes in business operations including acquisitions and planned data center migrations;
- computer viruses or software defects;
- loss or misuse of proprietary information or customer data that compromises security, confidentiality or integrity; or
- errors by our employees or third-party service providers.

From time to time in the ordinary course of our business, our network nodes and other systems experience temporary outages. As a means of ensuring continuity in the services we provide to our community and partners, we have invested in system redundancies via partnerships with industry leading cloud service providers, proactive alarm monitoring and other back-up infrastructure, though we cannot assure you that we will be able to re-route our services over our back-up facilities and provide continuous service to customers in all circumstances without material degradation. Because many of our services play a critical role for our community and partners, any damage to or failure of the infrastructure we rely on could disrupt or degrade the operation of our network, our platform and the provision of our services and result in the loss of current and potential community members and/or partners and harm our ability to conduct normal business operations.

***We use third-party services and technologies in connection with our business, and any disruption to the provision of these services and technologies to us could result in negative publicity and a slowdown in the growth of our users, which could materially and adversely affect our business, financial condition and results of operations.***

Our business partially depends on services provided by, and relationships with, various third parties, including cloud hosting and broadband providers, among others. To this end, when our cloud hosting and broadband vendors experience outages, our services will be negatively impacted and alternative resources will not be immediately available. In addition, certain third-party software we use in our operations is currently publicly available free of charge. If the owner of any such software decides to charge users or no longer makes the software publicly available, we may need to incur significant costs to obtain licensing, find replacement software or develop it on our own. If we are unable to obtain licensing, find or develop replacement software at a reasonable cost, or at all, our business and operations may be adversely affected.

We exercise no control over the third-party vendors that we rely upon for cloud hosting, broadband and software service. If such third parties increase their prices, fail to provide their services effectively, terminate their service or agreements or discontinue their relationships with us, we could suffer service interruptions, reduced revenues or increased costs, any of which may have a material adverse effect on our business, financial condition and results of operations.

***If we are unable to successfully grow our user base, compete effectively with other platforms, and further monetize our platform, our business will suffer.***

We have made, and are continuing to make, investments to enable our developers to design and build compelling content and deliver it to our users on our platform. Existing and prospective developers may not be successful in creating content that leads to and maintains user engagement (including maintaining the quality of experiences) or they may fail to expand the types of experiences that our developers can build for users, and other global entertainment companies, online content platforms, and social platforms may entice our users and potential users away from, or to spend less time with, our platform, each of which could adversely affect users' interest in our platform and lead to a loss of revenue opportunities and harm our results of operations.

Additionally, we may not succeed in further monetizing our platform and user base. As a result, our user growth, user engagement, financial performance and ability to grow revenue could be significantly harmed if:

- we fail to increase or maintain KPIs;
- our user growth outpaces our ability to monetize our users, including if our user growth occurs in markets that are not profitable;
- we fail to establish a base of our developers, creators, and users;
- we fail to provide the tools and education to our developers and creators to enable them to monetize their experiences;
- we fail to increase or maintain the amount of time spent on our platform, the number of experiences that our users share and explore with friends, or the usage of our technology for our developers;
- we do not develop and establish the social features of our platform, allowing it to more broadly serve the entertainment, education, and business markets;
- we fail to increase penetration and engagement across target age demographics;
- developers do not create engaging or new experiences for users;
- users reduce their subscriptions for our services within our platform; or
- the experiences on our platform do not maintain or gain popularity.

If we are able to continue to grow, we will need to manage our growth effectively, which could require expanding our internal IT systems, technological operations infrastructure, financial infrastructure, and operating and administrative systems and controls. In addition, we have expended in the past and may in the future expend significant resources to launch new features and changes on our platform that we are unable to monetize, which may significantly harm our business. Any future growth would add complexity to our organization and require effective coordination across our organization, and an inability to do so would adversely affect our business, financial conditions and results of operations.

We provide access to offerings within our platform that are subscription-based. While we intend for these efforts to generate increased recurring revenues from our existing user base, they may cause users to decrease their overall spend on our platform. Our ability to continue to attract and retain users of our paid subscription services will depend in part on our ability to consistently provide our subscribers with a quality experience. If our users do not perceive these offerings to be of value, or if we introduce new or adjust existing features or pricing in a manner that is not favorably received by them, we may not be able to attract and retain subscribers or be able to convince users to become subscribers of such additional service offerings, and we may not be able to increase the amount of recurring revenue from our user base. Subscribers may cancel their subscription to our service for many reasons, including a perception that they do not use the service sufficiently, the need to reduce household expenses, competitive services that provide a better value or experience or as a result of changes in pricing. If our efforts to attract and retain subscribers are not successful, our business, operating results, and financial condition may be adversely impacted.

***We have seen the growth rate of our users fluctuate and expect it to continue to change over time. If we fail to retain users or add new users, or if our users decrease their level of engagement with our platform, revenue, bookings, and operating results will be harmed.***

We believe we have successfully iterated our business model through market insights, and our organic and inorganic growth to establish scale and ultimately drive our monetization strategies. Our strong and growing product-market fit currently reaches over 100 million monthly unique players in Roblox, Minecraft and Fortnite and generates over one billion monthly impressions. We view our KPIs as a critical measure of our user engagement, and adding, maintaining, and engaging users has been and will continue to be necessary to our continued growth. Our KPI growth rate has fluctuated in the past and may slow in the future due to various factors. As COVID-19 related shelter-in-place orders are lifted and children return to school, we have seen growth rates moderate in certain markets. Other factors including: the introduction of new experiences on our platform, higher market penetration rates, and competition from a variety of entertainment sources for our users and their time could also cause our growth rates to fluctuate. For example, while our KPIs have grown sequentially on a quarterly basis for the last several years, there have been months where they have not or have grown at a slower pace, often due to seasonal or other factors. Seasonal factors may have been impacted by the COVID-19 pandemic and we expect that seasonality could again cause user activity to decrease, including below historical levels as the impacts of the COVID-19 pandemic moderate. In addition, our strategy seeks to expand the age groups and geographic markets that make up our users, and if and when we achieve maximum market penetration rates among any particular user cohort overall and in particular geographic markets, future growth in KPIs will need to come from other age or geographic cohorts in other markets, which may be difficult, costly or time consuming for us to achieve. Accessibility to the internet and bandwidth or connectivity limitations as well as regulatory requirements, may also affect our ability to further expand our user base in a variety of geographies. If our KPI growth rate slows or becomes stagnant, or we have a decline in KPIs, or we fail to effectively monetize users in certain geographic markets, our financial performance will increasingly depend on our ability to elevate user activity or increase the monetization of our users.

Our business plan assumes that the demand for interactive entertainment offerings, specifically, the adoption of a metaverse with users interacting together by playing, communicating, connecting, making friends, learning, or simply hanging out, all in 3D environments, will increase for the foreseeable future. However, if this market shrinks or grows more slowly than anticipated, if the metaverse does not gain widespread adoption as a forum for experiences, social interaction and creative expression for our users, or if demand for our platform does not grow as quickly as we anticipate, whether as a result of competition, product obsolescence, budgetary constraints of our developers, creators, and users, technological changes, unfavorable economic conditions, uncertain geopolitical or regulatory environments or other factors, we may not be able to increase our revenue and bookings sufficiently to ever achieve profitability and our stock price would decline.

The multitude of other entertainment options, online gaming, and other interactive experiences is high, making it difficult to retain users who are dissatisfied with our platform and seek other entertainment options. Moreover, a large number of our users are within a demographic which may be less brand loyal and more likely to follow trends, including viral trends, than other demographics. These and other factors may lead users to switch to another entertainment option rapidly, which can interfere with our ability to forecast usage or KPIs and would negatively affect our user retention, growth, and engagement. We also may not be able to penetrate other demographics in a meaningful manner to compensate for the loss of KPIs in this age group. Falling user retention, growth, or engagement rates could seriously harm our business.

***Our user metrics and other estimates are subject to inherent challenges in measurement, and real or perceived inaccuracies in those metrics may significantly harm and negatively affect our reputation and our business.***

We regularly review metrics and KPIs, including monthly unique players and monthly impressions to evaluate growth trends, measure our performance, and make strategic decisions. These metrics are calculated using internal data gathered on an analytics platform that we developed and operate and have not been validated by an independent third party. Our metrics and estimates may also differ from estimates published by third parties or from similarly titled metrics of our competitors due to differences in methodology or the assumptions on which we rely. If our estimates are inaccurate, then investors will have less confidence in our company and our prospects, which could cause the market price of our common stock to decline, our reputation and brand could be harmed.

While these metrics are based on what we believe to be reasonable estimates of our user base for the applicable period of measurement, there are inherent challenges in measuring how our service offerings are used and as a result, the metrics may overstate the number of monthly unique players and monthly impressions. For example, there may be users who have multiple accounts, fake user accounts, or fraudulent accounts created by bots to inflate user activity for a particular developer or creator, thus making the developer or creator's experience or other content appear more popular than it really is. We strive to detect and minimize fraud and unauthorized access to our service offerings, and these practices are prohibited in our terms of service and we implement measures to detect and suppress that behavior. Some of our demographic data may be incomplete or inaccurate. For example, because users self-report their dates of birth, our age demographic data may differ from our users' actual ages. If our users provide us with incorrect or incomplete information regarding their age or other attributes, then our estimates may prove inaccurate.



Errors or inaccuracies in our metrics or data could also result in incorrect business decisions and inefficiencies. For instance, if a significant understatement or overstatement of active users were to occur, we may expend resources to implement unnecessary business measures or fail to take required actions to attract a sufficient number of users to satisfy our growth strategies. If our developers do not perceive our user, geographic, or other demographic metrics to be accurate representations of our user base, or if we discover material inaccuracies in our user, geographic, or other demographic metrics, our reputation may be seriously harmed. Our developers, creators and partners may also be less willing to allocate their budgets or resources to our service offerings, which could seriously harm our business.

***Growth and engagement of our user community depends upon effective interoperability with mobile operating systems, networks, mobile devices and standards that we do not control.***

We make our services available across a variety of mobile operating systems and devices. We are dependent on the interoperability of our services with popular mobile devices and mobile operating systems that we do not control, such as Android and iOS. Any changes in such mobile operating systems or devices that degrade the functionality of our services or give preferential treatment to competitive services could adversely affect usage of our services. In order to deliver high quality services, it is important that our services work well across a range of mobile operating systems, networks, mobile devices and standards that we do not control. We may not be successful in developing relationships with key participants in the mobile industry or in developing services that operate effectively with these operating systems, networks, devices and standards. In the event that it is difficult for our users to access and use our services, particularly on their mobile devices, our user growth and user engagement could be harmed, and our business and operating results could be adversely affected.

***Our business depends substantially on the continuing efforts of our executive officers, key employees and qualified personnel, and our business operations may be severely disrupted if we lose their services.***

Our future success depends substantially on the continued efforts of our executive officers and key employees. If one or more of our executive officers or key employees were unable or unwilling to continue their services with us, we might not be able to replace them easily, in a timely manner, or at all. Since our industry is characterized by high demand and intense competition for talents, we cannot assure you that we will be able to attract or retain qualified staff or other highly skilled employees. In addition, as the Company is relatively young, our ability to train and integrate new employees into our operations may not meet the growing demands of our business which may materially and adversely affect our ability to grow our business and hence our results of operations.

If any of our executive officers and key employees terminates their services with us, our business may be severely disrupted, our financial condition and results of operations may be materially and adversely affected and we may incur additional expenses to recruit, train and retain qualified personnel. If any of our executive officers or key employees joins a competitor or forms a competing company, we may lose users and creators, know-how and key professionals and staff members. Certain of our executive officers and key employees have entered into a non-solicitation and non-competition agreements with us. However, certain provisions under the non-solicitation and non-competition agreement may be deemed legally invalid or unenforceable. If any dispute arises between our executive officers and us, we cannot assure you that we would be able to enforce these non-compete agreements.

***We plan to continue to make acquisitions and pursue other strategic transactions, which could impact our financial condition or results of operations and may adversely affect the price of our common stock.***

As part of our business strategy, we have made and intend to continue to make acquisitions to add specialized employees and complementary companies, products, or technologies, and from time to time may enter into other strategic transactions such as investments and joint ventures. We may not be able to find suitable acquisition candidates, and we may not be able to complete acquisitions or other strategic transactions on favorable terms, or at all, including as a result of regulatory challenges. In some cases, the costs of such acquisitions or other strategic transactions may be substantial, and there is no assurance that we will realize expected synergies from future growth and potential monetization opportunities for our acquisitions or a favorable return on investment for our strategic investments.

We may pay substantial amounts of cash or incur debt to pay for acquisitions or other strategic transactions, which has occurred in the past and could adversely affect our liquidity. The incurrence of indebtedness would also result in increased fixed obligations and increased interest expense, and could also include covenants or other restrictions that would impede our ability to manage our operations. We may also issue equity securities to pay for acquisitions and may grant stock options or other equity awards to retain the employees of acquired companies, which could increase our expenses, adversely affect our financial results, and result in dilution to our stockholders. In addition, any acquisitions or other strategic transactions we announce could be viewed negatively by users, marketers, developers, or investors, which may adversely affect our business or the price of our common stock.

We may also discover liabilities, deficiencies, or other claims associated with the companies or assets we acquire that were not identified in advance, which may result in significant unanticipated costs. The effectiveness of our due diligence review and our ability to evaluate the results of such due diligence are dependent upon the accuracy and completeness of statements and disclosures made or actions taken by the companies we acquire or their representatives, as well as the limited amount of time in which acquisitions are executed. In addition, we may fail to accurately forecast the financial impact of an acquisition or other strategic transaction, including tax and accounting charges. Acquisitions or other strategic transactions may also result in our recording of significant additional expenses to our results of operations and recording of substantial finite-lived intangible assets on our balance sheet upon closing. Any of these factors may adversely affect our financial condition or results of operations.

***We may not be able to successfully integrate our acquisitions, including the 2021 Acquisitions, and we incur significant costs to integrate and support the companies we acquire.***

The integration of acquisitions, including the 2021 Acquisitions, requires significant time and resources, particularly with respect to companies that have significant operations or that develop products where we do not have prior experience, and we may not manage these processes successfully. We continue to make substantial investments of resources to support our acquisitions, including the 2021 Acquisitions, which has in the past resulted, and we expect will in the future result, in significant ongoing operating expense and the diversion of resources and management attention from other areas of our business. We cannot assure you that these investments will be successful. If we fail to successfully integrate the companies we acquire, we may not realize the benefits expected from the transaction and our business may be harmed.

***We may encounter significant difficulties integrating acquired businesses.***

The integration of any businesses is a complex, costly and time-consuming process. As a result, we have devoted, and will continue to devote, significant management attention and resources to integrating acquired businesses, including those acquired in the 2021 Acquisitions. The failure to meet the challenges involved in integrating businesses and to realize the anticipated benefits of any acquisition could cause an interruption of, or a loss of momentum in, the activities of our combined business and could adversely affect our results of operations. The difficulties of combining acquired businesses with our own include, among others:

- the diversion of management attention to integration matters;
- difficulties in integrating functional roles, processes and systems, including accounting systems;
- challenges in conforming standards, controls, procedures and accounting and other policies, business cultures and compensation structures between the two companies;
- difficulties in assimilating, attracting and retaining key personnel;
- challenges in keeping existing clients and obtaining new clients;
- difficulties in achieving anticipated cost savings, synergies, business opportunities and growth prospects from an acquisition;
- difficulties in managing the expanded operations of a significantly larger and more complex business;
- contingent liabilities, including contingent tax liabilities or litigation, that may be larger than expected; and
- potential unknown liabilities, adverse consequences or unforeseen increased expenses associated with an acquisition, including possible adverse tax consequences to the combined business pursuant to changes in applicable tax laws or regulations.

Many of these factors are outside of our control, and any one of them could result in increased costs, decreased expected revenues and diversion of management time and energy, all of which could adversely impact our business and results of operations. These difficulties have been enhanced further during the COVID-19 pandemic as a result of our office closures and work-from-home policies, which may hinder assimilation of key personnel.

If we are not able to successfully integrate an acquisition, if we incur significantly greater costs to achieve the expected synergies than we anticipate or if activities related to the expected synergies have unintended consequences, our business, financial condition or results of operations could be adversely affected.

***The preparation of our financial statements involves the use of good faith estimates, judgments and assumptions, and our financial statements may be materially affected if such good faith estimates, judgments or good faith assumptions prove to be inaccurate.***

Financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) typically require the use of good faith estimates, judgments and assumptions that affect the reported amounts. Often, different estimates, judgments and assumptions could reasonably be used that would have a material effect on such consolidated financial statements, and changes in these estimates, judgments and assumptions may occur from period to period over time. Significant areas of accounting requiring the application of management’s judgment include, but are not limited to, determining the fair value of assets, share-based compensation and the timing and amount of cash flows from assets. These estimates, judgments and assumptions are inherently uncertain and, if our estimates were to prove to be wrong, we would face the risk that charges to income or other financial statement changes or adjustments would be required. Any such charges or changes would require a restatement of our consolidated financial statements and could harm our business, including our financial condition and results of operations and the price of our securities. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of the accounting estimates, judgments and assumptions that we believe are the most critical to an understanding of our consolidated financial statements and our business.

***We are currently dependent on certain game publishers and online game platforms for a substantial portion of our revenue. In the event such publishers or online platforms change their terms and conditions impacting our ability to deploy advertising campaigns on their platforms, or otherwise engage in direct-to-consumer offers, our business, growth prospects and financial condition could be adversely affected.***

We currently generate a substantial portion of our revenue from in-game platform advertising and direct to consumer offers, including digital subscriptions, in-game digital goods, and gameplay access fees, on various metaverse gaming platforms. Additional revenue is generated through our owned and operated properties, along with properties we operate on behalf of others. In the event such game publishers or online game platforms change their current terms and conditions in a manner that limits our ability to deploy advertising campaigns or otherwise engage in direct-to-consumer offers through our partner’s metaverse gaming platforms, or our owned and operated properties, our business, growth prospects and financial condition could be adversely affected.

### **Regulatory and Legal Risk Factors**

***Our business is subject to regulation, and changes in applicable regulations may negatively impact our business.***

We are subject to a number of foreign and domestic laws and regulations that affect companies conducting business on the Internet. In addition, laws and regulations relating to user privacy, data collection, retention, electronic commerce, virtual items and currency, consumer protection, content, advertising, localization, and information security have been adopted or are being considered for adoption by many jurisdictions and countries throughout the world. These laws could harm our business by limiting the products and services we can offer consumers or the manner in which we offer them. The costs of compliance with these laws may increase in the future as a result of changes in interpretation. Furthermore, any failure on our part to comply with these laws or the application of these laws in an unanticipated manner may harm our business and result in penalties or significant legal liability.

In addition, we include modes in our platform that allow players to compete against each other. Although we structure and operate these skill-based competitions with applicable laws in mind, our skill-based competitions in the future could become subject to evolving rules and regulations and expose us to significant liability, penalties and reputational harm.

***Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.***

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could affect the tax treatment of our earnings and adversely affect our operations, and our business and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, on December 22, 2017, tax legislation was signed into law that contained many significant changes to the U.S. tax laws. The new legislation reduced the corporate income tax rate from 34% to 21% effective January 1, 2018, resulting in our deferred income tax assets and liabilities, including NOLs, to be measured using the new rate as reflected in the valuation of these assets as of December 31, 2017. As a result, the value of our deferred tax assets decreased by approximately \$4.3 million and the related valuation allowance has been reduced by the same amount. Our analysis and interpretation of this legislation is ongoing. Given the full valuation allowance provided for net deferred tax assets for the periods presented herein, the change in tax law did not have a material impact on our consolidated financial statements provided herein. There may, however, be additional tax impacts identified in subsequent fiscal periods in accordance with subsequent interpretive guidance issued by the SEC or the Internal Revenue Service. Further, there may be other material adverse effects resulting from the legislation that we have not yet identified. No estimated tax provision has been recorded in the consolidated financial statements included herein for tax attributes that are incomplete or subject to change.

The foregoing items could have a material adverse effect on our business, cash flow, financial condition or results of operations. In addition, it is unclear how these U.S. federal income tax changes will affect state and local taxation, which often uses federal taxable income as a starting point for computing state and local tax liabilities. The impact of this tax legislation on holders of our common stock is also uncertain and could be adverse. We urge our stockholders and investors to consult with our legal and tax advisors with respect to this legislation and the potential tax consequences of investing in or holding our common stock.

***Our online activities are subject to various laws and regulations relating to privacy and child protection, which, if violated, could subject us to an increased risk of litigation and regulatory actions.***

In addition to our platform, we use third-party applications, websites, and social media platforms to promote our service offerings and engage users, as well as monitor and collect certain information about users in our online forums. A variety of laws and regulations have been adopted in recent years aimed at protecting children using the internet such as the Children’s Online Privacy and Protection Act of 1998 (“COPPA”). COPPA sets forth, among other things, a number of restrictions on what website operators can present to children under the age of 13 and what information can be collected from them. COPPA is of particular concern to us, and in an effort to minimize our risk of potential exposure, we retained a COPPA expert as a consultant and have posted a compliant privacy policy, terms of use and various other policies on our website. We undertake significant effort to implement certain precautions to ensure that access to our platform is COPPA compliant. Despite our efforts, no assurances can be given that such measures will be sufficient to completely avoid exposure and COPPA violations, any of which could expose us to significant liability, penalties, reputational harm and loss of revenue, among other things.

***The laws and regulations concerning data privacy are continually evolving. Failure to comply with these laws and regulations could harm our business.***

Consumers are able to access our service offerings online through our platform. We collect and store information about our consumers both personally identifying and non-personally identifying information. Numerous federal, state and international laws address privacy, data protection and the collection, storing, sharing, use, disclosure and protection of personally identifiable information and other user data. Numerous states already have, and are looking to expand, data protection legislation requiring companies like ours to consider solutions to meet differing needs and expectations of creators and attendees. Outside the United States, personally identifiable information and other user data is increasingly subject to legislation and regulations in numerous jurisdictions around the world, the intent of which is to protect the privacy of information that is collected, processed and transmitted in or from the governing jurisdiction. Foreign data protection, privacy, information security, user protection and other laws and regulations are often more restrictive than those in the United States. In particular, the European Union and its member states traditionally have taken broader views as to types of data that are subject to privacy and data protection laws and regulations and have imposed greater legal obligations on companies in this regard. For example, in April 2016, European legislative bodies adopted the General Data Protection Regulation (“GDPR”), which became effective on May 25, 2018. The GDPR applies to any company established in the European Union as well as to those outside of the European Union if they collect and use personal data in connection with the offering of goods or services to individuals in the European Union or the monitoring of their behavior. The GDPR enhances data protection obligations for processors and controllers of personal data, including, for example, expanded disclosures about how personal information is to be used, limitations on retention of information, mandatory data breach notification requirements and onerous new obligations on service providers. Non-compliance with the GDPR may result in monetary penalties of up to €20 million or 4% of annual worldwide revenue, whichever is higher. In addition, some countries are considering or have passed legislation implementing data protection requirements or requiring local storage and processing of data or similar requirements that could increase the cost and complexity of delivering our services. The GDPR and other changes in laws or regulations associated with the enhanced protection of certain types of personal data could greatly increase our cost of providing our products and services or even prevent us from offering certain services in jurisdictions in which we operate. The European Commission is also currently negotiating a new ePrivacy Regulation that would address various matters, including provisions specifically aimed at the use of cookies to identify an individual’s online behavior, and any such ePrivacy Regulation may provide for new compliance obligations and significant penalties. Any of these changes to European Union data protection law or its interpretation could disrupt and/or harm our business.

On June 23, 2016, the United Kingdom (“U.K.”) held a referendum in which voters approved an exit from the European Union, commonly referred to as “Brexit.” This decision created an uncertain political and economic environment, especially in regard to regulation of data protection, in the U.K. and other European Union countries, and the formal process for leaving the European Union has taken years to complete. The U.K. formally left the European Union on January 31, 2020 and began a transition period which expired on December 31, 2020. In particular, while the U.K. has implemented legislation that implements and complements the GDPR, with penalties of noncompliance of up to the greater of £17.5 million or four percent of worldwide revenues, it is unclear how data transfers to and from the United Kingdom will be regulated. The interpretation and application of many privacy and data protection laws are, and will likely remain, uncertain, and it is possible that these laws may be interpreted and applied in a manner that is inconsistent with our existing data management practices or product features. Although player interaction on our platform is subject to our privacy policies, end user license agreements (“EULAs”), and terms of service, if we fail to comply with our posted privacy policies, EULAs, or terms of service, or if we fail to comply with existing privacy-related or data protection laws and regulations, it could result in proceedings or litigation against us by governmental authorities or others, which could result in fines or judgments against us, damage our reputation, impact our financial condition and/or harm our business.

In addition to government regulation, privacy advocacy and industry groups may propose new and different self-regulatory standards that either legally or contractually apply to us. Any inability to adequately address privacy, data protection and data security concerns or comply with applicable privacy, data protection or data security laws, regulations, policies and other obligations could result in additional cost and liability to us, damage our reputation, inhibit sales and harm our business. Further, our failure, and/or the failure by the various third-party service providers and partners with which we do business, to comply with applicable privacy policies or federal, state or similar international laws and regulations or any other obligations relating to privacy, data protection or information security, or any compromise of security that results in the unauthorized release of personally identifiable information or other user data, or the perception that any such failure or compromise has occurred, could damage our reputation, result in a loss of creators or attendees, discourage potential creators and attendees from trying our platform and/or result in fines and/or proceedings by governmental agencies and/or users, any of which could have an adverse effect on our business, results of operations and financial condition. In addition, given the breadth and depth of changes in data protection obligations, ongoing compliance with evolving interpretation of the GDPR and other regulatory requirements requires time and resources and a review of the technology and systems currently in use against the requirements of GDPR and other regulations.

***We may be held liable for information or content displayed on, retrieved from or linked to our platform, or distributed to our users.***

Our interactive live streaming platform enables users and creators to exchange information and engage in various other online activities. Although we require our users and creators to register their real name, we do not require user identifications used and displayed while using the platform to contain any real-name information, and hence we are unable to verify the sources of all the information posted by our users and creators. In addition, because a majority of the communications on our online and in person platform is conducted in real time, we are unable to examine the content generated by users and creators before they are posted or streamed. Therefore, it is possible that users and creators may engage in illegal, obscene or incendiary conversations or activities, including publishing of inappropriate or illegal content that may be deemed unlawful. If any content on our platform is deemed illegal, obscene or incendiary, or if appropriate licenses and third-party consents have not been obtained, claims may be brought against us for defamation, libel, negligence, copyright, patent or trademark infringement, other unlawful activities or other theories and claims based on the nature and content of the information delivered on or otherwise accessed through our platform. Moreover, the costs of compliance may continue to increase when more content is made available on our platform as a result of our growing base of users and creators, which may adversely affect our results of operations.

***Intensified government regulation of the Internet industry could restrict our ability to maintain or increase the level of traffic to our platform as well as our ability to capture other market opportunities.***

The Internet industry is increasingly subject to strict scrutiny. New laws and regulations may be adopted from time to time to address new issues that come to the authorities' attention. We may not timely obtain or maintain all the required licenses or approvals or make all the necessary filings in the future. We also cannot assure you that we will be able to obtain the required licenses or approvals if we plan to expand into other Internet businesses. If we fail to obtain or maintain any of the required licenses or approvals or make the necessary filings, we may be subject to various penalties, which may disrupt our business operations or derail our business strategy, and materially and adversely affect our business, financial condition and results of operations.

***From time to time we may become involved in legal proceedings.***

From time to time we may become subject to legal proceedings, claims, litigation and government investigations or inquiries, which could be expensive, lengthy, disruptive to normal business operations and occupy a significant amount of our employees' time and attention. In addition, the outcome of any legal proceedings, claims, litigation, investigations or inquiries may be difficult to predict and could have a material adverse effect on our business, operating results, or financial condition.

### **Risks Related to Intellectual Property**

***We may be subject to claims of infringement of third-party intellectual property rights.***

From time to time, third parties may claim that we have infringed their intellectual property rights. For example, patent holding companies may assert patent claims against us in which they seek to monetize patents they have purchased or otherwise obtained. Although we take steps to avoid knowingly violating the intellectual property rights of others, it is possible that third parties still may claim infringement.

Existing or future infringement claims against us, whether valid or not, may be expensive to defend and divert the attention of our employees from business operations. Such claims or litigation could require us to pay damages, royalties, legal fees and other costs. We also could be required to stop offering, distributing or supporting our platform, service offerings, or other features or services which incorporate the affected intellectual property rights, redesign products, features or services to avoid infringement, or obtain a license, all of which could be costly and harm our business.

In addition, many patents have been issued that may apply to potential new modes of delivering, playing or monetizing interactive entertainment software products and services, such as those offered on our platform or that we would like to offer in the future. We may discover that future opportunities to provide new and innovative services to users and creators may be precluded by existing patents that we are unable to license on reasonable terms.

***Our technology, content and brands are subject to the threat of piracy, unauthorized copying and other forms of intellectual property infringement.***

We regard our technology, content and brands as proprietary and take measures to protect our technology, content and brands and other confidential information from infringement. Piracy and other forms of unauthorized copying and use of our technology, content and brands are persistent, and policing is difficult. Further, the laws of some countries in which our products are or may be distributed either do not protect our intellectual property rights to the same extent as the laws of the United States or are poorly enforced. Legal protection of our rights may be ineffective in such countries. In addition, although we take steps to enforce and police our rights, factors such as the proliferation of technology designed to circumvent the protection measures used by our business partners or by us, the availability of broadband access to the Internet, the refusal of Internet service providers or platform holders to remove infringing content in certain instances, and the proliferation of online channels through which infringing product is distributed all have contributed to an expansion in unauthorized copying of our technology, content and brands.

***Third parties may register trademarks or domain names or purchase internet search engine keywords that are similar to our registered trademark or pending trademarks, brands or websites, or misappropriate our data and copy our platform, all of which could cause confusion, divert users and creators away from our platform and service offerings, or harm our reputation.***

Competitors and other third parties may purchase (i) trademarks that are similar to our trademarks and (ii) keywords that are confusingly similar to our brands or websites in Internet search engine advertising programs and in the header and text of the resulting sponsored links or advertisements in order to divert users and creators from us to their websites. Preventing such unauthorized use is inherently difficult. If we are unable to prevent such unauthorized use, competitors and other third parties may continue to drive potential users and creators away from our platform to competing, irrelevant or potentially offensive platforms, which could harm our reputation and cause us to lose revenue.

***We may not be able to prevent others from unauthorized use of our intellectual property, which could harm our business and competitive position.***

We regard our registered trademark and pending trademarks, service marks, pending patents, domain names, trade secrets, proprietary technologies and similar intellectual property as critical to our success. We rely on trademark and patent law, trade secret protection and confidentiality and license agreements with our employees and others to protect our proprietary rights.

We have invested significant resources to develop our own intellectual property and acquire licenses to use and distribute the intellectual property of others on our platform. Failure to maintain or protect these rights could harm our business. In addition, any unauthorized use of our intellectual property by third parties may adversely affect our current and future revenues and our reputation.

Policing unauthorized use of proprietary technology is difficult and expensive. We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. Further, we require every employee and consultant to execute proprietary information and invention agreements prior to commencing work. Despite our efforts to protect our proprietary rights, third parties may attempt to copy or otherwise obtain and use our intellectual property or seek court declarations that they do not infringe upon our intellectual property rights. Monitoring unauthorized use of our intellectual property is difficult and costly, and we cannot assure you that the steps we have taken will prevent misappropriation of our intellectual property. From time to time, we may have to resort to litigation to enforce our intellectual property rights, which could result in substantial costs and diversion of our resources.

***Our patent and trademark applications may not be granted and our patent and trademark rights, once patents are issued and trademarks are registered, may be contested, circumvented, invalidated or limited in scope, and our patent and trademark rights may not protect us effectively once issued and registered, respectively. In particular, we may not be able to prevent others from developing or exploiting competing technologies and trademarks, which could have a material and adverse effect on our business operations, financial condition and results of operations.***

Currently, we have one patent application pending, 187 registered trademarks and eighteen pending trademark applications, along with licenses from game publishers to utilize their proprietary games. For our pending patent application we cannot assure you that we will be granted patents pursuant to our pending applications as well as future patent applications we intend to file. Even if our patent applications succeed, it is still uncertain whether these patents will be contested, circumvented or invalidated in the future. In addition, the rights granted under any issued patents may not provide us with sufficient protection or competitive advantages. The claims under any patents that issue from our patent applications may not be broad enough to prevent others from developing technologies that are similar or that achieve results similar to ours. It is also possible that the intellectual property rights of others will bar us from licensing and from exploiting any patents that issue from our pending applications. Numerous U.S. and foreign issued patents and pending patent applications owned by others exist in the fields in which we have developed and are developing our technology. These patents and patent applications might have priority over our patent applications and could subject our patent applications to invalidation. Finally, in addition to those who may claim priority, any of our pending patent and trademark applications may also be challenged by others on the basis that they are otherwise invalid or unenforceable.

## Governance Risks and Risks Related to our Common Stock

*We received a notice from Nasdaq that our common stock may be delisted from trading on the Nasdaq Capital Market if we fail to comply with the continued listing requirements, including the minimum bid price requirement. A delisting of our common stock is likely to reduce the liquidity of our common stock and may inhibit or preclude our ability to raise additional financing.*

We are required to comply with certain Nasdaq continued listing requirements, including a minimum bid price for our common stock, as well as a series of financial tests relating to stockholder equity, market value of listed securities and number of market makers and stockholders. If we fail to maintain compliance with any of those requirements, our common shares could be delisted from Nasdaq.

On October 4, 2022, we received a letter (the “Notice”) from the Listing Qualifications Staff of Nasdaq, indicating that, based upon the closing bid price of our common stock for the prior 30 consecutive business days, we are currently not in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on the Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2). To regain compliance, the closing bid price of our common stock must be at least \$1.00 per share for 10 consecutive business days during the 180-day period from October 4, 2022 to April 3, 2023. As a result, unless the closing bid of our common stock trades in such manner, we will need to solicit stockholder approval to authorize an amendment to its Certificate of Incorporation, as amended, to effect a reverse stock split of our issued and outstanding shares of common stock at a ratio calculated to maintain listing on the Nasdaq Capital Market, as determined by the Board in its sole discretion (the “Reverse Stock Split”). There is no guarantee that the Company’s stockholders will approve the Reverse Stock Split. If our stockholders fail to approve the Reverse Stock Split in such event, and our closing bid price does not meet or exceed \$1.00 by the end of the compliance period and Nasdaq does not grant us an additional compliance period, or we fail to regain compliance by the end of such additional compliance period, our Board of Directors will weigh the available alternatives to regain compliance. However, there can be no assurance that we will be able to successfully resolve such noncompliance.

If, for any reason, Nasdaq should delist our common stock from trading on its exchange and we are unable to obtain listing on another national securities exchange or take action to restore our compliance with the Nasdaq continued listing requirements, a reduction in some or all of the following may occur, each of which could have a material adverse effect on our stockholders:

- the liquidity of our common stock;
- the market price of our common stock;
- we will become a “penny stock”, which will make trading of our common stock much more difficult;
- our ability to obtain financing for the continuation of our operations;
- the number of institutional and general investors that will consider investing in our common stock;
- the number of investors in general that will consider investing in our common stock;
- the number of market makers in our common stock;
- the availability of information concerning the trading prices and volume of our common stock; and
- the number of broker-dealers willing to execute trades in shares of our common stock.

*Our amended and restated bylaws designate a state or federal court located within the State of Delaware as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us.*

Pursuant to our amended and restated bylaws, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (iii) any action asserting a claim against us arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any action asserting a claim against us that is governed by the internal affairs doctrine shall be a state or federal court located within the State of Delaware, in all cases subject to the court’s having personal jurisdiction over indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to this provision. The forum selection clause in our amended and restated bylaws may have the effect of discouraging lawsuits against us or our directors and officers and may limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us.

Because the applicability of the exclusive forum provision is limited to the extent permitted by law, we believe that the exclusive forum provision would not apply to suits brought to enforce any duty or liability created by the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Securities Act of 1933, as amended (the “Securities Act”), any other claim for which the federal courts have exclusive jurisdiction or concurrent jurisdiction over all suits brought to enforce any duty or liability created by the Securities Act. We note that there is uncertainty as to whether a court would enforce the provision and that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Although we believe this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers.

***Although our common stock is listed on the Nasdaq Capital Market, our shares are likely to be thinly traded for some time and an active market may never develop.***

Although our common stock is listed on the Nasdaq Capital Market, it is likely that initially there will be a very limited trading market for our common stock, and we cannot ensure that a robust trading market will ever develop or be sustained. Our shares of common stock may be thinly traded, and the price, if traded, may not reflect our actual or perceived value. There can be no assurance that there will be an active market for our shares of common stock in the future. The market liquidity will be dependent on the perception of our operating business, competitive forces, state of the live stream and gaming industry, growth rate and becoming cash flow profitable on a sustainable basis, among other things. We may, in the future, take certain steps, including utilizing investor awareness campaigns, press releases, road shows, and conferences to increase awareness of our business and any steps that we might take to bring us to the awareness of investors may require we compensate financial public relations firms with cash and/or stock. There can be no assurance that there will be any awareness generated or the results of any efforts will result in any impact on our trading volume. Consequently, investors may not be able to liquidate their investment or liquidate it at a price that reflects the value of the business and trading may be at an inflated price relative to the performance of our company due to, among other things, availability of sellers of our shares. If a market should develop, the price may be highly volatile. Because there may be a low price for our shares of common stock, many brokerage firms or clearing firms may not be willing to effect transactions in the securities or accept our shares for deposit in an account. Even if an investor finds a broker willing to effect a transaction in the shares of our common stock, the combination of brokerage commissions, transfer fees, taxes, if any, and any other selling costs may exceed the selling price. Further, many lending institutions will not permit the use of low-priced shares of common stock as collateral for any loans.

***Our stock price may be volatile, and you could lose all or part of your investment.***

The trading price of our common stock following our offering may fluctuate substantially and may be higher or lower than the initial public offering price. This may be especially true for companies with a small public float. The trading price of our common stock following our offering will depend on several factors, including those described in this “*Risk Factors*” section, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to lose all or part of your investment in our common stock since you might be unable to sell your shares at or above the price you paid in the offering. Factors that could cause fluctuations in the trading price of our common stock include:

- changes to our industry, including demand and regulations;
- we may not be able to compete successfully against current and future competitors;
- competitive pricing pressures;
- our ability to obtain working capital financing as required;
- additions or departures of key personnel;
- sales of our common stock;
- our ability to execute our business plan;
- operating results that fall below expectations;
- loss of any strategic relationship, sponsor or licensor;
- any major change in our management;
- changes in accounting standards, procedures, guidelines, interpretations or principals; and
- economic, geo-political and other external factors.

In addition, the stock market in general, and the market for technology companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors, as well as general economic, political and market conditions such as recessions or interest rate changes, may seriously affect the market price of our common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock shortly following our offering. If the market price of our common stock after our offering does not exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment.



In addition, in the past, following periods of volatility in the overall market and the market prices of particular companies' securities, securities class action litigations have often been instituted against these companies. Litigation of this type, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources. Any adverse determination in any such litigation or any amounts paid to settle any such actual or threatened litigation could require that we make significant payments.

***If securities industry analysts do not publish research reports on us, or publish unfavorable reports on us, then the market price and market trading volume of our common stock could be negatively affected.***

Any trading market for our common stock will be influenced in part by any research reports that securities industry analysts publish about us. We may not obtain any future research coverage by securities industry analysts. In the event we are covered by research analysts, and one or more of such analysts downgrade our securities, or otherwise reports on us unfavorably, or discontinues coverage of us, the market price and market trading volume of our common stock could be negatively affected.

***We have not paid cash dividends in the past and do not expect to pay cash dividends on our common stock in the future. Any return on investment will likely be limited to the value of our common stock.***

We have never paid cash dividends on our common stock and do not anticipate doing so in the foreseeable future. The payment of dividends on our common stock will depend on earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

***Since we do not anticipate paying any cash dividends on our capital stock in the foreseeable future, stock price appreciation, if any, will be your sole source of gain.***

We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, appreciation, if any, in the market price of our common stock will be your sole source of gain for the foreseeable future.

***Our issuance of additional shares of preferred stock could adversely affect the market value of our common stock, dilute the voting power of common stockholders and delay or prevent a change of control.***

Our board of directors have the authority to cause us to issue, without any further vote or action by the stockholders, up to an additional 9,994,641 shares of preferred stock in one or more series, to designate the number of shares constituting any series, and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, voting rights, rights and terms of redemption, redemption price or prices and liquidation preferences of such series. As of March 29, 2023, we had the following shares of Preferred Stock outstanding: 5,359 shares of Series A Preferred Stock, 1,297 shares of Series A-2 Preferred Stock, 1,733 shares of Series A-3 Preferred Stock, 1,934 shares of Series A-4 Preferred Stock and 2,299 shares of Series A-5 Preferred Stock.

The issuance of shares of preferred stock with dividend or conversion rights, liquidation preferences or other economic terms favorable to the holders of preferred stock could adversely affect the market price for our common stock by making an investment in the common stock less attractive. For example, investors in the common stock may not wish to purchase common stock at a price above the conversion price of a series of convertible preferred stock because the holders of the preferred stock would effectively be entitled to purchase common stock at the lower conversion price causing economic dilution to the holders of common stock.

Further, the issuance of shares of preferred stock with voting rights may adversely affect the voting power of the holders of our other classes of voting stock either by diluting the voting power of our other classes of voting stock if they vote together as a single class, or by giving the holders of any such preferred stock the right to block an action on which they have a separate class vote even if the action were approved by the holders of our other classes of voting stock. The issuance of shares of preferred stock may also have the effect of delaying, deferring or preventing a change in control of our company without further action by the stockholders, even where stockholders are offered a premium for their shares.

***The holders of Series A Preferred Stock are entitled to vote on an as-converted to Class A common stock basis and have rights to approve certain actions.***

From November 2022 to January 2023, we issued 12,622 shares of our (i) Series A Convertible Preferred Stock, par value \$0.001 per share (the “Series A Preferred”); (ii) Series A-2 Convertible Preferred Stock, par value \$0.001 per share (the “Series A-2 Preferred”); (iii) Series A-3 Convertible Preferred Stock, par value \$0.001 per share (the “Series A-3 Preferred”); (iv) Series A-4 Convertible Preferred Stock, par value \$0.001 per share (the “Series A-4 Preferred”) and (v) Series A-5 Convertible Preferred Stock, par value \$0.001 per share (the “Series A-5 Preferred”, and, collectively with the Series A Preferred, Series A-2 Preferred, Series A-3 Preferred and Series A-4 Preferred, the “Series A Stock”), to a group of accredited investors (collectively, the “Investors”), pursuant to a certain placement agency agreement.

The holders of our Series A Stock are generally entitled to vote with the holders of our common stock on all matters submitted for a vote of our stockholders (voting together with the holders of common stock as one class) on an as-converted basis. Additionally, the consent of the holders of a majority of the outstanding shares of Series A Stock is required in order for us to take certain actions, including issuances of securities that are senior to, or equal in priority with, the Series A Stock. As a result, the holders of Series A Stock may in the future have the ability to influence the outcome of certain matters affecting our governance and capitalization.

As of March 29, 2023, there were 12,622 shares of our Series A Preferred Stock outstanding, which are convertible without payment of additional consideration, into 22.4 million shares of our common stock, subject to certain ownership limitations. The conversion of the outstanding shares of our Series A Stock into common stock would be substantially dilutive to existing stockholders. Any dilution or potential dilution may cause our stockholders to sell their shares, which may contribute to a downward movement in the stock price of our common stock.

***Future issuances of debt securities, which would rank senior to our common stock upon our bankruptcy or liquidation, and future issuances of preferred stock, which would rank senior to our common stock for the purposes of dividends and liquidating distributions, may adversely affect the level of return you may be able to achieve from an investment in our common stock.***

In the future, we may attempt to increase our capital resources by offering debt securities. In the event of a bankruptcy or liquidation, holders of our debt securities, and lenders with respect to other borrowings we may make, would receive distributions of our available assets prior to any distributions being made to holders of our common stock. Moreover, if we issue preferred stock in the future, the holders of such preferred stock could be entitled to preferences over holders of common stock in respect of the payment of dividends and the payment of liquidating distributions. Because our decision to issue debt or preferred securities in any future offering, or borrow money from lenders, will depend in part on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of any such future offerings or borrowings. Holders of our common stock must bear the risk that any such future offerings we conduct or borrowings we make may adversely affect the level of return they may be able to achieve from an investment in our common stock.

***We are an emerging growth company, and any decision on our part to comply only with certain reduced reporting and disclosure requirements applicable to emerging growth companies could make our common stock less attractive to investors.***

We are an emerging growth company, and, for as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies that are not “emerging growth companies,” including:

- not being required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports and annual report on Form 10-K; and
- exemptions from the requirements of holding a non-binding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We could be an emerging growth company for up to five years following the completion of our offering. Our status as an emerging growth company will end as soon as any of the following takes place:

- the last day of the fiscal year in which we have more than \$1.07 billion in annual revenue;
- the date we qualify as a “large accelerated filer,” with at least \$700 million of equity securities held by non-affiliates;
- the date on which we have issued, in any three-year period, more than \$1.0 billion in non-convertible debt securities; or
- the last day of the fiscal year ending after the fifth anniversary of the completion of our offering.

We cannot predict if investors will find our common stock less attractive if we choose to rely on the exemptions afforded emerging growth companies. If some investors find our common stock less attractive because we rely on any of these exemptions, there may be a less active trading market for our common stock and the market price of our common stock may be more volatile.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

***Because of our status as an emerging growth company, you will not be able to depend on any attestation from our independent registered public accounting firm as to our internal control over financial reporting for the foreseeable future.***

Our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act until the later of the year following our first annual report required to be filed with the SEC, or the date we are no longer an “emerging growth company” as defined in the JOBS Act. Accordingly, you will not be able to depend on any attestation concerning our internal control over financial reporting from our independent registered public accounting firm for the foreseeable future. Subsequent to the time frame above, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act until such time that the Company becomes an “accelerated filer,” as defined by the SEC.

***We have granted, and may continue to grant, share incentive awards, which may result in increased share-based compensation expenses.***

We adopted our Amended and Restated 2014 Stock Option and Incentive Plan (the “2014 Plan”) in October 2014, for purposes of granting share-based compensation awards to employees, directors and consultants to incentivize their performance and align their interests with ours. We account for compensation costs for all share-based awards issued under the 2014 Plan using a fair-value based method and recognize expenses in our statements of comprehensive loss in accordance with GAAP. Under the 2014 Plan, we are authorized to grant options to purchase shares of common stock of our Company, restricted share units to receive shares of common stock and restricted shares of common stock. For Fiscal Year 2022 and Fiscal Year 2021, we recorded share-based compensation expense of \$4.3 million and \$2.4 million, respectively, primarily related to issuances and vesting of awards under the 2014 Plan.

We believe the granting of share incentive awards is important to our ability to attract and retain employees, and we will continue to grant share incentive awards to employees in the future. As a result, our expenses associated with share-based compensation may increase, which may have an adverse effect on our results of operations.

***Uncertainty in global economic conditions could negatively affect our business, results of operations and financial condition.***

We have significant intangible assets recorded on our consolidated balance sheets as of December 31, 2022. We will continue to evaluate the recoverability of the carrying amount of our intangible assets on an ongoing basis, and we may incur substantial impairment charges, which would adversely affect our consolidated financial results. There can be no assurance that the outcome of such reviews in the future will not result in substantial impairment charges. Impairment assessment inherently involves judgment as to assumptions about expected future cash flows and the impact of market conditions on those assumptions. Future events and changing market conditions may impact our assumptions as to prices, costs, holding periods or other factors that may result in changes in our estimates of future cash flows. Although we believe the assumptions we used in testing for impairment are reasonable, significant changes in any one of our assumptions could produce a significantly different result.

## **General Risk Factors**

### ***Actual or threatened epidemics, pandemics, outbreaks, or other public health crises may adversely affect our business.***

Our business could be materially and adversely affected by the risks, or the public perception of the risks, related to an epidemic, pandemic, outbreak, or other public health crisis, such as the recent outbreak of novel coronavirus (COVID-19). The risk, or public perception of the risk, of a pandemic or media coverage of infectious diseases could cause a decrease to the attendance of our in person gaming experiences, or cause certain of our partners, such as Wanda Theaters in China, to avoid holding in person events. Moreover, an epidemic, pandemic, outbreak or other public health crisis, such as COVID-19, could cause members of our Action Squad, in whom we rely on to manage the logistics of our in person experiences, or on-site employees of partners to avoid any involvement with our in person experiences or other events, which would adversely affect our ability to hold such events. The ultimate extent of the impact of any epidemic, pandemic or other health crisis on our business, financial condition and results of operations will depend on future developments, which are highly uncertain and cannot be predicted, including new information that may emerge concerning the severity of such epidemic, pandemic or other health crisis and actions taken to contain or prevent their further spread, among others. These and other potential impacts of an epidemic, pandemic or other health crisis, such as COVID-19, could therefore adversely affect our business, financial condition and results of operations.

### ***Changes in the state of the U.S. economy and a return to volatile or recessionary conditions in the United States or abroad could adversely affect our business or our access to capital markets in a material manner.***

To date, our principal sources of capital used to fund our operations have been the net proceeds we received from sales of equity securities and proceeds received from the issuance of convertible debt, as described herein. We have and will continue to use significant capital for the growth and development of our business, and, as such, we expect to seek additional capital either from operations or that may be available from future issuance(s) of common stock or debt financings, to fund our planned operations.

Accordingly, our results of operations and the implementation of our long-term business strategy could be adversely affected by general conditions in the global economy, including conditions that are outside of our control, such as the impact of health and safety concerns from the current outbreak of COVID-19. The most recent global financial crisis caused by COVID-19 resulted in extreme volatility and disruptions in the capital and credit markets. A severe or prolonged economic downturn could result in a variety of risks to our business and could have a material adverse effect on us, including limiting our ability to obtain additional capital from the capital markets. We could also be adversely affected by such factors as changes in foreign currency rates and weak economic and political conditions in each of the countries in which we operate.

### ***Our business is subject to risks generally associated with the entertainment industry.***

Our business is subject to risks that are generally associated with the entertainment industry, many of which are beyond our control. These risks could negatively impact our operating results and include the popularity, price to play, and timing of release of our esports licensed games, economic conditions that adversely affect discretionary consumer spending, changes in user demographics, the availability and popularity of other forms of entertainment, and critical reviews and public tastes and preferences, which may change rapidly and cannot necessarily be predicted.

## **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## **ITEM 2. PROPERTIES**

As of December 31, 2022 we maintain approximately 3,200 square feet of office space, 1,650 square feet of which is on a month-to-month basis, and 1,550 square feet of which is subject to a two-year lease, commencing on August 1, 2021, at a combined rate of approximately \$12,000 per month.

We anticipate no difficulty in extending the leases of our facilities or obtaining comparable facilities in suitable locations, as needed, and we consider our facilities to be adequate for our current needs.

## **ITEM 3. LEGAL PROCEEDINGS**

As of the date hereof, we are not a party to any material legal or administrative proceedings. There are no proceedings in which any of our directors, executive officers or affiliates, or any registered or beneficial stockholder, is an adverse party or has a material interest adverse to our interest. We may from time to time be subject to various legal or administrative claims and proceedings arising in the ordinary course of business. Litigation or any other legal or administrative proceeding, regardless of the outcome, is likely to result in substantial cost and diversion of our resources, including our management's time and attention.

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

None.

**PART II**

**ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

***Market Information and Holders***

Our common stock is listed on the Nasdaq Capital Market under the ticker symbol “SLGG.”

As of March 22, 2023, we had 164 holders of record of our common stock based upon the records of our transfer agent, which do not include beneficial owners of common stock whose shares are held in the names of various securities brokers, dealers and registered clearing agencies.

***Dividend Policy***

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business. Therefore, we do not currently expect to pay any cash dividends on our common stock for the foreseeable future. Any future determination to pay cash dividends will be at the discretion of our Board and will depend upon our results of operations, financial condition, capital requirements, general business conditions, and other factors that our board of directors deems relevant. Our ability to pay dividends may also be restricted by the terms of any future credit agreement or any future debt or preferred equity securities.

***Recent Sales of Unregistered Equity Securities***

No unregistered securities were issued during the years ended December 31, 2022 and 2021 that were not previously reported.

***Performance Graph***

As a smaller reporting company, we are not required to provide the performance graph required by Item 201(e) of Regulation S-K.

**ITEM 6. [Reserved]**

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion and analysis of our financial condition and results of our operations together with our consolidated financial statements and the notes thereto appearing elsewhere in this Report. This discussion contains forward-looking statements reflecting our current expectations, whose actual outcomes involve risks and uncertainties. Actual results and the timing of events may differ materially from those stated in or implied by these forward-looking statements due to a number of factors, including those discussed in the sections entitled "Risk Factors," "Special Note Regarding Forward-Looking Statements" and elsewhere in this Report.*

### General

Super League Gaming, Inc. is a leading publisher of games, monetization tools and content channels across metaverse gaming platforms that empower developers, energize players, and entertain fans. Our solutions provide incomparable access to an audience consisting of players in the largest global metaverse game environments, fans of hundreds of thousands of gaming influencers, and viewers of gameplay content across major social media and digital video platforms. Fueled by proprietary and patented technology systems, the company's platform includes access to vibrant in-game communities, a leading metaverse advertising platform, a network of highly viewed channels and original shows on Instagram, TikTok, Snap, YouTube, and Twitch, cloud-based livestream production tools, and an award-winning esports invitational tournament series. Super League's properties deliver powerful opportunities for brands and advertisers to achieve impactful insights and marketing outcomes with gamers of all ages.

We generate revenue from (i) innovative advertising including immersive game world and experience publishing and in-game media products, (ii) direct to consumer offers, including in-game items, e-commerce, game passes and ticketing and digital collectibles, and (iii) content and technology through the production and distribution of our own, advertiser and third-party content. We operate in one reportable segment to reflect the way management and our chief operating decision maker review and assess the performance of the business.

### Matters Affecting Comparability

*Impairment of Goodwill.* As described in more detail at Note 2 to the consolidated financial statements elsewhere herein, we performed goodwill impairment tests as of September 30, 2022 and December 31, 2022, resulting in aggregate goodwill impairment charges of \$50,263,000 for Fiscal Year 2022.

*Acquisitions.* During Fiscal Year 2021, we completed the acquisitions described below under the heading, "*Acquisitions Consummated during Fiscal Year 2021.*"

### Executive Summary

During Fiscal Year 2022, management continued to focus on monetization with respect to our three primary revenue streams: (1) advertising revenues, (2) content revenues, and (3) direct to consumer revenues. In addition to the strong key performance indicator ("KPI") performance during the periods presented, as described herein, we: (i) continued our focus on our premium advertising model and the monetization of our growing premium advertising inventory, including increased revenues generated from direct advertising sales, and from our global network of resellers focusing on selling our international media inventory on our behalf; (ii) continued to focus on the monetization of our original and user generated content library and remote production and broadcast capabilities, which emerged as a component of revenue in 2020; (iii) continued to focus on the monetization of the gamer and creator through direct-to-consumer offers, including increases in sales of digital goods with our Minehut, Mineville and Pixel Paradise digital properties; and, (iv) continued to unlock new ways that our content production technology can extend beyond esports, into other entertainment formats representing revenue growth opportunities in the current and future periods. We expect to continue to grow our advertising pipeline across various verticals with the capability to provide brands and advertisers with targeted, high-quality integrations that warrant premium costs per impressions ("CPM") advertising rates.

*Acquisitions Consummated during Fiscal Year 2021 (the "2021 Acquisitions")*

The 2021 Acquisitions were comprised of the following:

- *Acquisition of Mobcrush Streaming, Inc.* On June 1, 2021, the Company completed the acquisition of Mobcrush Streaming, Inc. ("Mobcrush"), a live streaming technology platform used by gaming influencers who generate and distribute original content to fans and subscribers across the most popular live streaming and social media platforms, including Twitch, YouTube, Facebook, Instagram, Twitter, and more. Mobcrush also operates Mineville and Pixel Paradise, two of only seven official Minecraft servers in partnership with Microsoft Corporation ("Microsoft").

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- *Acquisition of Bannerfy, LTD.* On August 24, 2021, the Company completed the acquisition of Bannerfy, Ltd., (“Bannerfy”), an intelligent technology platform that enables digital video and live streaming creators to collaborate with tier one sponsors on their social media channels including YouTube through scalable and custom premium placements.
- *Acquisition of Super Biz.* On October 4, 2021, the Company acquired (i) substantially all of the assets of Super Biz, and (ii) the personal goodwill of the founders regarding Super Biz’s business, as described at Note 5. Super Biz is a dynamic ad platform designed specifically for metaverse environments. Super Biz’s initial deployment enables brands to advertise across popular Roblox game titles and helps Roblox creators with monetization and game analytics. The acquisition allowed us to execute on our strategic plans to extend our existing and expanding presence and reach in the metaverse.

During the periods presented, we experienced significant organic and inorganic growth in our audience, further expanding our premium advertising inventory, increasing deal-sizes and strong repeat buying across the advertiser verticals of retail, entertainment, toys, fashion, consumer packaged goods, and automotive, while upholding our premium CPM advertising rates and margins, further validating a new premium social marketing channel for advertisers to reach elusive Generation Z and Alpha gamers. We further developed our in-house direct sales capability to monetize our domestic experiential and media inventory and launched a global network of resellers to sell our international media inventory on our behalf. In addition, we have deepened our product and engineering functions with specific expertise in metaverse game design, advertising technology, creator tool development, and data and analytics.

As an early-mover creating engaging experiences inside of metaverse game platforms, we converted our deep understanding of young gamers into significant audience reach in virtual world gaming platforms. We believe we have successfully iterated our business model through these market insights, and our organic and inorganic growth to establish scale and ultimately drive our monetization strategies. Our strong and growing product-market fit currently reaches over 100 million monthly unique players in Roblox, Minecraft and Fortnite and generates over one billion monthly impressions. Our software supports the creation and operation of our owned and third-party metaverse gaming worlds and experiences, along with creator tools and analytics underpinned by a creator economy. These tools enable Super League to access these extended audiences with our innovative in-game and in-stream ad products, and allow our game designers and content creators to participate in our advertising economy. Our analytics suite provides Super League, brands and advertisers, and game developers data that informs campaign measurement and insights, along with enhanced game design. Beyond our primary advertising revenue stream, we have the opportunity to extend further downstream in the metaverse gaming worlds we operate, and generate direct to consumer revenues. In addition, our platform, and our capability to produce compelling gaming-centric video and livestream broadcasts drives viewership to our own and our brand partner’s digital channels, and generates content production and syndication revenues from third party partners.

Specifically, Super League’s digital experience and media products provide a wide range of solutions for brands and advertisers. From branded in-game experiences, through to custom content and media, Super League can provide end-to-end solutions for brands to acquire customers, deepen brand affinity and deliver campaign performance with innovative advertising inventory. Additionally, our capability and proprietary technology is now being applied to new virtual world platforms beyond our core offering and is proving to be an enterprise solution for our owned and branded digital experiences that are less temporal and campaign-centric, generating revenue opportunities that are more diversified, annual in nature and less impacted by traditional advertising seasonality.

Through our organic and inorganic growth in Fiscal Year 2022 and Fiscal Year 2021, our premium advertising inventory and offer to brands has expanded significantly, which allows us to offer premium engagement with advertiser’s and brand’s targeted audiences, in a safe, trusted and measurable way, through deep, multi-faceted campaigns leading to growth in the size and scope of our advertising deals to attract a larger share of advertisers’ wallets.

During the second half of Fiscal Year 2021 and throughout Fiscal Year 2022, we also focused on continuing to forge strategic partnerships to create a global reseller network to augment our direct salesforce efforts. These partners have breadth and depth across all of the significant industry verticals along with global geographic coverage, which we believe will facilitate the acceleration of the rollout and awareness for our innovative ad products and drive the acceleration of future monetization.

On June 13, 2022 Super League Gaming, Inc. entered into an investor relations consulting agreement with MZHCI, LLC.

### *Delisting Notice*

On October 4, 2022, we received a letter (the “Letter”) from the Listing Qualifications Staff of The Nasdaq Stock Market, LLC (“Nasdaq”) indicating that, based upon the closing bid price of our common stock for 30 consecutive business days, the Company is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on the Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2). The Letter has no immediate effect on the listing of our common stock on the Nasdaq Capital Market.

The Company intends to monitor the closing bid price of its Common Stock. To regain compliance, the closing bid price of our common stock must be at least \$1.00 per share for 10 consecutive business days during the 180-day period from October 4, 2022 to April 3, 2023. If the Company does not regain compliance with the minimum bid price requirement by April 3, 2023, Nasdaq may grant the Company a second 180-day period to regain compliance. To qualify for this additional 180-day compliance period, the Company would be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for the Nasdaq Capital Market, other than the minimum bid price requirement. In addition, the Company would also be required to notify Nasdaq of its intent to cure the minimum bid price deficiency by effecting a reverse stock split, if necessary. If the Company does not regain compliance within the allotted compliance periods, including any extensions that may be granted by Nasdaq, Nasdaq will provide notice that our common stock will be subject to delisting. The Company would then be entitled to appeal that determination to a Nasdaq hearings panel.

*Seasonality*

Our revenue fluctuates quarterly and is generally higher in the second half of our fiscal year, with the fourth quarter typically representing our highest revenue quarter each year. Advertising spending is traditionally seasonally strong in the second half of each year, reflecting the impact of seasonal back to school, game release and holiday season advertising spending by brands and advertisers. We believe that this seasonality in advertising spending affects our quarterly results, which generally reflect relatively higher advertising revenue in second half of each year, compared to the first half of the year.

*Impact of COVID-19 Pandemic*

The novel coronavirus and actions taken to mitigate the spread of it have had and are expected to continue to have an adverse impact on the economies and financial markets of many countries, including the geographical areas in which the Company operates. It is unknown how long the adverse conditions associated with the coronavirus will last and what the complete financial effect will be to the Company.

Although we were impacted by the general deferral in advertising spending by brands and sponsors resulting from the COVID-19 pandemic for a significant portion of the year ended December 31, 2020 (“Fiscal Year 2020”), we reported significant quarter over quarter growth in revenue in the second half of Fiscal Year 2020, Fiscal Year 2021 and Fiscal Year 2022, and we expect to continue to expand our advertising revenue and revenue from the sale of our proprietary and third-party user generated content in future periods, as we continue to expand our advertising inventory, viewership and related sales activities. For a discussion of the risk factors related to COVID-19, please refer to Part II, Item 1A. “Risk Factors” in elsewhere herein.

**Results of Operations for the Fiscal Years Ended December 31, 2022 and 2021**

We derived the financial data as of and for the years ended December 31, 2022 and 2021, set forth below, from our audited consolidated financial statements included elsewhere herein, and should be read in conjunction with those audited consolidated financial statements and related notes thereto, as well as the information found under this section. Our historical results are not necessarily indicative of the results to be expected in future periods. All references to “Note,” followed by a number reference from one to eleven herein, refer to the applicable corresponding numbered footnotes to the consolidated financial statements contained elsewhere herein.

The following table sets forth a summary of our results of operations for the fiscal years ended December 31, 2022 and 2021:

	<b>Fiscal Year</b>		<b>Change</b>	
	<b>2022</b>	<b>2021</b>	<b>\$</b>	<b>%</b>
<b>REVENUE</b>	\$ 19,677,000	\$ 11,672,000	\$ 8,005,000	69%
<b>COST OF REVENUE</b>	11,162,000	6,547,000	4,615,000	70%
<b>GROSS PROFIT</b>	8,515,000	5,125,000	3,390,000	66%
<b>OPERATING EXPENSE</b>				
Selling, marketing and advertising	12,036,000	9,670,000	2,366,000	24%
Engineering, technology and development	15,876,000	11,100,000	4,776,000	43%
General and administrative	12,094,000	9,435,000	2,659,000	28%
Contingent consideration	3,206,000	-	3,206,000	100%
Impairment of goodwill	50,263,000	-	50,263,000	100%
Total operating expense	93,475,000	30,205,000	63,270,000	209%
<b>NET LOSS FROM OPERATIONS</b>	(84,960,000)	(25,080,000)	(59,880,000)	239%
<b>OTHER INCOME (EXPENSE), NET</b>	(696,000)	1,221,000	(1,917,000)	(157)%
Loss before benefit from income taxes	(85,656,000)	(23,859,000)	(61,797,000)	259%
Benefit from income taxes	205,000	3,111,000	(2,906,000)	(93)%
<b>NET LOSS</b>	<u>\$ (85,451,000)</u>	<u>\$ (20,748,000)</u>	<u>\$ (64,703,000)</u>	<u>312%</u>



**Comparison of the Results of Operations for the Fiscal Years Ended December 31, 2022 and 2021****Revenue**

	Fiscal Year		Change	
	2022	2021	\$	%
Advertising and sponsorships	\$ 13,957,000	\$ 8,005,000	\$ 5,952,000	74%
Content	3,911,000	2,264,000	1,647,000	73%
Direct to consumer	1,809,000	1,403,000	406,000	29%
	<u>\$ 19,677,000</u>	<u>\$ 11,672,000</u>	<u>\$ 8,005,000</u>	<u>69%</u>

	Fiscal Year	
	2022	2021
Number of customers > 10% of revenue / percent of revenue	- / -	One / 12%
By revenue category:		
Advertising and sponsorships	- / -	One / 12%

- Advertising and sponsorship revenue increased driven primarily by a \$3,795,000, or 53% increase in our direct sales advertising revenue, reflecting a 21% increase in our direct sales advertising revenue generating customers, driven by the growth of our premium in-game and in-stream advertising inventory, due in part to a full twelve months of revenues related to our FY 2021 Acquisitions, and an approximately 26% increase in the related average revenue per customer for Fiscal Year 2022, as compared to the prior year comparable period. The increase also reflects a \$2,391,000, or 492% increase in reseller advertising revenues reflecting the continued expansion of our global network sales partnerships focused on the expansion and acceleration of monetization of our unique advertising inventory.
- Content sales revenue increased \$1,647,000, or 73% driven primarily by a 24% increase in content sales revenue generating customers and an 11% increase in average content sales revenue per customer. The increase also included \$919,000 of product design and software development kit related revenue pursuant to a development agreement with a customer, which was completed during the first quarter of Fiscal Year 2022.
- Direct to consumer revenue for Fiscal Year 2022 increased \$406,000, or 29%, compared to the comparable prior year. Direct to consumer revenue is primarily comprised of revenue generated from our Minehut digital property, which provides various Minecraft server hosting services on a subscription basis and other digital goods to the Minecraft gaming community, and direct to consumer in-game platform sales revenue through the sale of digital goods, including cosmetic items, durable goods, player ranks and game modes, within our Mineville and Pixel Paradise gaming servers. Our Mineville and Pixel Paradise gaming servers leverage the flexibility of the Microsoft Minecraft Bedrock platform, are powered by our InPvP cloud architecture technology, and represent two of the seven official Microsoft Minecraft partner servers. Revenue is generated when transactions are facilitated between Microsoft and the end user, either via in-game currency or cash.

**Cost of Revenues**

Cost of revenue includes direct costs incurred in connection with the satisfaction of performance obligations under our revenue arrangements including internal and third-party engineering, creative, content, broadcast and other personnel, talent and influencers, developers, content capture and production services, direct marketing, cloud services, software, prizing, revenue sharing fees and venue fees. Cost of revenue fluctuates period to period based on the specific programs and revenue streams contributing to revenue each period and the related cost profile of our physical and digital experiences, advertising campaigns and content sales activities occurring each period.

Cost of revenue increased \$4,615,000, or 70%, driven primarily by, and consistent with, the 69% increase in related revenues for Fiscal Year 2022.

**Operating Expense**

	Fiscal Year		Change	
	2022	2021	\$	%
Selling, marketing and advertising	\$ 12,036,000	\$ 9,670,000	\$ 2,366,000	24%
Engineering, technology and development	15,876,000	11,100,000	4,776,000	43%
General and administrative	12,094,000	9,435,000	2,659,000	28%
Contingent consideration	3,206,000	-	3,206,000	100%
Impairment of goodwill	50,263,000	-	50,263,000	100%
Total operating expense	\$ 93,475,000	\$ 30,205,000	\$ 63,270,000	209%

Noncash stock-based compensation expense for the periods presented was included in the following operating expense line items:

	Fiscal Year		Change	
	2022	2021	\$	%
Selling, marketing and advertising	\$ 1,079,000	\$ 934,000	\$ 145,000	16%
Engineering, technology and development	389,000	288,000	101,000	35%
General and administrative	2,795,000	1,159,000	1,636,000	141%
Total noncash stock-based compensation expense	\$ 4,263,000	\$ 2,381,000	\$ 1,882,000	79%

On January 1, 2022, the Company issued 1,350,000 performance stock units (“PSUs”) under the Company’s 2014 Amended and Restated Stock Option and Incentive Plan, which vest in five equal increments of 270,000 PSUs, based on satisfaction of market related vesting conditions during the three-year period commencing on January 1, 2022, as described at Note 2 to the consolidated financial statements included elsewhere herein. A market condition is reflected in the grant-date fair value of an award, and therefore, a Monte Carlo simulation model is utilized to determine the estimated fair value of the equity-based award. Compensation cost is recognized for awards with a market condition, provided the requisite service period is satisfied, regardless of whether the market condition is ever satisfied. Noncash stock compensation expense related to the PSUs totaled \$2,142,000 for Fiscal Year 2022.

Amortization expense for the periods presented was included in the following operating expense line items:

	Fiscal Year		Change	
	2022	2021	\$	%
Sales, marketing and advertising	\$ 2,104,000	\$ 1,180,000	\$ 924,000	78%
Engineering, technology and development	2,326,000	1,556,000	770,000	49%
General and administrative	1,199,000	451,000	748,000	166%
Total amortization expense	\$ 5,629,000	\$ 3,187,000	\$ 2,442,000	77%

The net increase in selling, marketing and advertising expense was primarily due to the following:

- Selling, marketing and advertising personnel costs increased \$1,172,000 or 18%, driven by the addition of 11 former Mobcrush employees in connection with the acquisition of Mobcrush and organic growth in connection with the increase in our inhouse direct sales and marketing team focused on monetization and personnel in our creative and content functions. The Fiscal Year 2022 period includes twelve months of net expense related to employees acquired in connection with the June 2021 acquisition of Mobcrush, compared to seven months of net expense for Fiscal Year 2021.
- Increase in noncash stock compensation expense totaling \$145,000 driven by the impact of noncash compensation expense related to the PSUs issued on January 1, 2022, as described above.
- The increase in selling, marketing and advertising expense also included a full year of amortization of partner, customer and advertiser related intangible assets acquired in connection with the 2021 Acquisitions, totaling \$2,104,000 for Fiscal Year 2022. 2021 Acquisition related amortization of partner, customer and advertiser related intangible assets for Fiscal Year 2021 totaled \$1,180,000, reflecting partial 2021 Acquisition related amortization for the period from the respective acquisition closing dates to December 31, 2021.

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*Engineering, Technology and Development.* Components of our platform are available on a “free to use,” “always on basis,” and are utilized and offered as an audience acquisition tool, as a means of growing our audience, engagement, viewership, players and community. Engineering, technology and development related operating expense include the costs described below, incurred in connection with our audience acquisition and viewership expansion activities. Engineering, technology and development related operating expense includes (i) allocated internal engineering personnel expense, including salaries, noncash stock compensation, taxes and benefits, (ii) third-party contract software development and engineering expense, (iii) internal use software cost amortization expense, and (iv) technology platform related cloud services, broadband and other platform expense, incurred in connection with our audience acquisition and viewership expansion activities, including tools and product offering development, testing, minor upgrades and features, free to use services, corporate information technology and general platform maintenance and support. Capitalized internal use software development costs are amortized on a straight-line basis over the software’s estimated useful life.

The net increase in engineering, technology and development costs was primarily due to the following:

- Engineering and product function personnel costs increased \$3,545,000 or 106%, driven by an increase in engineering and product function personnel associated with the 2021 Acquisitions and Fiscal Year 2022 organic growth in personnel in connection with an increase in staffing of our in-house product and engineering team focused on the development and enhancement of our product and technology offerings and platforms. Fiscal year 2022 includes approximately twelve months of net expense related to employees acquired in connection with the 2021 Acquisitions, compared to a partial period of net personnel expense for the Fiscal Year 2021, for the periods from the respective acquisition closing dates to December 31, 2021. The increase in engineering and product function personnel was partially offset in connection with ongoing investment prioritization and cost optimization activities, which resulted in a net decrease of 13 full-time engineering and product function personnel during the second half of Fiscal Year 2022.
- The increase in engineering, technology and development costs for Fiscal Year 2022 also reflected an increase in cloud services and other technology platform costs totaling \$240,000, primarily reflecting costs resulting from our 2021 Acquisitions, as well as continued strong engagement across our digital properties.
- The increase also included a full year of amortization of developed technology related intangible assets acquired in connection with the 2021 Acquisitions totaling \$1,349,000 for Fiscal Year 2022. 2021 Acquisition related amortization of developed technology related intangible assets for Fiscal Year 2021 totaled \$631,000, reflecting partial 2021 Acquisition related amortization for the period from the respective acquisition closing dates to December 31, 2021.

*General and Administrative.* General and administrative expense for the periods presented was comprised of the following:

	Fiscal Year		Change	
	2022	2021	\$	%
Personnel costs	\$ 2,901,000	\$ 2,460,000	\$ 441,000	18%
Office and facilities	249,000	175,000	74,000	42%
Professional fees	1,247,000	1,330,000	(83,000)	(6)%
Stock-based compensation	2,795,000	1,159,000	1,636,000	141%
Depreciation and amortization	1,306,000	524,000	782,000	149%
Other	3,596,000	3,787,000	(191,000)	(5)%
Total general and administrative expense	\$ 12,094,000	\$ 9,435,000	\$ 2,659,000	28%

The net increase in general and administrative expense for the periods presented was primarily due to the following:

- Personnel costs increased primarily due to net increases in headcount in our finance and accounting function, human resources and operations functions.
- Noncash stock compensation expense increased primarily due to \$1,665,000 of noncash stock compensation expense recorded in connection with the PSUs granted on January 1, 2022, which vest in five equal tranches based on the achievement of certain Company stock price targets, as described at Note 2 to the consolidated financial statements elsewhere herein.
- Depreciation and amortization expense included a full year of amortization of trademark, developer and influencer related intangible assets acquired in connection with the 2021 Acquisitions totaling \$1,045,000 for Fiscal Year 2022. 2021 Acquisition related amortization of trademark, developer and influencer related intangible assets for Fiscal Year 2021 totaled \$318,000, reflecting partial 2021 Acquisition related amortization for the period from the respective acquisition closing dates to December 31, 2021.

During the third quarter of Fiscal Year 2022, the Company rebranded certain products acquired in connection with the acquisition of Mobcrush. As a result, the Company recorded a write down of trademark related intangible assets acquired in connection with the acquisition of Mobcrush totaling \$423,000, which is included as a component of amortization expense in general and administrative expense in the accompanying consolidated statement of operations for Fiscal Year 2022.

- Other general and administrative expense decreased driven by a 38% decrease in D&O insurance premiums for the 2022-2023 policy period, which covers the period from March 2022 to February 2023.

### **Contingent Consideration**

During Fiscal Year 2022, the Company determined that it was probable that the contingency associated with the Initial Earn Out Period (as defined at Note 5 to the consolidated financial statements) would be met in accordance with the terms of the Super Biz Purchase Agreement (as defined at Note 5 to the consolidated financial statements), and the applicable amounts were reasonably estimable, resulting in a charge to compensation expense totaling \$3,206,000 (including approximately 988,000 shares of common stock valued at \$0.336, the closing price of our common stock as of December 31, 2022), which is reflected in the consolidated statement of operations for the year ended December 31, 2022. Refer to Note 5 for additional information.

### **Impairment of Goodwill**

As described at Note 2 to the consolidated financial statements elsewhere herein, we performed goodwill impairment tests as of September 30, 2022 and December 31, 2022 (“Measurement Dates”). We utilized the market capitalization of the Company (Level 1 observable input) as of the respective Measurement Dates to estimate the fair value of the Company’s single reporting unit. The estimated market capitalization was determined by multiplying the applicable measurement date stock prices and the common shares outstanding as of the respective Measurement Dates. The market capitalization approach was utilized to estimate the fair value of our single reporting unit due to the significance of the decline in stock price as of the respective Measurement Dates, resulting in a market capitalization that was below the net book value of our single reporting unit as of the respective Measurement Dates. As of September 30, 2022, based on the analysis, the estimated fair value of our reporting unit was \$25.2 million, compared to a carrying value of our single reporting unit of \$67.3 million resulting in a goodwill impairment charge of \$42.0 million, which was reflected in the consolidated statement of operations for the third quarter of Fiscal Year 2022. As of December 31, 2022, based on the analysis, the estimated fair value of our reporting unit was \$12.6 million, compared to a carrying value of our single reporting unit of \$27.5 million, resulting in a fourth quarter 2022 goodwill impairment charge of \$8.3 million, reflecting the write down of the remaining balance of goodwill for our single reporting unit.

### **Other Income (Expense)**

On May 16, 2022, the Company entered into a securities purchase agreement with three institutional investors providing for the sale and issuance of a new series of senior convertible notes in the aggregate original principal amount of \$4,320,000 (of which 8% was an original issue discount) which accrues interest at a guaranteed annual rate of 9% per annum, as described below and at Note 6 to the consolidated financial statements elsewhere herein. Convertible note related interest expense for Fiscal Year 2022 totaled \$670,000, which was comprised of interest expense totaling \$389,000, and the amortization of original issue discount totaling \$280,000.

In May 2020, we entered into a forgivable loan from the U. S. Small Business Administration (“SBA”) resulting in net proceeds of approximately \$1.2 million pursuant to the Paycheck Protection Program (“PPP”) enacted by Congress under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. 636(a)(36)) (the “CARES Act”) administered by the SBA (the “PPP Loan”). To facilitate the PPP Loan, we entered into a note payable agreement with a third-party lender (the “PPP Loan Agreement”). In May 2021, the PPP loan and accrued interest was forgiven pursuant to the terms and conditions of the PPP Loan Agreement and the provision of the CARES Act. Upon forgiveness, and legal release, we reduced the liability by the amount forgiven, totaling \$1,213,000 and recorded a gain on extinguishment in the accompanying statement of operations for Fiscal Year 2021.

### **Benefit for Income Taxes**

*Release of Valuation Allowance.* Since inception, we have maintained a full valuation allowance against our net deferred tax assets. The net deferred tax liability resulting from the acquisition of Moberush created a source of income to utilize against our existing net deferred tax assets. Under the acquisition method of accounting, the impact on the acquiring company’s deferred tax assets is recorded outside of acquisition accounting. Accordingly, the valuation allowance on a portion of the Company’s net deferred tax assets was released, resulting in an income tax benefit of approximately \$3,073,000, recorded as a credit to income tax expense for Fiscal Year 2021. The offsetting amounts reduced net deferred tax liabilities, \$3,073,000 of which reduced the net deferred tax liability established in connection with the application of the acquisition method of accounting for the acquisition of Moberush.

### **Liquidity and Capital Resources**

#### **General**

Cash and cash equivalents totaled approximately \$2.5 million and \$14.5 million at December 31, 2022 and 2021, respectively. The change in cash and cash equivalents for the periods presented reflects the impact of operating, investing and financing cash flow related activities, as described below.

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. Including a noncash goodwill impairment charge of \$50.3 million in Fiscal Year 2022, the Company incurred net losses of \$85.5 million and \$20.7 million during Fiscal Year 2022 and Fiscal Year 2021, respectively, and had an accumulated deficit of \$210.7 million (including Fiscal Year 2022 noncash goodwill impairment charges of \$50.3 million) as of December 31, 2022. For Fiscal Year 2022, net cash used in operating activities totaled \$19.8 million.

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To date, our principal sources of capital used to fund our operations and growth have been the net proceeds received from equity and debt financings. We have and will continue to use significant capital for the growth and development of our business, and, as such, we expect to seek additional capital either from operations or that may be available from future issuance(s) of common stock, preferred stock and / or debt financings, to fund our planned operations. Accordingly, our results of operations and the implementation of our long-term business strategies have been and could continue to be adversely affected by general conditions in the global economy, including conditions that are outside of our control. The most recent global financial crisis caused by severe geopolitical conditions, including conflicts abroad, and the lingering effects of COVID-19 and threats of other outbreaks, have resulted in extreme volatility, disruptions and downward pressure on stock prices and trading volumes across the capital and credit markets in which we traditionally operate. A severe or prolonged economic downturn could result in a variety of risks to our business and could have a material adverse effect on us, including limiting our ability to obtain additional funding from the capital and credit markets. In management's judgement, these conditions raise substantial doubt about the ability of the Company to continue as a going concern as contemplated by Accounting Standards Codification ("ASC") 205-40, "Going Concern" ("ASC 205-40").

### *Management's Plans*

The Company experienced significant growth in Fiscal Year 2022 and Fiscal Year 2021 through organic and inorganic growth activities, including the expansion of our premium advertising inventory and quarter over quarter and year over year increases in recognized revenue across our three primary revenue streams. In Fiscal Year 2022, we focused on the continued expansion of our service offerings and revenue growth opportunities through internal development, collaborations, and through opportunistic strategic acquisitions, as well as management and reduction of costs. Management continues to explore alternatives for raising capital to facilitate our growth and execute our business strategy, including strategic partnerships and or other forms of equity or debt financings.

### *Series A Preferred Stock Financing*

During the fourth quarter of Fiscal Year 2022, we entered into subscription agreements with accredited investors in connection with the sale of an aggregate of 10,323 shares of newly designated Series A, A-2, A-3 and A-4 Convertible Preferred Stock, each series having a \$0.001 par value and a \$1,000 purchase price, raising net proceeds totaling \$8,926,000, after deducting placement agent and other financing costs totaling \$1,397,000. In addition, on January 31, 2023, we entered into subscription agreements with accredited investors in connection with the sale of an aggregate of 2,299 shares of newly designated Series A-5 Convertible Preferred Stock, par value \$0.001 per share (collectively with the Series A, A-2, A-3 and A-4 Convertible Preferred Stock, the "Series A Preferred"), at a purchase price of \$1,000 per share, raising net proceeds of \$2,000,000, after deducting placement agent costs of \$299,000.

The Company sold the shares of Series A Preferred pursuant to a Placement Agency Agreement (the "Placement Agency Agreement") with a registered broker dealer, which acted as the Company's exclusive placement agent (the "Placement Agent") for the offer and sale of the Series A Preferred (the "Series A Offering"). In connection with the Series A Offering, pursuant to the terms of the Placement Agency Agreement, the Company paid the Placement Agent an aggregate of \$1,697,000 in Placement Agent fees and costs, and will issue to the Placement Agent or its designees warrants (the "Placement Agent Warrants") to purchase 3,249,974 shares of Common Stock at a weighted average exercise price of \$0.56 per share. The Placement Agent Warrants provide for a cashless exercise feature and are exercisable for a period of five years from the Effective Date. In addition, the Company agreed to grant the Placement Agent the right to appoint, subject to the Company's approval, one representative to serve as a member of the Company's Board of Directors upon the closing of at least \$10 million in the Series A Offering.

Concurrently with the Series A Preferred subscription agreements, the Company and the holders of the Series A Preferred entered into a Registration Rights Agreement, pursuant to which the Company agreed to file a registration statement covering the resale of the shares of common stock issuable upon conversion of the Series A Preferred within 60 days following the final closing of the Series A Offering and to use its best efforts to cause such registration statement to become effective within 90 days of the filing date.

Use of net proceeds from the Series A Offering include the repayment of certain indebtedness and working capital and general corporate purposes, including sales and marketing activities and product development. Pursuant to the terms of the SPA (Note 6), as of March 31, 2023, \$4.2 million of the net proceeds were utilized in connection with the partial redemption of the Notes (as defined below).

### *Securities Purchase Agreement*

On May 16, 2022, the Company entered into a securities purchase agreement (the "SPA") with three institutional investors (collectively, the "Note Holders") providing for the sale and issuance of a new series of senior convertible notes in the aggregate original principal amount of \$4,320,000, of which 8% was an original issue discount (each, a "Note," and, collectively, the "Notes," and such financing, the "Note Offering"). Each Note accrued interest at a guaranteed annual rate of 9% per annum, matures 12 months from the date of issuance, and was convertible at the option of the Note Holders into that number of shares of the Company's common stock, equal to the sum of the outstanding principal balance, accrued and unpaid interest, and accrued and unpaid late charges (the "Conversion Amount"), divided by \$4.00, subject to adjustment upon the occurrence of certain events as more specifically set forth in the Note.

Concurrently with the SPA, the Company and the Note Holders entered into a Registration Rights Agreement, pursuant to which the Company filed a Registration Statement on Form S-3 within 30 days after the closing of the Note Offering. See Note 6 to the consolidated financial statements contained elsewhere in this Report for additional information about the Note Offering.

As of December 31, 2022, the balance of the Notes and related accrued interest totaled \$719,000 which was subsequently paid in full in the first quarter of fiscal year 2023.

*Common Stock Purchase Agreement*

On March 25, 2022, we entered into a common stock purchase agreement (the “Purchase Agreement”) with Tumim Stone Capital, LLC (“Tumim”), pursuant to which we have the right, but not the obligation, to sell to Tumim, and Tumim is obligated to purchase up to up to \$10,000,000 of newly issued shares (the “Total Commitment”) from time to time during the term of the Purchase Agreement. As consideration for Tumim’s commitment to purchase shares of common stock under the Purchase Agreement, we issued to Tumim 50,000 shares of common stock (the “Commitment Shares”), valued at \$100,000, following the execution of the Purchase Agreement.

The Purchase Agreement initially precludes us from issuing and selling more than 7,361,833 shares of our common stock, including the Commitment Shares, which number equals 19.99% of our common stock issued and outstanding as of March 25, 2022, unless we obtain stockholder approval to issue additional shares, or unless certain exceptions apply. In addition, a beneficial ownership limitation in the agreement initially limits us from directing Tumim to purchase shares of common stock if such purchases would result in Tumim beneficially owning more than 4.99% of the then-outstanding shares of our common stock (subject to an increase to 9.99% at Tumim’s option upon at least 61 calendar days’ notice). See Note 7 to the consolidated financial statements contained elsewhere in this Report for additional information about the Tumim Offering.

We may continue to evaluate potential strategic acquisitions. To finance such strategic acquisitions, we may find it necessary to raise additional equity capital, incur debt, or both. Any efforts to seek additional funding could be made through issuances of equity or debt, or other external financing. However, additional funding may not be available on favorable terms, or at all. The capital and credit markets have experienced extreme volatility and disruption periodically and such volatility and disruption may occur in the future. If we fail to obtain additional financing when needed, we may not be able to execute our business plans which, in turn, would have a material adverse impact on our financial condition, our ability to meet our obligations, and our ability to pursue our business strategies.

**Cash Flows for the Fiscal Years Ended December 31, 2022 and 2021**

The following table summarizes the change in cash and cash equivalents for the periods presented:

	<b>Fiscal Year</b>	
	<b>2022</b>	<b>2021</b>
Net cash used in operating activities	\$ (19,826,000)	\$ (22,707,000)
Net cash used in investing activities	(1,690,000)	(4,203,000)
Net cash provided by financing activities	9,465,000	33,501,000
Increase (decrease) in cash and cash equivalents	(12,051,000)	6,591,000
<b>Cash and cash equivalents, at beginning of period</b>	<b>14,533,000</b>	<b>7,942,000</b>
<b>Cash and cash equivalents, at end of period</b>	<b>\$ 2,482,000</b>	<b>\$ 14,533,000</b>

*Cash Flows from Operating Activities.* Net cash used in operating activities for Fiscal Year 2022 primarily reflected our net GAAP loss for Fiscal Year 2022, net of adjustments to reconcile net GAAP loss to net cash used in operating activities, which included \$50,263,000 of goodwill impairment charges, \$4,263,000 of noncash stock compensation charges, depreciation and amortization of \$5,403,000, and a write down of a trademark related intangible asset totaling \$423,000. Changes in working capital primarily reflected the impact of the settlement of receivables and payables in the ordinary course.

Net cash used in operating activities for Fiscal Year 2021 primarily reflected our net GAAP loss for Fiscal Year 2021, net of adjustments to reconcile net GAAP loss to net cash used in operating activities, which included \$2,381,000 of noncash stock compensation charges, depreciation and amortization of \$3,323,000, a noncash gain totaling \$1,213,000 in connection with the forgiveness of our PPP Loan in May 2021 and changes in valuation allowance and deferred income taxes totaling \$3,073,000. Changes in working capital primarily reflected the impact of the settlement of receivables and payables in the ordinary course.

*Cash Flows from Investing Activities.* Cash flows from investing activities were comprised of the following for the periods presented:

	<b>Fiscal Year</b>	
	<b>2022</b>	<b>2021</b>
Cash acquired in connection with the acquisition of Mobcrush, net	\$ -	\$ 586,000
Cash paid in connection with the acquisition of Bannerfy, net	-	(497,000)
Cash paid in connection with the acquisition of Super Biz, net	-	(3,000,000)
Purchase of property and equipment	(149,000)	(22,000)
Purchase of third-party game properties	(500,000)	-
Capitalization of software development costs	(923,000)	(1,065,000)
Acquisition of other intangible and other assets	(118,000)	(205,000)
<b>Net cash used in investing activities</b>	<b>\$ (1,690,000)</b>	<b>\$ (4,203,000)</b>

*Acquisition of Mobcrush.*

On June 1, 2021, we completed the Acquisition of Mobcrush pursuant to which we acquired all of the issued and outstanding shares of Mobcrush. At closing, the Company issued to the former stockholders of Mobcrush an aggregate total of 12,067,571 shares of common stock and reserved an aggregate total of 514,633 shares of common stock for issuance pursuant to stock options to be granted to Mobcrush employees retained in connection with the Acquisition of Mobcrush, resulting in a total of 12,582,204 shares of common stock issued and reserved as consideration for the Acquisition of Mobcrush. Upon completion of the Acquisition of Mobcrush, Mobcrush became a wholly owned subsidiary of the Company. Refer to Note 5 to the consolidated financial statements herein for information regarding assets acquired and liabilities assumed in connection with the Acquisition of Mobcrush.

*Acquisition of Bannerfy, LTD.*

On August 24, 2021 (the “Bannerfy Closing Date”), the Company completed the acquisition of Bannerfy, Ltd., (“Bannerfy”) pursuant to which the Company acquired all of the issued and outstanding common shares of Bannerfy. Pursuant to the Share Purchase Agreement, dated August 11, 2021 (the “Bannerfy Purchase Agreement”), the Company paid initial consideration of \$2.45 million (the “Bannerfy Closing Consideration”), as follows: (i) \$525,000 in the form of a cash payment, and (ii) \$1.925 million in the form of shares of the Company’s common stock at a price per share of \$4.10, the closing price of the Company’s common stock on the date of the Bannerfy Purchase Agreement, as reported on the Nasdaq Capital Market. Pursuant to the terms of the Bannerfy Purchase Agreement, \$275,000 of the Bannerfy Closing Consideration (the “Holdback Amount”), was withheld from the Bannerfy Closing Consideration to satisfy any indemnifiable Losses incurred by the Company (as defined in the Bannerfy Purchase Agreement) prior to the first anniversary of the Bannerfy Closing Date. The Company incurred no indemnifiable losses prior to the first anniversary of the Bannerfy Closing Date, and therefore during the three months ended September 30, 2022, the Company released to the Sellers the Holdback Amount as follows: (i) \$55,000 payable in the form of cash, and (ii) approximately \$220,000 in the form of shares of the Company’s common stock at a price of \$4.10.

In accordance with the Bannerfy Purchase Agreement, all remaining portions of the Bannerfy Purchase Price subsequent to the payment of the Bannerfy Closing Consideration, up to approximately \$4.55 million (the “Contingent Consideration”), is payable upon the achievement of certain revenue and gross profit thresholds for the remainder of Fiscal Year 2021, and each of the fiscal years ending December 31, 2022, and December 31, 2023 (“Earnout Periods”). Refer to Note 5 to the consolidated financial statements herein for additional information.

*Acquisition of Super Biz Co.*

On October 4, 2021 (“Super Biz Closing Date”), the Company entered into an Asset Purchase Agreement (the “Super Biz Purchase Agreement”) with Super Biz and the founders of Super Biz (the “Founders”), pursuant to which the Company acquired (i) substantially all of the assets of Super Biz, and (ii) the personal goodwill of the Founders regarding Super Biz’s business, (the “Super Biz Acquisition”). The consummation of the Super Biz Acquisition (the “Super Biz Closing”) occurred simultaneously with the execution of the Super Biz Purchase Agreement on the Super Biz Closing Date.

On the Super Biz Closing Date, the Company paid an aggregate total of \$6.0 million to Super Biz and the Founders, of which \$3.0 million was paid in the form of cash and \$3.0 million was paid in the form of shares of the Company’s common stock, at a per share price of \$2.91, the closing price of the Company’s common stock on the Super Biz Closing Date, as reported on the Nasdaq Capital Market.

Pursuant to the terms and subject to the conditions of the Super Biz Purchase Agreement, up to aggregate amount \$11.5 million will be payable to Super Biz and the Founders in connection with the achievement of certain revenue milestones for the period from the Super Biz Closing Date until December 31, 2022 and for the fiscal year ending December 31, 2023 (the “Super Biz Contingent Consideration”). The Super Biz Contingent Consideration is payable in the form of both cash and shares of the Company’s common stock, in equal amounts, as more specifically set forth in the Super Biz Purchase Agreement. As of December 31, 2022, the Company determined that it was probable that the contingency for the Initial Earn Out Period would be met in accordance with the terms of the Super Biz Purchase Agreement, and the applicable amounts were reasonably estimable, resulting in a charge to compensation expense totaling \$3,206,000 (including approximately 988,000 shares of common stock valued at \$0.336, the closing price of our common stock as of December 31, 2022), which is reflected in general and administrative expense in the consolidated statement of operations for the year ended December 31, 2022.

*Capitalized Internal Use Software Costs.* Software development costs incurred to develop internal-use software during the application development stage are capitalized and amortized on a straight-line basis over the software’s estimated useful life, which is generally three years. Software development costs incurred during the preliminary stages of development are charged to expense as incurred. Maintenance and training costs are charged to expense as incurred. Upgrades or enhancements to existing internal-use software that result in additional functionality are capitalized and amortized on a straight-line basis over the applicable estimated useful life.

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*Purchase of Third-Party Game Property.* In June 2022, we purchased *Anime Battlegrounds X*, a highly rated game on Roblox, from a third-party game developer. The total purchase price of \$500,000 was capitalized and is being amortized to cost of revenue over the estimated useful life of 5 years.

*Cash Flows from Financing Activities.* Cash flows from financing activities were comprised of the following for the periods presented:

	Fiscal Year	
	2022	2021
Proceeds from issuance of preferred stock, net of issuance costs (Note 7)	\$ 8,926,000	-
Proceeds from issuance of common stock, net of issuance costs (Note 7)	320,000	\$ 33,390,000
Proceeds from convertible notes, net (Note 6)	4,000,000	-
Payments on convertible notes (Note 6)	(3,781,000)	-
Proceeds from common stock options and purchase warrant exercises	-	111,000
<b>Net cash provided by financing activities</b>	<b>\$ 9,465,000</b>	<b>\$ 33,501,000</b>

#### *Convertible Preferred Stock*

During the fourth quarter of Fiscal Year 2022, we entered into subscription agreements with accredited investors relating to offerings with respect to the sale of an aggregate of 10,323 shares of newly designated Series A, A-2, A-3 and A-4 Convertible Preferred Stock, each series having a \$0.001 par value and a \$1,000 purchase price, hereinafter collectively referred to as “Series A Preferred,” and the individual offerings of Series A Preferred stock hereinafter collectively referred to as the Series A Offerings, as follows:

Date	Series Designation	Conversion Price	Shares	Gross Proceeds	Fees	Net Proceeds	Conversion Shares	Placement Agent Warrants
November 22, 2022	Series A	\$ 0.6200	5,359	\$ 5,359,000	\$ 752,000	\$ 4,607,000	8,644,000	1,253,000
November 28, 2022	Series A-2	\$ 0.6646	1,297	1,297,000	169,000	1,128,000	1,952,000	283,000
November 30, 2022	Series A-3	\$ 0.6704	1,733	1,733,000	225,000	1,508,000	2,585,000	375,000
December 22, 2022	Series A-4	\$ 0.3801	1,934	1,934,000	251,000	1,683,000	5,088,000	738,000
<b>Total</b>			<b>10,323</b>	<b>\$ 10,323,000</b>	<b>\$ 1,397,000</b>	<b>\$ 8,926,000</b>	<b>18,269,000</b>	<b>2,649,000</b>

Use of net proceeds from the Series A Offering include the repayment of certain indebtedness and working capital and general corporate purposes, including sales and marketing activities and product development. As disclosed at Note 6, in the event the Company consummated a subsequent equity financing during the term of the Notes, the Company is required, at the option of the Note Holders, to use 50% of the gross proceeds raised from such sale to redeem all or any portion of the Notes outstanding upon closing of such equity financing. For the Fiscal Year 2022, \$3,621,000 of the net proceeds from the Series A Offerings were utilized in connection with the partial redemption of the Notes.

#### *Convertible Debt.*

On May 16, 2022, as summarized above and further described at Note 6, the Company entered into a securities purchase agreement with three institutional investors, providing for the sale and issuance of a new series of senior convertible notes in the aggregate original principal amount of \$4,320,000, of which 8% is an original issue discount. During the third and fourth quarters of Fiscal Year 2022 we made convertible note redemption payments totaling \$3,782,000. As of December 31, 2022, the outstanding balance of the Notes and related accrued interest totaled \$719,000, which was subsequently paid in full in the first quarter of 2023.

#### *Common Stock Purchase Agreement*

On March 25, 2022, we entered into a common stock purchase agreement (the “Purchase Agreement”) with Tumim Stone Capital, LLC (“Tumim”), pursuant to which we have the right, but not the obligation, to sell to Tumim, and Tumim is obligated to purchase up to up to \$10,000,000 of newly issued shares (the “Total Commitment”) from time to time during the term of the Purchase Agreement. As consideration for Tumim’s commitment to purchase shares of common stock under the Purchase Agreement, we issued to Tumim 50,000 shares of common stock (the “Commitment Shares”), valued at \$100,000, following the execution of the Purchase Agreement.

The Purchase Agreement initially precludes us from issuing and selling more than 7,361,833 shares of our common stock, including the Commitment Shares, which number equals 19.99% of our common stock issued and outstanding as of March 25, 2022, unless we obtain stockholder approval to issue additional shares, or unless certain exceptions apply. In addition, a beneficial ownership limitation in the agreement initially limits us from directing Tumim to purchase shares of common stock if such purchases would result in Tumim beneficially owning more than 4.99% of the then-outstanding shares of our common stock (subject to an increase to 9.99% at Tumim’s option upon at least 61 calendar days’ notice). See Note 7 to the consolidated financial statements contained elsewhere in this Report for additional information about the Tumim Offering. During Fiscal Year 2022, we issued 7,425 shares of common stock pursuant to the Purchase Agreement, at an average price of \$1.11, raising net proceeds of approximately \$8,000, under the Purchase Agreement.



### *Equity Distribution Agreement*

On September 3, 2021, we entered into an Equity Distribution Agreement (the “Sales Agreement”) with two investment banks (the “Agents”), pursuant to which we could offer and sell, from time to time, through the Agents (the “ATM Offering”), up to \$75 million of shares of our common stock (the “Shares”), as described at Note 7. Under the Sales Agreement, the Agents were able to sell the Shares by any method permitted by law deemed to be an “at-the-market” offering as defined in Rule 415 promulgated under the Securities Act. Any Shares offered and sold in the ATM Offering were issued pursuant to our Registration Statement on Form S-3 filed with the SEC on September 7, 2021. During Fiscal Year 2022 the Company issued 323,639 shares of common stock, at an average price of \$0.99, raising net proceeds of \$312,000, under the Sales Agreement. The term of the ATM Offering terminated on November 16, 2022, one year from the date that the Form S-3 was declared effective by the SEC. The net proceeds from sales of Shares pursuant to the ATM Offering were used primarily for the repayment of certain indebtedness, working capital and general corporate purposes.

### *Other Equity Financings*

In January 2021, the Company issued 3,076,924 shares of common stock at a price of \$2.60 per share, raising aggregate net proceeds of approximately \$8.0 million, after deducting offering costs totaling \$73,000.

In February 2021, the Company issued 2,926,830 shares of common stock at a price of \$4.10 per share, raising aggregate net proceeds of approximately \$12.0 million, after deducting offering costs totaling \$70,000.

In March 2021, the Company issued 1,512,499 shares of common stock at a price of \$9.00 per share, raising aggregate net proceeds of approximately \$13.6 million, after deducting offering costs totaling \$72,000.

The offerings described above were made pursuant to an effective shelf Registration Statement on Form S-3, which was originally filed with the SEC on April 10, 2020 (File No. 333-237626). The net proceeds from these offerings were used for working capital and other general corporate purposes, including sales and marketing activities, product development and capital expenditures. The Company utilized a portion of the net proceeds for the acquisition of, or investment in, technologies, solutions or businesses.

### **Contractual Obligations and Off-Balance Sheet Commitments and Arrangements**

As of December 31, 2022, we had no significant commitments for capital expenditures, nor do we have any committed lines of credit, other committed funding or long-term debt, and no guarantees. As of December 31, 2022 we maintain approximately 3,200 square feet of office space, 1,650 square feet of which is on a month-to-month basis, and 1,550 square feet of which is subject to a two-year lease, commencing on August 1, 2021.

We have not entered into any off-balance sheet financial guarantees or other off-balance sheet commitments to guarantee the payment obligations of any third parties. We have not entered into any derivative contracts that are indexed to our shares and classified as stockholder’s equity or that are not reflected in our consolidated financial statements included elsewhere herein. Furthermore, we do not have any retained or contingent interest in assets transferred to an unconsolidated entity that serves as credit, liquidity or market risk support to such entity. We do not have any variable interest in any unconsolidated entity that provides financing, liquidity, market risk or credit support to us or engages in leasing, hedging or product development services with us.

### **Contingencies**

Certain conditions may exist as of the date the consolidated financial statements are issued, which may result in a loss to the Company, but which will only be resolved when one or more future events occur or fail to occur. The Company’s management, in consultation with its legal counsel as appropriate, assesses such contingent liabilities, and such assessment inherently involves an exercise of judgment. In assessing loss contingencies related to legal proceedings that are pending against the Company or unasserted claims that may result in such proceedings, the Company, in consultation with legal counsel, evaluates the perceived merits of any legal proceedings or unasserted claims, as well as the perceived merits of the amount of relief sought or expected to be sought therein. If the assessment of a contingency indicates it is probable that a material loss has been incurred and the amount of the liability can be estimated, then the estimated liability would be accrued in the Company’s consolidated financial statements. If the assessment indicates a potentially material loss contingency is not probable, but is reasonably possible, or is probable, but cannot be estimated, then the nature of the contingent liability, together with an estimate of the range of possible loss, if determinable and material, would be disclosed. Loss contingencies considered remote are generally not disclosed unless they involve guarantees, in which case the guarantees would be disclosed.

## Recent Accounting Pronouncements

Refer to Note 2 to the accompany consolidated financial statements contained elsewhere in this Report.

## Critical Accounting Estimates

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparation of our financial statements requires management to make judgments and estimates. Some accounting policies have a significant impact on amounts reported in our financial statements. The SEC has defined a company's critical accounting policies as the ones that are most important to the portrayal of a company's financial condition and results of operations, and which require a company to make its most difficult and subjective judgments. A summary of significant accounting policies and a description of accounting policies that are considered critical may be found in the audited financial statements and notes thereto included elsewhere herein. The following accounting policies were identified during the periods presented, based on activities occurring during the periods presented, as critical and requiring significant judgments and estimates.

### Revenue Recognition

Revenue is recognized when we transfer promised goods or services to customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods and services. In this regard, revenue is recognized when: (i) the parties to the contract have approved the contract (in writing, orally, or in accordance with other customary business practices) and are committed to perform their respective obligations; (ii) the entity can identify each party's rights regarding the goods or services to be transferred; (iii) the entity can identify the payment terms for the goods or services to be transferred; (iv) the contract has commercial substance (that is, the risk, timing, or amount of the entity's future cash flows is expected to change as a result of the contract); and (v) it is probable that the entity will collect substantially all of the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer.

Transaction prices are based on the amount of consideration to which we expect to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties, if any. We consider the explicit terms of the revenue contract, which are typically written and executed by the parties, our customary business practices, the nature, timing, and the amount of consideration promised by a customer, in connection with determining the transaction price for our revenue arrangements.

We report revenue on a gross or net basis based on management's assessment of whether we act as a principal or agent in the transaction and is evaluated on a transaction-by-transaction basis. To the extent we act as the principal, revenue is reported on a gross basis net of any sales tax from customers, when applicable. The determination of whether we act as a principal or an agent in a transaction is based on an evaluation of whether we control the good or service prior to transfer to the customer. Where applicable, we have determined that it acts as the principal in all of its advertising and sponsorships, content and direct to consumer revenue streams, except in situations where we utilize a reseller partner with respect to direct advertising sales arrangements.

We generate revenue from (i) innovative advertising including immersive game world and experience publishing and in-game media products, (ii) direct to consumer offers, including in-game items, e-commerce, game passes and ticketing and digital collectibles, and (iii) content and technology through the production and distribution of our own, advertiser and third-party content.

Revenue billed or collected in advance is recorded as deferred revenue until the event occurs or until applicable performance obligations are satisfied.

### *Advertising and Sponsorships:*

Advertising revenue primarily consists of direct sales activity along with sales of programmatic display and video advertising units to third-party advertisers and exchanges. Advertising arrangements typically include contract terms for time periods ranging from several days to several weeks in length.

For advertising arrangements that include performance obligations satisfied over time, customers typically simultaneously receive and consume the benefits under the arrangement as we satisfy our performance obligations, over the applicable contract term. As such, revenue is recognized over the contract term based upon estimates of progress toward complete satisfaction of the contract performance obligations (typically utilizing a time, effort or delivery-based method of estimation). Revenue from shorter term advertising arrangements that provide for a contractual delivery or performance date is recognized when performance is substantially complete and or delivery occurs. Payments are typically due from customers during the term of the arrangement for longer-term campaigns, and once delivery is complete for shorter-term campaigns.

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Sponsorship revenue arrangements may include exclusive or non-exclusive title sponsorships, marketing benefits, official product status exclusivity, product visibly and additional infrastructure placement, social media rights, rights to on-screen activations and promotions, display material rights, media rights, hospitality and tickets and merchandising rights. Sponsorship revenue also includes revenue pursuant to arrangements with brand and media partners, retail venues, game publishers and broadcasters that allow our partners to run amateur esports experiences, and or capture specifically curated gameplay content that is customized for our partners' distribution channels. Sponsorship arrangements typically include contract terms for time periods ranging from several weeks or months to terms of twelve months in length.

For sponsorship arrangements that include performance obligations satisfied over time, customers typically simultaneously receive and consume the benefits under the agreement as we satisfy our performance obligations, over the applicable contract term. As such, revenue is recognized over the contract term based upon estimates of progress toward complete satisfaction of the contract performance obligations (typically utilizing a time, effort or delivery-based method of estimation). Payments are typically due from customers during the term of the arrangement.

Revenue from sponsorship arrangements for one-off branded experiences and/or the development of content tailored specifically for our partners' distribution channels that provide for a contractual delivery or performance date, is recognized at a point in time, when performance is substantially complete and or delivery occurs.

### *Content Sales:*

Content-related revenue is generated in connection with our curation and distribution of esports and entertainment content for our own network of digital channels and media and entertainment partner channels. We distribute three primary types of content for syndication and licensing, including: (1) our own original programming content, (2) user generated content ("UGC"), including online gameplay and gameplay highlights, and (3) the creation of content for third parties utilizing our remote production and broadcast technology.

For content arrangements that include performance obligations satisfied over time, customers typically simultaneously receive and consume the benefits under the arrangement as we satisfy our performance obligations, over the applicable contract term. As such, revenue is recognized over the contract term based upon estimates of progress toward complete satisfaction of the contract performance obligations (typically utilizing a time, effort or delivery-based method of estimation). Revenue from shorter-term content sales arrangements that provide for a contractual delivery or performance date is recognized when performance is substantially complete and or delivery occurs. Payments are typically due from customers during the term of the arrangement for longer-term campaigns, and once delivery is complete for shorter-term campaigns.

### *Direct to Consumer:*

Direct to consumer revenue primarily consists of digital subscription fees, in-game digital goods, and gameplay access fees. Subscription revenue is recognized in the period the services are rendered. Payments are typically due from customers at the point of sale.

*Platform Generated Sales Transactions.* Our Mobcrush subsidiary generates in-game Platform sales revenue via digital goods sold within the platform, including cosmetic items, durable goods, player ranks and game modes, leveraging the flexibility of the Microsoft Minecraft Bedrock platform, and powered by the InPvP cloud architecture technology platform. Revenue is generated when transactions are facilitated between Microsoft and the end user, either via in-game currency or cash.

Revenue for digital goods sold on the platform is recognized when Microsoft (our partner) collects the revenue and facilitates the transaction on the platform. Revenue for such arrangements includes all revenue generated, bad debt, make goods, and refunds of all transactions managed via the platform by Microsoft. The revenue is recognized on a monthly basis. Payments are made to the Company monthly based on the reconciled sales revenue generated.

We make estimates and judgments when determining whether we will collect substantially all of the consideration to which we will be entitled in exchange for the goods or services that will be transferred to the customer. We assess the collectability of receivables based on several factors, including past transaction history and the creditworthiness of our customers. If it is determined that collection is not reasonably assured, amounts due are recognized when collectability becomes reasonably assured, assuming all other revenue recognition criteria have been met, which is generally upon receipt of cash for transactions where collectability may have been an issue. Management's estimates regarding collectability impact the actual revenue recognized each period and the timing of the recognition of revenue. Our assumptions and judgments regarding future collectability could differ from actual events and thus materially impact our financial position and results of operations.

Depending on the complexity of the underlying revenue arrangement and related terms and conditions, significant judgments, assumptions and estimates may be required to determine each parties rights regarding the goods or services to be transferred, each parties performance obligations, whether performance obligations are satisfied at a point in time or over time, estimates of completion methodologies, the timing of satisfaction of performance obligations, and the appropriate period or periods in which, or during which, the completion of the earnings process occurs. Depending on the magnitude of specific revenue arrangements, if different judgments, assumptions and estimates are made regarding revenue arrangements in any specific period, our periodic financial results may be materially affected.

## Accounting for Business Combinations

*Acquisition Method.* Acquisitions that meet the definition of a business under ASC 805, “Business Combinations” (“ASC 805”) are accounted for using the acquisition method of accounting. Under the acquisition method of accounting, assets acquired, liabilities assumed, contractual contingencies, and contingent consideration, when applicable, are recorded at fair value at the acquisition date. Any excess of the purchase price over the fair value of the net assets acquired is recorded as goodwill. The application of the acquisition method of accounting requires management to make significant estimates and assumptions in the determination of the fair value of assets acquired and liabilities assumed in connection with the allocation of the purchase price consideration to the assets acquired and liabilities assumed. Transaction costs associated with business combinations are expensed as incurred and are included in general and administrative expense in the consolidated statements of operations. Contingent consideration, if any, is recognized and measured at fair value as of the acquisition date.

*Cost Accumulation Model.* Acquisitions that do not meet the definition of a business under ASC 805 are accounted for as an asset acquisition, utilizing a cost accumulation model. Assets acquired and liabilities assumed are recognized at cost, which is the consideration the acquirer transfers to the seller, including direct transaction costs, on the acquisition date. The cost of the acquisition is then allocated to the assets acquired based on their relative fair values. Goodwill is not recognized in an asset acquisition. Direct transaction costs include those third-party costs that can be directly attributable to the asset acquisition and would not have been incurred absent the acquisition transaction.

Contingent consideration, representing an obligation of the acquirer to transfer additional assets or equity interests to the seller if future events occur or conditions are met, is recognized when probable and reasonably estimable. Contingent consideration recognized is included in the initial cost of the assets acquired, with subsequent changes in the recorded amount of contingent consideration recognized as an adjustment to the cost basis of the acquired assets. Subsequent changes are allocated to the acquired assets based on their relative fair value. Depreciation and/or amortization of adjusted assets are recognized as a cumulative catch-up adjustment, as if the additional amount of consideration that is no longer contingent had been accrued from the outset of the arrangement.

Contingent consideration that is paid to sellers that remain employed by the acquirer and linked to future services is generally considered compensation cost and recorded in the statement of operations in the post-combination period.

## Goodwill

Goodwill represents the excess of the purchase price of the acquired business over the acquisition date fair value of the net assets acquired. Goodwill is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) on an annual basis (December 31) and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. We consider our market capitalization and the carrying value of our assets and liabilities, including goodwill, when performing our goodwill impairment tests. We operate in one reporting segment.

If a potential impairment exists, a calculation is performed to determine the fair value of existing goodwill. This calculation can be based on quoted market prices and / or valuation models, which consider the estimated future undiscounted cash flows resulting from the reporting unit, and a discount rate commensurate with the risks involved. Third-party appraised values may also be used in determining whether impairment potentially exists. In assessing goodwill impairment, significant judgment is required in connection with estimates of market values, estimates of the amount and timing of future cash flows, and estimates of other factors that are used to determine the fair value of our reporting unit. If these estimates or related projections change in future periods, future goodwill impairment tests may result in charges to earnings.

When conducting the Company’s annual or interim goodwill impairment assessment, we initially perform a qualitative evaluation of whether it is more likely than not that goodwill is impaired. In evaluating whether it is more likely than not that the fair value of our reporting unit is less than its carrying amount, we consider the guidance set forth in ASC 350, “Intangibles Goodwill and Other” (“ASC 350”) which requires an entity to assess relevant events and circumstances, including macroeconomic conditions, industry and market considerations, cost factors, financial performance and other relevant events or circumstances.

### *September 30, 2022 Goodwill Impairment Testing*

At September 30, 2022, prior to the completion of our goodwill impairment testing, the goodwill balance totaled \$50.3 million.

At September 30, 2022, from a qualitative standpoint, we considered the Company’s history of reported losses and negative cash flows from operating activities, and also considered the sustained downturn in industry and macroeconomic conditions, including inflationary pressures and potential reductions in advertising spending and the sustained downturn of the broader mid-cap and micro-cap equity markets in the third quarter of Fiscal Year 2022. We also considered that the Company experienced significant inorganic and organic growth in Fiscal Year 2021, including the impact of the acquisitions of Moberush, Bannerfy and Super Biz on our premium advertising inventory, product offerings to advertisers, current period revenue recognized and future revenue generating opportunities.

However, the Company's stock price has been volatile, and the volatility continued during the three months ended September 30, 2022, declining 34% to \$0.68 as of September 30, 2022, reflecting a market capitalization that was approximately 38% of the Company's September 30, 2022 net book value. To assess whether the decline in our market capitalization was an indicator requiring an interim goodwill impairment test, we considered the significance of the decline and the length of time our common stock has been trading at a depressed value along with the macro factors described above. The significance of the decline is consistent with the broader microcap market. As of September 30, 2022 the decline in our stock price and other factors were deemed to be sustained, and therefore a triggering event requiring a goodwill impairment test as of September 30, 2022 was deemed to have occurred.

We utilized the market capitalization of the Company as of September 30, 2022, a Level 1 input as described above, to estimate the fair value of the Company's single reporting unit. The estimated market capitalization was determined by multiplying our September 30, 2022 stock price and the common shares outstanding as of September 30, 2022. The market capitalization approach was utilized to estimate the fair value of our single reporting unit as of September 30, 2022, due to the significance of the decline in stock price as of September 30, 2022, resulting in a market capitalization that was 38% of the net book value of our single reporting unit. Based on the analysis, the estimated fair value of our reporting unit was \$25.2 million, compared to a carrying value of our single reporting unit of \$67.3 million as of September 30, 2022. As such, the fair value of our single reporting unit was deemed to be below its carrying value as of September 30, 2022, resulting in a goodwill impairment charge of \$42.0 million, which was reflected in the consolidated statement of operations for the nine months ended September 30, 2022.

#### *December 31, 2022 Goodwill Impairment Testing*

At December 31, 2022, prior to the completion of our goodwill impairment testing, the goodwill balance totaled \$8.3 million.

At December 31, 2022, from a qualitative standpoint, we considered the factors described above under "September 30, 2022 Goodwill Impairment Testing," including the current period reported loss and negative cash flows from operating activities, and the sustained downturn in industry and macroeconomic conditions, including inflationary pressures and potential reductions in advertising spending and the sustained downturn of the broader mid-cap and micro-cap equity markets in the fourth quarter of Fiscal Year 2022. Similarly, given the Company's recent significant growth, management does not believe that the current market capitalization of the Company is indicative of any fundamental change in the Company's underlying business or future prospects as of the December 31, 2022 measurement date.

The Company's stock price has been volatile, and the volatility continued during the three months ended December 31, 2022, declining 50% from the September 30, 2022 closing price to \$0.336 as of December 31, 2022, reflecting a market capitalization that was approximately 46% of the Company's December 31, 2022 net book value. As of December 31, 2022 the decline in our stock price and other factors were deemed to be sustained, and therefore a triggering event requiring a goodwill impairment test as of December 30, 2022 was deemed to have occurred.

We utilized the market capitalization of the Company as of December 31, 2022, a Level 1 input as described above, to estimate the fair value of the Company's single reporting unit. Based on the analysis, the estimated fair value of our reporting unit was \$12.6 million, compared to a carrying value of our single reporting unit of \$27.5 million as of December 31, 2022. As such, the fair value of our single reporting unit was deemed to be below its carrying value as of December 31, 2022, resulting in an additional goodwill impairment charge of \$8.3 million in the fourth quarter of Fiscal Year 2022, reflecting the write down of the remaining balance of goodwill for our single reporting unit.

#### **Relaxed Ongoing Reporting Requirements**

Upon the completion of our initial public offering, we elected to report as an "emerging growth company" (as defined in the JOBS Act) under the reporting rules set forth under the Exchange Act. For so long as we remain an "emerging growth company," we may take advantage of certain exemptions from various reporting requirements that are applicable to other Exchange Act reporting companies that are not "emerging growth companies," including but not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- taking advantage of extensions of time to comply with certain new or revised financial accounting standards;
- being permitted to comply with reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- being exempt from the requirement to hold a non-binding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We are subject to ongoing public reporting requirements that are less rigorous than Exchange Act rules for companies that are not “emerging growth companies,” and our stockholders could receive less information than they might expect to receive from more mature public companies.

We expect to take advantage of these reporting exemptions until we are no longer an emerging growth company. We will remain an “emerging growth company” for up to five years, although if the market value of our Common Stock that is held by non-affiliates exceeds \$700 million as of any June 30 before that time, we would cease to be an “emerging growth company” as of the following December 31.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

In the ordinary course of our business, we are not currently exposed to market risk of the sort that may arise from changes in interest rates or foreign currency exchange rates, or that may otherwise arise from transactions in derivatives.

The preparation of financial statements in conformity with GAAP requires our management 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, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The Company’s significant estimates and assumptions include the fair value of the Company’s common stock, stock-based compensation, the recoverability and useful lives of long-lived assets, and the valuation allowance relating to the Company’s deferred tax assets.

#### **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The consolidated financial statements and related financial information required to be filed hereunder are indexed under Item 15 of this report and are incorporated herein by reference.

#### **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

#### **ITEM 9A. CONTROLS AND PROCEDURES**

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

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2022. Disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (ii) accumulated and communicated to the company’s management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure. Based on the evaluation of our disclosure controls and procedures, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 31, 2022.

##### **Limitations on Effectiveness of Controls and Procedures**

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving the desired control objectives. Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls or our internal control over financial reporting will prevent or detect all errors and all fraud. Our management recognizes that any control system, no matter how well designed and operated, is based upon certain judgments and assumptions and cannot provide absolute assurance that its objectives will be met. The design of a control system must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

## **Management’s Report on Internal Control over Financial Reporting**

### ***Internal Control Over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles. This process includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of consolidated financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of the internal control over financial reporting to future periods are subject to risk that the internal control may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate.

### ***Management’s Assessment of the Effectiveness of our Internal Control Over Financial Reporting***

Management has evaluated the effectiveness of our internal control over financial reporting as of December 31, 2022. In conducting its evaluation, management used the framework set forth in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Based on our evaluation under such framework, our management has concluded that our internal control over financial reporting was effective as of December 31, 2022.

### ***Report of Independent Registered Public Accounting Firm***

We are an “emerging growth company,” as defined in Rule 405 of the Securities Act and, accordingly, we are not required to provide the attestation report of our independent registered public accounting firm on our internal control over financial reporting required by Item 308(b) of Regulation S-K.

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

There were no changes in our internal control over financial reporting that occurred during the fiscal quarter ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **ITEM 9B. OTHER INFORMATION**

None.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC no later than April 30, 2023.

**ITEM 11. EXECUTIVE COMPENSATION.**

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC no later than April 30, 2023.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC no later than April 30, 2023.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC no later than April 30, 2023.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2022 annual meeting of stockholders to be filed with the SEC no later than April 30, 2023.



**PART IV****ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

<b>Exhibit No.</b>	<b>Name</b>	<b>Incorporation by Reference</b>
<a href="#">2.1</a>	Agreement and Plan of Merger, dated March 9, 2021, by and among Super League Gaming, Inc., SLG Merger Sub II, Inc., and Moberush, Inc.	Exhibit 2.1 to the Current Report on Form 8-K, filed on March 11, 2021.
<a href="#">2.2</a>	Amendment No. 1 to Agreement and Plan of Merger by and between Super League Gaming, Inc., and Moberush Streaming, Inc., dated April 20, 2021.	Exhibit 10.1 to the Current Report on Form 8-K, filed on April 21, 2021.
<a href="#">2.3</a>	Asset Purchase Agreement, dated October 4, 2021, among Super League Gaming, Inc., Bloxbiz Co., Samuel Drozdov, and Benjamin Khakshoor.	Exhibit 2.1 to the Current Report on Form 8-K, filed on October 7, 2021.
<a href="#">3.1</a>	Second Amended and Restated Certificate of Incorporation of Super League Gaming, Inc., dated November 19, 2018.	Exhibit 3.1 to the Registration Statement, filed on January 4, 2019.
<a href="#">3.2</a>	Second Amended and Restated Bylaws of Super League Gaming, Inc.	Exhibit 3.2 to the Registration Statement, filed on January 4, 2019.
<a href="#">3.3</a>	Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Super League Gaming, Inc., dated February 8, 2019.	Exhibit 3.3 to the Amendment No. 2 to the Registration Statement, filed on February 12, 2019.
<a href="#">3.4</a>	Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Super League Gaming, Inc., dated July 24, 2020.	Exhibit 3.1 to the Current Report on Form 8-K, filed on July 24, 2020.
<a href="#">3.5*</a>	Certificate of Designation of Preferences, Rights and Limitations of the Series A Preferred Stock	Filed herewith.
<a href="#">3.6*</a>	Certificate of Designation of Preferences, Rights and Limitations of the Series A-2 Preferred Stock	Filed herewith.
<a href="#">3.7*</a>	Certificate of Designation of Preferences, Rights and Limitations of the Series A-3 Preferred Stock	Filed herewith.
<a href="#">3.8*</a>	Certificate of Designation of Preferences, Rights and Limitations of the Series A-4 Preferred Stock	Filed herewith.
<a href="#">3.9*</a>	Certificate of Designation of Preferences, Rights and Limitations of the Series A-5 Preferred Stock	Filed herewith.
<a href="#">4.1</a>	Form of Common Stock Certificate.	Exhibit 4.1 to the Amendment No. 2 to the Registration Statement, filed on February 12, 2019.
<a href="#">4.2</a>	Form of Registration Rights Agreement, among Super League Gaming, Inc. and certain accredited investors.	Exhibit 4.2 to the Registration Statement on Form S-1, filed on January 4, 2019.
<a href="#">4.3</a>	Common Stock Purchase Warrant dated June 16, 2017 issued to Ann Hand.	Exhibit 4.3 to the Registration Statement on Form S-1, filed on January 4, 2019.
<a href="#">4.4</a>	Form of 9.00% Secured Convertible Promissory Note.	Exhibit 4.4 to the Registration Statement on Form S-1, filed on January 4, 2019.
<a href="#">4.5</a>	Form of Callable Common Stock Purchase Warrant, issued to certain accredited investors.	Exhibit 4.5 to the Registration Statement on Form S-1, filed on January 4, 2019.
<a href="#">4.6</a>	Form of Representative's Warrant.	Exhibit 4.6 to the Amendment No. 2 to the Registration Statement on Form S-1, filed on February 12, 2019.
<a href="#">10.1†</a>	Super League Gaming, Inc. Amended and Restated 2014 Stock Option and Incentive Plan.	Exhibit 10.1 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.2†</a>	Form of Stock Option Agreement under 2014 Stock Option and Incentive Plan.	Exhibit 10.2 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.3</a>	Subscription Agreement, among Nth Games, Inc. and certain accredited investors.	Exhibit 10.3 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.4</a>	Subscription Agreement, among Super League Gaming, Inc. and certain accredited investors.	Exhibit 10.4 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.5</a>	Form of Theater Agreement, filed herewith.	Exhibit 10.5 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.6</a>	Lease between Super League Gaming, Inc. and Roberts Business Park Santa Monica LLC, dated June 1, 2016.	Exhibit 10.6 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.7+</a>	License Agreement between Super League Gaming, Inc. and Riot Games, Inc., dated June 22, 2016.	Exhibit 10.7 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.8+</a>	Amended and Restated License Agreement between Super League Gaming, Inc. and Mojang AB, dated August 1, 2016.	Exhibit 10.8 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.9+</a>	Master Agreement between Super League Gaming, Inc. and Viacom Media Networks, dated June 9, 2017.	Exhibit 10.9 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.10</a>	Form of Common Stock Purchase Agreement, among Super League Gaming, Inc. and certain accredited investors.	Exhibit 10.10 to the Registration Statement, filed on January 4, 2019.

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<a href="#">10.11</a>	Form of Investors' Rights Agreement, among Super League Gaming, Inc. and certain accredited investors.	Exhibit 10.11 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.12†</a>	Employment Agreement, between Super League Gaming, Inc. and Ann Hand, dated June 16, 2017.	Exhibit 10.12 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.13†</a>	Employment Agreement, between Super League Gaming, Inc. and David Steigelfest, dated October 31, 2017.	Exhibit 10.13 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.14</a>	Riot Games, Inc. Extension Letter, dated November 21, 2017.	Exhibit 10.14 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.15</a>	Form of Note Purchase Agreement, among Super League Gaming, Inc. and certain accredited investors.	Exhibit 10.15 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.16</a>	Form of Security Agreement, between Super League Gaming, Inc. and certain accredited investors.	Exhibit 10.16 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.17</a>	Form of Intercreditor and Collateral Agent Agreement, among Super League Gaming, Inc. and certain accredited investors.	Exhibit 10.17 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.18</a>	Form of Investors' Rights Agreement (9% Secured Convertible Promissory Notes), among Super League Gaming, Inc. and certain accredited investors.	Exhibit 10.18 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.19</a>	Master Service Agreement and Initial Statement of Work between Super League Gaming, Inc. and Logitech Inc., dated March 1, 2018.	Exhibit 10.19 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.20</a>	Asset Purchase Agreement, between Super League Gaming, Inc. and Minehut, dated June 22, 2018.	Exhibit 10.20 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.21†</a>	Amended and Restated Employment Agreement, between Super League Gaming, Inc. and Ann Hand, dated November 15, 2018.	Exhibit 10.21 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.22†</a>	Amended and Restated Employment Agreement, between Super League Gaming, Inc. and David Steigelfest, dated November 1, 2018.	Exhibit 10.22 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.23†</a>	Employment Agreement, between Super League Gaming, Inc. and Matt Edelman, dated November 1, 2018.	Exhibit 10.23 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.24†</a>	Employment Agreement, between Super League Gaming, Inc. and Clayton Haynes, dated November 1, 2018.	Exhibit 10.24 to the Registration Statement, filed on January 4, 2019.
<a href="#">10.25++</a>	Commercial Partnership Agreement between Super League Gaming, Inc., and ggCircuit, LLC, dated September 23, 2019.	Exhibit 10.1 to the Quarterly Report on Form 10-Q for the period ended September 30, 2019, filed November 14, 2019.
<a href="#">10.26</a>	Form of Registration Rights Agreement, dated March 2021.	Exhibit 10.1 to the Current Report on Form 8-K, filed on March 11, 2021.
<a href="#">10.27</a>	Form of Voting Agreement, dated March 2021.	Exhibit 10.2 to the Current Report on Form 8-K, filed on March 11, 2021.
<a href="#">10.28</a>	Form of Securities Purchase Agreement, dated March 19, 2021.	Exhibit 10.1 to the Current Report on Form 8-K, filed on March 23, 2021.
<a href="#">10.29</a>	Equity Distribution Agreement, dated as of September 3, 2021, by and between Super League Gaming, Inc. and Maxim Group LLC.	Exhibit 1.3 to the Company's Registration Statement on Form S-3 (File No. 333-259347, filed September 7, 2021).
<a href="#">10.30</a>	Share Purchase Agreement, by and between Super League Gaming, Inc. and Bannerfly Ltd., dated August 11, 2021.	Exhibit 10.4 to the Quarterly Report on Form 10-Q for the period ended June 30, 2021, filed August 16, 2021.
<a href="#">10.31</a>	Common Stock Purchase Agreement, dated March 25, 2022, by and between Super League Gaming, Inc. and Tumim Stone Capital LLC	Exhibit 10.31 to the Annual Report on Form 10-K for the period ended December 31, 2021, filed March 31, 2022.
<a href="#">10.32*++</a>	Form of Placement Agent Agreement	Filed herewith.
<a href="#">10.33*++</a>	Form of 2022 Series A Subscription Agreement	Filed herewith.
<a href="#">10.34*++</a>	Form of Registration Rights Agreement, among Super League Gaming, Inc. and certain accredited investors.	Filed herewith.
<a href="#">10.35*++</a>	Form of Series A Placement Agent Warrant	Filed herewith.
<a href="#">14.1</a>	Super League Gaming, Inc. Code of Business Conduct and Ethics.	Exhibit 14.1 to the Registration Statement, filed on January 4, 2019.
<a href="#">23.1*</a>	Consent of Independent Registered Public Accounting Firm – Baker Tilly US, LLP	Filed herewith.
<a href="#">31.1*</a>	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act.	Filed herewith.
<a href="#">31.2*</a>	Certification of Principal Financial and Accounting Officer Pursuant to Section 302 of the Sarbanes-Oxley Act.	
<a href="#">32.1*</a>	Certification Pursuant to Section 906 of the Sarbanes-Oxley Act.	
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	
101.SCH	Inline XBRL Taxonomy Extension Schema Document	
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	
104	Cover Page Interactive Data File (embedded within the Inline XBRL Document and included in Exhibit 101)	

\* Filed herewith.

† Identifies exhibits that consist of a management contract or compensatory plan or arrangement.

+ Confidential treatment has been requested for certain confidential portions of this exhibit pursuant to Rule 406 under the Securities Act of 1933, as amended, and Rule 24b-2 under the Securities Exchange Act of 1934, as amended (together, the "Rules"). In accordance with the Rules, these confidential portions have been omitted from this exhibit and filed separately with the Securities and Exchange Commission.

++ Certain portions of this exhibit (indicated by "[\*\*\*\*]") have been omitted as the Company has determined (i) the omitted information is not material and (ii) the omitted information would likely cause harm to the Company if publicly disclosed.

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS  
SUPER LEAGUE GAMING, INC.**

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors  
Super League Gaming, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Super League Gaming, Inc. (the “Company”) as of December 31, 2022 and 2021, the related consolidated statements of operations, stockholders’ equity and cash flows for the years then ended, and the related notes to the consolidated financial statements (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

### Going Concern Uncertainty

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. As noted in Note 2 to the financial statements, the Company has suffered recurring losses from operations and negative cash flows from operations. This raises substantial doubt about the Company’s ability to continue as a going concern. Management’s plans in regard to these matters are also included in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Baker Tilly US, LLP

We have served as the Company’s auditor since 2016.

Los Angeles, California  
March 31, 2023

**SUPER LEAGUE GAMING, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**DECEMBER 31, 2022 AND 2021**

	<u>2022</u>	<u>2021</u>
<b>ASSETS</b>		
Current Assets		
Cash and cash equivalents	\$ 2,482,000	\$ 14,533,000
Accounts receivable	6,134,000	6,328,000
Prepaid expense and other current assets	1,381,000	1,334,000
Total current assets	9,997,000	22,195,000
Property and Equipment, net	147,000	104,000
Intangible and Other Assets, net	20,066,000	24,243,000
Goodwill	-	50,263,000
Total assets	<u>\$ 30,210,000</u>	<u>\$ 96,805,000</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current Liabilities		
Accounts payable	\$ 6,697,000	\$ 5,514,000
Accrued contingent consideration (Note 5)	3,206,000	-
Deferred revenue	111,000	76,000
Convertible note payable and accrued interest (Note 6)	679,000	-
Total current liabilities	10,693,000	5,590,000
Deferred taxes	313,000	518,000
Total liabilities	<u>11,006,000</u>	<u>6,108,000</u>
Commitments and Contingencies (Note 10)		
<b>Stockholders' Equity</b>		
Preferred stock, par value \$0.001 per share; 10,000,000 shares authorized; 10,323 and no shares issued and outstanding as of December 31, 2022 and 2021, respectively (Note 7).	-	-
Common stock, par value \$0.001 per share; 100,000,000 shares authorized; 37,605,973 and 36,809,187 shares issued and outstanding as of December 31, 2022 and 2021, respectively.	47,000	46,000
Additional paid-in capital	229,900,000	215,943,000
Accumulated deficit	(210,743,000)	(125,292,000)
Total stockholders' equity	19,204,000	90,697,000
Total liabilities and stockholders' equity	<u>\$ 30,210,000</u>	<u>\$ 96,805,000</u>

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

**SUPER LEAGUE GAMING, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021**

	<u>2022</u>	<u>2021</u>
<b>REVENUES</b>	\$ 19,677,000	\$ 11,672,000
<b>COST OF REVENUES</b>	<u>11,162,000</u>	<u>6,547,000</u>
<b>GROSS PROFIT</b>	<u>8,515,000</u>	<u>5,125,000</u>
<b>OPERATING EXPENSE</b>		
Selling, marketing and advertising	12,036,000	9,670,000
Engineering, technology and development	15,876,000	11,100,000
General and administrative	12,094,000	9,435,000
Contingent consideration	3,206,000	-
Impairment of goodwill	50,263,000	-
Total operating expense	<u>93,475,000</u>	<u>30,205,000</u>
<b>NET OPERATING LOSS</b>	<u>(84,960,000)</u>	<u>(25,080,000)</u>
<b>OTHER INCOME (EXPENSE)</b>		
Interest expense	(679,000)	(5,000)
Gain on loan forgiveness	-	1,213,000
Other	(17,000)	13,000
<b>Total other income</b>	<u>(696,000)</u>	<u>1,221,000</u>
<b>LOSS BEFORE BENEFIT FROM INCOME TAXES</b>	<u>(85,656,000)</u>	<u>(23,859,000)</u>
Benefit from income taxes	<u>205,000</u>	<u>3,111,000</u>
<b>NET LOSS</b>	<u>\$ (85,451,000)</u>	<u>\$ (20,748,000)</u>
<b>Net loss attributable to common stockholders - basic and diluted</b>		
Basic and diluted loss per common share	<u>\$ (2.30)</u>	<u>\$ (0.69)</u>
Weighted-average number of shares outstanding, basic and diluted	<u>37,189,495</u>	<u>29,882,828</u>

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

**SUPER LEAGUE GAMING, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021**

	2022	2021
<b>Preferred stock (Shares):</b>		
Balance, beginning of period	-	-
Issuance of Series A preferred stock (Note 7)	5,359	-
Issuance of Series A-2 preferred stock (Note 7)	1,297	-
Issuance of Series A-3 preferred stock (Note 7)	1,733	-
Issuance of Series A-4 preferred stock (Note 7)	1,934	-
<b>Balance, end of period</b>	<b>10,323</b>	<b>-</b>
<b>Preferred stock (Amount):</b>		
Balance, beginning of period	\$ -	\$ -
Issuance of Series A preferred stock at \$1,000 per share, net of issuance costs (Note 7)	-	-
Issuance of Series A-2 preferred stock at \$1,000 per share, net of issuance costs (Note 7)	-	-
Issuance of Series A-3 preferred stock at \$1,000 per share, net of issuance costs (Note 7)	-	-
Issuance of Series A-4 preferred stock at \$1,000 per share, net of issuance costs (Note 7)	-	-
<b>Balance, end of period</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Common stock (Shares):</b>		
Balance, beginning of period	36,809,187	15,483,010
Issuance of common stock at \$9.00 per share, net of issuance costs (Note 7)	-	1,512,499
Issuance of common stock at \$4.10 per share, net of issuance costs (Note 7)	-	2,926,830
Issuance of common stock at \$2.60 per share, net of issuance costs (Note 7)	-	3,076,924
Issuance of common stock at \$3.50 per share, net of issuance costs (Note 7)	-	-
Common stock issued for Mobcrush acquisition (Note 5)	-	12,067,571
Common stock issued for Bannerfy acquisition (Note 5)	53,660	415,855
Common stock issued for Super Biz acquisition (Note 5)	-	1,030,928
Stock-based compensation	362,062	295,570
Other Issuances of Common Stock (Note 7)	381,064	-
<b>Balance, end of period</b>	<b>37,605,973</b>	<b>36,809,187</b>
<b>Common stock (Amount):</b>		
Balance, beginning of period	\$ 46,000	\$ 25,000
Issuance of common stock at \$9.00 per share, net of issuance costs (Note 7)	-	2,000
Issuance of common stock at \$4.10 per share, net of issuance costs (Note 7)	-	3,000
Issuance of common stock at \$2.60 per share, net of issuance costs (Note 7)	-	3,000
Issuance of common stock at \$3.50 per share, net of issuance costs (Note 7)	-	-
Common stock issued for Mobcrush Acquisition (Note 5)	-	12,000
Common stock issued for Super Biz Acquisition (Note 5)	-	1,000
Other Issuances of Common Stock	1,000	-
<b>Balance, end of period</b>	<b>\$ 47,000</b>	<b>\$ 46,000</b>
<b>Additional paid-in-capital:</b>		
<b>Balance, beginning of period</b>	<b>\$ 215,943,000</b>	<b>\$ 115,459,000</b>
Issuance of Series A preferred stock at \$1,000 per share, net of issuance costs (Note 7)	4,607,000	-
Issuance of Series A-2 preferred stock at \$1,000 per share, net of issuance costs (Note 7)	1,128,000	-
Issuance of Series A-3 preferred stock at \$1,000 per share, net of issuance costs (Note 7)	1,508,000	-
Issuance of Series A-4 preferred stock at \$1,000 per share, net of issuance costs (Note 7)	1,683,000	-
Issuance of common stock at \$9.00 per share, net of issuance costs (Note 7)	-	13,540,000
Issuance of common stock at \$4.10 per share, net of issuance costs (Note 7)	-	11,927,000
Issuance of common stock at \$2.60 per share, net of issuance costs (Note 7)	-	7,924,000
Common stock issued for Mobcrush Acquisition (Note 5)	-	59,843,000
Common stock issued for Bannerfy Acquisition (Note 5)	220,000	1,768,000
Common stock issued for Super Biz Acquisition (Note 5)	-	2,999,000
Stock-based compensation	4,491,000	2,381,000
Stock option exercises	-	111,000
Other Issuances of Common Stock (Note 7)	320,000	(9,000)
<b>Balance, end of period</b>	<b>\$ 229,900,000</b>	<b>\$ 215,943,000</b>
<b>Accumulated Deficit:</b>		
Balance, beginning of period	\$ (125,292,000)	\$ (104,544,000)
Net Loss	(85,451,000)	(20,748,000)
<b>Balance, end of period</b>	<b>\$ (210,743,000)</b>	<b>\$ (125,292,000)</b>
<b>Total stockholders' equity</b>	<b>\$ 19,204,000</b>	<b>\$ 90,697,000</b>

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

**SUPER LEAGUE GAMING, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021**

	<u>2022</u>	<u>2021</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net loss	\$ (85,451,000)	\$ (20,748,000)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	5,403,000	3,323,000
Stock-based compensation	4,263,000	2,381,000
Impairment of goodwill	50,263,000	-
Write off of intangible asset	423,000	-
Amortization of convertible notes discount (Note 6)	280,000	-
Gain on loan forgiveness (Note 6)	-	(1,213,000)
Change in valuation allowance (Note 5)	-	(3,073,000)
Changes in assets and liabilities:		
Accounts receivable	193,000	(4,270,000)
Prepaid expense and other current assets	182,000	(348,000)
Accounts payable and accrued expense	1,402,000	1,328,000
Accrued contingent consideration (Note 5)	3,206,000	-
Deferred revenue	35,000	(54,000)
Deferred taxes	(205,000)	(38,000)
Accrued interest on notes payable	180,000	5,000
<b>Net cash used in operating activities</b>	<u>(19,826,000)</u>	<u>(22,707,000)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Cash acquired in connection with Mobcrush Acquisition (Note 5)	-	586,000
Cash paid in connection with Bannerfy Acquisition, net (Note 5)	-	(497,000)
Cash paid in connection with Super Biz Acquisition, net (Note 5)	-	(3,000,000)
Purchase of property and equipment	(149,000)	(22,000)
Purchase of third-party game properties	(500,000)	-
Capitalization of software development costs	(923,000)	(1,065,000)
Acquisition of other intangible and other assets	(118,000)	(205,000)
<b>Net cash used in investing activities</b>	<u>(1,690,000)</u>	<u>(4,203,000)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from issuance of preferred stock, net of issuance costs (Note 7)	8,926,000	-
Proceeds from issuance of common stock, net of issuance costs (Note 7)	320,000	33,390,000
Proceeds from note payable (Note 6)	4,000,000	-
Payments on convertible notes (Note 6)	(3,781,000)	-
Proceeds from stock option exercises	-	111,000
<b>Net cash provided by financing activities</b>	<u>9,465,000</u>	<u>33,501,000</u>
<b>(DECREASE)INCREASE IN CASH AND CASH EQUIVALENTS</b>	<u>(12,051,000)</u>	<u>6,591,000</u>
<b>CASH AND CASH EQUIVALENTS – beginning of year</b>	<u>14,533,000</u>	<u>7,942,000</u>
<b>CASH AND CASH EQUIVALENTS – end of year</b>	<u>\$ 2,482,000</u>	<u>\$ 14,533,000</u>
<b>SUPPLEMENTAL NONCASH FINANCING ACTIVITIES</b>		
Issuance of common stock in connection with Mobcrush Acquisition	\$ -	\$ 59,855,000
Issuance of common stock in connection with Bannerfy Acquisition	220,000	1,705,000
Issuance of common stock in connection with Super Biz Acquisition	-	3,000,000

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



**SUPER LEAGUE GAMING, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. DESCRIPTION OF BUSINESS**

Super League Gaming, Inc. (Nasdaq: SLGG), (“Super League,” the “Company,” “we,” “us” or “our”) is a leading publisher of games, monetization tools and content channels across metaverse gaming platforms that empower developers, energize players, and entertain fans. Our solutions provide incomparable access to an audience consisting of players in the largest global metaverse game environments, fans of hundreds of thousands of gaming influencers, and viewers of gameplay content across major social media and digital video platforms. Fueled by proprietary and patented technology systems, the Company’s platform includes access to vibrant in-game communities, a leading metaverse advertising platform, a network of highly viewed channels and original shows on Instagram, TikTok, Snap, YouTube, and Twitch, cloud-based livestream production tools, and an award-winning esports invitational tournament series. Super League’s properties deliver powerful opportunities for brands and advertisers to achieve impactful insights and marketing outcomes with gamers of all ages.

Super League was incorporated on October 1, 2014 as Nth Games, Inc. under the laws of the State of Delaware and changed its name to Super League Gaming, Inc. on June 15, 2015. We are an “emerging growth company” as defined by the Jumpstart Our Business Startups Act of 2012, as amended.

*Acquisition of Mobcrush Streaming, Inc.* On June 1, 2021, the Company completed the acquisition of Mobcrush Streaming, Inc. (“Mobcrush”), a live streaming technology platform used by gaming influencers who generate and distribute original content to fans and subscribers across the most popular live streaming and social media platforms, including Twitch, YouTube, Facebook, Instagram, Twitter, and more. Mobcrush also operates Mineville and Pixel Paradise, two of only seven official Minecraft servers in partnership with Microsoft Corporation (“Microsoft”).

*Acquisition of Bannerfy, LTD.* On August 24, 2021, the Company completed the acquisition of Bannerfy, Ltd., (“Bannerfy”), an intelligent technology platform that enables digital video and live streaming creators to collaborate with tier one sponsors on their social media channels including YouTube through scalable and custom premium placements.

*Acquisition of Bloxbiz Co. (doing business as, and hereinafter referred to as “Super Biz”).* On October 4, 2021, the Company acquired (i) substantially all of the assets of Super Biz, and (ii) the personal goodwill of the founders regarding Super Biz’s business, as described at Note 5. Super Biz is a dynamic ad platform designed specifically for metaverse environments. Super Biz’s initial deployment enables brands to advertise across popular Roblox game titles and helps Roblox creators with monetization and game analytics.

In accordance with the acquisition method of accounting, the financial results of Super League presented herein include the financial results of the fiscal year 2021 acquisitions described above for the applicable periods subsequent to the respective transaction closing dates. Refer to Note 5 for additional information.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

***Basis of Presentation***

The consolidated financial statements and accompanying notes have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

***Principles of Consolidation***

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries.

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense during the reporting period. Actual results could differ from these estimates. The Company believes that, of the significant accounting policies described herein, the accounting policies associated with revenue recognition, impairment of goodwill and intangibles, stock-based compensation expense, capitalized internal-use-software costs, accounting for business combinations, accounting for convertible debt, including estimates and assumptions used to calculate the fair value of debt instruments, accounting for convertible preferred stock, and accounting for income taxes and valuation allowances against net deferred tax assets, require its most difficult, subjective, or complex judgments.

### ***Going Concern***

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. Including a noncash goodwill impairment charge of \$50.3 million in fiscal year 2022, the Company incurred net losses of \$85.5 million and \$20.7 million during the years ended December 31, 2022 and 2021, respectively, and had an accumulated deficit of \$210.7 million (including fiscal year 2022 noncash goodwill impairment charges of \$50.3 million) as of December 31, 2022. For the years ended December 31, 2022 and 2021 net cash used in operating activities totaled \$19.8 million and \$22.7 million, respectively.

The Company had cash and cash equivalents of \$2.5 million and \$14.5 million as of December 31, 2022 and 2021, respectively. To date, our principal sources of capital used to fund our operations and growth have been the net proceeds received from equity and debt financings. We have and will continue to use significant capital for the growth and development of our business, and, as such, we expect to seek additional capital either from operations, or that may be available from future issuance(s) of common stock, preferred stock and / or debt financings, to fund our planned operations. Accordingly, our results of operations and the implementation of our long-term business strategies have been and could continue to be adversely affected by general conditions in the global economy, including conditions that are outside of our control. The most recent global financial crisis caused by severe geopolitical conditions, including conflicts abroad, and the lingering effects of COVID-19 and the threat of other outbreaks, have resulted in extreme volatility, disruptions and downward pressure on stock prices and trading volumes across the capital and credit markets in which we traditionally operate. A severe or prolonged economic downturn could result in a variety of risks to our business and could have a material adverse effect on us, including limiting our ability to obtain additional funding from the capital and credit markets. In management's judgement, these conditions raise substantial doubt about the ability of the Company to continue as a going concern as contemplated by ASC 205-40.

### ***Management's Plans***

The Company experienced significant growth in fiscal year 2022 and 2021 through organic and inorganic growth activities, including the expansion of our premium advertising inventory and quarter over quarter and year over year increases in recognized revenue across our primary revenue streams. In fiscal year 2022, we focused on the continued expansion of our service offerings and revenue growth opportunities through internal development, collaborations, and through opportunistic strategic acquisitions, as well as management and reduction of operating costs. Management continues to consider alternatives for raising capital to facilitate our growth and execute our business strategy, including strategic partnerships and or other forms of equity or debt financings.

During the fourth quarter of 2022, we entered into subscription agreements with accredited investors relating to offerings with respect to the sale of an aggregate of 10,323 shares of newly designated Series A, A-2, A-3 and A-4 Convertible Preferred Stock, each series having a \$0.001 par value and a \$1,000 purchase price, raising net proceeds totaling \$8.9 million, after deducting placement agent and other financing costs totaling \$1.4 million. Use of net proceeds from the preferred stock offerings included the repayment of certain indebtedness and working capital and general corporate purposes, including sales and marketing activities and product development. In addition, on January 31, 2023, we entered into subscription agreements with accredited investors in connection with the sale of an aggregate of 2,299 shares of newly designated Series A-5 Convertible Preferred Stock, par value \$0.001 per share, at a purchase price of \$1,000 per share, raising net proceeds of \$2,000,000, after deducting placement agent costs of \$299,000. Pursuant to the terms of the SPA (Note 7), \$4.2 million of the net proceeds were utilized in connection with the partial redemption of the Notes as of March 31, 2023.

On May 16, 2022, as further described at Note 6, the Company entered into a securities purchase agreement with three institutional investors, providing for the sale and issuance of a new series of senior convertible notes in the aggregate original principal amount of \$4,320,000, of which 8% is an original issue discount.

As further described at Note 7, on March 25, 2022, we entered into a common stock purchase agreement with an institutional investor. Pursuant to the agreement, the Company has the right, but not the obligation, to sell to the investor, and the investor is obligated to purchase, up to \$10,000,000 of newly issued shares of the Company's common stock, from time to time during the term of the agreement, subject to certain limitations and conditions.

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The Company considers historical operating results, costs, capital resources and financial position, in combination with current projections and estimates, as part of its plan to fund operations over a reasonable period. Management's considerations assume, among other things, that the Company will continue to be successful implementing its business strategy, that there will be no material adverse developments in the business, liquidity or capital requirements, and the Company will be able to raise additional equity and / or debt financing on acceptable terms. If one or more of these factors do not occur as expected, it could cause a reduction or delay of its business activities, sales of material assets, default on its obligations, or forced insolvency. The accompanying financial statements do not contain any adjustments which might be necessary if the Company were unable to continue as a going concern. No assurance can be given that any future financing will be available or, if available, that it will be on terms that are satisfactory to the Company.

We may continue to evaluate potential strategic acquisitions. To finance such strategic acquisitions, we may find it necessary to raise additional equity capital, incur debt, or both. Any efforts to seek additional funding could be made through issuances of equity or debt, or other external financing. However, additional funding may not be available on favorable terms, or at all. The capital and credit markets have experienced extreme volatility and disruption periodically and such volatility and disruption may occur in the future. If we fail to obtain additional financing when needed, we may not be able to execute our business plans which, in turn, would have a material adverse impact on our financial condition, our ability to meet our obligations, and our ability to pursue our business strategies.

***Reclassifications***

Certain reclassifications to operating expense line items have been made to prior year amounts for consistency and comparability with the current year's consolidated financial statement presentation. These reclassifications had no effect on the reported total operating expense for the periods presented.

***Revenue Recognition***

Revenue is recognized when the Company transfers promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods and services. In this regard, revenue is recognized when: (i) the parties to the contract have approved the contract (in writing, orally, or in accordance with other customary business practices) and are committed to perform their respective obligations; (ii) the entity can identify each party's rights regarding the goods or services to be transferred; (iii) the entity can identify the payment terms for the goods or services to be transferred; (iv) the contract has commercial substance (that is, the risk, timing, or amount of the entity's future cash flows is expected to change as a result of the contract); and (v) it is probable that the entity will collect substantially all of the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer.

Transaction prices are based on the amount of consideration to which we expect to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties, if any. We consider the explicit terms of the revenue contract, which are typically written and executed by the parties, our customary business practices, the nature, timing, and the amount of consideration promised by a customer in connection with determining the transaction price for our revenue arrangements. Refunds and sales returns historically have not been material.

The Company generates revenue from (i) innovative advertising including immersive game world and experience publishing and in-game media products, (ii) direct to consumer offers, including in-game items, e-commerce, game passes and ticketing and digital collectibles, and (iii) content and technology through the production and distribution of our own, advertiser and third-party content.

The Company reports revenue on a gross or net basis based on management's assessment of whether the Company acts as a principal or agent in the transaction and is evaluated on a transaction-by-transaction basis. To the extent the Company acts as the principal, revenue is reported on a gross basis net of any sales tax from customers, when applicable. The determination of whether the Company acts as a principal or an agent in a transaction is based on an evaluation of whether the Company controls the good or service prior to transfer to the customer. Where applicable, the Company has determined that it acts as the principal in all of its advertising and sponsorships, content and direct to consumer revenue streams, except in situations where we utilize a reseller partner with respect to direct advertising sales arrangements.

Revenue billed or collected in advance is recorded as deferred revenue until the event occurs or until applicable performance obligations are satisfied.

Advertising and Sponsorships

Advertising revenue primarily consists of direct sales activity along with sales of programmatic display and video advertising units to third-party advertisers and exchanges. Advertising arrangements typically include contract terms for time periods ranging from several days to several weeks in length.

For advertising arrangements that include performance obligations satisfied over time, customers typically simultaneously receive and consume the benefits under the arrangement as we satisfy our performance obligations, over the applicable contract term. As such, revenue is recognized over the contract term based upon estimates of progress toward complete satisfaction of the contract performance obligations (typically utilizing a time, effort or delivery-based method of estimation). Revenue from shorter-term advertising arrangements that provide for a contractual delivery or performance date is recognized when performance is substantially complete and or delivery occurs. Payments are typically due from customers during the term of the arrangement for longer-term campaigns, and once delivery is complete for shorter-term campaigns.

Sponsorship revenue arrangements may include: exclusive or non-exclusive title sponsorships, marketing benefits, official product status exclusivity, product visibly and additional infrastructure placement, social media rights, rights to on-screen activations and promotions, display material rights, media rights, hospitality and tickets and merchandising rights. Sponsorship revenue also includes revenue pursuant to arrangements with brand and media partners, retail venues, game publishers and broadcasters that allow our partners to run amateur esports experiences, and or capture specifically curated gameplay content that is customized for our partners' distribution channels. Sponsorship arrangements typically include contract terms for time periods ranging from several weeks or months to terms of twelve months in length.

For sponsorship arrangements that include performance obligations satisfied over time, customers typically simultaneously receive and consume the benefits under the agreement as we satisfy our performance obligations, over the applicable contract term. As such, revenue is recognized over the contract term based upon estimates of progress toward complete satisfaction of the contract performance obligations (typically utilizing a time, effort or delivery-based method of estimation). Payments are typically due from customers during the term of the arrangement.

Revenue from sponsorship arrangements for one-off branded experiences and/or the development of content tailored specifically for our partners' distribution channels that provide for a contractual delivery or performance date, is recognized at a point in time, when performance is substantially complete and or delivery occurs.

Content Sales

Content sales revenue is generated in connection with our curation and distribution of esports and entertainment content for our own network of digital channels and media and entertainment partner channels. We distribute three primary types of content for syndication and licensing, including: (1) our own original programming content, (2) user generated content ("UGC"), including online gameplay and gameplay highlights, and (3) the creation of content for third parties utilizing our remote production and broadcast technology.

For content arrangements that include performance obligations satisfied over time, customers typically simultaneously receive and consume the benefits under the arrangement as we satisfy our performance obligations, over the applicable contract term. As such, revenue is recognized over the contract term based upon estimates of progress toward complete satisfaction of the contract performance obligations (typically utilizing a time, effort or delivery-based method of estimation). Revenue from shorter-term content sales arrangements that provide for a contractual delivery or performance date is recognized when performance is substantially complete and/or delivery occurs. Payments are typically due from customers during the term of the arrangement for longer-term campaigns, and once delivery is complete for shorter-term campaigns.

Direct to Consumer

Direct to consumer revenue primarily consists of monthly digital subscription fees, and sales of in-game digital goods. Subscription revenue is recognized in the period the services are rendered. Payments are typically due from customers at the point of sale.

*InPvP Platform Generated Sales Transactions.* Our Mobcrush subsidiary generates in-game Platform sales revenue via digital goods sold within the platform, including cosmetic items, durable goods, player ranks and game modes, leveraging the flexibility of the Microsoft Minecraft Bedrock platform, and powered by the InPvP cloud architecture technology platform. Revenue is generated when transactions are facilitated between Microsoft and the end user, either via in-game currency or cash.

Revenue for digital goods sold on the platform is recognized when Microsoft (our partner) collects the revenue and facilitates the transaction on the platform. Revenue for such arrangements includes all revenue generated, bad debt, make goods, and refunds of all transactions managed via the platform by Microsoft. The revenue is recognized on a monthly basis. Payments are made to the Company monthly based on the reconciled sales revenue generated.

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Revenue was comprised of the following for the periods presented:

	2022	2021
Advertising and sponsorships	\$ 13,957,000	\$ 8,005,000
Content sales	3,911,000	2,264,000
Direct to consumer	1,809,000	1,403,000
	<u>\$ 19,677,000</u>	<u>\$ 11,672,000</u>

For the fiscal years ended December 31, 2022 and 2021, 32% and 19% of revenues were recognized at a single point in time, and 68% and 81% of revenues were recognized over time, respectively.

***Cost of Revenues***

Cost of revenue includes direct costs incurred in connection with the satisfaction of performance obligations under our revenue arrangements including internal and third-party engineering, creative, content, broadcast and other personnel, talent and influencers, developers, content capture and production services, direct marketing, cloud services, software, prizing, and revenue sharing fees.

***Advertising***

Gaming experience and Super League brand related advertising costs include the cost of ad production, social media, print media, marketing, promotions, and merchandising. The Company expenses advertising costs as incurred. Advertising costs are included in selling, marketing and advertising expense in the accompanying statements of operations. Advertising expense for the fiscal years ended December 31, 2022 and 2021 were \$507,000 and \$568,000, respectively.

***Engineering, Technology and Development Costs***

Components of our platform are available on a “free to use,” “always on basis,” and are utilized and offered as an audience acquisition tool, as a means of growing our audience, engagement, viewership, players and community. Engineering, technology and development related operating expense includes the costs described below, incurred in connection with our audience acquisition and viewership expansion activities. Engineering, technology and development related operating expense includes (i) allocated internal engineering personnel expense, including salaries, noncash stock compensation, taxes and benefits, (ii) third-party contract software development and engineering expense, (iii) internal use software cost amortization expense, and (iv) technology platform related cloud services, broadband and other platform expense, incurred in connection with our audience acquisition and viewership expansion activities, including tools and product offering development, testing, minor upgrades and features, free to use services, corporate information technology and general platform maintenance and support.

***Cash and Cash Equivalents***

The Company considers all highly-liquid, short-term investments with original maturities of three months or less when purchased to be cash equivalents. The Company’s cash equivalents consisted of investments in AAA-rated money market funds for the periods presented.

***Accounts Receivable***

Accounts receivable are recorded at the original invoice amount, less an estimate made for doubtful accounts, if any. The Company provides an allowance for doubtful accounts for potential credit losses based on its evaluation of the collectability and the customers’ creditworthiness. Accounts receivable are written off when they are determined to be uncollectible. As of December 31, 2022 and 2021, no allowance for doubtful accounts was deemed necessary.

***Fair Value Measurements***

Fair value is defined as the exchange price that would be received from selling an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Company measures financial assets and liabilities at fair value at each reporting period using a fair value hierarchy which requires the Company to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument’s classification within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Three levels of inputs may be used to measure fair value:

Level 1. Quoted prices in active markets for identical assets or liabilities.

*Level 2.* Quoted prices for similar assets and liabilities in active markets or inputs other than quoted prices which are observable for the assets or liabilities, either directly or indirectly through market corroboration, for substantially the full term of the financial instruments.

*Level 3.* Unobservable inputs which are supported by little or *no* market activity and which are significant to the fair value of the assets or liabilities.

Certain assets and liabilities are required to be recorded at fair value on a recurring basis, including derivative financial instruments and convertible notes payable recorded at fair value (Note 6). The convertible notes outstanding at December 31, 2022 are recorded at fair value, using Level 3 inputs. Certain long-lived assets may be periodically required to be measured at fair value on a nonrecurring basis, including long-lived assets that are impaired. The fair value for other assets and liabilities such as cash, restricted cash, accounts receivable, receivables reserved for users, other receivables, prepaid expense and other current assets, accounts payable and accrued expense, and liabilities to customers have been determined to approximate carrying amounts due to the short maturities of these instruments.

#### ***Derivative Financial Instruments***

The Company evaluates its financial instruments to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. For derivative financial instruments that are accounted for as liabilities, the derivative instrument is initially recorded at its fair value and is then re-valued at each reporting date, with changes in the fair value reported in the consolidated statements of operations. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is reassessed at the end of each reporting period. Equity instruments that are initially classified as equity that become subject to reclassification are reclassified to a liability at the fair value of the instrument on the reclassification date. Derivative instrument liabilities are classified in the balance sheet as current or non-current based on whether or not net-cash settlement of the derivative instrument could be required within 12 months of the balance sheet date. In circumstances where the embedded conversion option in a convertible instrument is required to be bifurcated and there are also other embedded derivative instruments in the convertible instrument that are required to be bifurcated, the bifurcated derivative instruments are accounted for as a single, compound derivative instrument.

Derivative liabilities are adjusted to reflect fair value at each period end, with any increase or decrease in the fair value being recorded in the statement of operations.

#### ***Property and Equipment***

Property and equipment are recorded at cost. Major additions and improvements that materially extend useful lives of property and equipment are capitalized. Maintenance and repairs are charged against the results of operations as incurred. When these assets are sold or otherwise disposed of, the asset and related depreciation are relieved, and any gain or loss is included in the statements of operations for the period of sale or disposal. Depreciation and amortization are computed on a straight-line basis over the estimated useful lives of the assets, typically over a three to five-year period.

#### ***Acquisitions***

*Acquisition Method.* Acquisitions that meet the definition of a business under ASC 805 are accounted for using the acquisition method of accounting. Under the acquisition method of accounting, assets acquired, liabilities assumed, contractual contingencies, and contingent consideration, when applicable, are recorded at fair value at the acquisition date. Any excess of the purchase price over the fair value of the net assets acquired is recorded as goodwill. The application of the acquisition method of accounting requires management to make significant estimates and assumptions in the determination of the fair value of assets acquired and liabilities assumed in connection with the allocation of the purchase price consideration to the assets acquired and liabilities assumed. Transaction costs associated with business combinations are expensed as incurred and are included in general and administrative expense in the consolidated statements of operations. Contingent consideration, if any, is recognized and measured at fair value as of the acquisition date.

*Cost Accumulation Model.* Acquisitions that do not meet the definition of a business under ASC 805 are accounted for as an asset acquisition, utilizing a cost accumulation model. Assets acquired and liabilities assumed are recognized at cost, which is the consideration the acquirer transfers to the seller, including direct transaction costs, on the acquisition date. The cost of the acquisition is then allocated to the assets acquired based on their relative fair values. Goodwill is not recognized in an asset acquisition. Direct transaction costs include those third-party costs that can be directly attributable to the asset acquisition and would not have been incurred absent the acquisition transaction.

Contingent consideration, representing an obligation of the acquirer to transfer additional assets or equity interests to the seller if future events occur or conditions are met, is recognized when probable and reasonably estimable. Contingent consideration recognized is included in the initial cost of the assets acquired, with subsequent changes in the recorded amount of contingent consideration recognized as an adjustment to the cost basis of the acquired assets. Subsequent changes are allocated to the acquired assets based on their relative fair value. Depreciation and/or amortization of adjusted assets are recognized as a cumulative catch-up adjustment, as if the additional amount of consideration that is no longer contingent had been accrued from the outset of the arrangement.

Contingent consideration that is paid to sellers that remain employed by the acquirer and linked to future services is generally considered compensation cost and recorded in the statement of operations in the post-combination period.

### ***Intangible Assets***

Intangible assets primarily consist of (i) internal-use software development costs, (ii) domain name, copyright and patent registration costs, (iii) commercial licenses and branding rights, (iv) developed technology acquired, (v) partner, customer, creator and influencer related intangible assets acquired and (vi) other intangible assets, which are recorded at cost (or in accordance with the acquisition method or cost accumulation methods described above) and amortized using the straight-line method over the estimated useful lives of the assets, ranging from three to 10 years.

Software development costs incurred to develop internal-use software during the application development stage are capitalized and amortized on a straight-line basis over the software's estimated useful life, which is generally three years. Software development costs incurred during the preliminary stages of development are charged to expense as incurred. Maintenance and training costs are charged to expense as incurred. Upgrades or enhancements to existing internal-use software that result in additional functionality are capitalized and amortized on a straight-line basis over the applicable estimated useful life.

### ***Impairment of Long-Lived Assets***

The Company assesses the recoverability of long-lived assets whenever events or changes in circumstances indicate that their carrying value may not be recoverable. Factors we consider important, which could trigger an impairment review, include the following: significant underperformance relative to expected historical or projected future operating results; significant changes in the manner of our use of the acquired assets or the strategy for our overall business; significant negative industry or economic trends; significant adverse changes in legal factors or in the business climate, including adverse regulatory actions or assessments; and significant decline in our stock price for a sustained period. In the event the sum of the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss equal to the excess of the asset's carrying value over its fair value is recorded.

Other assets of a reporting unit that are held and used may be required to be tested for impairment when certain events trigger interim goodwill impairment tests. In such situations, other assets, or asset groups, are tested for impairment under their respective standards and the other assets' or asset groups' carrying amounts are adjusted for impairment before testing goodwill for impairment as described below. For the periods presented herein, management believes that there was no impairment of long-lived assets. There can be no assurance, however, that market conditions or demand for the Company's products or services will not change, which could result in long-lived asset impairment charges in the future.

### ***Goodwill***

The Company currently has one reporting unit. The following table presents the changes in the carrying amount of goodwill for the periods presented.

	<u>2022</u>	<u>2021</u>
Beginning Balance	\$ 50,263,000	\$ 2,565,000
Acquisitions (See Note 5)	-	47,698,000
Impairment charges	(50,263,000)	-
Ending Balance	<u>\$ -</u>	<u>\$ 50,263,000</u>

Goodwill represents the excess of the purchase price of the acquired business over the acquisition date fair value of the net assets acquired. Goodwill is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) on an annual basis (December 31) and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. We consider our market capitalization and the carrying value of our assets and liabilities, including goodwill, when performing our goodwill impairment tests. We operate in one reporting segment.

If a potential impairment exists, a calculation is performed to determine the fair value of existing goodwill. This calculation can be based on quoted market prices and / or valuation models, which consider the estimated future undiscounted cash flows resulting from the reporting unit, and a discount rate commensurate with the risks involved. Third-party appraised values may also be used in determining whether impairment potentially exists. In assessing goodwill impairment, significant judgment is required in connection with estimates of market values, estimates of the amount and timing of future cash flows, and estimates of other factors that are used to determine the fair value of our reporting unit. If these estimates or related projections change in future periods, future goodwill impairment tests may result in charges to earnings.

When conducting the Company's annual or interim goodwill impairment assessment, we initially perform a qualitative evaluation of whether it is more likely than not that goodwill is impaired. In evaluating whether it is more likely than not that the fair value of our reporting unit is less than its carrying amount, we consider the guidance set forth in ASC 350, which requires an entity to assess relevant events and circumstances, including macroeconomic conditions, industry and market considerations, cost factors, financial performance and other relevant events or circumstances.

*September 30, 2022 Goodwill Impairment Testing*

At September 30, 2022, prior to the completion of our goodwill impairment testing, the goodwill balance totaled \$50.3 million.

At September 30, 2022, from a qualitative standpoint, we considered the Company's history of reported losses and negative cash flows from operating activities, and also considered the sustained downturn in industry and macroeconomic conditions, including inflationary pressures and potential reductions in advertising spending and the sustained downturn of the broader mid-cap and micro-cap equity markets in the third quarter of 2022. We also considered that the Company experienced significant inorganic and organic growth in fiscal 2021, including the impact of the acquisitions of Mobcrush, Bannerfy and Super Biz on our premium advertising inventory, product offerings to advertisers, current period revenue recognized and future revenue generating opportunities.

However, the Company's stock price has been volatile, and the volatility continued during the three months ended September 30, 2022, declining 34% to \$0.68 as of September 30, 2022, reflecting a market capitalization that was approximately 38% of the Company's September 30, 2022 net book value. To assess whether the decline in our market capitalization was an indicator requiring an interim goodwill impairment test, we considered the significance of the decline and the length of time our common stock has been trading at a depressed value along with the macro factors described above. The significance of the decline is consistent with the broader microcap market. As of September 30, 2022 the decline in our stock price and other factors were deemed to be sustained, and therefore a triggering event requiring a goodwill impairment test as of September 30, 2022 was deemed to have occurred.

We utilized the market capitalization of the Company as of September 30, 2022, a Level 1 input as described above, to estimate the fair value of the Company's single reporting unit. The estimated market capitalization was determined by multiplying our September 30, 2022 stock price and the common shares outstanding as of September 30, 2022. The market capitalization approach was utilized to estimate the fair value of our single reporting unit as of September 30, 2022, due to the significance of the decline in stock price as of September 30, 2022, resulting in a market capitalization that was 38% of the net book value of our single reporting unit. Based on the analysis, the estimated fair value of our reporting unit was \$25.2 million, compared to a carrying value of our single reporting unit of \$67.3 million as of September 30, 2022. As such, the fair value of our single reporting unit was deemed to be below its carrying value as of September 30, 2022, resulting in a goodwill impairment charge of \$42.0 million, which was reflected in the consolidated statement of operations for the nine months ended September 30, 2022.

*December 31, 2022 Goodwill Impairment Testing*

At December 31, 2022, prior to the completion of our goodwill impairment testing, the goodwill balance totaled \$8.3 million.

At December 31, 2022, from a qualitative standpoint, we considered the factors described above under "September 30, 2022 Goodwill Impairment Testing," including the current period reported loss and negative cash flows from operating activities, and the sustained downturn in industry and macroeconomic conditions, including inflationary pressures and potential reductions in advertising spending and the sustained downturn of the broader mid-cap and micro-cap equity markets in the fourth quarter of 2022. Similarly, given the Company's recent significant growth, management does not believe that the current market capitalization of the Company is indicative of any material fundamental change in the Company's underlying business or future prospects as of the December 31, 2022 measurement date.

The Company's stock price has been volatile, and the volatility continued during the three months ended December 31, 2022, declining approximately 50% from the September 30, 2022 closing price to \$0.336 as of December 31, 2022, reflecting a market capitalization that was approximately 46% of the Company's December 31, 2022 net book value. As of December 31, 2022 the decline in our stock price and other factors were deemed to be sustained, and therefore a triggering event requiring a goodwill impairment test as of December 30, 2022 was deemed to have occurred.

We utilized the market capitalization of the Company as of December 31, 2022, a Level 1 input as described above, to estimate the fair value of the Company's single reporting unit. Based on the analysis, the estimated fair value of our reporting unit was \$12.6 million, compared to a carrying value of our single reporting unit of \$27.5 million as of December 31, 2022. As such, the fair value of our single reporting unit was deemed to be below its carrying value as of December 31, 2022, resulting in an additional goodwill impairment charge of \$8.3 million in the fourth quarter of 2022, reflecting the write down of the remaining balance of goodwill for our single reporting unit.



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

Compensation expense for stock-based awards is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense, typically on a straight-line basis over the employee's requisite service period (generally the vesting period of the equity award) which is generally two to four years. Compensation expense for awards with performance conditions that affect vesting is recorded only for those awards expected to vest or when the performance criteria are met. The fair value of restricted stock and restricted stock unit awards is determined by the product of the number of shares or units granted and the grant date market price of the underlying common stock. The fair value of stock option and common stock purchase warrant awards is estimated on the date of grant utilizing the Black-Scholes-Merton option pricing model. The Company utilizes the simplified method for estimating the expected term for options granted to employees due to the lack of available or sufficient historical exercise data for the Company for the applicable options terms. The Company accounts for forfeitures of awards as they occur. Estimates of expected volatility of the underlying common stock for the expected term of the stock option used in the Black-Scholes-Merton option pricing model are determined by reference to historical volatilities of the Company's common stock and historical volatilities of similar companies.

Grants of equity-based awards (including warrants) to non-employees in exchange for consulting or other services are accounted for using the grant date fair value of the equity instruments issued.

On January 1, 2022, the Company issued 1,350,000 performance stock units ("PSUs") under the Company's 2014 Amended and Restated Stock Option and Incentive Plan, which vest in five equal increments of 270,000 PSUs, based on the Company's stock price reaching certain predetermined levels, as described at Note 8. A condition affecting the exercisability or other pertinent factors used in determining the fair value of an award that is based on an entity achieving a specified share price constitutes a market condition pursuant to ASC 718, "Stock based Compensation" ("ASC 718"). A market condition is reflected in the grant-date fair value of an award, and therefore, a Monte Carlo simulation model is utilized to determine the estimated fair value of the equity-based award. Compensation cost is recognized for awards with a market condition, provided the requisite service period is satisfied, regardless of whether the market condition is ever satisfied.

### ***Equity Financing Costs***

Specific incremental costs directly attributable to a proposed or actual offering of securities are deferred and charged against the gross proceeds of the equity financing. In the event that the proposed or actual equity financing is not completed, or is deemed not likely to be completed, such costs are expensed in the period that such determination is made. Deferred equity financing costs, if any, are included in other current assets in the accompanying consolidated balance sheet. For the years ended December 31, 2022 and 2021, financing costs charged against gross proceeds in connection with equity financings totaled \$1,397,000 and \$434,000, respectively. Deferred financing cost, included in prepaid expense and other current assets, at December 31, 2022 and 2021, totaled \$374,000 and \$144,000, respectively.

Specific incremental costs directly attributable to a proposed or actual debt offering are reported in the balance sheet as a direct deduction from the face amount of the debt instrument. In the event that the proposed or actual debt financing is not completed, or is deemed not likely to be completed, such costs are expensed in the period that such determination is made. In the event that the Company elects to use the fair value option to account for debt instruments, all costs directly attributable to the debt offering are expensed as incurred in the statement of operations. For the years ended December 31, 2022 and 2021, debt financing costs expensed as incurred in connection with debt financings totaled \$123,000 and \$0, respectively.

### ***Convertible Debt***

The Company evaluates its convertible notes to determine if those contracts or embedded components of those contracts qualify as derivatives under ASC 815, "Derivatives and Hedging" ("ASC 815"). ASC 815 requires conversion, redemption options, call options and other features (hereinafter, "Embedded Instruments") contained in the Company's convertible debt instruments that meet certain criteria to be bifurcated and separately accounted for as an embedded derivative. In circumstances where the embedded conversion option in a convertible instrument is required to be bifurcated and there are also other embedded derivative instruments in the convertible instrument that are required to be bifurcated, the bifurcated derivative instruments are accounted for as a single, compound derivative instrument.

In the event that the fair value option election is not made, as described below, the Company evaluates the balance sheet classification for convertible debt instruments issued to determine whether the instrument should be classified as debt or equity, and whether the Embedded Instruments should be accounted for separately from the host instrument. Embedded Instruments of a convertible debt instrument would be separated from the convertible instrument and classified as a derivative liability if the feature, were it a standalone instrument, meets the definition of an "embedded derivative." Generally, characteristics that require derivative treatment include, among others, when the conversion feature is not indexed to the Company's equity, or when it must be settled either in cash or by issuing stock that is readily convertible to cash. When a conversion feature meets the definition of an embedded derivative, it is required to be separated from the host instrument and classified as a derivative liability carried on the balance sheet at fair value, with any changes in its fair value recognized currently in the consolidated statements of operations.

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**Fair Value Option (“FVO”) Election.** The Company accounts for convertible notes issued, as described at Note 6 under the fair value option election pursuant to ASC 825, “Financial Instruments” (“ASC 825”), as discussed below. The convertible notes accounted for under the FVO election are each debt host financial instruments containing embedded features which would otherwise be required to be bifurcated from the debt-host and recognized as separate derivative liabilities subject to initial and subsequent periodic estimated fair value measurements under ASC 815. Notwithstanding, ASC 825 provides for the “fair value option” election, to the extent not otherwise prohibited by ASC 825, to be afforded to financial instruments, wherein bifurcation of an embedded derivative is not necessary, and the financial instrument is initially measured at its issue-date estimated fair value and then subsequently remeasured at estimated fair value on a recurring basis at each reporting period date. The estimated fair value adjustment, as required by ASC 825, is recognized as a component of other comprehensive income (“OCI”) with respect to the portion of the fair value adjustment attributed to a change in the instrument-specific credit risk, with the remaining amount of the fair value adjustment recognized as other income (expense) in the accompanying consolidated statement of operations. With respect to the note described at Note 6, as provided for by ASC 825, the estimated fair value adjustment is presented in a respective single line item within other income (expense) in the accompanying consolidated statements of operations, since the change in fair value of the convertible notes payable was not attributable to instrument specific credit risk. The estimated fair value adjustment is included in other income (expense) in the accompanying consolidated statement of operations.

### Reportable Segments

The Company utilizes the management approach to identify the Company’s operating segments and measure the financial information disclosed, based on information reported internally to the Chief Operating Decision Maker (“CODM”) to make resource allocation and performance assessment decisions. An operating segment of a public entity has all the following characteristics: (1) it engages in business activities from which it may earn revenues and incur expense; (2) its operating results are regularly reviewed by the public entity’s CODM to make decisions about resources to be allocated to the segment and assess its performance; and (3) its discrete financial information is available. Based on the applicable criteria under the standard, the components of the Company’s operations are its: (1) advertising and sponsorship component, including content sales component; and (2) the Company’s direct-to-consumer component.

A reportable segment is an identified operating segment that also exceeds the quantitative thresholds described in the applicable standard. Based on the applicable criteria under the standard, including quantitative thresholds, management has determined that the Company has one reportable segment that operated primarily in domestic markets during the periods presented herein.

### Concentration of Credit Risks

Financial instruments that potentially subject the Company to concentrations of credit risk are cash equivalents, investments and accounts receivable. The Company places its cash equivalents and investments primarily in highly rated money market funds. Cash equivalents are also invested in deposits with certain financial institutions and may, at times, exceed federally insured limits. The Company has not experienced any significant losses on its deposits of cash and cash equivalents.

### Risks and Uncertainties

**Concentrations.** The Company had certain customers whose revenue individually represented 10% or more of the Company’s total revenue, or whose accounts receivable balances individually represented 10% or more of the Company’s total accounts receivable, and vendors whose accounts payable balances individually represented 10% or more of the Company’s total accounts payable, as follows:

	Year Ended December 31,	
	2022	2021
Number of customers > 10% of revenues / percent of revenues	- / -	One / 12%

Revenue concentrations were comprised of the following revenue categories:

	Year Ended December 31,	
	2022	2021
Advertising and sponsorships	-	12%
	-	12%
	December 31, 2022	December 31, 2021
Number of customers > 10% of accounts receivable / percent of accounts receivable	Two / 25%	Three / 35%
Number of vendors > 10% of accounts payable / percent of accounts payable	One / 10%	One / 21%

### **Earnings (Loss) Per Share**

Basic earnings (loss) per share is computed by dividing the income or loss by the weighted-average number of outstanding shares of common stock for the applicable period. Diluted earnings per share is computed by dividing the income or loss by the weighted-average number of outstanding shares of common stock for the applicable period, including the dilutive effect of common stock equivalents. Potentially dilutive common stock equivalents primarily consist of common stock potentially issuable in connection with the conversion of outstanding preferred stock, convertible notes payable, employee stock options, unvested restricted stock units, common stock purchase warrants (“warrants”) issued to employees and non-employees in exchange for services and warrants issued in connection with financings.

Common stock underlying all outstanding stock options, restricted stock units and warrants, totaling 7,174,000 and 5,060,000 at December 31, 2022 and 2021, respectively, have been excluded from the computation of diluted loss per share because the effect of inclusion would have been anti-dilutive. Common stock potentially issuable in connection with the conversion of outstanding preferred stock totaling 18,269,000 and zero at December 31, 2022 and 2021, respectively, have been excluded from the computation of diluted loss per share because the effect of inclusion would have been anti-dilutive. Common stock potentially issuable in connection with the conversion of outstanding convertible notes payable totaling 143,000 and zero at December 31, 2022 and 2021, respectively, have been excluded from the computation of diluted loss per share because the effect of inclusion would have been anti-dilutive.

### **Income Taxes**

Income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the Company’s consolidated financial statements or income tax returns. A valuation allowance is established to reduce deferred tax assets if all, or some portion, of such assets will more than likely not be realized, or if it is determined that there is uncertainty regarding future realization of such assets.

Under U.S. GAAP, a tax position is a position in a previously filed tax return, or a position expected to be taken in a future tax filing that is reflected in measuring current or deferred income tax assets and liabilities. Tax positions are recognized only when it is more likely than not, based on technical merits, that the position will be sustained upon examination. Tax positions that meet the more likely than not thresholds are measured using a probability weighted approach as the largest amount of tax benefit being realized upon settlement. The Company considers many factors when evaluating and estimating its tax positions and tax benefits, which may require periodic adjustments, and which may not accurately forecast actual outcomes. Management believes the Company has no uncertain tax positions for the years ended December 31, 2022 and 2021.

The Company has elected to include interest and penalties related to its tax contingences as a component of income tax expense. There were no accruals for interest and penalties related to uncertain tax positions for the periods presented. Income tax returns remain open for examination by applicable authorities, generally three years from filing for federal and four years for state. The Company is not currently under examination by any taxing authority nor has it been notified of an impending examination.

### **Recent Accounting Guidance**

*Recent Accounting Pronouncements – Not Yet Adopted.* In October 2021, the FASB issued ASU No. 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*, which requires entities to recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with ASC Topic 606, *Revenue from Contracts with Customers*, in order to align the recognition of a contract liability with the definition of a performance obligation. This standard will be effective for the Company beginning in the first quarter of fiscal year 2023, and early adoption is permitted. The Company is currently evaluating the impact that this standard will have on its financial statements and related disclosures.

*Recent Accounting Pronouncements – Adopted.* On August 5, 2020, the FASB issued ASU No. 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)*. The guidance in this update eliminates the beneficial conversion and cash conversion accounting models for convertible instruments. It also amends the accounting for certain contracts in an entity’s own equity that are currently accounted for as derivatives because of specific settlement provisions. In addition, the new guidance modifies how particular convertible instruments and certain contracts that may be settled in cash or shares impact the diluted EPS computation. The guidance was required to be applied retrospectively with the cumulative effect recognized as of the date of adoption. The guidance became effective at the beginning of the Company’s first quarter of the fiscal year ending December 31, 2022. The adoption of this standard did not have a material impact on the Company’s consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The guidance requires lessees to present right-of-use assets and lease liabilities on the balance sheet. The guidance became effective at the beginning of the Company’s first quarter of the fiscal year ending December 31, 2022. The adoption of this standard did not have a material impact on the Company’s consolidated financial statements and related disclosures.

### 3. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31, 2022 and 2021:

	<u>2022</u>	<u>2021</u>
Computer hardware	\$ 3,314,000	\$ 3,165,000
Furniture and fixtures	356,000	356,000
	<u>3,670,000</u>	<u>3,521,000</u>
Less: accumulated depreciation and amortization	(3,523,000)	(3,417,000)
	<u>\$ 147,000</u>	<u>\$ 104,000</u>

Depreciation and amortization expense for property and equipment was \$106,000 and \$73,000 for the years ended December 31, 2022 and 2021, respectively.

### 4. INTANGIBLE AND OTHER ASSETS

Intangible and other assets consisted of the following for the periods presented:

	<u>December 31, 2022</u>	<u>December 31, 2021</u>	<u>Useful Life (Years)</u>
Partner and customer relationships	\$ 13,376,000	\$ 13,376,000	3 - 7
Capitalized software development costs	5,262,000	4,339,000	3
Capitalized third-party game property costs	500,000	-	5
Developed technology	7,880,000	7,880,000	5 - 7
Influencers/content creators	2,559,000	2,559,000	3 - 5
Trade name	189,000	189,000	7
Domain	68,000	68,000	5 - 10
Copyrights and other	760,000	1,141,000	5 - 10
	<u>30,594,000</u>	<u>29,552,000</u>	
Less: accumulated amortization	(10,528,000)	(5,309,000)	
Intangible and other assets, net	<u>\$ 20,066,000</u>	<u>\$ 24,243,000</u>	

Total amortization expense for the fiscal years ended December 31, 2022 and 2021 totaled \$5,629,000 and \$3,187,000, respectively. Amortization expense included in cost of revenues for the fiscal years ended December 31, 2022 and 2021 totaled \$90,000 and \$63,000, respectively.

In June 2022, we purchased “*Anime Battlegrounds X*”, a highly rated game on Roblox, from a third-party game developer. The total purchase price of \$500,000 was capitalized and is being amortized to cost of revenue over the estimated useful life of 5 years.

During the third quarter of 2022, the Company rebranded certain products acquired in connection with the acquisition of Moberush. As a result, the Company recorded a write down of trademark related intangible assets acquired in connection with the acquisition of Moberush totaling \$423,000, which is included as a component of amortization expense in general and administrative expense in the accompanying consolidated statement of operations for the year ended December 31, 2022.

The Company expects to record aggregate amortization expense for each of the five succeeding fiscal years as follows:

**For the years ending December 31,**

2023	\$ 5,108,000
2024	4,706,000
2025	4,100,000
2026	2,951,000
2027	2,161,000
Thereafter	1,040,000
	<u>\$ 20,066,000</u>

## 5. ACQUISITIONS

### *Acquisition of Mobcrush*

On March 9, 2021, we entered into an Agreement and Plan of Merger, as amended on April 20, 2021 (the “Mobcrush Merger Agreement”), by and among Mobcrush, the Company, and SLG Merger Sub II, Inc., a wholly-owned subsidiary of the Company (“Merger Co”), which provided for the acquisition of Mobcrush by Super League pursuant to the merger of Merger Co with and into Mobcrush, with Mobcrush as the surviving corporation (the “Mobcrush Acquisition”).

On June 1, 2021 (“Mobcrush Closing Date”), the Company completed the Mobcrush Acquisition pursuant to which the Company acquired all of the issued and outstanding shares of Mobcrush. In accordance with the terms and subject to the conditions of the Mobcrush Merger Agreement each outstanding share of Mobcrush common stock, par value \$0.001 per share (“Mobcrush Common Stock”), and Mobcrush preferred stock, par value \$0.001, was canceled and converted into the right to receive (i) 0.528 shares of the Company’s common stock, as determined in the Mobcrush Merger Agreement, and (ii) any cash in lieu of fractional shares of common stock otherwise issuable under the Mobcrush Merger Agreement (the “Mobcrush Merger Consideration”). At closing, the Company issued to the former stockholders of Mobcrush an aggregate total of 12,067,571 shares of the Company’s common stock and reserved an aggregate total of 514,633 shares of common stock for future stock option grants, under the Super League 2014 Stock Option and Incentive Plan, to the former Mobcrush employees retained by the Company in connection with the Mobcrush Acquisition, resulting in a total of 12,582,204 shares of common stock issued and reserved as consideration for the Mobcrush Acquisition. Upon completion of the Mobcrush Acquisition, Mobcrush became a wholly-owned subsidiary of the Company.

The Mobcrush Acquisition was approved by the board of directors of each of the Company and Mobcrush, and was approved by the stockholders of Mobcrush. For purposes of complying with Nasdaq Listing Rule 5635, Super League’s stockholders approved the issuance of an aggregate of 12,582,204 shares of common stock to be issued in connection with the Mobcrush Acquisition.

Transaction costs incurred by the Company relating to the Mobcrush Acquisition totaled \$636,000 and were expensed as incurred in accordance with the acquisition method of accounting.

In accordance with the acquisition method of accounting, the financial results of Super League presented herein include the financial results of Mobcrush subsequent to the Mobcrush Closing Date. Disclosure of revenue and net loss for Mobcrush on a stand-alone basis for the periods presented herein is not practical due to the integration of Mobcrush operations, including sales, products, advertising inventory, resource allocation and related operating expense, with those of the consolidated Company upon acquisition, consistent with Super League operating in one reporting segment.

The Company determined that the Mobcrush Acquisition constituted a business acquisition as defined by ASC 805. Accordingly, the assets acquired and liabilities assumed in the transaction were recorded at their estimated acquisition date fair values, while transaction costs associated with the acquisition were expensed as incurred pursuant to the acquisition method of accounting in accordance with ASC 805. Super League’s purchase price allocation was based on an evaluation of the appropriate fair values of the assets acquired and liabilities assumed and represents management’s best estimate based on available data. Fair values were determined based on the requirements of ASC 820, “Fair Value Measurements and Disclosures” (“ASC 820”).

The following table summarizes the determination of the fair value of the purchase price consideration paid in connection with the Mobcrush Acquisition:

Equity Consideration at closing – shares of common stock	\$ 12,067,571
Super League closing stock price per share on the Mobcrush Closing Date	\$ 4.96
Fair value of common stock issued	<u>\$ 59,855,000</u>

The fair value of the Company common stock used in determining the estimated fair value of the Mobcrush Merger Consideration was \$4.96 per share based on the closing price of Company common stock on June 1, 2021, as quoted on the Nasdaq Capital Market.

The purchase price allocation was based upon an estimate of the fair value of the assets acquired and the liabilities assumed by the Company in connection with the Mobcrush Acquisition, as follows:

	<u>Amount</u>
<b>Assets Acquired and Liabilities Assumed:</b>	
Cash	\$ 586,000
Accounts receivable	1,266,000
Prepays	141,000
Property and equipment	13,000
Identifiable intangible assets	19,500,000
Accounts payable and accrued expense	(2,017,000)
Deferred revenue	(130,000)
Net deferred income tax liability	<u>(3,073,000)</u>
Identifiable net assets acquired	16,286,000
Goodwill	43,569,000
Total purchase price	<u>\$ 59,855,000</u>

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The following table presents details of the fair values of the acquired intangible assets of Mobcrush:

	<b>Estimated Useful Life (in years)</b>	<b>Amount</b>
Preferred partner relationship	7	10,700,000
Developed technology	5	3,900,000
Influencers/content creators	5	2,000,000
Advertiser and agency relationships	5	1,900,000
Trademarks (see Note 4)	7	500,000
Customer relationships	5	500,000
Total intangible assets acquired		<u>\$ 19,500,000</u>

Aggregated amortization expense for intangible assets acquired in connection with the Mobcrush Acquisition (including the write down of trademark related intangible assets described above) for the fiscal years ended December 31, 2022 and 2021, totaled \$3,651,000 and \$1,883,000, respectively. Goodwill represents the excess of the purchase price of the acquired business over the acquisition date fair value of the net assets acquired. Goodwill recorded in connection with the Mobcrush Acquisition was primarily attributable to expected synergies from combining the operations of Super League and Mobcrush, and also included residual value attributable to the assembled and trained workforce acquired in the Mobcrush Acquisition. Refer to Note 2 “Goodwill” above for additional information.

Pursuant to the terms of the Mobcrush Merger Agreement, immediately prior to the effective time of the Mobcrush Acquisition, each vested option to acquire shares of Mobcrush common stock held by former Mobcrush employees was exercised so that, at the effective time of the Mobcrush Acquisition, shares of Mobcrush common stock issued upon exercise of these vested options received shares of Company common stock issuable as Mobcrush Merger Consideration. Unvested options to acquire shares of Mobcrush common stock that were outstanding immediately prior to the Mobcrush Closing Date were canceled, and a number of options to purchase shares of Company common stock were issued to replace the cancelled unvested Mobcrush options in a manner consistent with options historically granted by Super League under the Super League 2014 Stock Option and Incentive Plan (the “Replacement Options”).

Pursuant to the terms of the Mobcrush Merger Agreement, 514,633 shares of the Company’s common stock were reserved for Replacement Option grants to the former Mobcrush employees retained by the Company in connection with the Mobcrush Acquisition. As of December 31, 2022, 415,000 Replacement Options have been granted to former Mobcrush employees retained by the Company, with continued employment required to vest and retain the Replacement Options granted. Under ASC 805, consideration arrangements in which the payments are automatically forfeited if employment terminates is considered to be compensation for post-combination services, and not acquisition consideration. As such, the 514,633 shares of the Company’s common stock reserved at closing for future stock option grants to former Mobcrush employees retained by the Company are not included as a component of the consideration paid in connection with the Mobcrush Acquisition, and will be accounted for pursuant to ASC 718 upon grant.

Management is primarily responsible for determining the fair value of the tangible and identifiable intangible assets acquired and liabilities assumed as of the Mobcrush Closing Date. Management considered a number of factors, including reference to an independent analysis of estimated fair values solely for the purpose of allocating the purchase price to the assets acquired and liabilities assumed. The analysis included a discounted cash flow analysis which estimated the future net cash flows expected to result from the respective assets acquired as of the Mobcrush Closing Date. A discount rate consistent with the risks associated with achieving the estimated net cash flows was used to estimate the present value of future estimated net cash flows.

The fair values of the acquired intangible assets, as described above, was determined using the following methods:

Description	Valuation Method Applied	Valuation Method Description	Assumptions
Preferred partner relationship / Advertiser and agency relationships	Multi-Period Excess Earnings Method “MPEE”) under the Income Approach	MPEEM is an application of the DCF Method, whereby revenue derived from the intangible asset is estimated using the overall business revenue, adjusted for attrition, obsolescence, cost of goods sold, operating expense, and taxes. Required returns attributable to other assets employed in the business are subtracted. The “excess” earnings are attributable to the intangible asset, and are discounted to present value at a rate of return to estimate the fair value of the intangible asset.	Discount rate 13% - 14%; Forecast period 6 – 10yrs.;
Developed technology and Trademarks	Relief-from-Royalty Method under the Income Approach	Under the Relief-from-Royalty method, the royalty savings is calculated by estimating a reasonable royalty rate that a third-party would negotiate in a licensing agreement. Such royalties are most commonly expressed as a percentage of total revenue involving the technology.	Forecast period: 4 – 5 yrs.; Royalty Rate: Developed Technology 5% - 3%; Discount Rate: 14%;
Influencers/content creators	With-and-Without Method under the Income Approach	The With-and-Without Method compares the present value of the after-tax cash flows of the business assuming that the subject intangible asset is in place with the present value of the after-tax cash flows of the business assuming the subject asset is not in place. The difference between the present value of the two scenarios isolates the impact of the subject intangible asset and provides an estimation of fair value.	Forecast period: 4 years; Recreate Period 20 months; Discount Rate: 13%;
Customer relationships	Replacement Cost Method	In the Replacement Cost Method, value is estimated by determining the current cost of replacing an asset with one of equivalent economic utility. The premise of the approach is that a prudent investor would pay no more for an asset than the amount for which the utility of the asset could be replaced.	Rate of Return 14%; Discount rate 13%; Discount period .5; Risk Adjusted Return Factor 1.1

The Mobcrush Acquisition was treated for tax purposes as a nontaxable transaction and, as such, the historical tax bases of the acquired assets and assumed liabilities, net operating losses, and other tax attributes of Mobcrush will carryover. As a result, no new tax goodwill was created in connection with the Mobcrush Acquisition as there is no step-up to fair value of the underlying tax bases of the acquired net assets. The acquisition method of accounting includes the establishment of a net deferred tax asset or liability resulting from book tax basis differences related to assets acquired and liabilities assumed on the date of acquisition. Acquisition date deferred tax assets primarily relate to certain net operating loss carryforwards of Mobcrush. Acquisition date deferred tax liabilities relate to specifically identified non-goodwill intangibles acquired. The estimated net deferred tax liability was determined as follows:

	Book Basis	Tax Basis	Difference
Intangible assets acquired	\$ 19,500,000	\$ 2,635,000	\$ (16,865,000)
Tangible assets acquired	13,000		(13,000)
Estimated net operating loss carryforwards – Mobcrush	-	5,895,000	5,895,000
Net deferred tax liability – pretax			(10,983,000)
Estimated tax rate			27.98%
Estimated net deferred tax liability			<u>\$ (3,073,000)</u>

*Release of Valuation Allowance.* Since inception, the Company has maintained a full valuation allowance against its net deferred tax assets. The net deferred tax liability resulting from the Mobcrush Acquisition created a source of income to utilize against the Company’s existing net deferred tax assets. Under the acquisition method of accounting, the impact on the acquiring company’s deferred tax assets is recorded outside of acquisition accounting. Accordingly, the valuation allowance on a portion of the Company’s net deferred tax assets was released, resulting in an income tax benefit of approximately \$3,073,000, recorded as a credit to income tax expense for the year ended December 31, 2021. The offsetting amounts reduced net deferred tax liabilities, \$3,073,000, of which reduced the net deferred tax liability established in connection with the application of the acquisition method of accounting for the Mobcrush Acquisition.

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The following unaudited pro forma combined results of operations for the period presented are provided for illustrative purposes only. The unaudited pro forma combined statements of operations for the year ended December 31, 2021, assumes the acquisition occurred as of January 1, 2020. The unaudited pro forma combined financial results do not purport to be indicative of the results of operations for future periods or the results that actually would have been realized had the entities been a single entity during the period.

	<u>2021</u>
<b>Revenue</b>	\$ 14,976,000
<b>Net Loss</b>	(26,363,000)

Pro forma adjustments primarily relate to the amortization of identifiable intangible assets acquired over the estimated economic useful life as described above, the expensing of stock options issued to former Mobcrush employees acquired in connection with the Merger, the exclusion of interest expense related to convertible debt of Mobcrush not assumed by Super League in connection with the Merger, the exclusion of nonrecurring transaction costs, and the exclusion of amortization and depreciation related to tangible and intangible assets of Mobcrush existing immediately prior to the Merger. The unaudited pro forma combined statement of operations for the period presented herein have been adjusted to give effect to pro forma events that are expected to have a continuing impact on the combined results. As such, the income tax benefit related to the release of valuation allowance reflected in the statement of income for the year ended December 31, 2021, as described above, totaling \$3,073,000, is not reflected in the accompanying unaudited pro forma combined statement of operations for the period presented.

#### *Acquisition of Bannerfy, LTD*

On August 11, 2021, the Company entered into a Share Purchase Agreement (the “Bannerfy Purchase Agreement”) with William Roberts, Colin Gillespie, and Robert Pierre (collectively, “Sellers”), pursuant to which the Company agreed to purchase, and Sellers agreed to sell, all of the issued and outstanding common shares of Bannerfy, a company organized under the laws of England and Wales for a total purchase price of \$7.0 million (the “Bannerfy Purchase Price”) (the “Bannerfy Acquisition”). On August 24, 2021 (the “Bannerfy Closing Date”), the Company completed the acquisition of Bannerfy.

Pursuant to the Bannerfy Purchase Agreement, upon the consummation of the Bannerfy Acquisition (the “Bannerfy Closing”), the Company paid an initial payment (subject to a holdback as described below) of \$2.45 million (the “Bannerfy Closing Consideration”), paid or to be paid as follows (i) \$525,000 in the form of a cash payment, and (ii) \$1.92 million in the form of shares of the Company’s common stock, at a price per share of \$4.10, the closing price of the Company’s common stock on the effective date of the Bannerfy Purchase Agreement, as reported on the Nasdaq Capital Market. Pursuant to the terms of the Bannerfy Purchase Agreement, \$275,000 of the Bannerfy Closing Consideration (“Holdback Amount”), was withheld from the Bannerfy Closing Consideration to satisfy any indemnifiable losses incurred by the Company (as defined in the Bannerfy Purchase Agreement) prior to the first anniversary of the Bannerfy Closing Date. The Company incurred no indemnifiable losses prior to the first anniversary of the Bannerfy Closing Date, and therefore during the three months ended September 30, 2022, the Company released to the Sellers the Holdback Amount as follows: (i) \$55,000 payable in the form of cash, and (ii) approximately \$220,000 in the form of shares of the Company’s common stock, at a price per share of \$4.10.

In accordance with the Bannerfy Purchase Agreement, all remaining portions of the Bannerfy Purchase Price subsequent to the payment of the Bannerfy Closing Consideration, up to approximately \$4.55 million (the “Contingent Consideration”), was payable upon the achievement of certain revenue and gross profit thresholds for the remainder of the 2021 fiscal year, and each of the fiscal years ending December 31, 2022, and December 31, 2023 (“Earnout Periods”). For the 2021, 2022 and 2023 Earnout Periods, 8%, 38% and 54%, respectively of the Contingent Consideration is potentially payable. The Contingent Consideration is payable in the form of both cash and shares of the Company’s common stock, 21% in cash and 79% in Company common stock, based on a conversion price of \$4.10 per share. No Contingent Consideration was accrued or paid during the periods presented.

The Bannerfy Acquisition was accounted for in accordance with ASC 805. In accordance with ASC 805, if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets, the set is not considered a business. Gross assets acquired excludes cash and cash equivalents, deferred tax assets, and goodwill resulting from the effects of deferred tax liabilities. A single identifiable asset includes any individual asset or group of assets that could be recognized and measured as a single identifiable asset in a business combination. When evaluating whether assets are similar, we considered the nature of each single identifiable asset and the risks associated with managing and creating outputs from the assets. Management determined that the Bannerfy Acquisition involved the acquisition of developed technology, which accounted for substantially all of the fair value of the gross assets acquired, and therefore, the Bannerfy Acquisition was determined not to be the acquisition of a business under ASC 805, and is therefore accounted for as an asset acquisition utilizing a cost accumulation model in accordance with the applicable guidance.



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Transaction costs incurred in connection with the Bannerfy Acquisition totaled \$62,000, which are included as a component of the purchase price paid in connection with the Bannerfy Acquisition.

The Bannerfy Purchase Price paid, comprised of the Bannerfy Closing Consideration of \$2.45 million and \$62,000 of related transaction costs, was allocated to the developed technology acquired, with an estimated useful life of seven years. In addition, the carrying value of the developed technology acquired in connection with the Bannerfy Acquisition includes an adjustment related to deferred taxes, totaling \$556,000, as described below. Net working capital assets acquired were not material.

Aggregated amortization expense for the developed technology intangible asset acquired in connection with the Bannerfy Acquisition for the fiscal years ended December 31, 2022 and 2021, totaled \$438,000 and \$146,000, respectively.

The Company hired the former director of Bannerfy (“Bannerfy Executive”), who was also a selling shareholder of Bannerfy. Pursuant to the provisions of the Bannerfy Purchase Agreement, in the event that the Bannerfy Executive ceases to be an employee, during any of the Earnout Periods, as a consequence of his resignation or termination for cause, as defined in the Bannerfy Purchase Agreement, the Bannerfy Executive shall only be entitled to such percentage of any Contingent Consideration payment which would otherwise be payable to him on a prorated basis based on the number of months employed during the applicable Earnout Period. Under ASC 805, a contingent consideration arrangement in which the payments are automatically forfeited if employment terminates is considered to be compensation for post-combination services, and not acquisition consideration. As such, the Contingent Consideration, if any, will be accounted for as post-combination services and expensed in the period that payment of any amounts of Contingent Consideration becomes probable and reasonably estimable.

The Bannerfy Acquisition was treated for tax purposes as a nontaxable transaction and, as such, the historical tax bases of the acquired assets and assumed liabilities, net operating losses, and other tax attributes of Bannerfy will carryover. As a result, there is no step-up to fair value of the underlying tax bases of the acquired net assets in connection with the Bannerfy Acquisition. The acquisition method of accounting includes the establishment of a net deferred tax asset or liability resulting from book tax basis differences related to assets acquired and liabilities assumed on the date of acquisition. When an acquisition of a group of assets is purchased in a transaction that is not accounted for as a business combination under ASC 805, a difference between the book and tax bases of the assets arises. ASC 740, “Income Taxes” (“ASC 740”) requires the use of simultaneous equations to determine the assigned value of the asset and the related deferred tax asset or liability. As neither goodwill nor a bargain purchase gain is recognized in an asset acquisition, recognizing deferred tax assets or liabilities for temporary differences in an asset acquisition results in adjusting the carrying amount of the related assets and liabilities. The deferred tax liability and resulting adjustment to the carrying amount of the assets acquired in connection with the Bannerfy Acquisition was determined as follows:

	<b>Book Basis</b>	<b>Tax Basis</b>	<b>Difference</b>
Intangible assets acquired	\$ 2,512,000	\$ -	\$ (2,512,000)
Estimated net operating loss carryforwards – Bannerfy		144,000	144,000
Net deferred tax liability – pretax			(2,368,000)
Estimated tax rate			23.48%
Estimated net deferred tax liability – Pursuant to ASC 740(1)			\$ (556,000)

(1) Pursuant to ASC 740, the deferred tax liability is estimated using the following formula: (a) Applicable tax rate divided by (b) one minus the applicable tax rate, multiplied by (c) the tax basis of the net assets acquired less the initial book basis of the net assets acquired.

Bannerfy commenced operations in September 2020. As such, the historical balance sheets and statements of operations of Bannerfy were not material, and therefore unaudited pro forma combined results of operations for the periods presented are not provided for illustrative purposes. Disclosure of revenue and net loss for Bannerfy on a stand-alone basis for the periods presented herein is not practical due to the integration of Bannerfy operations, including sales, products, advertising inventory, resource allocation and related operating expense, with those of the consolidated Company upon acquisition, consistent with Super League operating in one reporting segment.

#### *Acquisition of Super Biz Co.*

On October 4, 2021 (“Super Biz Closing Date”), the Company entered into an Asset Purchase Agreement (the “Super Biz Purchase Agreement”) with Super Biz Co. and the founders of Super Biz (the “Founders”), pursuant to which the Company acquired (i) substantially all of the assets of Super Biz (the “Super Biz Assets”), and (ii) the personal goodwill of the Founders regarding Super Biz’s business, (the “Super Biz Acquisition”). The consummation of the Super Biz Acquisition (the “Super Biz Closing”) occurred simultaneously with the execution of the Super Biz Purchase Agreement on the Super Biz Closing Date.

At closing, the Company paid an aggregate total of \$6.0 million to Super Biz and the Founders (the “Super Biz Closing Consideration”), of which \$3.0 million was paid in the form of cash (the “Super Biz Closing Cash Consideration”) and \$3.0 million was paid in the form of shares of the Company’s common stock, at a per share price of \$2.91, the closing price of the Company’s common stock on the Super Biz Closing Date, as reported on the Nasdaq Capital Market (the “Super Biz Stock Consideration”).

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Pursuant to the terms and subject to the conditions of the Super Biz Purchase Agreement, up to an aggregate amount \$11.5 million will be payable to Super Biz and the Founders in connection with the achievement of certain revenue milestones for the period from the Super Biz Closing Date until December 31, 2022 (“Initial Earn Out Period”) and for the fiscal year ending December 31, 2023 (the “Super Biz Contingent Consideration”) (“Super Biz Earn Out Periods”). The Super Biz Contingent Consideration is payable in the form of both cash and shares of the Company’s common stock, in equal amounts, as more specifically set forth in the Super Biz Purchase Agreement.

The Super Biz Acquisition was approved by the board of directors of each of the Company and Super Biz and was approved by the stockholders of Super Biz.

In accordance with the acquisition method of accounting, the financial results of Super League presented herein include the financial results of Super Biz subsequent to the Super Biz Closing Date. Disclosure of revenue and net loss for Super Biz on a stand-alone basis for the year ended December 31, 2022 is not practical due to the integration of Super Biz activities, including sales, products, advertising inventory, resource allocation and related operating expense, with those of the consolidated Company upon acquisition, consistent with Super League operating in one reporting segment.

The Company determined that the Super Biz Acquisition constitutes a business acquisition as defined by ASC 805. Accordingly, the assets acquired and liabilities assumed in the transaction were recorded at their estimated acquisition date fair values, while transaction costs associated with the acquisition were expensed as incurred pursuant to the acquisition method of accounting in accordance with ASC 805. Super League’s purchase price allocation was based on an evaluation of the appropriate fair values of the assets acquired and liabilities assumed and represents management’s best estimate based on available data. Fair values were determined based on the requirements of ASC 820.

Transaction costs incurred by the Company relating to the Super Biz Acquisition totaled \$47,000 and were expensed as incurred in accordance with the acquisition method of accounting.

The following table summarizes the determination of the fair value of the purchase price consideration paid in connection with the Super Biz Acquisition:

Cash consideration at closing		\$	3,000,000
Equity consideration at closing – shares of common stock	1,031,928		
Super League closing stock price per share on the Super Biz Closing Date	\$ 2.91		
Fair value of equity consideration issued at closing	\$ 3,000,000		3,000,000
Fair value of total consideration issued at closing		\$	<u>6,000,000</u>

The fair value of the Company common stock used in determining the estimated fair value of the Super Biz Closing Consideration was \$2.91 per share based on the closing price of Company common stock on October 4, 2021, as quoted on the Nasdaq Capital Market.

The purchase price allocation was based upon an estimate of the fair value of the assets acquired and the liabilities assumed by the Company in connection with the Super Biz Acquisition, as follows:

	<u>Amount</u>
<b>Assets Acquired and Liabilities Assumed:</b>	
Accounts receivable	\$ 124,000
Identifiable intangible assets	<u>1,747,000</u>
Identifiable net assets acquired	1,871,000
Goodwill	<u>4,129,000</u>
Total purchase price	<u>\$ 6,000,000</u>

The following table presents details of the fair values of the acquired intangible assets of Super Biz:

	<u>Estimated Useful Life (in years)</u>	<u>Amount</u>
Developed technology	7	\$ 912,000
Developer relationships	3	559,000
Customer relationships	3	<u>276,000</u>
Total intangible assets acquired		<u>\$ 1,747,000</u>

Aggregated amortization expense for the intangible assets acquired in connection with the Super Biz Acquisition for the fiscal years ended December 31, 2022 and 2021, totaled \$409,000 and \$99,000, respectively. Goodwill represents the excess of the purchase price of the acquired business over the acquisition date fair value of the net assets acquired. Goodwill recorded in connection with the Super Biz Acquisition was primarily attributable to expected synergies from combining the operations and assets of Super League and Super Biz, and also includes residual value attributable to the assembled and trained workforce acquired in the acquisition. Refer to Note 2 “Goodwill” above for additional information.

Management is primarily responsible for determining the fair value of the tangible and identifiable intangible assets acquired and liabilities assumed as of the Super Biz Closing Date. Management considered a number of factors, including reference to an independent analysis of estimated fair values solely for the purpose of allocating the purchase price to the assets acquired and liabilities assumed. The analysis included a discounted cash flow analysis which estimated the future net cash flows expected to result from the respective assets acquired as of the Super Biz Closing Date. A discount rate consistent with the risks associated with achieving the estimated net cash flows was used to estimate the present value of future estimated net cash flows. The fair values of the intangible assets acquired in connection with the Super Biz acquisition were determined using the cost method. Under the cost method, value is estimated by determining the current cost of replacing an asset with one of equivalent economic utility. The premise of the approach is that a prudent investor would pay no more for an asset than the amount for which the utility of the asset could be replaced. Valuation assumptions utilized included rates of return of 30%, discount periods of 0.5 to 1, risk adjusted return factors of 1.1 to 1.3 and weighted average costs of capital of 30%.

The Company hired the Founders of Super Biz in connection with the Super Biz Acquisition. Pursuant to the provisions of the Super Biz Purchase Agreement, in the event that a Founder ceases to be an employee during any of the Super Biz Earn Out Periods, as a consequence of his resignation without good cause, or termination for cause, the Super Biz Contingent Consideration will be reduced by one-half (50%) for the respective Super Biz Earn Out Periods, if and when earned. Under ASC 805, a contingent consideration arrangement in which the payments are automatically forfeited if employment terminates is considered to be compensation for post-combination services, and not acquisition consideration. As such, the Contingent Consideration, is accounted for as post-combination services and expensed in the period that payment of any amounts of Contingent Consideration is determined to be probable and reasonably estimable. As of December 31, 2022, the Company determined that it was probable that the contingency for the Initial Earn Out Period would be met in accordance with the terms of the Super Biz Purchase Agreement, and the applicable amounts were reasonably estimable, resulting in a charge to compensation expense totaling \$3,206,000 (including approximately 988,000 shares of common stock valued at \$0.336, the closing price of our common stock as of December 31, 2022), which is reflected as a component of operating expense in the consolidated statement of operations for the year ended December 31, 2022. The Contingent Consideration is recorded as a liability in the accompanying consolidated balance sheet in accordance with ASC 480, “Distinguishing liabilities from equity” (“ASC 480”), which requires freestanding financial instruments where the company must or could settle the obligation by issuing a variable number of its shares, and the obligation's monetary value is based solely or predominantly on variations in something other than the fair value of the company's shares, to be recorded as a liability.

For tax purposes, consistent with the accounting for book purposes, the Super Biz Closing Consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date, with the excess purchase price allocated to goodwill. As a result, no deferred tax assets or liabilities were recorded with the acquisition and all of the goodwill is expected to be deductible for tax purposes.

Super Biz operations commenced in December 2020. As such, the historical balance sheets and statements of operations of Super Biz were not material, and therefore unaudited pro forma combined results of operations for the periods presented are not provided for illustrative purposes.

## **6. DEBT**

### *Convertible Notes Payable at Fair Value*

On May 16, 2022, the Company entered into a Securities Purchase Agreement (the “SPA”) with three institutional investors (collectively, the “Note Holders”) providing for the sale and issuance of a series of senior convertible notes in the aggregate original principal amount of \$4,320,000, of which 8% is an original issue discount (“OID”) (each, a “Note,” and, collectively, the “Notes,” and such financing, the “Note Offering”). The Notes accrue interest at a guaranteed annual rate of 9% per annum, mature 12 months from the date of issuance, and are convertible at the option of the Note Holders into that number of shares of the Company’s common stock, equal to the sum of the outstanding principal balance, accrued and unpaid interest, and accrued and unpaid late charges (the “Conversion Amount”), divided by \$4.00 (the “Conversion Price”), subject to adjustment upon the occurrence of certain events as more specifically set forth in the Note, as amended; provided, however, in no event will the Company be permitted to issue more than 19.99% of the shares of common stock issued and outstanding immediately prior to the Note Offering, which number of shares shall be reduced, on a share-for-share basis, by the number of shares of common stock issued or issuable pursuant to any transaction or series of transactions that may be aggregated with the Note Offering. In the event of the occurrence of an event of default, the Note Holders may, at the Note Holder’s option, convert all, or any part of, the Conversion Amount into shares of common stock at 90% of the lowest volume weighted average price of the ten trading days preceding the date for which the price is being calculated.

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In addition, the Company may be required to redeem all or a portion of the Notes under certain circumstances, and, in the event (A) the Company sells Company common stock pursuant to the March 25, 2022 Purchase Agreement, described below, or (B) consummates a subsequent equity financing, then the Note Holders will have the right, but not the obligation, to require the Company to use 50% of the gross proceeds raised from such sale to redeem all or any portion of the Conversion Amount then remaining under the Notes, in cash, at a price equal to the Conversion Amount being redeemed. The Company may, at its option, redeem all or a portion of the Notes at a price equal to 110% of the Conversion Amount being redeemed.

In the event of a change of control, the Note Holders may require the Company to redeem all or any portion of this Note in cash at a price equal to the greatest of (i) the product of (x) 110% multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (x) 110% multiplied by (y) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest closing sale price of the shares of common stock during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable change of control and (2) the public announcement of such change of control and ending on the date the Note Holder delivers the change of control redemption notice by (II) the Conversion Price then in effect, and (iii) the product of (x) 110% multiplied by (y) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration and the aggregate cash value of any non-cash consideration per share of common stock to be paid to the holders of the shares of common stock upon consummation of such change of control divided by (II) the Conversion Price then in effect.

In the event of the occurrence of an event of default, the Note Holders may require the Company to redeem (regardless of whether such Event of Default has been cured) all or any portion of the Notes. Each portion of the Notes subject to redemption by the Company pursuant to an event of default shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) 110% and (ii) the product of (X) the conversion rate with respect to the Conversion Amount in effect at such time as the Holder delivers an event of default redemption notice multiplied by (Y) the product of (1) 110% multiplied by (2) the greatest closing sale price of the common stock on any trading day during the period commencing on the date immediately preceding such event of default and ending on the date the Company makes the entire payment required to be made under the Notes. Upon any bankruptcy the Company would be required to pay to the Note Holders an amount in cash representing (i) all outstanding principal, accrued and unpaid interest and accrued and unpaid late charges on such principal and interest, multiplied by (ii) 110%, in addition to any and all other amounts due under the Notes, provided that any Note Holder may, in its sole discretion, waive such right to receive payment upon a bankruptcy event of default, in whole or in part.

Under the Notes, the Company is subject to certain customary affirmative and negative covenants regarding the incurrence of indebtedness, the existence of liens, the repayment of indebtedness, the payment of cash in respect of dividends, distributions or redemptions, and the transfer of assets, among other matters.

The Notes are subject to a most favored nation provision and standard adjustments in the event of any stock split, stock dividend, stock combination, recapitalization or other similar transaction. If the Company issues or sells, or enters into any agreement to issue or sell, any variable rate securities, including by way of one or more reset(s) to a fixed price, the Note Holders have the right, but not the obligation, in any Note Holder's sole discretion, to substitute the applicable variable price for the Conversion Price upon conversion of the Notes.

Concurrently with the SPA, the Company and the Note Holders entered into a registration rights agreement, pursuant to which the Company agreed to file a Registration Statement on Form S-3 within 30 days after the closing of the Note Offering.

During the year ended December 31, 2022, the Company recorded interest expense related to the Notes totaling \$389,000, and made cash interest payments totaling \$209,000. Accrued interest totaled \$180,000 at December 31, 2022.

The Notes were issued with an original issue discount of \$320,000, or 8%, which is recorded as an adjustment to the carrying amount of the Notes. The original issue discount is amortized using the interest method over the contractual term of the Notes and reflected as interest expense in the statement of operations. Total amortization of original issue discount for the year ended December 31, 2022 was \$280,000. At December 31, 2022, the balance of the original issue discount was \$40,000, which is included in "Convertible note payable and accrued interest" in the accompanying consolidated balance sheet.

The Company elected to utilize the FVO to account for the Notes, which is included in current liabilities. Principal payments on the Notes during the year ended December 31, 2022 totaled \$3,781,000. The change in fair value of the Notes at each balance sheet date, if any, is included in other income (expense) in the accompanying consolidated statement of operations for the year ended December 31, 2022. The Notes were valued based on a binomial lattice model utilizing the following assumptions and results for fiscal year 2022:

	May 16, 2022	June 30, 2022	September 30, 2022
Stock price	\$ 1.27	\$ 1.02	\$ 0.68
Volatility	82%	83%	82%
Risk free rate	2.1%	2.7%	3.1%
Dividend rate	-	-	-
Implied yield	20.7%	23.9%	23.4%
Estimated Fair value of Notes, including OID, excluding accrued interest	4,000,000	3,986,000	4,245,000
Change in fair value	NA	(49,000)	334,000

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At December 31, 2022, the remaining principal balance of the Notes totaled \$539,000, and accrued interest totaled \$180,000, both of which were paid in full in the first quarter of 2023. The carrying value of the Notes approximated their fair values as of December 31, 2022. The decrease in fair value during the three months ended December 31, 2022 was \$285,000, resulting in a net impact of the change in fair value of the Notes of \$0 for the year ended December 31, 2022.

**PPP Loan**

On May 4, 2020, the Company entered into a forgivable loan from the U.S. Small Business Administration (“SBA”) resulting in net proceeds of \$1,200,047 pursuant to the Paycheck Protection Program (“PPP”) enacted by Congress under the CARES Act administered by the SBA (the “PPP Loan”). To facilitate the PPP Loan, the Company entered into a Note Payable Agreement with a bank (the “Lender”) (the “PPP Loan Agreement”). The PPP Loan had an original maturity date of May 4, 2022, and accrued interest at a rate of 1.00% per annum, with interest accruing throughout the period the PPP Loan was outstanding, or until forgiven.

The PPP Loan was accounted for as a financial liability in accordance with ASC 470, “Debt” (“ASC 470”) Accordingly, the proceeds from the PPP Loan were recorded as a long-term liability on the balance sheet until either (1) the loan is, in part or wholly, forgiven and the company had been “legally released” or (2) the Company paid off the loan to the Lender. Interest was accrued in accordance with the interest method.

In May 2021, the PPP loan was forgiven pursuant to the terms and conditions of the PPP Loan Agreement and the provision of the Cares Act. Upon forgiveness, and legal release, the Company reduced the liability by the amount forgiven, totaling \$1,213,000 and recorded a gain on extinguishment in the consolidated statement of operations for the year ended December 31, 2021.

**7. STOCKHOLDERS’ EQUITY****Preferred Stock**

The Company’s initial certificate of incorporation authorized 5,000,000 shares of preferred stock, par value \$0.001 per share. No preferred stock had been issued and outstanding since inception of the Company. In October 2016, the Company’s Board of Directors (the “Board of Directors”) and a majority of the holders of the Company’s common stock approved an amendment and restatement of the certificate of incorporation which, in part, eliminated the authorized preferred stock. In August 2018, the Board of Directors approved a second amendment and restatement of the Company’s amended and restated certificate of incorporation (the “Amended and Restated Charter”) to, in part, increase the Company’s authorized capital to a total of 110.0 million shares, including 10.0 million shares of newly created preferred stock, par value \$0.001 per share (“Preferred Stock”), authorize the Board of Directors to fix the designation and number of each series of Preferred Stock, and to determine or change the designation, relative rights, preferences, and limitations of any series of Preferred Stock. The Amended and Restated Charter was approved by a majority of the Company’s stockholders in September 2018, and was filed with the State of Delaware in November 2018. All references in the accompanying consolidated financial statements to Preferred Stock have been restated to reflect the Amended and Restated Charter.

**Common Stock**

The Amended and Restated Charter also increased the Company’s authorized capital to include 100.0 million shares of common stock, par value \$0.001, and removed the deemed liquidation provision, as such term is defined in the Amended and Restated Charter. Each holder of common stock is entitled to one vote for each share of common stock held at all meetings of stockholders.

**Equity Financings**

*Fiscal year ended December 31, 2022:*

**Preferred Stock Issuances**

During the fourth quarter of 2022, we entered into subscription agreements with accredited investors in connection with the sale of an aggregate of 10,323 shares of newly designated Series A, A-2, A-3 and A-4 Convertible Preferred Stock, each series having a \$0.001 par value and a \$1,000 purchase price, hereinafter collectively referred to as “Series A Preferred,” and the individual offerings of Series A Preferred stock hereinafter collectively referred to as the Series A Offerings, as follows:

Date	Series Designation	Conversion Price	Shares	Gross Proceeds	Fees	Net Proceeds	Conversion Shares	Placement Agent Warrants (1)
November 22, 2022	Series A	\$ 0.6200	5,359	\$ 5,359,000	\$ 752,000	\$ 4,607,000	8,644,000	1,253,000
November 28, 2022	Series A-2	\$ 0.6646	1,297	1,297,000	169,000	1,128,000	1,952,000	283,000
November 30, 2022	Series A-3	\$ 0.6704	1,733	1,733,000	225,000	1,508,000	2,585,000	375,000
December 22, 2022	Series A-4	\$ 0.3801	1,934	1,934,000	251,000	1,683,000	5,088,000	738,000
<b>Total</b>			<b>10,323</b>	<b>\$ 10,323,000</b>	<b>\$ 1,397,000</b>	<b>\$ 8,926,000</b>	<b>18,269,000</b>	<b>2,649,000</b>

(1) – To be issued upon final closing of the Series A Preferred Stock offering

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Use of net proceeds from the Series A Offerings include the repayment of certain indebtedness and working capital and general corporate purposes, including sales and marketing activities and product development. As disclosed at Note 6, in the event the Company consummated a subsequent equity financing during the term of the Notes, the Company is required, at the option of the Note Holders, to use 50% of the gross proceeds raised from such sale to redeem all or any portion of the Notes outstanding upon closing of such equity financing. For the year ended December 31, 2022, \$3,621,000 of the net proceeds from the Series A Offerings were utilized in connection with the partial redemption of the Notes.

On the respective effective dates, the Company filed certificates of designation of preferences, rights and limitations of the Series A Preferred with the State of Delaware, respectively.

Each share of Series A Preferred is convertible at the option of the holder, subject to certain beneficial ownership limitations and primary market limitations as set forth in each Series A Certificate of Designation, into such number of shares of the Company's common stock, equal to the number of Series A Preferred to be converted, multiplied by the stated value of \$1,000 (the "Stated Value"), divided by the conversion price in effect at the time of the conversion, as described above. In addition, subject to beneficial ownership and primary market limitations: (1) the Series A Preferred will automatically convert into shares of Common Stock at the Conversion Price upon the earlier of (a) the 24-month anniversary of the Effective Date or (b) the consent to conversion by holders of at least 51% of the outstanding shares of Series A Preferred; and (2) on the one year anniversary of the Effective Date, the Company may, in its discretion, convert (y) 50% of the outstanding shares of Series A Preferred if the volume-weighted average price of the Company's Common Stock over the previous 10 days as reported on the NASDAQ Capital Market (the "VWAP"), equals at least 250% of the Conversion Price, or (z) 100% of the outstanding shares of Series A Preferred if and only if the VWAP equals at least 300% of the Conversion Price.

The Series A Preferred shall vote together with the common stock on an as-converted basis, and not as a separate class, subject to the primary market limitations, except that holders of Series A Preferred shall vote as a separate class with respect to (a) amending, altering, or repealing any provision of the Series A Certificate of Designation in a manner that adversely affects the powers, preferences or rights of the Series A Preferred, (b) increasing the number of authorized shares of Series A Preferred, (c) authorizing or issuing an additional class or series of capital stock that ranks senior to or pari passu with the Series A Preferred with respect to the distribution of assets on liquidation, (d) authorizing, creating, incurring, assuming, guaranteeing or suffering to exist any indebtedness for borrowed money of any kind in excess of \$5 million, or I entering into any agreement with respect to the foregoing. In addition, no holder of Series A Preferred shall be entitled to vote on any matter presented to the Company's stockholders relating to approving the conversion of such holder's Series A Preferred into an amount in excess of the primary market limitations. Upon any dissolution, liquidation or winding up, whether voluntary or involuntary, holders of Series A Preferred will be entitled to first receive distributions out of the Company's assets in an amount per share equal to the Stated Value plus all accrued and unpaid dividends, whether capital or surplus before any distributions shall be made on any shares of Common Stock (after the payment to any senior security, if any).

Holders of the Series A Preferred will be entitled to receive dividends, subject to the beneficial ownership and primary market limitations, payable in the form of that number of shares of Common Stock equal to 20% of the shares of Common Stock underlying the Series A Preferred then held by such holder on the 12 and 24-month anniversaries of the respective filing date. In addition, subject to the beneficial ownership and primary market limitations, holders of Series A Preferred will be entitled to receive dividends equal, on an as-if-converted to shares of Common Stock basis, and in the same form as dividends actually paid on shares of the common stock when, as, and if such dividends are paid on shares of the common stock. Notwithstanding the foregoing, to the extent that a holder's right to participate in any dividend in shares of common stock to which such holder is entitled would result in such holder exceeding the beneficial ownership and primary market limitations, then such holder shall not be entitled to participate in any such dividend to such extent and the portion of such shares that would cause such holder to exceed the beneficial ownership and primary market limitations shall be held in abeyance for the benefit of such holder until such time, if ever, as such holder's beneficial ownership thereof would not result in such holder exceeding the beneficial ownership and primary market limitations.

The Company and the investors in the Series A Offerings also executed a registration rights agreement (the "Registration Rights Agreement"), pursuant to which the Company agreed to file a registration statement covering the resale of the shares of Common Stock issuable upon conversion of the Series A Preferred within sixty days following the final closing of Series A Offerings and to use its best efforts to cause such registration statement to become effective within 90 days of the filing date.

The Company sold the shares of Series A Preferred pursuant to a Placement Agency Agreement (the "Placement Agency Agreement") with a registered broker dealer, which acted as the Company's exclusive placement agent (the "Placement Agent") for Series A Offerings.

Pursuant to the terms of the Placement Agency Agreement, we agreed to pay to the Placement Agent at each Closing a cash fee equal to 10% of the gross proceeds raised in the Series A Offerings and (ii) a non-accountable expense allowance equal to 3% of the gross proceeds of the Series A Offerings. In addition, we have agreed to issue to the Placement Agent or its designees for nominal consideration and following the final closing under the Series A Offerings, five-year warrants to purchase 14.5% of the shares of common stock issuable upon conversion of the Series A Preferred shares sold in the Series A Offerings, at an exercise price equal to the applicable conversion price. The Placement Agent Warrants provide for a cashless exercise feature and are exercisable for a period of five years from the Effective Date. In addition, the Company agreed to grant the Placement Agent the right to appoint, subject to the Company's approval, one representative to serve as a member of the Company's Board of Directors upon the closing of at least \$10 million in aggregate in connection with the Series A Offerings.

The securities to be issued in the Series A Offerings are exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 4(a)(2) of the Securities Act and/or Rule 506(b) of Regulation D promulgated thereunder because, among other things, the transaction did not involve a public offering, the investors are accredited investors, the investors are purchasing the securities for investment and not for resale and the Company took appropriate measures to restrict the transfer of the securities. The securities have not been registered under the Securities Act and may not be sold in the United States absent registration or an exemption from registration. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

The Subscription Agreements contains representations and warranties that the parties made to, and solely for the benefit of, the other signatories to the Subscription Agreements in the context of all of the terms and conditions thereof and in the context of the specific relationship between the parties to the Subscription Agreements. The provisions of such Subscription Agreements, including the representations and warranties contained therein, are not for the benefit of any party other than the party signatories thereto and are not intended for investors and the public to obtain factual information about the current state of affairs of the parties to such Subscription Agreements. Rather, investors and the public refer to other disclosures contained in the Company's filings with the U.S. Securities and Exchange Commission.

#### Common Stock Purchase Agreement

On March 25, 2022, we entered into a common stock purchase agreement (the "Purchase Agreement") with Tumim Stone Capital, LLC ("Tumim"). Pursuant to the Purchase Agreement, the Company has the right, but not the obligation, to sell to Tumim, and Tumim is obligated to purchase, up to \$10,000,000 of newly issued shares (the "Total Commitment") of the Company's common stock from time to time during the term of the Purchase Agreement (the "Tumim Offering"), subject to certain limitations and conditions. As consideration for Tumim's commitment to purchase shares of common stock under the Purchase Agreement, the Company issued to Tumim 50,000 shares of common stock, valued at \$100,000, following the execution of the Purchase Agreement (the "Commitment Shares"). During the year ended December 31, 2022, we issued 7,425 shares of common stock at an average price of \$1.11, raising net proceeds of approximately \$8,000, under the Purchase Agreement.

The Purchase Agreement initially precludes the Company from issuing and selling more than 7,361,833 shares of its common stock, including the Commitment Shares, which number equals 19.99% of the common stock issued and outstanding as of March 25, 2022, unless the Company obtains stockholder approval to issue additional shares, or unless certain exceptions apply. In addition, a beneficial ownership limitation in the agreement initially limits the Company from directing Tumim to purchase shares of common stock if such purchases would result in Tumim beneficially owning more than 4.99% of the then-outstanding shares of common stock (subject to an increase to 9.99% at Tumim's option upon at least 61 calendar days' notice).

From and after the initial satisfaction of the conditions to the Company's right to commence sales of common stock to Tumim (such event, the "Commencement," and the date of initial satisfaction of all such conditions, the "Commencement Date"), the Company may direct Tumim to purchase shares of common stock at a purchase price per share equal to 95% of the average daily dollar volume-weighted average price for the common stock during the three consecutive trading day period immediately following the date on which the Company delivers to Tumim a notice for such purchase. The Company will control the timing and amount of any such sales of common stock to Tumim. Actual sales of shares of common stock to Tumim will depend on a variety of factors to be determined by the Company from time to time, including, among other things, market conditions, the trading price of the common stock, and determinations by the Company as to the appropriate sources of funding for the Company and its operations.

The Commencement Date of the Tumim Offering was March 25, 2022. Unless earlier terminated, the Purchase Agreement will automatically terminate upon the earliest of (i) the expiration of the 18-month period following the Commencement Date, (ii) Tumim's purchase or receipt of the Total Commitment worth of common stock, or (iii) the occurrence of certain other events set forth in the Purchase Agreement. The Company has the right to terminate the Purchase Agreement at any time after Commencement, at no cost or penalty, upon five trading days' prior written notice to Tumim. Tumim has the right to terminate the Purchase Agreement upon five trading days' prior written notice to the Company, but only upon the occurrence of certain events set forth in the Purchase Agreement.

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Use of proceeds from any Tumim Offerings includes working capital and general corporate purposes, including sales and marketing activities, product development and capital expenditures. The Company may also use a portion of the net proceeds to acquire or invest in complementary businesses, products and technologies. The Purchase Agreement contains customary representations, warranties and agreements by the Company, as well as customary indemnification obligations of the Company.

### *Fiscal year ended December 31, 2021:*

In January 2021, the Company issued 3,076,924 shares of common stock at a price of \$2.60 per share, raising aggregate net proceeds of approximately \$8.0 million, after deducting offering costs totaling \$73,000.

In February 2021, the Company issued 2,926,830 shares of common stock at a price of \$4.10 per share, raising aggregate net proceeds of approximately \$12.0 million, after deducting offering costs totaling \$70,000.

In March 2021, the Company issued 1,512,499 shares of common stock at a price of \$9.00 per share, raising aggregate net proceeds of approximately \$13.6 million, after deducting offering costs totaling \$72,000.

The offerings described above were made pursuant to an effective shelf registration statement on Form S-3, which was originally filed with the Securities and Exchange Commission on April 10, 2020 (File No. 333-237626). The net proceeds from these offerings were used for working capital and other general corporate purposes, including sales and marketing activities, product development and capital expenditures. The Company also reserved the right to use a portion of the net proceeds for the acquisition of, or investment in, technologies, solutions or businesses.

### Equity Distribution Agreement

On September 3, 2021, the Company entered into an Equity Distribution Agreement (the “Sales Agreement”) with two investment banks (the “Agents”), pursuant to which the Company could offer and sell, from time to time, through the Agents (the “ATM Offering”), up to \$75 million of its shares of common stock (the “Shares”). Any Shares offered and sold in the Offering were issued pursuant to the Company’s Registration Statement on Form S-3 filed with the SEC on September 3, 2021 (the “Form S-3”) and the prospectus relating to the Offering that forms a part of the Form S-3, following such time as the Form S-3 is declared effective by the SEC. During the year ended December 31, 2022, the Company issued 323,639 shares of common stock, at an average price of \$0.99, raising net proceeds of \$312,000, under the Sales Agreement.

Subject to the terms and conditions of the Sales Agreement, the Agents used their commercially reasonable efforts to sell the Shares from time to time, based upon the Company’s instructions. Under the Sales Agreement, the Agents sold the Shares by any method permitted by law deemed to be an “at-the-market” offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the “Securities Act”), including, without limitation, sales made directly on the Nasdaq Capital Market, on any other existing trading market for the Company’s common stock or to or through a market maker.

The Company had no obligation to sell any of the Shares and could at any time suspend offers under the Sales Agreement. The Offering terminated upon the earlier of (a) the sale of all of the Shares, (b) the termination by the mutual written agreement of the managing agent and the Company, or (c) one year from the date that the Form S-3 is declared effective by the SEC, or November 16, 2022.

Under the terms of the Sales Agreement, the Agents were entitled to an aggregate commission at a fixed rate of 3.0% of the gross sales price of Shares sold under the Sales Agreement.

Use of proceeds from “at-the-market” offerings included working capital and general corporate purposes, including sales and marketing activities, product development and capital and acquisition related expenditures.

## **8. STOCK-BASED INCENTIVE PLANS**

The Super League 2014 Stock Option and Incentive Plan (the “Plan”) was approved by the Board of Directors and the stockholders of Super League in October 2014. The Plan was subsequently amended in May 2015, May 2016, July 2017 and October 2018. The Plan allows grants of stock options, stock awards and performance shares with respect to common stock of the Company to eligible individuals, which generally includes directors, officers, employees, advisors and consultants. The Plan provides for both the direct award and sale of shares of common stock and for the grant of options to purchase shares of common stock. Options granted under the Plan include non-statutory options as well as incentive options intended to qualify under Section 422 of the Internal Revenue Code of 1986, as amended.



The Board of Directors administers the Plan and determines which eligible individuals are to receive option grants or stock issuances under the Plan, the times when the grants or issuances are to be made, the number of shares of common stock subject to each grant or issuance, the status of any granted option as either an incentive stock option or a non-statutory stock option under the federal tax laws, the vesting schedule to be in effect for the option grant or stock issuance and the maximum term for which any granted option is to remain outstanding. The exercise price of options is generally equal to the fair market value of common stock of the Company on the date of grant. Options generally begin to be exercisable six months to one year after grant and typically expire 10 years after grant. Stock options and restricted shares generally vest over two to four years (generally representing the requisite service period). The Plan terminates automatically on July 1, 2027. The Plan provides for the following programs:

- **Option Grants**

Under the discretionary option grant program, the Company's compensation committee of the Board of Directors may grant (1) non-statutory options to purchase shares of common stock to eligible individuals in the employ or service of Super League or its affiliates (including employees, non-employee members of the Board of Directors and consultants) at an exercise price not less than 85% of the fair market value of such shares on the grant date, and (2) incentive stock options to purchase shares of common stock to eligible employees at an exercise price not less than 100% of the fair market value of such shares on the grant date (not less than 110% of fair market value if such employee actually or constructively owns more than 10% of Super League's voting stock or the voting stock of any of its subsidiaries).

- **Stock Awards or Sales**

Under the stock award or sales program, eligible individuals may be issued shares of common stock of the Company directly, upon the attainment of performance milestones or the completion of a specified period of service or as a bonus for past services. Under this program, the purchase price for the shares will not be less than 100% of the fair market value of the shares on the date of issuance, and payment may be in the form of cash or past services rendered. Eligible individuals will have no stockholder rights with respect to any unvested restricted shares or restricted stock units issued to them under the stock award or sales program; however, eligible individuals will have the right to receive any regular cash dividends paid on such shares.

The initial reserve under the Plan was 583,334 shares of common stock, which reserve was subsequently increased to 1,000,000 shares upon stockholders' approval in May 2016. In July 2017, the Company amended and restated the Plan to increase the number of shares of common stock reserved thereunder from 1,000,000 shares to 1,500,000 shares. In October 2018, the Company amended and restated the Plan to increase the number of shares of common stock reserved thereunder from 1,500,000 shares to 1,833,334 shares. In July 2020, the Company's shareholders approved an amendment to the Plan to increase the number of shares authorized for issuance from 1,833,334 to 2,583,334. In May 2021, the Company's shareholders approved an amendment to the Plan to increase the number of shares authorized for issuance from 2,583,334 to 5,000,000. In June 2022, the Company's shareholders approved an amendment to the Plan to increase the number of shares authorized for issuance from 5,000,000 to 6,250,000. As of December 31, 2022, 1,139,074 shares remained available for issuance under the Plan.

Super League issues new shares of common stock upon the exercise of stock options, the grant of restricted stock, or the delivery of shares pursuant to vested restricted stock units. The compensation committee of the Board of Directors may amend or modify the Plan at any time, subject to any required approval by the stockholders of the Company, pursuant to the terms therein. In the event that any outstanding option or other right for any reason expires or is canceled or otherwise terminated, the shares allocable to the unexercised portion of such option or other right is returned and available for the purposes of this Plan.

#### **Stock Options**

The fair value of stock options granted was estimated on their respective grant dates using the Black-Scholes-Merton option pricing model and the following weighted-average assumptions for the years ended December 31, 2022 and 2021:

	2022	2021
Expected Volatility	95%	95%
Risk-free interest rate	2.89%	.99%
Dividend yield	-%	-%
Expected life of options (in years)	6.08	5.86

The expected volatility assumption for purposes of determining the fair value of stock options for the periods presented was estimated based on reference to the historical stock price volatility of the Company and a representative peer group for the applicable estimated term.

A summary of stock option activity for the year ended December 31, 2022 is as follows:

	Options (#)	Weighted-Average		Aggregate Intrinsic Value (\$)
		Exercise Price Per Share (\$)	Remaining Contractual Term (Years)	
Outstanding at December 31, 2021	2,433,000	\$ 5.18		\$ 246,000
Granted	239,000	\$ 1.51		
Exercised	-	\$ -		
Canceled / forfeited	(194,000)	\$ 4.23		
Outstanding at December 31, 2022	2,478,000	\$ 4.90	6.87	\$ 4,000
Vested and exercisable at December 31, 2022	1,569,000	\$ 5.80	5.99	\$ 4,000

The weighted-average grant date fair value of stock options granted during the years ended December 31, 2022 and 2021 was \$1.17 and \$3.40, respectively. The aggregate fair value of stock options that vested during the years ended December 31, 2022 and 2021 was \$1,726,000 and \$720,000, respectively. As of December 31, 2022, the total unrecognized compensation expense related to non-vested stock option awards was \$2,204,000, which is expected to be recognized over a weighted-average term of approximately 2.16 years.

### Restricted Stock Units

The following table summarizes non-vested restricted stock unit activity for the year ended December 31, 2022:

Non-vested Restricted Stock	2014 Plan Activity		Outside of the 2014 Plan Activity		Totals	
	Restricted Stock Units (#)	Weighted Average Grant Date Fair Value (\$)	Restricted Stock Units (#)	Weighted Average Grant Date Fair Value (\$)	Restricted Stock Units (#)	Weighted Average Grant Date Fair Value (\$)
At December 31, 2021	361,000	\$ 4.92	-	\$ -	361,000	\$ 4.92
Granted	1,940,000	\$ 1.57	140,000	\$ 0.91	2,080,000	\$ 1.52
Vested	(257,000)	\$ 4.50	(105,000)	\$ 0.91	(362,000)	\$ 3.46
Canceled	(32,000)	\$ 1.87	-	\$ -	(32,000)	\$ 1.87
At December 31, 2022	2,012,000	\$ 1.78	35,000	\$ 0.91	2,047,000	\$ 1.77

As of December 31, 2022, the total unrecognized compensation expense related to non-vested restricted stock units was \$983,000 which will be recognized over a weighted-average term of approximately one year.

On January 1, 2022, the Company issued 1,350,000 performance stock units (“PSUs”) (included in the table above) under the Company’s 2014 Amended and Restated Stock Option and Incentive Plan, which vest in five equal increments of 270,000 PSUs, based on satisfaction of the following vesting conditions during the three-year period commencing on January 1, 2022:

- (i) the Company’s stock price equaling \$4.75 per share based on 60-day volume weighted average price (“VWAP”);
- (ii) the Company’s stock price equaling \$6.00 per share based on 60-day VWAP;
- (iii) the Company’s stock price equaling \$7.00 per share based on 60-day VWAP;
- (iv) the Company’s stock price equaling \$8.00 per share based on 60-day VWAP; and
- (v) the Company’s stock price equaling \$9.00 per share based on 60-day VWAP.

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A condition affecting the exercisability or other pertinent factors used in determining the fair value of an award that is based on an entity achieving a specified share price constitutes a market condition pursuant ASC 718. Noncash stock compensation expense related to the PSUs totaled \$2,142,000 for the year ended December 31, 2022.

During the year ended December 31, 2022, the Company issued 170,000 restricted stock units (included in the table above) to nonemployees for services (“Nonemployee RSUs”). The weighted average grant date fair value of the Nonemployee RSUs granted during the year ended December 31, 2022 was \$0.91. Compensation expense for Nonemployee RSUs for the year ended December 31, 2022 totaled \$131,000. As of December 31, 2022, the total unrecognized compensation expense related to Nonemployee RSUs was \$24,000, which will be recognized in the first quarter of fiscal 2023.

**Warrants Issued to Employees and Nonemployees for Services**

A summary of employee and nonemployee warrant activity (outside of the Plan) for the year ended December 31, 2022 is as follows:

	Warrants (#)	Weighted-Average		Aggregate Intrinsic Value (\$)
		Exercise Price Per Share (\$)	Remaining Contractual Term (Years)	
Outstanding at December 31, 2021	781,000	\$ 10.26		
Granted	500,000	\$ 0.67		\$ -
Expired	(116,000)	\$ 10.80		\$ -
Outstanding at December 31, 2022	1,165,000	\$ 6.09	4.78	\$ -
Vested and exercisable as of December 31, 2022	665,000	\$ 10.16	4.78	\$ -

The weighted-average grant date fair value of common stock purchase warrants (“Warrants”) granted during the year ended December 31, 2022 was \$0.50. No Warrants were granted to employees or non-employees in exchange for services performed during the year ended December 31, 2021. No Warrants vested during the years ended December 31, 2022 and 2021. As of December 31, 2022, the total unrecognized compensation expense related to Warrants was \$228,000.

On December 1, 2022, the Company issued 500,000 warrants (included in the table above) to a third-party for nonemployee investor relations services. The warrants have an exercise price of \$0.67, a grant date fair value of \$0.50, vest in twelve equal monthly installments commencing on the grant date and expire five years from the grant date. Compensation expense included in the statement of operations for the year ended December 31, 2022 totaled \$20,000.

**Noncash Stock Compensation Expense**

Noncash stock-based compensation expense for the periods presented was comprised of the following:

	2022	2021
Stock options	\$ 1,278,000	\$ 1,148,000
Warrants	20,000	-
Restricted stock units	2,965,000	1,233,000
Total noncash stock compensation expense	\$ 4,263,000	\$ 2,381,000

Noncash stock-based compensation expense for the periods presented was included in the following financial statement line items:

	2022	2021
Sales, marketing and advertising	\$ 1,079,000	\$ 934,000
Engineering, technology and development	389,000	288,000
General and administrative	2,795,000	1,159,000
Total noncash stock compensation expense	\$ 4,263,000	\$ 2,381,000

## 9. INCOME TAXES

Super League's provision for income taxes consisted of the following for the years ended December 31, 2022 and 2021:

	2022	2021
<b>Current:</b>		
Federal taxes	\$ -	\$ -
State taxes	-	-
Total current	<u>\$ -</u>	<u>\$ -</u>
<b>Deferred:</b>		
Federal taxes	\$ (7,541,000)	\$ (4,654,000)
State taxes	(1,664,000)	(969,000)
Foreign taxes	(205,000)	(38,000)
Subtotal	(9,410,000)	(5,661,000)
Change in valuation allowance	9,205,000	2,550,000
Total deferred	<u>(205,000)</u>	<u>(3,111,000)</u>
Provision for income taxes	<u>\$ (205,000)</u>	<u>\$ (3,111,000)</u>

The tax effects of temporary differences and carryforwards that give rise to significant portions of deferred tax assets and liabilities consist of the following as of December 31, 2022 and 2021.

	2022	2021
<b>Deferred tax assets (liabilities):</b>		
Net operating loss and credits	\$ 32,098,000	\$ 27,963,000
Stock compensation	3,026,000	2,837,000
Accrued liabilities	504,000	11,000
Fixed assets and intangibles	(2,231,000)	(4,812,000)
State taxes	11,000	1,000
Capitalized research and development costs	2,002,000	-
Total net deferred tax assets (liabilities)	35,410,000	26,000,000
Valuation allowance	(35,723,000)	(26,518,000)
Total net deferred tax assets (liabilities), net of valuation allowance	<u>\$ (313,000)</u>	<u>\$ (518,000)</u>

A reconciliation of the federal statutory income tax rate and the effective income tax rate is as follows:

	2022	2021
Statutory federal tax rate - (benefit) expense	21%	21%
State tax, net	6	-
Non-deductible permanent items	(15)	(2)
Change in tax rate	(1)	-
Valuation allowance	(11)	(6)
	<u>-%</u>	<u>13%</u>

For the years ended December 31, 2022 and 2021, the Company recorded full valuation allowances against its domestic net deferred tax assets due to uncertainty regarding future realizability pursuant to guidance set forth in the FASB's Accounting Standards Codification Topic No. 740, Income Taxes. In future periods, if the Company determines it will more likely than not be able to realize these amounts, the applicable portion of the benefit from the release of the valuation allowance will generally be recognized in the statements of operations in the period the determination is made. The Company does not maintain a valuation allowance on the activity in the UK from its recent acquisition of Bannerfy Ltd due to the deferred tax liability position. Components of net loss before income tax attributable to foreign entities totaled \$1.1 million for the year ended December 31, 2022, and was not material for the year ended December 31, 2021.

At December 31, 2022, the Company had U.S. federal, state income tax, and foreign net operating loss carryforwards of approximately \$118.3 million, \$104.9 million and \$985,000, respectively, expiring through 2037. Utilization of the net operating loss carryforwards may be subject to a substantial annual limitation due to ownership change limitations that may have occurred or that could occur in the future, as required by Section 382 of the Internal Revenue Code of 1986, as amended, as well as similar state provisions. The Company has not completed a study to assess whether an ownership change has occurred or whether there have been multiple ownership changes since the Company's formation due to the complexity and cost associated with such a study, and the fact that there may be additional such ownership changes in the future. Federal net operating loss carryforwards totaling approximately \$94.1 million were generated in fiscal year 2018 or after, and therefore have no expiration date.

A provision enacted in the Tax Cuts and Jobs Act of 2017 related to the capitalization for tax purposes of research and experimental expenditures became effective January 1, 2022. This provision requires us to capitalize research and experimental expenditures and amortize them on the U.S. tax return over five or fifteen years, depending upon where the research is conducted. This provision did not have a material impact on our fiscal year 2022 effective tax rate on a net basis or our cash paid for taxes due to our net operating loss position.

## 10. COMMITMENTS AND CONTINGENCIES

### *Operating Leases*

As of December 31, 2022 we maintain approximately 3,200 square feet of office space, 1,650 square feet of which is on a month-to-month basis, and 1,550 square feet of which expires on August 1, 2023, at a combined rate of approximately \$12,000 per month. The adoption of ASC 842, “Leases” (“ASC 842”), did not have a material impact on the Company’s consolidated financial statements and related disclosures.

Rent expense for the years ended December 31, 2022 and 2021 was approximately \$168,000 and \$111,000, respectively, and is included in general and administrative expense in the accompanying statements of operations. Rental payments are expensed in the statements of operations in the period to which they relate. Scheduled rent increases, if any, are amortized on a straight-line basis over the lease term.

### *Related Party Transactions*

In May 2018, the Company entered into a consulting agreement with a member of the Board of Directors, pursuant to which the board member provides the Company with strategic advice and planning services for which he receives a cash payment of \$7,500 per month from the Company. The consulting agreement had an initial term ending December 31, 2019, and was extended for successive one-year periods upon mutual agreement of the board member and the Company through to fiscal year 2023. Total consulting expense under the agreement totaled \$90,000 for each of the years ended December 31, 2022 and 2021.

## 11. SUBSEQUENT EVENTS

The Company evaluated subsequent events for their potential impact on the consolidated financial statements and disclosures through the date the consolidated financial statements were available to be issued and determined that, except as set forth below, no subsequent events occurred that were reasonably expected to impact the consolidated financial statements presented herein.

On January 31, 2023, we entered into subscription agreements with accredited investors in connection with the sale of an aggregate of 2,299 shares of newly designated Series A-5 Convertible Preferred Stock, par value \$0.001 per share, at a purchase price of \$1,000 per share, raising net proceeds of \$2,000,000, after deducting placement agent costs of \$299,000. Refer to Note 7 for a description of the terms of the preferred stock issued.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) 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.

**SUPER LEAGUE GAMING, INC.**

Date: March 31, 2023

By: /s/ Ann Hand  
Ann Hand  
*President and Chief Executive Officer*  
*(Principal Executive Officer)*

**SUPER LEAGUE GAMING, INC.**

Date: March 31, 2023

By: /s/ Clayton Haynes  
Clayton Haynes  
*Chief Financial Officer*  
*(Principal Financial and Accounting Officer)*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ Ann Hand</u> Ann Hand	Chief Executive Officer and Chair of the Board (Principal Executive Officer)	March 31, 2023
<u>/s/ Clayton Haynes</u> Clayton Haynes	Chief Financial Officer (Principal Financial and Accounting Officer)	March 31, 2023
<u>/s/ David Steigelfest</u> David Steigelfest	Director	March 31, 2023
<u>/s/ Jeff Gehl</u> Jeff Gehl	Director	March 31, 2023
<u>/s/ Kristin Patrick</u> Kristin Patrick	Director	March 31, 2023
<u>/s/ Mark Jung</u> Mark Jung	Director	March 31, 2023
<u>/s/ Michael Keller</u> Michael Keller	Director	March 31, 2023

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES A PREFERRED STOCK  
OF  
SUPER LEAGUE GAMING, INC.**

It is hereby certified that:

1. The name of the Company (hereinafter called the "Company") is Super League Gaming, Inc., a Delaware corporation.
2. The Certificate of Incorporation (the "Certificate of Incorporation") of the Company authorizes the issuance of Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share, of which none has been designated or issued, and expressly vests in the Board of Directors of the Company the authority to issue any or all of said shares in one (1) or more series and by resolution or resolutions to establish the designation and number and to fix the relative rights and preferences of each series to be issued.
3. The Board of Directors of the Company, pursuant to the authority expressly vested in it as aforesaid, has adopted the following resolutions creating a Series A issue of Preferred Stock:

**RESOLVED**, that Five Thousand Three Hundred and Fifty Nine (5,359) of the Ten Million (10,000,000) authorized shares of Preferred Stock of the Company shall be designated Series A Convertible Preferred Stock, \$0.001 par value per share, and shall possess the rights and preferences set forth below:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act. A Person shall be regarded as in control of the Company if the Company owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other person, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Attribution Parties**" shall have the meaning set forth in Section 6(e).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(e).

"**Business Day**" means any day except Saturday, Sunday, and any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

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“**Certificate of Designations**” means this Certificate of Designation of Preferences, Rights and Limitations of Series A Preferred Stock.

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

“**Common Stock**” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries of the Company, whether or not vested or otherwise convertible or exercisable into shares of Common Stock at the time of such issuance, which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock, and excluding shares of Common Stock issuable upon conversion of the Series A Preferred Stock.

“**Company Conversion Notice**” means a notice delivered by the Company to effect a Mandatory Conversion of all the outstanding Series A Preferred Stock (which for these purposes shall include the shares of Series A Preferred Stock along with any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock and so on that may be authorized following the date hereof), provided that the effective date of such Mandatory Conversion shall be no less than ten (10) Business Days following the date that such notice is deemed to have been given.

“**Conversion Amount**” means the Stated Value at issue.

“**Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Conversion Price**” means \$0.62, subject to adjustment as set forth in Section 7.

“**Conversion Shares**” means the shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock in accordance with the terms hereof.

“**Deemed Liquidation Event**” means any of the following, unless the Majority Holders elect otherwise by written notice sent to the Company at least five (5) business days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Company is a constituent party or



- (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

The Corporation shall not have the power to effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Corporation in accordance with Section 5 hereto.

“**Dividend Shares**” shall have the meaning set forth in Section 3.

“**Effective Date**” means the date that this Certificate of Designations is filed with the Secretary of State of Delaware.

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

“**Fundamental Transaction**” shall have the meaning set forth in Section 7(d).

“**Holder**” shall mean an owner of shares of Series A Preferred Stock.

“**Junior Securities**” means the Common Stock and any other class or series of capital stock of the Company hereafter created which does not expressly rank senior or pari passu with or senior to the Series A Preferred Stock (which for these purposes shall include the Series A Preferred Stock, along with any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges.

“**Liquidation**” shall have the meaning set forth in Section 5(a).

“**Majority Holders**” shall mean the Holders of 51% or more of the then issued and outstanding shares of all Series A Preferred Stock, which for these purposes shall include the shares of Series A Preferred Stock, along with any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock and so on that may be authorized following the date hereof.

“**Mandatory Conversion**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Determination**” shall have the meaning set forth in Section 6(b).

“**New York Courts**” shall have the meaning set forth in Section 8(d).

“**Notice of Conversion**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Date**” shall have the meaning set forth in Section 6(a).

“**Original Issue Date**” means the date of the first issuance of any shares of Series A Preferred Stock regardless of the number of transfers of any particular shares of Series A Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series A Preferred Stock.

“**Parity Securities**” means any class or series of capital stock of the Company hereinafter created that expressly ranks pari passu with the Series A Preferred Stock (which for these purposes shall include the Series A Preferred Stock, along with any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges. No Parity Securities exist as of the date hereof.

“**Person**” means an individual, entity, corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust or unincorporated organization.

“**PIK Shares**” shall have the meaning set forth in Section 3.

“**Preferred Stock**” means the Company’s preferred stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Primary Market Limitation**” shall have the meaning set forth in Section 6(f).

“**Purchase Rights**” shall have the meaning set forth in Section 7(b).

“**Second Anniversary**” shall mean the second yearly anniversary after the Effective Date.

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

“**Senior Securities**” shall be any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series A Preferred Stock (which for these purposes shall include the Series A Preferred Stock, along with any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation, as well as any other rights, preferences and privileges. No Senior Securities exist as of the date hereof.

“**Series A Preferred Stock**” shall have the meaning set forth in Section 2.

“**Share Delivery Date**” shall have the meaning set forth in Section 6(d).

“**Stated Value**” means \$1,000.00 per share of Series A Preferred Stock.

“**Subsidiary**” means any subsidiary of the Company existing as of the Effective Date hereof and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the Effective Date.

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

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“**Transfer Agent**” means Issuer Direct, the current transfer agent of the Company, with a mailing address of One Glenwood Avenue, Suite 1001, Raleigh, North Carolina 27603, a facsimile number of 919-481-6222 and an email address of , and any successor transfer agent of the Company.

Section 2. Designation and Authorized Shares. The series of Preferred Stock designated by this Certificate of Designations shall be designated as the Company’s Series A Convertible Preferred Stock (the “**Series A Preferred Stock**”) and the number of shares so designated shall be Five Thousand Three Hundred and Fifty Nine (5,359). So long as any of the Series A Preferred Stock are issued and outstanding, the Company shall not issue any Senior Securities or Parity Securities without the approval of the Majority Holders. The Series A Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series A Preferred Stock.

Section 3. Dividends. Holders of shares of Series A Preferred Stock will be entitled to receive: (a) dividends payable as follows: a number of shares of Common Stock equal to twenty percent (20%) of the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock then held by such Holder on each of the 12 and 24 month anniversaries of the Effective Date (collectively, the “**PIK Shares**”) and (b) dividends equal, on an as-if-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. The dividends set forth in clause (a) of this Section 3 will be satisfied solely by delivery of shares of Common Stock. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid) upon the consummation of a Fundamental Transaction. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid not previously paid) upon the Mandatory Conversion Date following any Mandatory Conversion as contemplated in Section 6(b) hereto. Notwithstanding the foregoing, to the extent that a Holder’s right to participate in any dividend of PIK Shares or any stock dividend declared on the Common Stock to which such Holder is entitled to pursuant to clause (a) or (b) of this Section 3 (“**Dividend Shares**”) would result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then such Holder shall not be entitled to participate in any such dividend to such extent (or in the beneficial ownership of any PIK Shares or Dividend Shares as a result of such dividend to such extent) and the portion of such PIK Shares and/or Dividend Shares that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder’s beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation.

Section 4. Voting Rights. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), and subject to the limitations set forth in Section 6(f), each Holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, Holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class. The Holders shall be entitled to the same notice of any regular or special meeting of the stockholders as may or shall be given to holders of Common Stock entitled to vote at such meetings. As long as any shares of Series A Preferred Stock are outstanding, the Company may not, without the affirmative vote of the Majority Holders voting as a separate class, (i) amend, alter or repeal any provision of this Certificate of Designations in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock, (ii) increase the number of authorized shares of Series A Preferred Stock, (iii) issue, or obligate itself to issue Parity Securities or Senior Securities, (iv) authorize, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind in excess of \$5,000,000 or (v) entering into any agreement with respect to the foregoing. Notwithstanding anything contained herein to the contrary, no holder of Series A Preferred Stock shall be entitled to vote on any matter presented to the Company’s stockholders relating to approving the conversion of such holder’s Series A Preferred Stock into an amount in excess of the Primary Market Limitation. Notwithstanding anything contained herein, for the purposes of this Section 4, the outstanding shares of Series A Preferred Stock includes both the Series A Preferred Stock and any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock and so on that may be authorized following the date hereof and shall take into account the number of whole shares of Common Stock into which the shares of Series A Preferred Stock (and any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock and so on) are convertible into as of the record date for determining stockholders entitled to vote on such matter.

Section 5. Liquidation.

(a) The Series A Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any voluntary or involuntary liquidation, dissolution or winding-up of the Company (“**Liquidation**”) or Deemed Liquidation Event, rank: (i) junior to the Senior Securities, if any (ii) pari passu with the Parity Securities, if any and (iii) senior to the Junior Securities. For purposes hereof, references to Series A Preferred Stock in this Section 5 shall include the Series A Preferred Stock, and any and all sub-series designated Series A-1 Preferred Stock, Series A-2 Preferred Stock, and so on, that may be authorized following the date hereof.

(b) As of the date hereof, there are no outstanding Senior Securities or Parity Securities and the Junior Securities consist solely of shares of Common Stock. That so being, upon any Liquidation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event, as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to one (1) times the applicable Original Issue Price, plus any dividends accrued but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the “**Liquidation Amounts**”).

(c) After the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Series A Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Series A Preferred Stock pursuant to Section 5(b), shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

## Section 6 Conversion.

(a) Conversions at Option of Holder. Each share of Series A Preferred Stock (or fraction thereof) shall be convertible, at any time and from time to time, from and after the Original Issue Date at the option of the Holder thereof into that number of shares of Common Stock (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) determined by dividing the Stated Value by the Conversion Price then in effect. Holders shall effect conversions by providing the Company and the Transfer Agent, with the form of conversion notice attached hereto as Annex A (a “**Notice of Conversion**”). Each Notice of Conversion shall specify the number of shares of Series A Preferred Stock to be converted, the number of shares of Series A Preferred Stock owned prior to such conversion, the number of shares of Series A Preferred Stock owned subsequent to such conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Company pursuant to Section 6 and in accordance with Section 9 (such date, the “**Optional Conversion Date**”). Such Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the shares of Series A Preferred Stock have been converted as of the Optional Conversion Date. If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion and Cancellation Request are deemed delivered to the Company in accordance with Section 9. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Series A Preferred Stock, a Holder shall not be required to surrender any Certificated Series A Preferred Stock to the Company unless all of the shares of Series A Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series A Preferred Stock promptly following the Optional Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to the converting Holder, the determination of whether the Series A Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder’s determination of whether the shares of Series A Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series A Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(b) **Mandatory Conversion.** On the earliest to occur of: (i) the effective date of such conversion set forth in the Company Conversion Notice, provided that the Company may not deliver the Company Conversion Notice unless the Majority Holders consented to such conversion prior to the delivery of the Company Conversion Notice; (ii) on the one year anniversary of the Original Issue Date, the Company may, in its discretion, convert (A) 50% of the outstanding shares of Series A Preferred if the volume-weighted average price of the Company's common stock over the previous 10 days as reported on the NASDAQ Capital Market (the "**VWAP**"), equals at least 250% of the Conversion Price, or (B) 100% of the outstanding shares of Series A Preferred if the VWAP equals at least 300% of the Conversion Price. or (iii) the Second Anniversary (the earlier to occur of the foregoing, the "**Mandatory Conversion Date**" and together with an Optional Conversion Date, the "**Conversion Date**"), each outstanding share of Series A Preferred Stock will automatically convert (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Mandatory Conversion Date (a "**Mandatory Conversion**"). Within two Trading Days of (x) the Mandatory Conversion Date, if the shares of Series A Preferred Stock are held in book entry form, or (y) such Holder's surrender of Certificated Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and an indemnity or security reasonably acceptable to the Company (which shall not include the posting of any bond) to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), the Company shall deliver: (I) to each Holder, the Conversion Shares issuable upon conversion of such Holder's Series A Preferred Stock via the Certificated Preferred Stock, and (II) the PIK Shares issuable upon Mandatory Conversion under Section 3, to Holders as of the Mandatory Conversion Date; provided that, any failure by the Holder to return Certificated Series A Preferred Stock, if any, will have no effect on the Mandatory Conversion pursuant to this Section 6(b), which Mandatory Conversion will be deemed to occur on the Mandatory Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to any Holder, such Holder shall within five Business Days of such Holder's receipt of the Company Conversion Notice, provide the Company with a written determination (a "**Mandatory Conversion Determination**"), delivered in accordance with Section 9, of whether such Holder's Series A Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A Preferred Stock are convertible, and the submission of a Mandatory Conversion Determination shall be deemed to be such Holder's determination of the maximum number of shares of Series A Preferred Stock that may be converted, subject to the Beneficial Ownership Limitation or the Primary Market Limitation and the portion of the shares of Common Stock issuable upon such Mandatory Conversion hereunder that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder's beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Mandatory Conversion Determination that such determination has not violated the restrictions set forth in Section 6(e) or Section 6(f) and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(c) **Conversion Shares.** The aggregate number of Conversion Shares which the Company shall issue upon conversion of the Series A Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series A Preferred Stock to be converted, multiplied by the Stated Value, divided by the Conversion Price in effect at the time of the conversion.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares upon Conversion. Promptly after the applicable Conversion Date, but in any case within the earlier of (i) two (2) Trading Days and (ii) the Standard Settlement Period (as defined below) thereof (the "Share Delivery Date"), the Company shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series A Preferred Stock pursuant to Section 6(a) or 6(b), as applicable, any PIK Shares to which the Holder is entitled pursuant to Section 3 that have not been previously issued, if any, and a wire transfer of immediately available funds in the amount of accrued and unpaid cash dividends, if any. Conversion Shares issuable hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with DTC through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares and PIK Shares, if any, to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion or the Company Conversion Notice, as the case may be. The Company shall (A) deliver (or cause to be delivered) to the converting Holder who has converted less than all of such Holder's Certificated Series A Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series A Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series A Preferred Stock converted. The Company agrees to maintain a transfer agent that is a participant in the DTC's FAST program so long as any shares of Series A Preferred Stock remain outstanding. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares upon an Optional Conversion. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, in addition to any other rights herein, the Holder shall be entitled to elect by written notice to the Transfer Agent, on behalf of the Company, at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any Certificated Series A Preferred Stock delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute. The Company's obligation to issue and deliver the Conversion Shares upon conversion of Series A Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder.

(iv) [Reserved].

(v) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (i) upon the conversion of all outstanding shares of Series A Preferred Stock (taking into account the adjustments and restrictions of Section 7) and (ii) in respect of the PIK Shares. The Company covenants that all Conversion Shares and PIK Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable.



(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of or as dividends on the Series A Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to upon such conversion or in respect of any such dividend, the Company shall round up to the next whole share of Common Stock.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Series A Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series A Preferred Stock and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(e) Beneficial Ownership Limitation. The Company shall not effect any conversion of the Series A Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "Beneficial Ownership Limitation" shall be 4.99% (or, at the written election of any Holder delivered to the Company pursuant to the terms of Section 9 prior to the issuance of any shares of Series A Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series A Preferred Stock held by the applicable Holder. A Holder, upon at least sixty-one (61) days advance notice to the Company, may terminate, increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(e); provided, however, that the Holder shall not be entitled to increase or terminate the limitation contained in this Section 6(e) if the Holder has acquired (or if any of the Holder's Attribution parties has indirectly acquired) the Series A Preferred Stock with the purpose or effect of changing or influencing the control of the Company. The limitations contained in this Section 6(e) shall apply to a successor holder of Series A Preferred Stock.

(f) **Primary Market Limitation.** Unless the Company obtains the approval of its stockholders as required by the applicable rules of the applicable Trading Market for issuances of Common Stock in excess of such amount, the Company shall not effect any conversion of the Series A Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, the Holder, together with the Attribution Parties, would beneficially own in excess of the Primary Market Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). For purposes of this Section 6(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Primary Market Limitation**" shall be 19.99% of the number of shares of the Common Stock outstanding as of the Effective Date, immediately prior to the issuance of any shares of Series A Preferred. The limitations contained in this paragraph shall apply to a successor holder of the Series A Preferred Stock.

## Section 7. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Company, at any time while the Series A Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, will not include any shares of Common Stock issued by the Company upon conversion of this Series A Preferred Stock or payment of a dividend on this Series A Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price will be multiplied by a fraction of which the numerator will be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event and of which the denominator will be the number of shares of Common Stock, or in the event that clause (D) of this Section 7(a) will apply shares of reclassified capital stock, outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) will become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series A Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

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

(d) Fundamental Transaction. If, at any time while the Series A Preferred Stock is outstanding, (A) the Company effects any merger or consolidation of the Company with or into another Person, (B) the Company effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, or (C) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "Fundamental Transaction"), then, upon any subsequent conversion of the Series A Preferred Stock, the Holders shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the "Alternate Consideration"). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall adjust the Conversion Price in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration they receive upon any conversion of the Series A Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(d) and insuring that the Series A Preferred Stock (or any such replacement security) will be substantially similar in form and substance to this Certificate of Designations and insuring that the Series A Preferred Stock will be convertible for a corresponding number of shares of capital stock of such successor entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series A Preferred Stock (without regard to any limitations on the conversion of this Series A Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Series A Preferred Stock immediately prior to the consummation of such Fundamental Transaction) and will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 will be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(f) Notice to the Holders.

- (i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.
- (ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series A Preferred Stock, and shall cause to be delivered to each Holder pursuant to Section 9, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert such Holder's Series A Preferred Stock pursuant to Section 6(a) (subject to the Beneficial Ownership Limitation and the Primary Market Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided to the Holders, the Company or the Transfer Agent hereunder, including, without limitation, any Notice of Conversion or Company Conversion Notice, shall be in writing and delivered personally, by facsimile, by e-mail, or sent by a nationally recognized overnight courier service (i) if to the Holders, at the Holder's address set forth in the book and records of the Company or to another address of such Holder as may be specified by such Holder to the Company in a written notice delivered in accordance with this Section, or (ii) if to the Company, at 2912 Colorado Avenue, Suite 203, Santa Monica, CA 90404, or to another address as the Company may specify for such purposes by written notice to the Holders delivered in accordance with this Section. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided pursuant to this Certificate of Designations constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay accrued dividends, as applicable, on the shares of Series A Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series A Preferred Stock Certificate. If a Holder alleges that such Holder's Series A Preferred Stock certificate has been lost, stolen or destroyed, the Company will only be obligated to issue a replacement certificate if the Holder delivers to the transfer agent, or the Company, as applicable: (i) a lost certificate affidavit; (ii) an indemnity bond in a form acceptable to the Company's transfer agent, or if the Company acts as its own transfer agent, an agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate; and (iii) any other documentation that the transfer agent or the Company, if the Company acts as its own transfer agent, may reasonably require.

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

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

(f) Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any dividend or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

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

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

(i) Status of Converted Series A Preferred Stock. If any shares of Series A Preferred Stock shall be converted or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A Convertible Preferred Stock.

[Signature page follows.]



IN WITNESS WHEREOF, this Certificate of Designations has been executed by a duly authorized officer of the Company as of this 22<sup>nd</sup> day of November, 2022.

*/s/ Ann Hand*

Name: Ann Hand  
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES A PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock indicated below into shares of common stock, \$.001 par value per share (the "Common Stock"), of Super League Gaming, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Series A Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Series A Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Series A Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Series A Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[Holder]

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

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES A-2 PREFERRED STOCK  
OF  
SUPER LEAGUE GAMING, INC.**

It is hereby certified that:

1. The name of the Company (hereinafter called the "Company") is Super League Gaming, Inc., a Delaware corporation.
2. The Certificate of Incorporation (the "Certificate of Incorporation") of the Company authorizes the issuance of Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share, of which none has been designated or issued, and expressly vests in the Board of Directors of the Company the authority to issue any or all of said shares in one (1) or more series and by resolution or resolutions to establish the designation and number and to fix the relative rights and preferences of each series to be issued.
3. The Board of Directors of the Company, pursuant to the authority expressly vested in it as aforesaid, has adopted the following resolutions creating a Series A-2 issue of Preferred Stock:

**RESOLVED**, that One Thousand Two Hundred Ninety Seven (1,297) of the Ten Million (10,000,000) authorized shares of Preferred Stock of the Company shall be designated Series A-2 Convertible Preferred Stock, \$0.001 par value per share, and shall possess the rights and preferences set forth below:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act. A Person shall be regarded as in control of the Company if the Company owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other person, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Attribution Parties**" shall have the meaning set forth in Section 6(e).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(e).

"**Business Day**" means any day except Saturday, Sunday, and any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

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“**Certificate of Designations**” means this Certificate of Designation of Preferences, Rights and Limitations of Series A-2 Preferred Stock.

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

“**Common Stock**” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries of the Company, whether or not vested or otherwise convertible or exercisable into shares of Common Stock at the time of such issuance, which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock, and excluding shares of Common Stock issuable upon conversion of the Series A Preferred Stock and Series A-2 Preferred Stock.

“**Company Conversion Notice**” means a notice delivered by the Company to effect a Mandatory Conversion of all the outstanding Series A Preferred Stock (which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock, along with any and all sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock and so on that may be authorized following the date hereof); provided that the effective date of such Mandatory Conversion shall be no less than ten (10) Business Days following the date that such notice is deemed to have been given.

“**Conversion Amount**” means the Stated Value at issue.

“**Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Conversion Price**” means \$0.6646, subject to adjustment as set forth in Section 7.

“**Conversion Shares**” means the shares of Common Stock issuable upon conversion of the shares of Series A-2 Preferred Stock in accordance with the terms hereof.

“**Deemed Liquidation Event**” means any of the following, unless the Majority Holders elect otherwise by written notice sent to the Company at least five (5) business days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Company is a constituent party or

- (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

The Corporation shall not have the power to effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Corporation in accordance with Section 5 hereto.

“**Dividend Shares**” shall have the meaning set forth in Section 3.

“**Effective Date**” means the date that this Certificate of Designations is filed with the Secretary of State of Delaware.

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

“**Fundamental Transaction**” shall have the meaning set forth in Section 7(d).

“**Holder**” shall mean an owner of shares of Series A-2 Preferred Stock.

“**Junior Securities**” means the Common Stock and any other class or series of capital stock of the Company hereafter created which does not expressly rank senior or pari passu with or senior to the Series A-2 Preferred Stock (which for these purposes shall include the Series A-2 Preferred Stock and Series A Preferred Stock, along with any and all sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges.

“**Liquidation**” shall have the meaning set forth in Section 5(a).

“**Majority Holders**” shall mean the Holders of 51% or more of the then issued and outstanding shares of all Series A Preferred Stock, which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock, along with any and all sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock and so on that may be authorized following the date hereof.

“**Mandatory Conversion**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Determination**” shall have the meaning set forth in Section 6(b).

“**New York Courts**” shall have the meaning set forth in Section 8(d).

“**Notice of Conversion**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Date**” shall have the meaning set forth in Section 6(a).

“**Original Issue Date**” means the date of the first issuance of any shares of Series A-2 Preferred Stock regardless of the number of transfers of any particular shares of Series A-2 Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series A-2 Preferred Stock.

“**Parity Securities**” means any class or series of capital stock of the Company hereinafter created that expressly ranks pari passu with the Series A-2 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, along with any and all sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges. The only Parity Securities existing as of the date hereof are the Series A Preferred Stock.

“**Person**” means an individual, entity, corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust or unincorporated organization.

“**PIK Shares**” shall have the meaning set forth in Section 3.

“**Preferred Stock**” means the Company’s preferred stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Primary Market Limitation**” shall have the meaning set forth in Section 6(f).

“**Purchase Rights**” shall have the meaning set forth in Section 7(b).

“**Second Anniversary**” shall mean the second yearly anniversary after the Effective Date.

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

“**Senior Securities**” shall be any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series A-2 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, along with any and all sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation, as well as any other rights, preferences and privileges. No Senior Securities exist as of the date hereof.

“**Series A Preferred Stock**” shall mean, unless otherwise stated herein, Five Thousand Three Hundred and Fifty Nine (5,359) shares of Series A Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 22, 2022.

“**Series A-2 Preferred Stock**” shall have the meaning set forth in Section 2.

“**Share Delivery Date**” shall have the meaning set forth in Section 6(d).

“**Stated Value**” means \$1,000.00 per share of Series A-2 Preferred Stock.

“**Subsidiary**” means any subsidiary of the Company existing as of the Effective Date hereof and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the Effective Date.

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

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“**Transfer Agent**” means Issuer Direct, the current transfer agent of the Company, with a mailing address of One Glenwood Avenue, Suite 1001, Raleigh, North Carolina 27603, a facsimile number of 919-481-6222 and an email address of info@issuerdirect.com, and any successor transfer agent of the Company.

Section 2. Designation and Authorized Shares. The series of Preferred Stock designated by this Certificate of Designations shall be designated as the Company’s Series A-2 Convertible Preferred Stock (the “**Series A-2 Preferred Stock**”) and the number of shares so designated shall be One Thousand Two Hundred Ninety Seven (1,297). So long as any of the Series A-2 Preferred Stock are issued and outstanding, the Company shall not issue any Senior Securities or Parity Securities without the approval of the Majority Holders. The Series A-2 Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series A-2 Preferred Stock.

Section 3. Dividends. Holders of shares of Series A-2 Preferred Stock will be entitled to receive: (a) dividends payable as follows: a number of shares of Common Stock equal to twenty percent (20%) of the number of shares of Common Stock issuable upon conversion of the Series A-2 Preferred Stock then held by such Holder on each of the 12 and 24 month anniversaries of the Effective Date (collectively, the “**PIK Shares**”) and (b) dividends equal, on an as-if-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. The dividends set forth in clause (a) of this Section 3 will be satisfied solely by delivery of shares of Common Stock. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid) upon the consummation of a Fundamental Transaction. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid not previously paid) upon the Mandatory Conversion Date following any Mandatory Conversion as contemplated in Section 6(b) hereto. Notwithstanding the foregoing, to the extent that a Holder’s right to participate in any dividend of PIK Shares or any stock dividend declared on the Common Stock to which such Holder is entitled pursuant to clause (a) or (b) of this Section 3 (“**Dividend Shares**”) would result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then such Holder shall not be entitled to participate in any such dividend to such extent (or in the beneficial ownership of any PIK Shares or Dividend Shares as a result of such dividend to such extent) and the portion of such PIK Shares and/or Dividend Shares that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder’s beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation.

Section 4. Voting Rights. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), and subject to the limitations set forth in Section 6(f), each Holder of outstanding shares of Series A-2 Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A-2 Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, Holders of Series A-2 Preferred Stock shall vote together with the holders of Common Stock as a single class. The Holders shall be entitled to the same notice of any regular or special meeting of the stockholders as may or shall be given to holders of Common Stock entitled to vote at such meetings. As long as any shares of Series A-2 Preferred Stock are outstanding, the Company may not, without the affirmative vote of the Majority Holders voting as a separate class, (i) amend, alter or repeal any provision of this Certificate of Designations in a manner that adversely affects the powers, preferences or rights of the Series A-2 Preferred Stock, (ii) increase the number of authorized shares of Series A-2 Preferred Stock, (iii) issue, or obligate itself to issue Parity Securities or Senior Securities, (iv) authorize, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind in excess of \$5,000,000 or (v) entering into any agreement with respect to the foregoing. Notwithstanding anything contained herein to the contrary, no holder of Series A-2 Preferred Stock shall be entitled to vote on any matter presented to the Company’s stockholders relating to approving the conversion of such holder’s Series A-2 Preferred Stock into an amount in excess of the Primary Market Limitation. Notwithstanding anything contained herein, for the purposes of this Section 4, the outstanding shares of Series A-2 Preferred Stock includes both the Series A-2 Preferred Stock, Series A Preferred Stock and any and all sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock and so on that may be authorized following the date hereof and shall take into account the number of whole shares of Common Stock into which the shares of Series A-2 Preferred Stock (and Series A Preferred Stock and any other sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock and so on that may be authorized following the date hereof) are convertible into as of the record date for determining stockholders entitled to vote on such matter.



Section 5. Liquidation.

(a) The Series A-2 Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any voluntary or involuntary liquidation, dissolution or winding-up of the Company ("**Liquidation**") or Deemed Liquidation Event, rank: (i) junior to the Senior Securities, if any (ii) pari passu with the Parity Securities, if any and (iii) senior to the Junior Securities. For purposes hereof, references to Series A-2 Preferred Stock in this Section 5 shall include the Series A-2 Preferred Stock, the Series A Preferred Stock and any and all sub-series designated Series A-3 Preferred Stock, Series A-4 Preferred Stock, and so on, that may be authorized following the date hereof.

(b) As of the date hereof, there are no outstanding Senior Securities, Parity Securities consist solely of Series A Preferred Stock, and the Junior Securities consist solely of shares of Common Stock. That so being, upon any Liquidation, the holders of shares of Series A-2 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event, the holders of shares of Series A-2 Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event, as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to one (1) times the applicable Original Issue Price, plus any dividends accrued but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "**Liquidation Amounts**").

(c) After the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Series A-2 Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Series A-2 Preferred Stock pursuant to Section 5(b), shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

## Section 6 Conversion.

(a) Conversions at Option of Holder. Each share of Series A-2 Preferred Stock (or fraction thereof) shall be convertible, at any time and from time to time, from and after the Original Issue Date at the option of the Holder thereof into that number of shares of Common Stock (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) determined by dividing the Stated Value by the Conversion Price then in effect. Holders shall effect conversions by providing the Company and the Transfer Agent, with the form of conversion notice attached hereto as Annex A (a "**Notice of Conversion**"). Each Notice of Conversion shall specify the number of shares of Series A-2 Preferred Stock to be converted, the number of shares of Series A-2 Preferred Stock owned prior to such conversion, the number of shares of Series A-2 Preferred Stock owned subsequent to such conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Company pursuant to Section 6 and in accordance with Section 9 (such date, the "**Optional Conversion Date**"). Such Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the shares of Series A-2 Preferred Stock have been converted as of the Optional Conversion Date. If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion and Cancellation Request are deemed delivered to the Company in accordance with Section 9. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Series A-2 Preferred Stock, a Holder shall not be required to surrender any Certificated Series A-2 Preferred Stock to the Company unless all of the shares of Series A-2 Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series A-2 Preferred Stock promptly following the Optional Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to the converting Holder, the determination of whether the Series A-2 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-2 Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series A-2 Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series A-2 Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(b) **Mandatory Conversion.** On the earliest to occur of: (i) the effective date of such conversion set forth in the Company Conversion Notice, provided that the Company may not deliver the Company Conversion Notice unless the Majority Holders consented to such conversion prior to the delivery of the Company Conversion Notice; (ii) on the one year anniversary of the Original Issue Date, the Company may, in its discretion, convert (A) 50% of the outstanding shares of Series A-2 Preferred if the volume-weighted average price of the Company's common stock over the previous 10 days as reported on the NASDAQ Capital Market (the "**VWAP**"), equals at least 250% of the Conversion Price, or (B) 100% of the outstanding shares of Series A-2 Preferred if the VWAP equals at least 300% of the Conversion Price. or (iii) the Second Anniversary (the earlier to occur of the foregoing, the "**Mandatory Conversion Date**" and together with an Optional Conversion Date, the "**Conversion Date**"), each outstanding share of Series A-2 Preferred Stock will automatically convert (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Mandatory Conversion Date (a "**Mandatory Conversion**"). Within two Trading Days of (x) the Mandatory Conversion Date, if the shares of Series A-2 Preferred Stock are held in book entry form, or (y) such Holder's surrender of Certificated Series A-2 Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and an indemnity or security reasonably acceptable to the Company (which shall not include the posting of any bond) to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), the Company shall deliver: (I) to each Holder, the Conversion Shares issuable upon conversion of such Holder's Series A-2 Preferred Stock via the Certificated Preferred Stock, and (II) the PIK Shares issuable upon Mandatory Conversion under Section 3, to Holders as of the Mandatory Conversion Date; provided that, any failure by the Holder to return Certificated Series A-2 Preferred Stock, if any, will have no effect on the Mandatory Conversion pursuant to this Section 6(b), which Mandatory Conversion will be deemed to occur on the Mandatory Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to any Holder, such Holder shall within five Business Days of such Holder's receipt of the Company Conversion Notice, provide the Company with a written determination (a "**Mandatory Conversion Determination**"), delivered in accordance with Section 9, of whether such Holder's Series A-2 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-2 Preferred Stock are convertible, and the submission of a Mandatory Conversion Determination shall be deemed to be such Holder's determination of the maximum number of shares of Series A-2 Preferred Stock that may be converted, subject to the Beneficial Ownership Limitation or the Primary Market Limitation and the portion of the shares of Common Stock issuable upon such Mandatory Conversion hereunder that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder's beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Mandatory Conversion Determination that such determination has not violated the restrictions set forth in Section 6(e) or Section 6(f) and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(c) **Conversion Shares.** The aggregate number of Conversion Shares which the Company shall issue upon conversion of the Series A-2 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series A-2 Preferred Stock to be converted, multiplied by the Stated Value, divided by the Conversion Price in effect at the time of the conversion.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares upon Conversion. Promptly after the applicable Conversion Date, but in any case within the earlier of (i) two (2) Trading Days and (ii) the Standard Settlement Period (as defined below) thereof (the "**Share Delivery Date**"), the Company shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series A-2 Preferred Stock pursuant to Section 6(a) or 6(b), as applicable, any PIK Shares to which the Holder is entitled pursuant to Section 3 that have not been previously issued, if any, and a wire transfer of immediately available funds in the amount of accrued and unpaid cash dividends, if any. Conversion Shares issuable hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with DTC through its Deposit or Withdrawal at Custodian system ("**DWAC**") if the Company is then a participant in such system and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares and PIK Shares, if any, to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion or the Company Conversion Notice, as the case may be. The Company shall (A) deliver (or cause to be delivered) to the converting Holder who has converted less than all of such Holder's Certificated Series A-2 Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series A-2 Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series A-2 Preferred Stock converted. The Company agrees to maintain a transfer agent that is a participant in the DTC's FAST program so long as any shares of Series A-2 Preferred Stock remain outstanding. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares upon an Optional Conversion. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, in addition to any other rights herein, the Holder shall be entitled to elect by written notice to the Transfer Agent, on behalf of the Company, at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any Certificated Series A-2 Preferred Stock delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute. The Company's obligation to issue and deliver the Conversion Shares upon conversion of Series A-2 Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder.

(iv) [Reserved].

(v) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A-2 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (i) upon the conversion of all outstanding shares of Series A-2 Preferred Stock (taking into account the adjustments and restrictions of Section 7) and (ii) in respect of the PIK Shares. The Company covenants that all Conversion Shares and PIK Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of or as dividends on the Series A-2 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to upon such conversion or in respect of any such dividend, the Company shall round up to the next whole share of Common Stock.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Series A-2 Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series A-2 Preferred Stock and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(e) **Beneficial Ownership Limitation.** The Company shall not effect any conversion of the Series A-2 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-2 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "**Attribution Parties**")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-2 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-2 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-2 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Beneficial Ownership Limitation**" shall be 4.99% (or, at the written election of any Holder delivered to the Company pursuant to the terms of Section 9 prior to the issuance of any shares of Series A-2 Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series A-2 Preferred Stock held by the applicable Holder. A Holder, upon at least sixty-one (61) days advance notice to the Company, may terminate, increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(e); provided, however, that the Holder shall not be entitled to increase or terminate the limitation contained in this Section 6(e) if the Holder has acquired (or if any of the Holder's Attribution parties has indirectly acquired) the Series A-2 Preferred Stock with the purpose or effect of changing or influencing the control of the Company. The limitations contained in this Section 6(e) shall apply to a successor holder of Series A-2 Preferred Stock.

(f) **Primary Market Limitation.** Unless the Company obtains the approval of its stockholders as required by the applicable rules of the applicable Trading Market for issuances of Common Stock in excess of such amount, the Company shall not effect any conversion of the Series A-2 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-2 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, the Holder, together with the Attribution Parties, would beneficially own in excess of the Primary Market Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-2 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-2 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-2 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). For purposes of this Section 6(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Primary Market Limitation**" shall be 19.99% of the number of shares of the Common Stock outstanding as of the Effective Date, immediately prior to the issuance of any shares of Series A-2 Preferred. The limitations contained in this paragraph shall apply to a successor holder of the Series A-2 Preferred Stock.

#### Section 7. Certain Adjustments.

(a) **Stock Dividends and Stock Splits.** If the Company, at any time while the Series A-2 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, will not include any shares of Common Stock issued by the Company upon conversion of this Series A-2 Preferred Stock or payment of a dividend on this Series A-2 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price will be multiplied by a fraction of which the numerator will be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event and of which the denominator will be the number of shares of Common Stock, or in the event that clause (D) of this Section 7(a) will apply shares of reclassified capital stock, outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) will become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder’s Series A-2 Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(c) Pro Rata Distributions. During such time as this Series A-2 Preferred Stock is outstanding, if the Company declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Series A-2 Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Series A-2 Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder’s right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).



(d) Fundamental Transaction. If, at any time while the Series A-2 Preferred Stock is outstanding, (A) the Company effects any merger or consolidation of the Company with or into another Person, (B) the Company effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, or (C) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “Fundamental Transaction”), then, upon any subsequent conversion of the Series A-2 Preferred Stock, the Holders shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “Alternate Consideration”). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall adjust the Conversion Price in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration they receive upon any conversion of the Series A-2 Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(d) and insuring that the Series A-2 Preferred Stock (or any such replacement security) will be substantially similar in form and substance to this Certificate of Designations and insuring that the Series A-2 Preferred Stock will be convertible for a corresponding number of shares of capital stock of such successor entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series A-2 Preferred Stock (without regard to any limitations on the conversion of this Series A-2 Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Series A-2 Preferred Stock immediately prior to the consummation of such Fundamental Transaction) and will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 will be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(f) Notice to the Holders.

(i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

- (ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series A-2 Preferred Stock, and shall cause to be delivered to each Holder pursuant to Section 9, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert such Holder's Series A-2 Preferred Stock pursuant to Section 6(a) (subject to the Beneficial Ownership Limitation and the Primary Market Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided to the Holders, the Company or the Transfer Agent hereunder, including, without limitation, any Notice of Conversion or Company Conversion Notice, shall be in writing and delivered personally, by facsimile, by e-mail, or sent by a nationally recognized overnight courier service (i) if to the Holders, at the Holder's address set forth in the book and records of the Company or to another address of such Holder as may be specified by such Holder to the Company in a written notice delivered in accordance with this Section, or (ii) if to the Company, at 2912 Colorado Avenue, Suite 203, Santa Monica, CA 90404, or to another address as the Company may specify for such purposes by written notice to the Holders delivered in accordance with this Section. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided pursuant to this Certificate of Designations constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay accrued dividends, as applicable, on the shares of Series A-2 Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series A-2 Preferred Stock Certificate. If a Holder alleges that such Holder's Series A-2 Preferred Stock certificate has been lost, stolen or destroyed, the Company will only be obligated to issue a replacement certificate if the Holder delivers to the transfer agent, or the Company, as applicable: (i) a lost certificate affidavit; (ii) an indemnity bond in a form acceptable to the Company's transfer agent, or if the Company acts as its own transfer agent, an agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate; and (iii) any other documentation that the transfer agent or the Company, if the Company acts as its own transfer agent, may reasonably require.

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

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

(f) Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any dividend or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

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

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

(i) Status of Converted Series A-2 Preferred Stock. If any shares of Series A-2 Preferred Stock shall be converted or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A-2 Convertible Preferred Stock.

[Signature page follows.]

IN WITNESS WHEREOF, this Certificate of Designations has been executed by a duly authorized officer of the Company as of this 28<sup>th</sup> day of November, 2022.

*/s/ Ann Hand*

Name: Ann Hand  
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES A-2 PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A-2 Convertible Preferred Stock indicated below into shares of common stock, \$.001 par value per share (the "Common Stock"), of Super League Gaming, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Series A-2 Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Series A-2 Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Series A-2 Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Series A-2 Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[Holder]

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

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES A-3 PREFERRED STOCK  
OF  
SUPER LEAGUE GAMING, INC.**

It is hereby certified that:

1. The name of the Company (hereinafter called the "**Company**") is Super League Gaming, Inc., a Delaware corporation.
2. The Certificate of Incorporation (the "**Certificate of Incorporation**") of the Company authorizes the issuance of Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share, of which none has been designated or issued, and expressly vests in the Board of Directors of the Company the authority to issue any or all of said shares in one (1) or more series and by resolution or resolutions to establish the designation and number and to fix the relative rights and preferences of each series to be issued.
3. The Board of Directors of the Company, pursuant to the authority expressly vested in it as aforesaid, has adopted the following resolutions creating a Series A-3 issue of Preferred Stock:

**RESOLVED**, that One Thousand Seven Hundred Thirty Three (1,733) of the Ten Million (10,000,000) authorized shares of Preferred Stock of the Company shall be designated Series A-3 Convertible Preferred Stock, \$0.001 par value per share, and shall possess the rights and preferences set forth below:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act. A Person shall be regarded as in control of the Company if the Company owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other person, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Attribution Parties**" shall have the meaning set forth in Section 6(e).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(e).

"**Business Day**" means any day except Saturday, Sunday, and any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

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“**Certificate of Designations**” means this Certificate of Designation of Preferences, Rights and Limitations of Series A-3 Preferred Stock.

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

“**Common Stock**” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries of the Company, whether or not vested or otherwise convertible or exercisable into shares of Common Stock at the time of such issuance, which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock, and excluding shares of Common Stock issuable upon conversion of the Series A Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock.

“**Company Conversion Notice**” means a notice delivered by the Company to effect a Mandatory Conversion of all the outstanding Series A Preferred Stock (which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, along with any and all sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on that may be authorized following the date hereof); provided that the effective date of such Mandatory Conversion shall be no less than ten (10) Business Days following the date that such notice is deemed to have been given.

“**Conversion Amount**” means the Stated Value at issue.

“**Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Conversion Price**” means \$0.6704, subject to adjustment as set forth in Section 7.

“**Conversion Shares**” means the shares of Common Stock issuable upon conversion of the shares of Series A-3 Preferred Stock in accordance with the terms hereof.

“**Deemed Liquidation Event**” means any of the following, unless the Majority Holders elect otherwise by written notice sent to the Company at least five (5) business days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Company is a constituent party or



- (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

The Corporation shall not have the power to effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Corporation in accordance with Section 5 hereto.

“**Dividend Shares**” shall have the meaning set forth in Section 3.

“**Effective Date**” means the date that this Certificate of Designations is filed with the Secretary of State of Delaware.

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

“**Fundamental Transaction**” shall have the meaning set forth in Section 7(d).

“**Holder**” shall mean an owner of shares of Series A-3 Preferred Stock.

“**Junior Securities**” means the Common Stock and any other class or series of capital stock of the Company hereafter created which does not expressly rank senior or pari passu with or senior to the Series A-3 Preferred Stock (which for these purposes shall include the Series A Preferred Stock and Series A-2 Preferred Stock, along with any and all sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges.

“**Liquidation**” shall have the meaning set forth in Section 5(a).

“**Majority Holders**” shall mean the Holders of 51% or more of the then issued and outstanding shares of all Series A Preferred Stock, which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock along with any and all sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on that may be authorized following the date hereof.

“**Mandatory Conversion**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Determination**” shall have the meaning set forth in Section 6(b).

“**New York Courts**” shall have the meaning set forth in Section 8(d).

“**Notice of Conversion**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Date**” shall have the meaning set forth in Section 6(a).

“**Original Issue Date**” means the date of the first issuance of any shares of Series A-3 Preferred Stock regardless of the number of transfers of any particular shares of Series A-3 Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series A-3 Preferred Stock.

“**Parity Securities**” means any class or series of capital stock of the Company hereinafter created that expressly ranks pari passu with the Series A-3 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock, along with any and all sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges. The only Parity Securities existing as of the date hereof are the Series A Preferred Stock and Series A-2 Preferred Stock.

“**Person**” means an individual, entity, corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust or unincorporated organization.

“**PIK Shares**” shall have the meaning set forth in Section 3.

“**Preferred Stock**” means the Company’s preferred stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Primary Market Limitation**” shall have the meaning set forth in Section 6(f).

“**Purchase Rights**” shall have the meaning set forth in Section 7(b).

“**Second Anniversary**” shall mean the second yearly anniversary after the Effective Date.

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

“**Senior Securities**” shall be any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series A-3 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock along with any and all sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation, as well as any other rights, preferences and privileges. No Senior Securities exist as of the date hereof.

“**Series A Preferred Stock**” shall mean, unless otherwise stated herein, Five Thousand Three Hundred and Fifty Nine (5,359) shares of Series A Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 22, 2022.

“**Series A-2 Preferred Stock**” shall mean, unless otherwise stated herein, One Thousand Two Hundred Ninety Seven (1,297) of Series A-2 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 28, 2022.

“**Series A-3 Preferred Stock**” shall have the meaning set forth in Section 2.

“**Share Delivery Date**” shall have the meaning set forth in Section 6(d).

“**Stated Value**” means \$1,000.00 per share of Series A-3 Preferred Stock.

“**Subsidiary**” means any subsidiary of the Company existing as of the Effective Date hereof and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the Effective Date.

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

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“**Transfer Agent**” means Issuer Direct, the current transfer agent of the Company, with a mailing address of One Glenwood Avenue, Suite 1001, Raleigh, North Carolina 27603, a facsimile number of 919-481-6222 and an email address of info@issuereirect.com, and any successor transfer agent of the Company.

Section 2. Designation and Authorized Shares. The series of Preferred Stock designated by this Certificate of Designations shall be designated as the Company's Series A-3 Convertible Preferred Stock (the "Series A-3 Preferred Stock") and the number of shares so designated shall be One Thousand Seven Hundred Thirty Three (1,733). So long as any of the Series A-3 Preferred Stock are issued and outstanding, the Company shall not issue any Senior Securities or Parity Securities without the approval of the Majority Holders. The Series A-3 Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series A-3 Preferred Stock.

Section 3. Dividends. Holders of shares of Series A-3 Preferred Stock will be entitled to receive: (a) dividends payable as follows: a number of shares of Common Stock equal to twenty percent (20%) of the number of shares of Common Stock issuable upon conversion of the Series A-3 Preferred Stock then held by such Holder on each of the 12 and 24 month anniversaries of the Effective Date (collectively, the "PIK Shares") and (b) dividends equal, on an as-if-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. The dividends set forth in clause (a) of this Section 3 will be satisfied solely by delivery of shares of Common Stock. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid) upon the consummation of a Fundamental Transaction. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid not previously paid) upon the Mandatory Conversion Date following any Mandatory Conversion as contemplated in Section 6(b) hereto. Notwithstanding the foregoing, to the extent that a Holder's right to participate in any dividend of PIK Shares or any stock dividend declared on the Common Stock to which such Holder is entitled to pursuant to clause (a) or (b) of this Section 3 ("Dividend Shares") would result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then such Holder shall not be entitled to participate in any such dividend to such extent (or in the beneficial ownership of any PIK Shares or Dividend Shares as a result of such dividend to such extent) and the portion of such PIK Shares and/or Dividend Shares that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder's beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation.

Section 4. Voting Rights. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), and subject to the limitations set forth in Section 6(f), each Holder of outstanding shares of Series A-3 Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A-3 Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, Holders of Series A-3 Preferred Stock shall vote together with the holders of Common Stock as a single class. The Holders shall be entitled to the same notice of any regular or special meeting of the stockholders as may or shall be given to holders of Common Stock entitled to vote at such meetings. As long as any shares of Series A-3 Preferred Stock are outstanding, the Company may not, without the affirmative vote of the Majority Holders voting as a separate class, (i) amend, alter or repeal any provision of this Certificate of Designations in a manner that adversely affects the powers, preferences or rights of the Series A-3 Preferred Stock, (ii) increase the number of authorized shares of Series A-3 Preferred Stock, (iii) issue, or obligate itself to issue Parity Securities or Senior Securities, (iv) authorize, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind in excess of \$5,000,000 or (v) entering into any agreement with respect to the foregoing. Notwithstanding anything contained herein to the contrary, no holder of Series A-3 Preferred Stock shall be entitled to vote on any matter presented to the Company's stockholders relating to approving the conversion of such holder's Series A-3 Preferred Stock into an amount in excess of the Primary Market Limitation. Notwithstanding anything contained herein, for the purposes of this Section 4, the outstanding shares of Series A-3 Preferred Stock includes both the Series A Preferred Stock, Series A-2 Preferred Stock and any and all sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on that may be authorized following the date hereof and shall take into account the number of whole shares of Common Stock into which the shares of Series A-3 Preferred Stock (and Series A Preferred Stock and Series A-2 Preferred Stock and any other sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on that may be authorized following the date hereof) are convertible into as of the record date for determining stockholders entitled to vote on such matter.

Section 5. Liquidation.

(a) The Series A-3 Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any voluntary or involuntary liquidation, dissolution or winding-up of the Company ("Liquidation") or Deemed Liquidation Event, rank: (i) junior to the Senior Securities, if any (ii) pari passu with the Parity Securities, if any and (iii) senior to the Junior Securities. For purposes hereof, references to Series A-3 Preferred Stock in this Section 5 shall include the Series A Preferred Stock, the Series A-2 Preferred Stock and any and all sub-series designated Series A-4 Preferred Stock, Series A-5 Preferred Stock and so on that may be authorized following the date hereof.

(b) As of the date hereof, there are no outstanding Senior Securities, Parity Securities consist solely of Series A Preferred Stock and Series A-2 Preferred Stock, and the Junior Securities consist solely of shares of Common Stock. That so being, upon any Liquidation, the holders of shares of Series A-3 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event, the holders of shares of Series A-3 Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event, as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to one (1) times the applicable Original Issue Price, plus any dividends accrued but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "Liquidation Amounts").

(c) After the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Series A-3 Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Series A-3 Preferred Stock pursuant to Section 5(b), shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

#### Section 6 Conversion.

(a) Conversions at Option of Holder. Each share of Series A-3 Preferred Stock (or fraction thereof) shall be convertible, at any time and from time to time, from and after the Original Issue Date at the option of the Holder thereof into that number of shares of Common Stock (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) determined by dividing the Stated Value by the Conversion Price then in effect. Holders shall effect conversions by providing the Company and the Transfer Agent, with the form of conversion notice attached hereto as Annex A (a "**Notice of Conversion**"). Each Notice of Conversion shall specify the number of shares of Series A-3 Preferred Stock to be converted, the number of shares of Series A-3 Preferred Stock owned prior to such conversion, the number of shares of Series A-3 Preferred Stock owned subsequent to such conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Company pursuant to Section 6 and in accordance with Section 9 (such date, the "**Optional Conversion Date**"). Such Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the shares of Series A-3 Preferred Stock have been converted as of the Optional Conversion Date. If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion and Cancellation Request are deemed delivered to the Company in accordance with Section 9. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Series A-3 Preferred Stock, a Holder shall not be required to surrender any Certificated Series A-3 Preferred Stock to the Company unless all of the shares of Series A-3 Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series A-3 Preferred Stock promptly following the Optional Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to the converting Holder, the determination of whether the Series A-3 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-3 Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series A-3 Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series A-3 Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(b) **Mandatory Conversion.** On the earliest to occur of: (i) the effective date of such conversion set forth in the Company Conversion Notice, provided that the Company may not deliver the Company Conversion Notice unless the Majority Holders consented to such conversion prior to the delivery of the Company Conversion Notice; (ii) on the one year anniversary of the Original Issue Date, the Company may, in its discretion, convert (A) 50% of the outstanding shares of Series A-3 Preferred if the volume-weighted average price of the Company's common stock over the previous 10 days as reported on the NASDAQ Capital Market (the "**VWAP**"), equals at least 250% of the Conversion Price, or (B) 100% of the outstanding shares of Series A-3 Preferred if the VWAP equals at least 300% of the Conversion Price. or (iii) the Second Anniversary (the earlier to occur of the foregoing, the "**Mandatory Conversion Date**" and together with an Optional Conversion Date, the "**Conversion Date**"), each outstanding share of Series A-3 Preferred Stock will automatically convert (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Mandatory Conversion Date (a "**Mandatory Conversion**"). Within two Trading Days of (x) the Mandatory Conversion Date, if the shares of Series A-3 Preferred Stock are held in book entry form, or (y) such Holder's surrender of Certificated Series A-3 Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and an indemnity or security reasonably acceptable to the Company (which shall not include the posting of any bond) to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), the Company shall deliver: (I) to each Holder, the Conversion Shares issuable upon conversion of such Holder's Series A-3 Preferred Stock via the Certificated Preferred Stock, and (II) the PIK Shares issuable upon Mandatory Conversion under Section 3, to Holders as of the Mandatory Conversion Date; provided that, any failure by the Holder to return Certificated Series A-3 Preferred Stock, if any, will have no effect on the Mandatory Conversion pursuant to this Section 6(b), which Mandatory Conversion will be deemed to occur on the Mandatory Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to any Holder, such Holder shall within five Business Days of such Holder's receipt of the Company Conversion Notice, provide the Company with a written determination (a "**Mandatory Conversion Determination**"), delivered in accordance with Section 9, of whether such Holder's Series A-3 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-3 Preferred Stock are convertible, and the submission of a Mandatory Conversion Determination shall be deemed to be such Holder's determination of the maximum number of shares of Series A-3 Preferred Stock that may be converted, subject to the Beneficial Ownership Limitation or the Primary Market Limitation and the portion of the shares of Common Stock issuable upon such Mandatory Conversion hereunder that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder's beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Mandatory Conversion Determination that such determination has not violated the restrictions set forth in Section 6(e) or Section 6(f) and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(c) Conversion Shares. The aggregate number of Conversion Shares which the Company shall issue upon conversion of the Series A-3 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series A-3 Preferred Stock to be converted, multiplied by the Stated Value, divided by the Conversion Price in effect at the time of the conversion.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares upon Conversion. Promptly after the applicable Conversion Date, but in any case within the earlier of (i) two (2) Trading Days and (ii) the Standard Settlement Period (as defined below) thereof (the "**Share Delivery Date**"), the Company shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series A-3 Preferred Stock pursuant to Section 6(a) or 6(b), as applicable, any PIK Shares to which the Holder is entitled pursuant to Section 3 that have not been previously issued, if any, and a wire transfer of immediately available funds in the amount of accrued and unpaid cash dividends, if any. Conversion Shares issuable hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with DTC through its Deposit or Withdrawal at Custodian system ("**DWAC**") if the Company is then a participant in such system and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares and PIK Shares, if any, to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion or the Company Conversion Notice, as the case may be. The Company shall (A) deliver (or cause to be delivered) to the converting Holder who has converted less than all of such Holder's Certificated Series A-3 Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series A-3 Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series A-3 Preferred Stock converted. The Company agrees to maintain a transfer agent that is a participant in the DTC's FAST program so long as any shares of Series A-3 Preferred Stock remain outstanding. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares upon an Optional Conversion. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, in addition to any other rights herein, the Holder shall be entitled to elect by written notice to the Transfer Agent, on behalf of the Company, at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any Certificated Series A-3 Preferred Stock delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.



(iii) Obligation Absolute. The Company's obligation to issue and deliver the Conversion Shares upon conversion of Series A-3 Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder.

(iv) [Reserved].

(v) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A-3 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (i) upon the conversion of all outstanding shares of Series A-3 Preferred Stock (taking into account the adjustments and restrictions of Section 7) and (ii) in respect of the PIK Shares. The Company covenants that all Conversion Shares and PIK Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of or as dividends on the Series A-3 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to upon such conversion or in respect of any such dividend, the Company shall round up to the next whole share of Common Stock.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Series A-3 Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series A-3 Preferred Stock and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(e) **Beneficial Ownership Limitation.** The Company shall not effect any conversion of the Series A-3 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-3 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "**Attribution Parties**")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-3 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-3 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-3 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Beneficial Ownership Limitation**" shall be 4.99% (or, at the written election of any Holder delivered to the Company pursuant to the terms of Section 9 prior to the issuance of any shares of Series A-3 Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series A-3 Preferred Stock held by the applicable Holder. A Holder, upon at least sixty-one (61) days advance notice to the Company, may terminate, increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(e); provided, however, that the Holder shall not be entitled to increase or terminate the limitation contained in this Section 6(e) if the Holder has acquired (or if any of the Holder's Attribution parties has indirectly acquired) the Series A-3 Preferred Stock with the purpose or effect of changing or influencing the control of the Company. The limitations contained in this Section 6(e) shall apply to a successor holder of Series A-3 Preferred Stock.

(f) **Primary Market Limitation.** Unless the Company obtains the approval of its stockholders as required by the applicable rules of the applicable Trading Market for issuances of Common Stock in excess of such amount, the Company shall not effect any conversion of the Series A-3 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-3 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, the Holder, together with the Attribution Parties, would beneficially own in excess of the Primary Market Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-3 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-3 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-3 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). For purposes of this Section 6(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Primary Market Limitation**" shall be 19.99% of the number of shares of the Common Stock outstanding as of the Effective Date, immediately prior to the issuance of any shares of Series A-3 Preferred. The limitations contained in this paragraph shall apply to a successor holder of the Series A-3 Preferred Stock.

#### Section 7. Certain Adjustments.

(a) **Stock Dividends and Stock Splits.** If the Company, at any time while the Series A-3 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, will not include any shares of Common Stock issued by the Company upon conversion of this Series A-3 Preferred Stock or payment of a dividend on this Series A-3 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price will be multiplied by a fraction of which the numerator will be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event and of which the denominator will be the number of shares of Common Stock, or in the event that clause (D) of this Section 7(a) will apply shares of reclassified capital stock, outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) will become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder’s Series A-3 Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(c) Pro Rata Distributions. During such time as this Series A-3 Preferred Stock is outstanding, if the Company declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Series A-3 Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Series A-3 Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder’s right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(d) Fundamental Transaction. If, at any time while the Series A-3 Preferred Stock is outstanding, (A) the Company effects any merger or consolidation of the Company with or into another Person, (B) the Company effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, or (C) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “Fundamental Transaction”), then, upon any subsequent conversion of the Series A-3 Preferred Stock, the Holders shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “Alternate Consideration”). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall adjust the Conversion Price in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration they receive upon any conversion of the Series A-3 Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(d) and insuring that the Series A-3 Preferred Stock (or any such replacement security) will be substantially similar in form and substance to this Certificate of Designations and insuring that the Series A-3 Preferred Stock will be convertible for a corresponding number of shares of capital stock of such successor entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series A-3 Preferred Stock (without regard to any limitations on the conversion of this Series A-3 Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Series A-3 Preferred Stock immediately prior to the consummation of such Fundamental Transaction) and will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 will be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(f) Notice to the Holders.

- (i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.
- (ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series A-3 Preferred Stock, and shall cause to be delivered to each Holder pursuant to Section 9, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert such Holder's Series A-3 Preferred Stock pursuant to Section 6(a) (subject to the Beneficial Ownership Limitation and the Primary Market Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided to the Holders, the Company or the Transfer Agent hereunder, including, without limitation, any Notice of Conversion or Company Conversion Notice, shall be in writing and delivered personally, by facsimile, by e-mail, or sent by a nationally recognized overnight courier service (i) if to the Holders, at the Holder's address set forth in the book and records of the Company or to another address of such Holder as may be specified by such Holder to the Company in a written notice delivered in accordance with this Section, or (ii) if to the Company, at 2912 Colorado Avenue, Suite 203, Santa Monica, CA 90404, or to another address as the Company may specify for such purposes by written notice to the Holders delivered in accordance with this Section. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided pursuant to this Certificate of Designations constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay accrued dividends, as applicable, on the shares of Series A-3 Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series A-3 Preferred Stock Certificate. If a Holder alleges that such Holder's Series A-3 Preferred Stock certificate has been lost, stolen or destroyed, the Company will only be obligated to issue a replacement certificate if the Holder delivers to the transfer agent, or the Company, as applicable: (i) a lost certificate affidavit; (ii) an indemnity bond in a form acceptable to the Company's transfer agent, or if the Company acts as its own transfer agent, an agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate; and (iii) any other documentation that the transfer agent or the Company, if the Company acts as its own transfer agent, may reasonably require.

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

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

(f) Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any dividend or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

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

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

(i) Status of Converted Series A-3 Preferred Stock. If any shares of Series A-3 Preferred Stock shall be converted or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A-3 Convertible Preferred Stock.

[Signature page follows.]



IN WITNESS WHEREOF, this Certificate of Designations has been executed by a duly authorized officer of the Company as of this 30<sup>th</sup> day of November, 2022.

*/s/ Ann Hand*

Name: Ann Hand  
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES A-3 PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A-3 Convertible Preferred Stock indicated below into shares of common stock, \$.001 par value per share (the "Common Stock"), of Super League Gaming, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Series A-3 Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Series A-3 Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Series A-3 Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Series A-3 Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[Holder]

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

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES A-4 PREFERRED STOCK  
OF  
SUPER LEAGUE GAMING, INC.**

It is hereby certified that:

1. The name of the Company (hereinafter called the "Company") is Super League Gaming, Inc., a Delaware corporation.
2. The Certificate of Incorporation (the "Certificate of Incorporation") of the Company authorizes the issuance of Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share, of which none has been designated or issued, and expressly vests in the Board of Directors of the Company the authority to issue any or all of said shares in one (1) or more series and by resolution or resolutions to establish the designation and number and to fix the relative rights and preferences of each series to be issued.
3. The Board of Directors of the Company, pursuant to the authority expressly vested in it as aforesaid, has adopted the following resolutions creating a Series A-4 issue of Preferred Stock:

**RESOLVED**, that one thousand nine hundred thirty four (1,934) of the Ten Million (10,000,000) authorized shares of Preferred Stock of the Company shall be designated Series A-4 Convertible Preferred Stock, \$0.001 par value per share, and shall possess the rights and preferences set forth below:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act. A Person shall be regarded as in control of the Company if the Company owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other person, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Attribution Parties**" shall have the meaning set forth in Section 6(e).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(e).

"**Business Day**" means any day except Saturday, Sunday, and any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

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“**Certificate of Designations**” means this Certificate of Designation of Preferences, Rights and Limitations of Series A-4 Preferred Stock.

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

“**Common Stock**” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries of the Company, whether or not vested or otherwise convertible or exercisable into shares of Common Stock at the time of such issuance, which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock, and excluding shares of Common Stock issuable upon conversion of the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series A-4 Preferred Stock.

“**Company Conversion Notice**” means a notice delivered by the Company to effect a Mandatory Conversion of all the outstanding Series A Preferred Stock (which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series A-4 Preferred Stock, along with any and all sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on that may be authorized following the date hereof); provided that the effective date of such Mandatory Conversion shall be no less than ten (10) Business Days following the date that such notice is deemed to have been given.

“**Conversion Amount**” means the Stated Value at issue.

“**Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Conversion Price**” means \$0.3801, subject to adjustment as set forth in Section 7.

“**Conversion Shares**” means the shares of Common Stock issuable upon conversion of the shares of Series A-4 Preferred Stock in accordance with the terms hereof.

“**Deemed Liquidation Event**” means any of the following, unless the Majority Holders elect otherwise by written notice sent to the Company at least five (5) business days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Company is a constituent party or

- (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

The Corporation shall not have the power to effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Corporation in accordance with Section 5 hereto.

“**Dividend Shares**” shall have the meaning set forth in Section 3.

“**Effective Date**” means the date that this Certificate of Designations is filed with the Secretary of State of Delaware.

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

“**Fundamental Transaction**” shall have the meaning set forth in Section 7(d).

“**Holder**” shall mean an owner of shares of Series A-4 Preferred Stock.

“**Junior Securities**” means the Common Stock and any other class or series of capital stock of the Company hereafter created which does not expressly rank senior or pari passu with or senior to the Series A-4 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, along with any and all sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges.

“**Liquidation**” shall have the meaning set forth in Section 5(a).

“**Majority Holders**” shall mean the Holders of 51% or more of the then issued and outstanding shares of all Series A Preferred Stock, which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, along with any and all sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on that may be authorized following the date hereof.

“**Mandatory Conversion**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Determination**” shall have the meaning set forth in Section 6(b).

“**New York Courts**” shall have the meaning set forth in Section 8(d).

“**Notice of Conversion**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Date**” shall have the meaning set forth in Section 6(a).

“**Original Issue Date**” means the date of the first issuance of any shares of Series A-4 Preferred Stock regardless of the number of transfers of any particular shares of Series A-4 Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series A-4 Preferred Stock.

“**Parity Securities**” means any class or series of capital stock of the Company hereinafter created that expressly ranks pari passu with the Series A-4 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, along with any and all sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges. The only Parity Securities existing as of the date hereof are the Series A Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock.

“**Person**” means an individual, entity, corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust or unincorporated organization.

“**PIK Shares**” shall have the meaning set forth in Section 3.

“**Preferred Stock**” means the Company’s preferred stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Primary Market Limitation**” shall have the meaning set forth in Section 6(f).

“**Purchase Rights**” shall have the meaning set forth in Section 7(b).

“**Second Anniversary**” shall mean the second yearly anniversary after the Effective Date.

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

“**Senior Securities**” shall be any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series A-4 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, along with any and all sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation, as well as any other rights, preferences and privileges. No Senior Securities exist as of the date hereof.

“**Series A Preferred Stock**” shall mean, unless otherwise stated herein, Five Thousand Three Hundred and Fifty Nine (5,359) shares of Series A Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 22, 2022.

“**Series A-2 Preferred Stock**” shall mean, unless otherwise stated herein, One Thousand Two Hundred Ninety Seven (1,297) of Series A-2 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 28, 2022.

“**Series A-3 Preferred Stock**” shall mean, unless otherwise stated herein, One Thousand Seven Hundred Thirty Three (1,733) of Series A-3 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 30, 2022.

“**Series A-4 Preferred Stock**” shall have the meaning set forth in Section 2.

“**Share Delivery Date**” shall have the meaning set forth in Section 6(d).

“**Stated Value**” means \$1,000.00 per share of Series A-4 Preferred Stock.

“**Subsidiary**” means any subsidiary of the Company existing as of the Effective Date hereof and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the Effective Date.

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

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

**“Transfer Agent”** means Issuer Direct, the current transfer agent of the Company, with a mailing address of One Glenwood Avenue, Suite 1001, Raleigh, North Carolina 27603, a facsimile number of 919-481-6222 and an email address of info@issuerdirect.com, and any successor transfer agent of the Company.

**Section 2. Designation and Authorized Shares.** The series of Preferred Stock designated by this Certificate of Designations shall be designated as the Company’s Series A-4 Convertible Preferred Stock (the **“Series A-4 Preferred Stock”**) and the number of shares so designated shall be one thousand nine hundred thirty four (1,934). So long as any of the Series A-4 Preferred Stock are issued and outstanding, the Company shall not issue any Senior Securities or Parity Securities without the approval of the Majority Holders. The Series A-4 Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series A-4 Preferred Stock.

**Section 3. Dividends.** Holders of shares of Series A-4 Preferred Stock will be entitled to receive: (a) dividends payable as follows: a number of shares of Common Stock equal to twenty percent (20%) of the number of shares of Common Stock issuable upon conversion of the Series A-4 Preferred Stock then held by such Holder on each of the 12 and 24 month anniversaries of the Effective Date (collectively, the **“PIK Shares”**) and (b) dividends equal, on an as-if-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. The dividends set forth in clause (a) of this Section 3 will be satisfied solely by delivery of shares of Common Stock. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid) upon the consummation of a Fundamental Transaction. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid not previously paid) upon the Mandatory Conversion Date following any Mandatory Conversion as contemplated in Section 6(b) hereto. Notwithstanding the foregoing, to the extent that a Holder’s right to participate in any dividend of PIK Shares or any stock dividend declared on the Common Stock to which such Holder is entitled to pursuant to clause (a) or (b) of this Section 3 (**“Dividend Shares”**) would result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then such Holder shall not be entitled to participate in any such dividend to such extent (or in the beneficial ownership of any PIK Shares or Dividend Shares as a result of such dividend to such extent) and the portion of such PIK Shares and/or Dividend Shares that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder’s beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation.



Section 4. Voting Rights. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), and subject to the limitations set forth in Section 6(f), each Holder of outstanding shares of Series A-4 Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A-4 Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, Holders of Series A-4 Preferred Stock shall vote together with the holders of Common Stock as a single class. The Holders shall be entitled to the same notice of any regular or special meeting of the stockholders as may or shall be given to holders of Common Stock entitled to vote at such meetings. As long as any shares of Series A-4 Preferred Stock are outstanding, the Company may not, without the affirmative vote of the Majority Holders voting as a separate class, (i) amend, alter or repeal any provision of this Certificate of Designations in a manner that adversely affects the powers, preferences or rights of the Series A-4 Preferred Stock, (ii) increase the number of authorized shares of Series A-4 Preferred Stock, (iii) issue, or obligate itself to issue Parity Securities or Senior Securities, (iv) authorize, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind in excess of \$5,000,000 or (v) entering into any agreement with respect to the foregoing. Notwithstanding anything contained herein to the contrary, no holder of Series A-4 Preferred Stock shall be entitled to vote on any matter presented to the Company's stockholders relating to approving the conversion of such holder's Series A-4 Preferred Stock into an amount in excess of the Primary Market Limitation. Notwithstanding anything contained herein, for the purposes of this Section 4, the outstanding shares of Series A-4 Preferred Stock includes both the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and any and all sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on that may be authorized following the date hereof and shall take into account the number of whole shares of Common Stock into which the shares of Series A-4 Preferred Stock (and Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and any other sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on that may be authorized following the date hereof) are convertible into as of the record date for determining stockholders entitled to vote on such matter.

Section 5. Liquidation.

(a) The Series A-4 Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any voluntary or involuntary liquidation, dissolution or winding-up of the Company ("Liquidation") or Deemed Liquidation Event, rank: (i) junior to the Senior Securities, if any (ii) pari passu with the Parity Securities, if any and (iii) senior to the Junior Securities. For purposes hereof, references to Series A-4 Preferred Stock in this Section 5 shall include the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and any and all sub-series designated Series A-5 Preferred Stock, Series A-6 Preferred Stock and so on that may be authorized following the date hereof.

(b) As of the date hereof, there are no outstanding Senior Securities, Parity Securities consist solely of Series A Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock and the Junior Securities consist solely of shares of Common Stock. That so being, upon any Liquidation, the holders of shares of Series A-4 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event, the holders of shares of Series A-4 Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event, as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to one (1) times the applicable Original Issue Price, plus any dividends accrued but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "Liquidation Amounts").

(c) After the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Series A-4 Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Series A-4 Preferred Stock pursuant to Section 5(b), shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

Section 6 Conversion.

(a) Conversions at Option of Holder. Each share of Series A-4 Preferred Stock (or fraction thereof) shall be convertible, at any time and from time to time, from and after the Original Issue Date at the option of the Holder thereof into that number of shares of Common Stock (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) determined by dividing the Stated Value by the Conversion Price then in effect. Holders shall effect conversions by providing the Company and the Transfer Agent, with the form of conversion notice attached hereto as Annex A (a "**Notice of Conversion**"). Each Notice of Conversion shall specify the number of shares of Series A-4 Preferred Stock to be converted, the number of shares of Series A-4 Preferred Stock owned prior to such conversion, the number of shares of Series A-4 Preferred Stock owned subsequent to such conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Company pursuant to Section 6 and in accordance with Section 9 (such date, the "**Optional Conversion Date**"). Such Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the shares of Series A-4 Preferred Stock have been converted as of the Optional Conversion Date. If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion and Cancellation Request are deemed delivered to the Company in accordance with Section 9. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Series A-4 Preferred Stock, a Holder shall not be required to surrender any Certificated Series A-4 Preferred Stock to the Company unless all of the shares of Series A-4 Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series A-4 Preferred Stock promptly following the Optional Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to the converting Holder, the determination of whether the Series A-4 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-4 Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series A-4 Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series A-4 Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(b) **Mandatory Conversion.** On the earliest to occur of: (i) the effective date of such conversion set forth in the Company Conversion Notice, provided that the Company may not deliver the Company Conversion Notice unless the Majority Holders consented to such conversion prior to the delivery of the Company Conversion Notice; (ii) on the one year anniversary of the Original Issue Date, the Company may, in its discretion, convert (A) 50% of the outstanding shares of Series A-4 Preferred if the volume-weighted average price of the Company's common stock over the previous 10 days as reported on the NASDAQ Capital Market (the "**VWAP**"), equals at least 250% of the Conversion Price, or (B) 100% of the outstanding shares of Series A-4 Preferred if the VWAP equals at least 300% of the Conversion Price. or (iii) the Second Anniversary (the earlier to occur of the foregoing, the "**Mandatory Conversion Date**" and together with an Optional Conversion Date, the "**Conversion Date**"), each outstanding share of Series A-4 Preferred Stock will automatically convert (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Mandatory Conversion Date (a "**Mandatory Conversion**"). Within two Trading Days of (x) the Mandatory Conversion Date, if the shares of Series A-4 Preferred Stock are held in book entry form, or (y) such Holder's surrender of Certificated Series A-4 Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and an indemnity or security reasonably acceptable to the Company (which shall not include the posting of any bond) to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), the Company shall deliver: (I) to each Holder, the Conversion Shares issuable upon conversion of such Holder's Series A-4 Preferred Stock via the Certificated Preferred Stock, and (II) the PIK Shares issuable upon Mandatory Conversion under Section 3, to Holders as of the Mandatory Conversion Date; provided that, any failure by the Holder to return Certificated Series A-4 Preferred Stock, if any, will have no effect on the Mandatory Conversion pursuant to this Section 6(b), which Mandatory Conversion will be deemed to occur on the Mandatory Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to any Holder, such Holder shall within five Business Days of such Holder's receipt of the Company Conversion Notice, provide the Company with a written determination (a "**Mandatory Conversion Determination**"), delivered in accordance with Section 9, of whether such Holder's Series A-4 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-4 Preferred Stock are convertible, and the submission of a Mandatory Conversion Determination shall be deemed to be such Holder's determination of the maximum number of shares of Series A-4 Preferred Stock that may be converted, subject to the Beneficial Ownership Limitation or the Primary Market Limitation and the portion of the shares of Common Stock issuable upon such Mandatory Conversion hereunder that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder's beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Mandatory Conversion Determination that such determination has not violated the restrictions set forth in Section 6(e) or Section 6(f) and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(c) Conversion Shares. The aggregate number of Conversion Shares which the Company shall issue upon conversion of the Series A-4 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series A-4 Preferred Stock to be converted, multiplied by the Stated Value, divided by the Conversion Price in effect at the time of the conversion.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares upon Conversion. Promptly after the applicable Conversion Date, but in any case within the earlier of (i) two (2) Trading Days and (ii) the Standard Settlement Period (as defined below) thereof (the "**Share Delivery Date**"), the Company shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series A-4 Preferred Stock pursuant to Section 6(a) or 6(b), as applicable, any PIK Shares to which the Holder is entitled pursuant to Section 3 that have not been previously issued, if any, and a wire transfer of immediately available funds in the amount of accrued and unpaid cash dividends, if any. Conversion Shares issuable hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with DTC through its Deposit or Withdrawal at Custodian system ("**DWAC**") if the Company is then a participant in such system and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares and PIK Shares, if any, to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion or the Company Conversion Notice, as the case may be. The Company shall (A) deliver (or cause to be delivered) to the converting Holder who has converted less than all of such Holder's Certificated Series A-4 Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series A-4 Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series A-4 Preferred Stock converted. The Company agrees to maintain a transfer agent that is a participant in the DTC's FAST program so long as any shares of Series A-4 Preferred Stock remain outstanding. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares upon an Optional Conversion. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, in addition to any other rights herein, the Holder shall be entitled to elect by written notice to the Transfer Agent, on behalf of the Company, at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any Certificated Series A-4 Preferred Stock delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute. The Company's obligation to issue and deliver the Conversion Shares upon conversion of Series A-4 Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder.

(iv) [Reserved].

(v) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A-4 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (i) upon the conversion of all outstanding shares of Series A-4 Preferred Stock (taking into account the adjustments and restrictions of Section 7) and (ii) in respect of the PIK Shares. The Company covenants that all Conversion Shares and PIK Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of or as dividends on the Series A-4 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to upon such conversion or in respect of any such dividend, the Company shall round up to the next whole share of Common Stock.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Series A-4 Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series A-4 Preferred Stock and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(e) **Beneficial Ownership Limitation.** The Company shall not effect any conversion of the Series A-4 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-4 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "**Attribution Parties**")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-4 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-4 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-4 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Beneficial Ownership Limitation**" shall be 4.99% (or, at the written election of any Holder delivered to the Company pursuant to the terms of Section 9 prior to the issuance of any shares of Series A-4 Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series A-4 Preferred Stock held by the applicable Holder. A Holder, upon at least sixty-one (61) days advance notice to the Company, may terminate, increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(e); provided, however, that the Holder shall not be entitled to increase or terminate the limitation contained in this Section 6(e) if the Holder has acquired (or if any of the Holder's Attribution parties has indirectly acquired) the Series A-4 Preferred Stock with the purpose or effect of changing or influencing the control of the Company. The limitations contained in this Section 6(e) shall apply to a successor holder of Series A-4 Preferred Stock.

(f) **Primary Market Limitation.** Unless the Company obtains the approval of its stockholders as required by the applicable rules of the applicable Trading Market for issuances of Common Stock in excess of such amount, the Company shall not effect any conversion of the Series A-4 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-4 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, the Holder, together with the Attribution Parties, would beneficially own in excess of the Primary Market Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-4 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-4 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-4 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). For purposes of this Section 6(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Primary Market Limitation**" shall be 19.99% of the number of shares of the Common Stock outstanding as of the Effective Date, immediately prior to the issuance of any shares of Series A-4 Preferred. The limitations contained in this paragraph shall apply to a successor holder of the Series A-4 Preferred Stock.

#### Section 7. Certain Adjustments.

(a) **Stock Dividends and Stock Splits.** If the Company, at any time while the Series A-4 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, will not include any shares of Common Stock issued by the Company upon conversion of this Series A-4 Preferred Stock or payment of a dividend on this Series A-4 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price will be multiplied by a fraction of which the numerator will be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event and of which the denominator will be the number of shares of Common Stock, or in the event that clause (D) of this Section 7(a) will apply shares of reclassified capital stock, outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) will become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “Purchase Rights”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder’s Series A-4 Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(c) Pro Rata Distributions. During such time as this Series A-4 Preferred Stock is outstanding, if the Company declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “Distribution”), at any time after the issuance of this Series A-4 Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Series A-4 Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder’s right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).



(d) **Fundamental Transaction.** If, at any time while the Series A-4 Preferred Stock is outstanding, (A) the Company effects any merger or consolidation of the Company with or into another Person, (B) the Company effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, or (C) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “**Fundamental Transaction**”), then, upon any subsequent conversion of the Series A-4 Preferred Stock, the Holders shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “Alternate Consideration”). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall adjust the Conversion Price in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration they receive upon any conversion of the Series A-4 Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(d) and insuring that the Series A-4 Preferred Stock (or any such replacement security) will be substantially similar in form and substance to this Certificate of Designations and insuring that the Series A-4 Preferred Stock will be convertible for a corresponding number of shares of capital stock of such successor entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series A-4 Preferred Stock (without regard to any limitations on the conversion of this Series A-4 Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Series A-4 Preferred Stock immediately prior to the consummation of such Fundamental Transaction) and will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 will be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(f) Notice to the Holders.

- (i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.
- (ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series A-4 Preferred Stock, and shall cause to be delivered to each Holder pursuant to Section 9, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert such Holder's Series A-4 Preferred Stock pursuant to Section 6(a) (subject to the Beneficial Ownership Limitation and the Primary Market Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

## Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided to the Holders, the Company or the Transfer Agent hereunder, including, without limitation, any Notice of Conversion or Company Conversion Notice, shall be in writing and delivered personally, by facsimile, by e-mail, or sent by a nationally recognized overnight courier service (i) if to the Holders, at the Holder's address set forth in the book and records of the Company or to another address of such Holder as may be specified by such Holder to the Company in a written notice delivered in accordance with this Section, or (ii) if to the Company, at 2912 Colorado Avenue, Suite 203, Santa Monica, CA 90404, or to another address as the Company may specify for such purposes by written notice to the Holders delivered in accordance with this Section. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided pursuant to this Certificate of Designations constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay accrued dividends, as applicable, on the shares of Series A-4 Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series A-4 Preferred Stock Certificate. If a Holder alleges that such Holder's Series A-4 Preferred Stock certificate has been lost, stolen or destroyed, the Company will only be obligated to issue a replacement certificate if the Holder delivers to the transfer agent, or the Company, as applicable: (i) a lost certificate affidavit; (ii) an indemnity bond in a form acceptable to the Company's transfer agent, or if the Company acts as its own transfer agent, an agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate; and (iii) any other documentation that the transfer agent or the Company, if the Company acts as its own transfer agent, may reasonably require.

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

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

(f) Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any dividend or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

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

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

(i) Status of Converted Series A-4 Preferred Stock. If any shares of Series A-4 Preferred Stock shall be converted or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A-4 Convertible Preferred Stock.

[Signature page follows.]

IN WITNESS WHEREOF, this Certificate of Designations has been executed by a duly authorized officer of the Company as of this 22<sup>nd</sup> day of December, 2022.

*/s/ Ann Hand*

Name: Ann Hand  
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES A-4 PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A-4 Convertible Preferred Stock indicated below into shares of common stock, \$.001 par value per share (the "Common Stock"), of Super League Gaming, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Series A-4 Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Series A-4 Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Series A-4 Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Series A-4 Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[Holder]

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

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES A-5 PREFERRED STOCK  
OF  
SUPER LEAGUE GAMING, INC.**

It is hereby certified that:

1. The name of the Company (hereinafter called the "**Company**") is Super League Gaming, Inc., a Delaware corporation.
2. The Certificate of Incorporation (the "**Certificate of Incorporation**") of the Company authorizes the issuance of Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share, of which none has been designated or issued, and expressly vests in the Board of Directors of the Company the authority to issue any or all of said shares in one (1) or more series and by resolution or resolutions to establish the designation and number and to fix the relative rights and preferences of each series to be issued.
3. The Board of Directors of the Company, pursuant to the authority expressly vested in it as aforesaid, has adopted the following resolutions creating a Series A-5 issue of Preferred Stock:

**RESOLVED**, that Two Thousand Two Hundred Ninety Nine (2,299) of the Ten Million (10,000,000) authorized shares of Preferred Stock of the Company shall be designated Series A-5 Convertible Preferred Stock, \$0.001 par value per share, and shall possess the rights and preferences set forth below:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act. A Person shall be regarded as in control of the Company if the Company owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other person, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Attribution Parties**" shall have the meaning set forth in Section 6(e).

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“**Beneficial Ownership Limitation**” shall have the meaning set forth in Section 6(e).

“**Business Day**” means any day except Saturday, Sunday, and any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

“**Certificate of Designations**” means this Certificate of Designation of Preferences, Rights and Limitations of Series A-5 Preferred Stock.

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

“**Common Stock**” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries of the Company, whether or not vested or otherwise convertible or exercisable into shares of Common Stock at the time of such issuance, which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock, and excluding shares of Common Stock issuable upon conversion of the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and Series A-5 Preferred Stock.

“**Company Conversion Notice**” means a notice delivered by the Company to effect a Mandatory Conversion of all the outstanding Series A Preferred Stock (which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and Series A-5 Preferred Stock, along with any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on that may be authorized following the date hereof); provided that the effective date of such Mandatory Conversion shall be no less than ten (10) Business Days following the date that such notice is deemed to have been given.

“**Conversion Amount**” means the Stated Value at issue.

“**Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Conversion Price**” means \$0.5546, subject to adjustment as set forth in Section 7.

“**Conversion Shares**” means the shares of Common Stock issuable upon conversion of the shares of Series A-5 Preferred Stock in accordance with the terms hereof.



“**Deemed Liquidation Event**” means any of the following, unless the Majority Holders elect otherwise by written notice sent to the Company at least five (5) business days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Company is a constituent party or
  - (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

The Corporation shall not have the power to effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Corporation in accordance with Section 5 hereto.

“**Dividend Shares**” shall have the meaning set forth in Section 3.

“**Effective Date**” means the date that this Certificate of Designations is filed with the Secretary of State of Delaware.

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

“**Fundamental Transaction**” shall have the meaning set forth in Section 7(d).

“**Holder**” shall mean an owner of shares of Series A-5 Preferred Stock.

“**Junior Securities**” means the Common Stock and any other class or series of capital stock of the Company hereafter created which does not expressly rank senior or pari passu with or senior to the Series A-5 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series A-4 Preferred Stock, along with any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges.

“**Liquidation**” shall have the meaning set forth in Section 5(a).

“**Majority Holders**” shall mean the Holders of 51% or more of the then issued and outstanding shares of all Series A Preferred Stock, which for these purposes shall include the shares of Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and Series A-5 Preferred Stock, along with any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on that may be authorized following the date hereof.

“**Mandatory Conversion**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Determination**” shall have the meaning set forth in Section 6(b).

“**New York Courts**” shall have the meaning set forth in Section 8(d).

“**Notice of Conversion**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Date**” shall have the meaning set forth in Section 6(a).

“**Original Issue Date**” means the date of the first issuance of any shares of Series A-5 Preferred Stock regardless of the number of transfers of any particular shares of Series A-5 Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series A-5 Preferred Stock.

“**Parity Securities**” means any class or series of capital stock of the Company hereinafter created that expressly ranks pari passu with the Series A-5 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, along with any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges. The only Parity Securities existing as of the date hereof are the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series A-4 Preferred Stock.

“**Person**” means an individual, entity, corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust or unincorporated organization.

“**PIK Shares**” shall have the meaning set forth in Section 3.

“**Preferred Stock**” means the Company’s preferred stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Primary Market Limitation**” shall have the meaning set forth in Section 6(f).

“**Purchase Rights**” shall have the meaning set forth in Section 7(b).

“**Second Anniversary**” shall mean the second yearly anniversary after the Effective Date.

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

“**Senior Securities**” shall be any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series A-5 Preferred Stock (which for these purposes shall include the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Stock along with any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation, as well as any other rights, preferences and privileges. No Senior Securities exist as of the date hereof.

“**Series A Preferred Stock**” shall mean, unless otherwise stated herein, Five Thousand Three Hundred and Fifty Nine (5,359) shares of Series A Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 22, 2022.

“**Series A-2 Preferred Stock**” shall mean, unless otherwise stated herein, One Thousand Two Hundred Ninety Seven (1,297) of Series A-2 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 28, 2022.

“**Series A-3 Preferred Stock**” shall mean, unless otherwise stated herein, One Thousand Seven Hundred Thirty Three (1,733) of Series A-3 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 30, 2022.

“**Series A-4 Preferred Stock**” shall mean, unless otherwise stated herein, One Thousand Nine Hundred Thirty Four (1,934) of Series A-4 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on December 22, 2022

“**Series A-5 Preferred Stock**” shall have the meaning set forth in Section 2.

“**Share Delivery Date**” shall have the meaning set forth in Section 6(d).

“**Stated Value**” means \$1,000.00 per share of Series A-5 Preferred Stock.

“**Subsidiary**” means any subsidiary of the Company existing as of the Effective Date hereof and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the Effective Date.

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

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“**Transfer Agent**” means Issuer Direct, the current transfer agent of the Company, with a mailing address of One Glenwood Avenue, Suite 1001, Raleigh, North Carolina 27603, a facsimile number of 919-481-6222 and an email address of info@issuerdirect.com, and any successor transfer agent of the Company.

Section 2. Designation and Authorized Shares. The series of Preferred Stock designated by this Certificate of Designations shall be designated as the Company’s Series A-5 Convertible Preferred Stock (the “**Series A-5 Preferred Stock**”) and the number of shares so designated shall be Two Thousand Two Hundred Ninety Nine (2,299). So long as any of the Series A-5 Preferred Stock are issued and outstanding, the Company shall not issue any Senior Securities or Parity Securities without the approval of the Majority Holders. The Series A-5 Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series A-5 Preferred Stock.

Section 3. Dividends. Holders of shares of Series A-5 Preferred Stock will be entitled to receive: (a) dividends payable as follows: a number of shares of Common Stock equal to twenty percent (20%) of the number of shares of Common Stock issuable upon conversion of the Series A-5 Preferred Stock then held by such Holder on each of the 12 and 24 month anniversaries of the Effective Date (collectively, the “**PIK Shares**”) and (b) dividends equal, on an as-if-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. The dividends set forth in clause (a) of this Section 3 will be satisfied solely by delivery of shares of Common Stock. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid) upon the consummation of a Fundamental Transaction. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid not previously paid) upon the Mandatory Conversion Date following any Mandatory Conversion as contemplated in Section 6(b) hereto. Notwithstanding the foregoing, to the extent that a Holder’s right to participate in any dividend of PIK Shares or any stock dividend declared on the Common Stock to which such Holder is entitled to pursuant to clause (a) or (b) of this Section 3 (“**Dividend Shares**”) would result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then such Holder shall not be entitled to participate in any such dividend to such extent (or in the beneficial ownership of any PIK Shares or Dividend Shares as a result of such dividend to such extent) and the portion of such PIK Shares and/or Dividend Shares that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder’s beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation.

Section 4. Voting Rights. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), and subject to the limitations set forth in Section 6(f), each Holder of outstanding shares of Series A-5 Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A-5 Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, Holders of Series A-5 Preferred Stock shall vote together with the holders of Common Stock as a single class. The Holders shall be entitled to the same notice of any regular or special meeting of the stockholders as may or shall be given to holders of Common Stock entitled to vote at such meetings. As long as any shares of Series A-5 Preferred Stock are outstanding, the Company may not, without the affirmative vote of the Majority Holders voting as a separate class, (i) amend, alter or repeal any provision of this Certificate of Designations in a manner that adversely affects the powers, preferences or rights of the Series A-5 Preferred Stock, (ii) increase the number of authorized shares of Series A-5 Preferred Stock, (iii) issue, or obligate itself to issue Parity Securities or Senior Securities, (iv) authorize, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind in excess of \$5,000,000 or (v) entering into any agreement with respect to the foregoing. Notwithstanding anything contained herein to the contrary, no holder of Series A-5 Preferred Stock shall be entitled to vote on any matter presented to the Company's stockholders relating to approving the conversion of such holder's Series A-5 Preferred Stock into an amount in excess of the Primary Market Limitation. Notwithstanding anything contained herein, for the purposes of this Section 4, the outstanding shares of Series A-5 Preferred Stock includes both the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on that may be authorized following the date hereof and shall take into account the number of whole shares of Common Stock into which the shares of Series A-5 Preferred Stock (and Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and any other sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on that may be authorized following the date hereof) are convertible into as of the record date for determining stockholders entitled to vote on such matter.

Section 5. Liquidation.

(a) The Series A-5 Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any voluntary or involuntary liquidation, dissolution or winding-up of the Company (“**Liquidation**”) or Deemed Liquidation Event, rank: (i) junior to the Senior Securities, if any (ii) pari passu with the Parity Securities, if any and (iii) senior to the Junior Securities. For purposes hereof, references to Series A-5 Preferred Stock in this Section 5 shall include the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on that may be authorized following the date hereof.

(b) As of the date hereof, there are no outstanding Senior Securities, Parity Securities consist solely of Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series A-4 Preferred Stock and the Junior Securities consist solely of shares of Common Stock. That so being, upon any Liquidation, the holders of shares of Series A-5 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event, the holders of shares of Series A-5 Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event, as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to one (1) times the applicable Original Issue Price, plus any dividends accrued but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the “**Liquidation Amounts**”).

(c) After the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Series A-5 Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Series A-5 Preferred Stock pursuant to Section 5(b), shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

## Section 6 Conversion.

(a) Conversions at Option of Holder. Each share of Series A-5 Preferred Stock (or fraction thereof) shall be convertible, at any time and from time to time, from and after the Original Issue Date at the option of the Holder thereof into that number of shares of Common Stock (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) determined by dividing the Stated Value by the Conversion Price then in effect. Holders shall effect conversions by providing the Company and the Transfer Agent, with the form of conversion notice attached hereto as Annex A (a "**Notice of Conversion**"). Each Notice of Conversion shall specify the number of shares of Series A-5 Preferred Stock to be converted, the number of shares of Series A-5 Preferred Stock owned prior to such conversion, the number of shares of Series A-5 Preferred Stock owned subsequent to such conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Company pursuant to Section 6 and in accordance with Section 9 (such date, the "**Optional Conversion Date**"). Such Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the shares of Series A-5 Preferred Stock have been converted as of the Optional Conversion Date. If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion and Cancellation Request are deemed delivered to the Company in accordance with Section 9. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Series A-5 Preferred Stock, a Holder shall not be required to surrender any Certificated Series A-5 Preferred Stock to the Company unless all of the shares of Series A-5 Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series A-5 Preferred Stock promptly following the Optional Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to the converting Holder, the determination of whether the Series A-5 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-5 Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series A-5 Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series A-5 Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(b) **Mandatory Conversion.** On the earliest to occur of: (i) the effective date of such conversion set forth in the Company Conversion Notice, provided that the Company may not deliver the Company Conversion Notice unless the Majority Holders consented to such conversion prior to the delivery of the Company Conversion Notice; (ii) on the one year anniversary of the Original Issue Date, the Company may, in its discretion, convert (A) 50% of the outstanding shares of Series A-5 Preferred if the volume-weighted average price of the Company's common stock over the previous 10 days as reported on the NASDAQ Capital Market (the "**VWAP**"), equals at least 250% of the Conversion Price, or (B) 100% of the outstanding shares of Series A-5 Preferred if the VWAP equals at least 300% of the Conversion Price. or (iii) the Second Anniversary (the earlier to occur of the foregoing, the "**Mandatory Conversion Date**" and together with an Optional Conversion Date, the "**Conversion Date**"), each outstanding share of Series A-5 Preferred Stock will automatically convert (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Mandatory Conversion Date (a "**Mandatory Conversion**"). Within two Trading Days of (x) the Mandatory Conversion Date, if the shares of Series A-5 Preferred Stock are held in book entry form, or (y) such Holder's surrender of Certificated Series A-5 Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and an indemnity or security reasonably acceptable to the Company (which shall not include the posting of any bond) to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), the Company shall deliver: (I) to each Holder, the Conversion Shares issuable upon conversion of such Holder's Series A-5 Preferred Stock via the Certificated Preferred Stock, and (II) the PIK Shares issuable upon Mandatory Conversion under Section 3, to Holders as of the Mandatory Conversion Date; provided that, any failure by the Holder to return Certificated Series A-5 Preferred Stock, if any, will have no effect on the Mandatory Conversion pursuant to this Section 6(b), which Mandatory Conversion will be deemed to occur on the Mandatory Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to any Holder, such Holder shall within five Business Days of such Holder's receipt of the Company Conversion Notice, provide the Company with a written determination (a "**Mandatory Conversion Determination**"), delivered in accordance with Section 9, of whether such Holder's Series A-5 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series A-5 Preferred Stock are convertible, and the submission of a Mandatory Conversion Determination shall be deemed to be such Holder's determination of the maximum number of shares of Series A-5 Preferred Stock that may be converted, subject to the Beneficial Ownership Limitation or the Primary Market Limitation and the portion of the shares of Common Stock issuable upon such Mandatory Conversion hereunder that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder's beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Mandatory Conversion Determination that such determination has not violated the restrictions set forth in Section 6(e) or Section 6(f) and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(c) **Conversion Shares.** The aggregate number of Conversion Shares which the Company shall issue upon conversion of the Series A-5 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series A-5 Preferred Stock to be converted, multiplied by the Stated Value, divided by the Conversion Price in effect at the time of the conversion.



(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares upon Conversion. Promptly after the applicable Conversion Date, but in any case within the earlier of (i) two (2) Trading Days and (ii) the Standard Settlement Period (as defined below) thereof (the "Share Delivery Date"), the Company shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series A-5 Preferred Stock pursuant to Section 6(a) or 6(b), as applicable, any PIK Shares to which the Holder is entitled pursuant to Section 3 that have not been previously issued, if any, and a wire transfer of immediately available funds in the amount of accrued and unpaid cash dividends, if any. Conversion Shares issuable hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with DTC through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares and PIK Shares, if any, to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion or the Company Conversion Notice, as the case may be. The Company shall (A) deliver (or cause to be delivered) to the converting Holder who has converted less than all of such Holder's Certificated Series A-5 Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series A-5 Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series A-5 Preferred Stock converted. The Company agrees to maintain a transfer agent that is a participant in the DTC's FAST program so long as any shares of Series A-5 Preferred Stock remain outstanding. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares upon an Optional Conversion. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, in addition to any other rights herein, the Holder shall be entitled to elect by written notice to the Transfer Agent, on behalf of the Company, at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any Certificated Series A-5 Preferred Stock delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute. The Company's obligation to issue and deliver the Conversion Shares upon conversion of Series A-5 Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder.

(iv) [Reserved].

(v) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A-5 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (i) upon the conversion of all outstanding shares of Series A-5 Preferred Stock (taking into account the adjustments and restrictions of Section 7) and (ii) in respect of the PIK Shares. The Company covenants that all Conversion Shares and PIK Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of or as dividends on the Series A-5 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to upon such conversion or in respect of any such dividend, the Company shall round up to the next whole share of Common Stock.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Series A-5 Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series A-5 Preferred Stock and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(e) Beneficial Ownership Limitation. The Company shall not effect any conversion of the Series A-5 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-5 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-5 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-5 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-5 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "Beneficial Ownership Limitation" shall be 4.99% (or, at the written election of any Holder delivered to the Company pursuant to the terms of Section 9 prior to the issuance of any shares of Series A-5 Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series A-5 Preferred Stock held by the applicable Holder. A Holder, upon at least sixty-one (61) days advance notice to the Company, may terminate, increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(e); provided, however, that the Holder shall not be entitled to increase or terminate the limitation contained in this Section 6(e) if the Holder has acquired (or if any of the Holder's Attribution parties has indirectly acquired) the Series A-5 Preferred Stock with the purpose or effect of changing or influencing the control of the Company. The limitations contained in this Section 6(e) shall apply to a successor holder of Series A-5 Preferred Stock.

(f) **Primary Market Limitation.** Unless the Company obtains the approval of its stockholders as required by the applicable rules of the applicable Trading Market for issuances of Common Stock in excess of such amount, the Company shall not effect any conversion of the Series A-5 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series A-5 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, the Holder, together with the Attribution Parties, would beneficially own in excess of the Primary Market Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series A-5 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A-5 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series A-5 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). For purposes of this Section 6(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Primary Market Limitation**" shall be 19.99% of the number of shares of the Common Stock outstanding immediately as of the Effective Date, immediately prior to the issuance of any shares of Series A-5 Preferred. The limitations contained in this paragraph shall apply to a successor holder of the Series A-5 Preferred Stock.

Section 7. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Company, at any time while the Series A-5 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, will not include any shares of Common Stock issued by the Company upon conversion of this Series A-5 Preferred Stock or payment of a dividend on this Series A-5 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price will be multiplied by a fraction of which the numerator will be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event and of which the denominator will be the number of shares of Common Stock, or in the event that clause (D) of this Section 7(a) will apply shares of reclassified capital stock, outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) will become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series A-5 Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(c) Pro Rata Distributions. During such time as this Series A-5 Preferred Stock is outstanding, if the Company declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “Distribution”), at any time after the issuance of this Series A-5 Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Series A-5 Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder’s right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(d) Fundamental Transaction. If, at any time while the Series A-5 Preferred Stock is outstanding, (A) the Company effects any merger or consolidation of the Company with or into another Person, (B) the Company effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, or (C) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “Fundamental Transaction”), then, upon any subsequent conversion of the Series A-5 Preferred Stock, the Holders shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “Alternate Consideration”). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall adjust the Conversion Price in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration they receive upon any conversion of the Series A-5 Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(d) and insuring that the Series A-5 Preferred Stock (or any such replacement security) will be substantially similar in form and substance to this Certificate of Designations and insuring that the Series A-5 Preferred Stock will be convertible for a corresponding number of shares of capital stock of such successor entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series A-5 Preferred Stock (without regard to any limitations on the conversion of this Series A-5 Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Series A-5 Preferred Stock immediately prior to the consummation of such Fundamental Transaction) and will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 will be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(f) Notice to the Holders.

- (i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.
- (ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series A-5 Preferred Stock, and shall cause to be delivered to each Holder pursuant to Section 9, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert such Holder's Series A-5 Preferred Stock pursuant to Section 6(a) (subject to the Beneficial Ownership Limitation and the Primary Market Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided to the Holders, the Company or the Transfer Agent hereunder, including, without limitation, any Notice of Conversion or Company Conversion Notice, shall be in writing and delivered personally, by facsimile, by e-mail, or sent by a nationally recognized overnight courier service (i) if to the Holders, at the Holder's address set forth in the book and records of the Company or to another address of such Holder as may be specified by such Holder to the Company in a written notice delivered in accordance with this Section, or (ii) if to the Company, at 2912 Colorado Avenue, Suite 203, Santa Monica, CA 90404, or to another address as the Company may specify for such purposes by written notice to the Holders delivered in accordance with this Section. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided pursuant to this Certificate of Designations constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay accrued dividends, as applicable, on the shares of Series A-5 Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series A-5 Preferred Stock Certificate. If a Holder alleges that such Holder's Series A-5 Preferred Stock certificate has been lost, stolen or destroyed, the Company will only be obligated to issue a replacement certificate if the Holder delivers to the transfer agent, or the Company, as applicable: (i) a lost certificate affidavit; (ii) an indemnity bond in a form acceptable to the Company's transfer agent, or if the Company acts as its own transfer agent, an agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate; and (iii) any other documentation that the transfer agent or the Company, if the Company acts as its own transfer agent, may reasonably require.

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

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

(f) Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any dividend or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.



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

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

(i) Status of Converted Series A-5 Preferred Stock. If any shares of Series A-5 Preferred Stock shall be converted or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A-5 Convertible Preferred Stock.

[Signature page follows.]

IN WITNESS WHEREOF, this Certificate of Designations has been executed by a duly authorized officer of the Company as of this 31<sup>st</sup> day of January, 2023.

*/s/ Ann Hand*

Name: Ann Hand  
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES A-5 PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A-5 Convertible Preferred Stock indicated below into shares of common stock, \$.001 par value per share (the "Common Stock"), of Super League Gaming, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Series A-5 Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Series A-5 Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Series A-5 Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Series A-5 Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[Holder]

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

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [\*\*\*], HAS BEEN OMITTED BECAUSE SUPER LEAGUE GAMING, INC. HAS DETERMINED THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO SUPER LEAGUE GAMING, INC. IF PUBLICLY DISCLOSED.

PLACEMENT AGENCY AGREEMENT

October 12, 2022

[\*\*\*]

Re: Super League Gaming, Inc.

Ladies and Gentlemen:

This Placement Agency Agreement (“**Agreement**”) sets forth the terms upon which [\*\*\*] (“[\*\*\*]” or “**Placement Agent**”), a registered broker-dealer and member of the Financial Industry Regulatory Authority (“**FINRA**”), shall be engaged by Super League Gaming, Inc., a Delaware corporation (the “**Company**”) to act as exclusive Placement Agent in connection with the private placement (the “**Offering**”) of shares (the “**Shares**”) of Series A Convertible Preferred Stock, par value \$0.001 per share (the “**Series A Preferred Stock**”). The Offering will consist of a minimum of 5,000 Shares (\$5,000,000) (“**Minimum Offering Amount**”) and up to a maximum of 30,000 Shares (\$30,000,000) (“**Maximum Offering Amount**”) which shall be offered on a “reasonable efforts, all or none” basis as to the Minimum Offering Amount and a “reasonable efforts” basis for all amounts in excess of the Minimum Offering Amount. In the event the Offering is oversubscribed, the Company and Placement Agent may, in their mutual discretion, have Company sell up to 10,000 additional Shares for an additional aggregate purchase price of \$10,000,000 (the “**Overallotment**”). For purposes hereof, this Agreement shall also cover, and the term “Shares” shall include, the potential issuance and sale of another series of convertible preferred stock of the Company, with identical rights and preferences as the Series A Preferred Stock being sold in the Offering (except for voting provisions) and which may be sold to certain persons due to concerns relating to beneficial ownership limitations.

The purchase price for the Shares will be \$1,000 per Share (the “**Offering Price**”), with a minimum investment of \$100,000; *provided, however*, that subscriptions for lesser amounts may be accepted in the Company’s and Placement Agent’s joint discretion. The Placement Agent shall accept subscriptions only from persons or entities who qualify as “accredited investors,” as such term is defined in Rule 501 of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) under Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”). The Shares will be offered until the earlier of (i) the termination of the Offering as provided herein, (ii) the time that all Shares offered in the Offering are sold or (iii) December 5, 2022 (“**Initial Offering Period**”), which date may be extended by the Placement Agent and the Company in their joint discretion until February 3, 2023 (this additional period and the Initial Offering Period shall be referred to as the “**Offering Period**”). The date on which the Offering expires or is terminated shall be referred to as the “**Termination Date**.”

With respect to the Offering, the Company shall provide the Placement Agent, on terms set forth herein, the right to offer and sell all of the Shares being offered. Purchases of Shares may be made by the Placement Agent and its officers, directors, employees and affiliates. All such purchases, together with purchases by officers, directors, employees and affiliates of the Company, shall be included in calculations as to whether the Minimum Offering Amount, Maximum Offering Amount or Overallotment has been sold in the Offering. The Company, in its sole discretion, may accept or reject, in whole or in part, any prospective investment in the Shares. Notwithstanding anything to the contrary set forth herein, it is understood that no sale shall be regarded as effective unless and until accepted by the Company. The Company and the Placement Agent shall mutually agree with respect to allotting any prospective subscriber less than the number of Shares that such subscriber desires to purchase.

The Offering will be made by the Company solely pursuant to the Memorandum (as defined below), which at all times will be in form and substance reasonably acceptable to the Company, the Placement Agent and their respective counsel and contain such legends and other information as Company, the Placement Agent and their respective counsel, may, from time to time, deem necessary or desirable to be set forth therein. “**Memorandum**” as used in this Agreement means Company’s Confidential Private Placement Memorandum dated on or about October 12, 2022, inclusive of all annexes, and all amendments, supplements and appendices thereto.

1. Appointment of Placement Agent. On the basis of the representations and warranties provided herein, and subject to the terms and conditions set forth herein, the Placement Agent is appointed as exclusive placement agent for the Company during the Offering Period to assist the Company in finding qualified subscribers for the Offering. The Placement Agent shall also have exclusivity during the Offering Period with respect to any other securities that the Company desires to offer for capital raise purposes. The Placement Agent may sell Shares through other broker-dealers who are FINRA members, as well as through foreign finders pursuant to applicable FINRA rules, and may reallow all or a portion of the Agent Compensation (as defined in Section 3(b) below) it receives to such other broker-dealers or foreign finders. On the basis of such representations and warranties and subject to such terms and conditions, the Placement Agent hereby accepts such appointment and agrees to perform its services hereunder diligently and in good faith and in a professional and businesslike manner and to use its reasonable efforts to assist the Company in (A) finding subscribers of Shares who qualify as “accredited investors,” as such term is defined in Rule 501 of Regulation D, and (B) completing the Offering. The Placement Agent has no obligation to purchase any of the Shares. Unless sooner terminated in accordance with this Agreement, the engagement of the Placement Agent hereunder shall continue until the later of the Termination Date or the Final Closing (as defined below).

2. Representations, Warranties and Covenants of the Company. Except as set forth in the Memorandum, the SEC Reports (as defined herein) or in the schedule of exceptions delivered to the Placement Agent on the date hereof (the “**Schedule of Exceptions**”), the representations and warranties of the Company contained in this Section 2 are true and correct as of the date of this Agreement.

(a) The Memorandum has been prepared by the Company in compliance in all material respects with Regulation D and Section 4(a)(2) of the Act and the requirements of all other rules and regulations (the “**Regulations**”) relating to offerings of the type contemplated by the Offering, and the applicable securities laws and the rules and regulations of those jurisdictions wherein the Placement Agent notifies the Company that the Shares are to be offered and sold excluding any foreign jurisdictions. The Shares will be offered and sold pursuant to the registration exemptions provided by Regulation D and Section 4(a)(2) of the Act as a transaction not involving a public offering and the requirements of any other applicable state securities laws and the respective rules and regulations thereunder in those United States jurisdictions in which the Placement Agent notifies the Company that the Shares are being offered for sale. To the extent that Shares are offered in jurisdictions outside of the United States, such Shares will be offered and sold in compliance with all applicable laws that govern private securities offerings in the applicable country and in all local jurisdictions in which such Shares are offered. None of the Company, its affiliates, or any person acting on its or their behalf (other than the Placement Agent, its affiliates or any person acting on its behalf, in respect of which no representation is made) has taken nor will it take any action that conflicts with the conditions and requirements of, or that would make unavailable with respect to the Offering, the exemption(s) from registration available pursuant to Rule 506(b) of Regulation D or Section 4(a)(2) of the Act, or knows of any reason why any such exemption would be otherwise unavailable to it. None of the Company, its predecessors or affiliates has been subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failing to comply with Section 503 of Regulation D. The Company has not, for a period of six months prior to the commencement of the offering of Shares, sold, offered for sale or solicited any offer to buy any of its securities in a manner that would be integrated with the offer and sale of the Shares pursuant to this Agreement and would cause the exemption from registration set forth in Rule 506(b) of Regulation D to become unavailable with respect to the offer and sale of the Shares pursuant to this Agreement in the United States. For purposes of this Agreement, “to the Company’s Knowledge” or similar phrases means the actual knowledge of either of Ann Hand or Clayton Haynes of a fact or matter after making reasonable inquiry.

(b) The Memorandum does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, the foregoing does not apply to any statements or omissions made solely in reliance on and in conformity with written information furnished to the Company by the Placement Agent specifically for use in the preparation thereof. To the Company’s Knowledge, none of the statements, documents, certificates or other items made, prepared or supplied by the Company with respect to the transactions contemplated hereby contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made. There are no facts, circumstances or conditions which the Company has not disclosed in the Memorandum and of which the Company is aware that has had or that could reasonably be expected to have a Company Group Material Adverse Effect (as defined in Section 2(c) below). Notwithstanding anything to the contrary herein, the Company makes no representation or warranty with respect to any estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and other forecasts and plans) that may have been delivered to the Placement Agent or its representatives or that are contained in the Memorandum, except that such estimates, projections and other forecasts and plans have been prepared in good faith on the basis of assumptions stated therein, which assumptions were believed to be reasonable at the time of such preparation. Any statistical and market-related data included in the Memorandum are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate in all material respects and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(c) The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of Delaware and has the requisite power and authority to own its properties and to carry on its business as described in the Memorandum. Section 2(c) of the Schedule of Exceptions lists each entity owned or controlled, directly or indirectly by the Company (each a “**Subsidiary**” and collectively, the “**Subsidiaries**”). Each Subsidiary is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of the state or foreign jurisdiction of its incorporation or formation, as applicable, as set forth in Section 2(c) of the Schedule of Exceptions. Except as set forth on Section 2(c) of the Schedule of Exceptions, neither the Company nor any Subsidiary (i) owns or controls, directly or indirectly, any interest in any other corporation, association or other business entity or (ii) participates in any joint venture, partnership or similar arrangement. Each Subsidiary has the requisite company power to own, operate and lease its properties and to carry out its business as described in the Memorandum. Each of the Company and the Subsidiaries (collectively referred to herein as the “**Company Group**”) is qualified or licensed to do business in the jurisdictions listed in Section 2(c) of the Schedule of Exceptions, except for any failure to be so qualified or licensed that would not have a Company Group Material Adverse Effect. Each member of the Company Group is qualified or licensed to do business in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of its business makes qualification necessary, except where the failure to be so qualified or licensed would not reasonably be expected to result in a Company Group Material Adverse Effect. No member of the Company Group is in violation of any provision of any of its organizational documents. As used in this Agreement, “**Company Group Material Adverse Effect**” means any event, circumstance, change or effect that, individually or in the aggregate with all other events, circumstances, changes and effects, is or is reasonably likely to be materially adverse to (i) the business, condition (financial or otherwise), assets, prospects, liabilities or results of operations of the Company and its Subsidiaries taken as a whole or (ii) the ability of the Company to consummate the transactions contemplated by this Agreement and to perform its obligations under the Transaction Documents; provided, however, that clause (i) shall not include any event, circumstance, change or effect resulting from (y) changes in general economic conditions or changes in securities markets in general that do not have a materially disproportionate effect (relative to other industry participants) on the Company or its Subsidiaries or (z) general changes in the industries in which the Company and the Company Subsidiaries operate, except those events, circumstances, changes or effects that adversely affect the Company and its Subsidiaries to a materially greater extent than they affect other entities operating in such industries.

(d) The Company has all requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement substantially in the form of Exhibit B to the Memorandum (the “**Registration Rights Agreement**”), the Subscription Agreement substantially in the form of Exhibit A to the Memorandum (the “**Subscription Agreement**”), the Escrow Agreement (as hereinafter defined) and the other agreements contemplated hereby (this Agreement, the Subscription Agreement, the Registration Rights Agreement and the other agreements contemplated hereby that the Company is executing and delivering hereunder are collectively referred to herein as the “**Transaction Documents**”).

(e) The Shares to be purchased by investors pursuant to the Memorandum and the Agent Warrants (as defined in Section 3(b)) to be issued to the Placement Agent pursuant to the terms of this Agreement have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be duly and validly issued, fully paid and non-assessable and will have the rights, preferences and priorities set forth in the Company's Certificate of Incorporation (including the Certificate of Designation, as defined below). The shares of common stock, par value \$0.001 of the Company ("**Common Stock**") issuable upon conversion of the Shares and Agent Warrant Shares (as defined in Section 3(b)) (collectively, the "**Conversion Shares**") have been duly authorized and reserved for issuance and when issued by the Company upon valid conversion of the Shares and Agent Warrant Shares, will be duly and validly issued, fully paid and nonassessable. The shares of Common Stock which may be issued as dividends on the Shares (collectively, the "**Dividend Shares**") have been duly authorized and reserved for issuance, and when issued by the Company in payment of dividends on the Shares, will be duly and validly issued, fully paid and nonassessable. The Agent Warrant Shares have been duly authorized and reserved for issuance and when issued by the Company pursuant to the terms of the Agent Warrants, will be duly and validly issued, fully paid and nonassessable. The issuance of the Shares, Conversion Shares, Dividend Shares, Agent Warrants and Agent Warrant Shares are not subject to any preemptive or other similar rights of any securityholder of the Company. The capital stock of the Company conforms in all material respects to all statements relating thereto contained in the Memorandum. No holder of Shares or Agent Warrants will be subject to personal liability solely by reason of being such a holder.

(f) Prior to the First Closing, each of the Transaction Documents (other than this Agreement, which has already been authorized) will have been duly authorized. This Agreement has been duly authorized, executed and delivered and constitutes, and each of the other Transaction Documents, upon due execution and delivery, will constitute, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms (i) except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect related to laws affecting creditors' rights generally, including the effect of statutory and other laws regarding fraudulent conveyances and preferential transfers, and except that no representation is made herein regarding the enforceability of the Company's obligations to provide indemnification and contribution remedies under the securities laws and (ii) subject to the limitations imposed by general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(g) Neither the execution and the delivery of this Agreement or any Transaction Document, nor the consummation of the transactions contemplated hereby, will (with or without the passage of time or giving of notice): (i) to the Company's Knowledge, violate any injunction, judgment, order, decree, ruling, charge or other restriction, or any Law (as defined below) applicable to any member of the Company Group, (ii) violate any provisions of any of the charter documents of any member of the Company Group, (iii) violate or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a violation or default) under, result in the termination of, accelerate the performance required by any of the terms, conditions or provisions of any Material Contract (as defined in Section 2(n) below) of any member of the Company Group, or by which any member of the Company Group, or any of its respective operating assets, is bound or (iv) result in the creation of any lien, charge or other encumbrance on the assets or properties of any member of the Company Group. "**Law**" means any applicable federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, decree, directive, injunction, writ or similar action or decision.



(h) The financial statements included in the Memorandum, together with the related schedules and notes, present fairly, in all material respects, the financial position of the Company and its Subsidiaries, at the dates indicated and its results of operations, stockholders' equity and cash flows for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved (except for any preparation of non-GAAP measures). The supporting schedules, if any, present fairly, in all material respects, in accordance with GAAP the information required to be stated therein. Except as set forth in such financial statements or otherwise disclosed in the Memorandum, the Schedule of Exceptions attached hereto, or in the Company's reports, schedules, forms, statements and other documents filed by the Company under the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"), neither the Company nor any Subsidiary has any known material liabilities of any kind, whether accrued, absolute or contingent, or otherwise.

(i) Since the date of the Company's most recent financial statements contained in the Memorandum, there has been no Company Group Material Adverse Effect.

(j) As of the date of the First Closing, the Company will have the authorized and outstanding capital stock (as of the date of the Memorandum) as described in the Memorandum. All outstanding shares of capital stock of the Company are duly authorized, validly issued and outstanding, fully paid and non-assessable. Except as described in the Memorandum or in the SEC Reports, as of the date of the First Closing: (i) there will be no outstanding options, stock subscription agreements, warrants or other rights permitting or requiring the Company or others to purchase or acquire any shares of capital stock or other equity securities of the Company or to pay any dividend or make any other distribution in respect thereof; (ii) there will be no securities issued or outstanding which are convertible into or exchangeable for any of the foregoing and there are no contracts, commitments or understandings, whether or not in writing, to issue or grant any such option, warrant, right or convertible or exchangeable security; (iii) no shares of stock or other securities of the Company are reserved for issuance for any purpose; (iv) there will be no voting trusts or other contracts, commitments, understandings, arrangements or restrictions of any kind with respect to the ownership, voting or transfer of shares of stock or other securities of Company, including, without limitation, any preemptive rights, rights of first refusal, proxies or similar rights, and (v) no person holds a right to require Company to register any securities of Company under the Act or to participate in any such registration.

(k) The Certificate of Designation on the Series A Preferred Stock, the proposed form of which is attached to the Memorandum as Exhibit C (the “**Certificate of Designation**”), has been duly authorized by the Company and will have been duly executed and delivered by the Company and duly filed with the Secretary of State of the State of Delaware before the First Closing. The holders of the Series A Preferred Stock will have the rights set forth in the Certificate of Designation upon filing of the Certificate of Designation with the Secretary of State of the State of Delaware.

(l) The conduct of business by members of the Company Group as presently and proposed to be conducted is not subject to continuing oversight, supervision, regulation or examination by any governmental official or body of the United States, or any other jurisdiction wherein any such members currently conduct such business, except as described in the Memorandum. Neither the Company, nor any other member of the Company Group has received any notice of any violation of, or noncompliance with, any Law applicable to its business, the violation of, or noncompliance with, which would have or would reasonably be expected to have a Company Group Material Adverse Effect, and the Company knows of no facts or set of circumstances which could give rise to such a notice.

(m) Each member of the Company Group has all franchises, permits, authorizations, licenses, and any similar authority necessary for the conduct of its business as described in the Memorandum, except as would not, individually or in the aggregate, reasonably be expected to have a Company Group Material Adverse Effect. Except as disclosed in the Memorandum or the SEC Reports, no member of the Company Group has received written notice of (i) any pending proceedings which could reasonably be expected to result in the revocation, cancellation, suspension of any adverse modification of any such franchises, permits, authorizations, licenses or other similar authority or (ii) any default under any of such franchises, permits, licenses, authorizations or other similar authority, except as would not, individually or in the aggregate, reasonably be expected to have an Company Group Material Adverse Effect.

(n) Except as disclosed in the Memorandum or in the SEC Reports, no breach or default by any member of the Company Group or to the Company’s Knowledge, any other party exists in the due performance under any of the terms of any note, bond, indenture, mortgage, deed of trust, lease, rental agreement, material contract, material purchase or sales order or other material agreement or instrument to which any member of the Company Group is a party or by which it or its property is bound or affected (each of the foregoing, a “**Material Contract**”), and there exists no condition, event or act which constitutes, nor which after notice, the lapse of time or both, could constitute a default under any of the foregoing, except as would not, individually or in the aggregate, has had or is reasonably be expected to have an Company Group Material Adverse Effect. The Material Contracts disclosed in the Memorandum are in all material respects accurately described in the Memorandum and are in full force and effect in accordance with their respective terms, subject to any applicable bankruptcy, insolvency or other laws affecting the rights of creditors generally and to general equitable principles and the availability of specific performance.

(o) The members of the Company Group collectively, solely and exclusively own all right, title and interest in, or possesses enforceable rights to use, all patents, patent applications, trademarks, service marks, copyrights, rights, licenses, franchises, trade secrets, confidential information, processes and formulations necessary for the conduct of its business as now conducted (collectively, the “**Intangibles**”), except where the failure to own or possess such rights would not, individually or in the aggregate, would reasonably be expected to have a Company Group Material Adverse Effect. To the Company’s Knowledge, no member of the Company Group has infringed upon the rights of others with respect to the Intangibles and, except as disclosed in the Memorandum, no member of the Company Group has received any notice that such member has or may have infringed or is infringing upon the rights of others with respect to the Intangibles, nor has such member received any written notice of conflict with the asserted rights of others with respect to the Intangibles. To the Company’s Knowledge, all such Intangibles are enforceable and no others have infringed upon the rights of any members of the Company Group with respect to the Intangibles. None of the Company Group’s Intangibles have expired or terminated, or are expected to expire or terminate, within three years from the date of this Agreement. All current and former officers, employees, consultants and independent contractors of each member of the Company Group having access to proprietary information of a member of the Company Group, its customers or business partners and inventions owned by any member of the Company Group have executed and delivered to the applicable member of the Company Group an agreement regarding the protection of such proprietary information. The Company Group has secured, by valid written assignments from all of Company Group’s current and former consultants, independent contractors and employees who were involved in, or who contributed to, the creation or development of any Intangibles, unencumbered and unrestricted exclusive ownership of each such third party’s Intangibles in their respective contributions, except where the failure to do so would not individually or in the aggregate, reasonably be expected to have a Company Group Material Adverse Effect. No current or former employee, officer, director, consultant or independent contractor of any member of the Company Group has any right, license, claim or interest whatsoever in or with respect to any Intangibles.

(p) Except as set forth in the Memorandum or the SEC Reports, no member of the Company Group is a party to any collective bargaining agreement nor does it employ any member of a union. No executive officer of any member of the Company Group has provided written notice that such officer intends to leave the Company Group or otherwise terminate such officer's employment with the Company Group. No executive officer of any member of the Company Group, to the Company’s Knowledge, is in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company Group to any material liability with respect to any of the foregoing matters. To the Company’s Knowledge, Each member of the Company Group is in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Company Group Material Adverse Effect. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the Company’s Knowledge, is threatened, and the Company has no knowledge of any existing or imminent labor dispute by the employees of any of its principal suppliers, manufacturers, customers or contractors.

(q) Except (i) as set forth in the Memorandum, (ii) may be required under state securities or Blue Sky laws, (iii) as may be required under the Securities Act, the rules and regulations of the Commission under the Securities Act (the “**Securities Act Regulations**”), Exchange Act, the rules and regulations of the SEC under the Exchange Act (the “**Exchange Act Regulations**”), the rules of Nasdaq (the “**Exchange**”) or (iv) will have been obtained or made on or prior to the First Closing, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with any court or governmental authority or other Person on the part of any member of the Company Group is required in connection with the issuance or sale of the Shares or the consummation of the transactions contemplated herein or in the other Transaction Documents.

(r) Subsequent to the respective dates as of which information is given in the Memorandum, each of the members of the Company Group has operated their respective businesses in the ordinary course and, except as may otherwise be set forth in the Memorandum or in the SEC Reports, there has been no: (i) Company Group Material Adverse Effect; (ii) transaction otherwise than in the ordinary course of business consistent with past practice; (iii) issuance of any securities (debt or equity) or any rights to acquire any such securities other than pursuant to equity incentive plans approved by its board of directors; (iv) damage, loss or destruction, whether or not covered by insurance, with respect to any asset or property of any members of the Company Group or (v) agreement to permit any of the foregoing.

(s) Except as set forth in the Memorandum or the SEC Reports, there are no actions, suits, claims, hearings or proceedings pending before any court or governmental authority or, to the Company’s Knowledge, threatened, against any members of the Company Group, or involving its assets or any of its officers or directors (in their capacity as such) which, if determined adversely to such member of the Company Group or such officer or director, could reasonably be expected to have a Company Group Material Adverse Effect. No member of the Company Group is a party or subject to the provisions of any material order, writ, injunction, judgment or decree of any governmental authority that has not been satisfied in full or otherwise discharged.

(t) No member of the Company Group is: (i) in violation of its charter documents, (ii) in violation of any statute, rule or regulation applicable to such member, the violation of which would have or would reasonably be expected to have a Company Group Material Adverse Effect; or (iii) in violation of any judgment, decree or order of any court or governmental body having jurisdiction over such member of the Company Group, which violation or violations individually, or in the aggregate, could reasonably be expected to have a Company Group Material Adverse Effect.

(u) Except as disclosed in the Memorandum, no director, officer or manager of the Company or any Subsidiary or, to the Company’s Knowledge, none of the shareholders of the Company, any interest in any Person which is a competitor, supplier or customer of any member of the Company Group (unless such person is a publicly traded company), (ii) owns, directly or indirectly, in whole or in part, any property, asset or right, real, personal or mixed, tangible or intangible (including any of the Intangibles) which is utilized by or in connection with the business of any member of the Company Group, (iii) is a customer of, or supplier to, any member of the Company Group or (iv) directly or indirectly has an interest in or is a party to any Material Contract pertaining or relating to any member of the Company Group. In addition, no director, officer or employee of the Company, nor any affiliate of any such person nor to the Company’s Knowledge, no shareholder of the Company, is presently, directly or indirectly through his/her affiliation with any other person or entity, a party to any loan from any member of the Company Group.

(v) Each of the Company and the Subsidiaries has filed, on a timely basis, each federal, state, local and foreign tax return, report and declarations that were required to be filed, or has requested an extension therefor and has paid all taxes and all related assessments, charges, penalties and interest to the extent that the same have become due. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. Neither the Company nor any Subsidiary has executed any waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax. To the Company's Knowledge, none of the Company Group's tax returns is presently being audited by any taxing authority. No liens have been filed and no claims are being asserted by or against any member of the Company Group with respect to any taxes (other than liens for taxes not yet due and payable). The Company has received no notice of assessment or proposed assessment of any taxes claimed to be owed by it or any other Person on its behalf. Neither the Company nor any Subsidiary is a party to any tax sharing or tax indemnity agreement or any other agreement of a similar nature that remains in effect. The Company and the Subsidiaries have complied in all material respects with all applicable legal requirements relating to the payment and withholding of taxes and, within the time and in the manner prescribed by law, has withheld from wages, fees and other payments and paid over to the proper governmental or regulatory authorities all amounts required.

(w) Except as otherwise disclosed in the Memorandum or the SEC Reports, (i) each member of the Company Group has at all times conducted and currently conducts its business in compliance, in all material respects, with all Environmental Laws (as defined below), including having and complying with all environmental permits, licenses and other approvals and authorizations necessary for the operation of its business as presently conducted, (ii) no member of the Company Group has received any communication from any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company, any of its Subsidiaries or any of their respective properties, assets or operations (each, a **"Governmental Entity"**) or any other Person alleging that it may be or was in violation of, or liable under, any Environmental Law, and (iii) there is no claim pending, or to the Company's Knowledge, threatened, against the Company or any member of the Company Group arising under any Environmental Law. For purposes hereof, **"Environmental Law"** means any applicable Federal, state, local or foreign laws, relating to (a) the protection, preservation or restoration of the environment (including, air, water vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource) or (b) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of, Hazardous Substances, in each case as amended and as in effect on the date hereof. **"Hazardous Substance"** means any substance listed, defined, designated or classified as hazardous, toxic, radioactive, or dangerous, or otherwise regulated, under any Environmental Law. Hazardous Substance includes any substance for which exposure is regulated by any Governmental Entity or any Environmental Law including, but not limited to, any toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste, petroleum or any derivative or by-product thereof, radon, radioactive material, asbestos, or asbestos containing material, urea formaldehyde foam insulation, lead or polychlorinated biphenyls.

(x) Except as disclosed in the Memorandum or the SEC Reports, neither the Company nor any Subsidiary owns any real property. Each of the Company and the Subsidiaries has good and marketable title to all personal property and assets reflected as owned by it in the financial statements referred to in Section 2(h) above and which are material to the business of the Company or such Subsidiary, in each case free and clear of any security interests, mortgages, liens, encumbrances, claims and other defects, except such as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property. The real property, improvements, equipment and personal property held under lease by each of the Company and the Subsidiaries are held under valid and enforceable leases, with such exceptions as are not material, and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property. With respect to the property and assets leased, each member of the Company Group is in compliance with such leases, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Company Group Material Adverse Effect.

(y) Each member of the Company Group and any “employee benefit plan” (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, “ERISA”)) established or maintained by the Company, the Subsidiaries or their “ERISA Affiliates” (as defined below) are in compliance in all material respects with ERISA. “ERISA Affiliate” means, with respect to the Company or a Subsidiary, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the “Code”) of which the Company or such Subsidiary is a member. Each “employee benefit plan” established or maintained by the Company, its Subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(z) Neither the Company, any Subsidiary, nor, to the Company’s Knowledge, any director, officer, agent, employee or other Person acting on behalf of any of such entities has, in the course of its actions for, or on behalf of, the Company or any Subsidiary has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company, its Subsidiaries and, to the Company’s Knowledge, its and their respective affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(aa) The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the “**Money Laundering Laws**”); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(bb) Neither the Company, any of its Subsidiaries nor, to the Company’s Knowledge, its or their respective directors, officers, agents, employees or affiliates are currently the subject of sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority applicable to the Company and its Subsidiaries (collectively, “**Sanctions**”), nor is the Company or any of its Subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions; and the Company does not intend to, directly or indirectly, use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partners or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, purchaser or otherwise) of Sanctions.

(cc) Except as disclosed to the Placement Agent in writing, no member of the Company Group is obligated to pay, and has not obligated the Placement Agent to pay, a finder’s or origination fee in connection with the Offering (other than to the Placement Agent), and the Company hereby agrees to indemnify the Placement Agent from any such claim made by any other person, as more fully set forth in Section 8 hereof. Except as disclosed to the Placement Agent, the Company has not offered for sale or solicited offers to purchase the Shares except for negotiations with the Placement Agent.

(dd) Except as described in the Memorandum or the SEC Reports, the Company maintains an effective system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure.

(ee) Except as described in the Memorandum or the SEC Reports, the Company maintains effective internal control over financial reporting (as defined under Rule 13a-15 and 15d-15 of the Exchange Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Memorandum or the SEC Reports, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(ff) Each of the Company and the Subsidiaries is insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are prudent and customary in the business in which it is engaged, including directors and officers' liability.

(gg) The Company's Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act and is listed on the Exchange; the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange; except as set forth in the Memorandum or the SEC Reports, the Company has not received any notice that it is out of compliance with the listing or maintenance requirements of the Exchange and the Company is, and will continue to be, in material compliance with all such listing and maintenance requirements; and the Company has not received any notification that the SEC or the Exchange is contemplating terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange.

(hh) The Company, and all Company Related Persons (as defined below) are not subject to any of the disqualifications set forth in Rule 506(d) of Regulation D (each a "**Disqualification Event**"). The Company has exercised reasonable care to determine whether any Company Related Person is subject to a Disqualification Event. The Memorandum contains a true and complete description of the matters required to be disclosed with respect to the Company and the Company Related Persons pursuant to the disclosure requirements of Rule 506(e) of Regulation D, to the extent applicable. As used herein, "**Company Related Persons**" means any predecessor of the Company, any affiliated Company, any director, executive officer, other officer of the Company participating in the Offering, any general partner or managing member of the Company, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, and any "promoter" (as defined in Rule 405 under the Act) connected with the Company in any capacity. The Company agrees to promptly notify the Placement Agent in writing of (i) any Disqualification Event relating to any Company Related Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Company Related Person.



(ii) No representation or warranty by the Company contained in Section 2 of this Agreement and no statement by the Company contained in the Schedule of Exceptions to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances in which they are made, not misleading.

(jj) Until the earlier of (i) the Termination Date and (ii) the Final Closing, the Company will not issue any press release, grant any interview, or otherwise communicate with the media in any manner whatsoever with respect to the Offering without the Placement Agent's prior consent, which consent will not unreasonably be withheld, delayed or conditioned.

2A. Representations, Warranties and Covenants of Placement Agent. The Placement Agent represents and warrants to Company that the following representations and warranties are true and correct as of the date of this Agreement:

(a) [\*\*\*] is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to enter into this Agreement and to carry out and perform its obligations under the terms of this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by the Placement Agent, and upon due execution and delivery by the Company, this Agreement will be a valid and binding agreement of the Placement Agent enforceable against it in accordance with its terms, except as may be limited by principles of public policy and, as to enforceability, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditor's rights from time to time in effect and subject to general equity principles.

(c) The Placement Agent is a member in good standing of FINRA and is registered as a broker-dealer under the Exchange Act, and under the securities acts of each state into which it is making offers or sales of the Shares. The Placement Agent is in compliance with all applicable rules and regulations of the SEC and FINRA, except to the extent that such noncompliance would not have a material adverse effect on the transactions contemplated hereby. None of the Placement Agent or its affiliates, or any person acting on behalf of the foregoing (other than Company or its affiliates or any person acting on its or their behalf, in respect of which no representation is made) has taken nor will it take any action that conflicts with the conditions and requirements of, or that would make unavailable with respect to the Offering, the exemption(s) from registration available pursuant to Rule 506 of Regulation D or Section 4(a)(2) of the Act, or knows of any reason why any such exemption would be otherwise unavailable to it.

(d) None of the execution and delivery of or performance by the Placement Agent under this Agreement or any other agreement or document entered into by the Placement Agent in connection herewith or the consummation of the transactions herein or therein contemplated conflicts with or violates, any agreement or other instrument to which the Placement Agent is a party or by which its assets may be bound, or any term of its certificate of incorporation or by-laws, or any license, permit, judgment, decree, order, statute, rule or regulation applicable to Placement Agent or any of its assets, except in each case as would not have a material adverse effect on the transactions contemplated hereby.

(e) Neither Placement Agent nor any Placement Agent Related Persons (as defined below) are subject to any Disqualification Event. Placement Agent has exercised reasonable care to determine whether any Placement Agent Related Person is subject to a Disqualification Event. The Memorandum contains a true and complete description of the matters required to be disclosed with respect to Placement Agent and Placement Agent Related Persons pursuant to the disclosure requirements of Rule 506(e) of Regulation D, to the extent applicable. As used herein, “**Placement Agent Related Persons**” means any director, general partner, managing member, executive officer, or other officer of Placement Agent participating in the Offering. Placement Agent agrees to promptly notify the Company in writing of (i) any Disqualification Event relating to any Placement Agent Related Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Placement Agent Related Person.

### 3. Placement Agent Compensation.

(a) In connection with the Offering, the Company will pay at each Closing (as defined in Section 4(e) below) a cash fee (the “**Agent Cash Fee**”) to the Placement Agent equal to 10% of the gross proceeds from the sale of the Shares consummated at such Closing.

(b) As additional compensation, at or within ten (10) business days following the Final Closing, the Company will issue to the Placement Agent (or its designee(s)) for nominal consideration, a five-year warrants (the “**Agent Warrants**”) to purchase such number of shares of the Company’s common stock as is equal to 14.5% of the shares of Common Stock initially issuable upon conversion of the Shares sold at each closing in this Offering (the “**Agent Warrant Shares**”) at an exercise price equal to the Conversion Price of the Shares issued at such closing (the Agent Cash Fee and Agent Warrants are sometimes referred to herein collectively as “**Agent Compensation**”). The Agent Warrants will be exercisable on a “cashless” basis and for the five-year period following issuance. The Agent Warrants will be in such authorized denominations and will be registered in such names as the Placement Agent shall request in an instruction letter (the “**Agent Warrant Instruction Letter**”) to be delivered to the Company promptly following the Final Closing and the Company shall deliver such Agent Warrants to the Placement Agent within ten (10) business days following the delivery of the Agent Warrant Instruction Letter.

(c) At each Closing, the Company will pay [\*\*\*] a non-accountable expense allowance equal to 3% of the aggregate purchase price of the Shares sold at such Closing (the “**Agent Expense Allowance**”). The Agent Expense Allowance payable at the First Closing shall be reduced by the \$25,000 advance paid to [\*\*\*] previously. The Placement Agent will not bear any of Company’s legal, accounting, printing or other expenses in connection with any transaction contemplated hereby. [\*\*\*] will pay for its own expenses, including all its legal fees and expenses, from the Agent Expense Allowance.

(d) The Company shall also pay and issue to the Placement Agent the Agent Compensation calculated according to the percentages set forth in Sections 3(a) and (b) of this Agreement, if any person or entity contacted by the Placement Agent and provided with a Memorandum during the Offering Period and with whom the Placement Agent has discussions regarding a potential investment in the Offering, invests in the Company (other than through open or public market purchases or securities purchased in any underwritten public offering) and irrespective of whether such potential investor purchased Shares in the Offering (the “**Tail Investors**”) at any time prior to the earlier of the date that is twelve (12) months after the Termination Date or the Final Closing (“**Tail Period**”), whichever is applicable. The names of Tail Investors shall be provided in writing by the Placement Agent to the Company upon written request following the Termination Date or the Final Closing, as the case may be (the “**Tail Investor List**”). The Company acknowledges and agrees that the Tail Investor List is proprietary to the Placement Agent, shall be maintained in strict confidence by the Company and those persons/entities on such list shall not be contacted by the Company without the Placement Agent’s prior written consent; *provided, however*, that such restrictions shall not apply to ordinary course shareholder communications by the Company to its shareholders, including those Tail Investors that are shareholders of the Company. In the event the Placement Agent exercises its right of first refusal with respect to an offering pursuant to the provisions of Section 3(e) below, the specific compensation terms to the Placement Agent that are negotiated in such offering shall govern and the provisions of this Section 3(d) will not be operative with respect to such offering.

(e) Effective upon the sale of at least \$25,000,000 in the Offering, the Company agrees to grant to [\*\*\*], for a period of twelve (12) months following the Final Closing (the “**ROFR Term**”), the irrevocable preferential right of first refusal to act as lead placement agent for any proposed private placement of the Company’s securities (equity or debt) that is proposed to be consummated to investors in the United States with the assistance of a registered broker dealer. In that regard, it is understood that if the Company determines to pursue such a financing during the ROFR Term and wishes to engage a placement agent to assist in connection with such offering, the Company shall promptly provide the Placement Agent with a written notice of such intention and statement of terms (the “**Notice**”). If, within ten (10) business days of the receipt of the Notice, the Placement Agent does not accept in writing such offer to act as lead placement agent with respect to such offering upon the terms proposed, then the Company shall be entitled to engage a placement agent other than [\*\*\*]; provided that the terms of the compensation to be paid to such other placement agent or underwriter are not materially less favorable to the Company than the terms included in the Notice. The Placement Agent’s failure to exercise these preferential rights in any situation shall not affect its preferential rights to any subsequent offering during the ROFR Term. The Company represents and warrants that no other person has any right to participate in any offer, sale or distribution of the Company’s securities to which [\*\*\*]’ preferential rights shall apply.

(f) Effective upon the sale of at least \$10,000,000 in the Offering, at the Placement Agent's option, the Company agrees that it shall take, and shall cause its board of directors (the "**Board of Directors**") to take, all action within its powers to nominate one (1) representative designated by the Placement Agent (the "**PA Director**") as a member of the Board of Directors of the Company. In this regard, the Company shall give the PA Director copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that the PA Director shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided. In addition, as a Board of Directors designee, the PA Director shall be entitled to receive reimbursement for all reasonable costs incurred in attending such meetings, including but not limited to, meals, lodging and transportation. The PA Director shall be entitled to (i) the same indemnification protections afforded to other directors of the Company, including the Company's maintenance of an insurance policy providing liability insurance for directors and officers of the Company, (ii) cash compensation commensurate to what is provided to other board members of the Company and (iii) equity compensation in amounts to be determined based on the pool that is made available to non-employee directors of the Company. Further, the Placement Agent agrees that it will not propose any individual as the PA Director whose background does not comply with or would disqualify the Company from complying with (i) applicable securities laws, (ii) contractual obligations to and rules of the Exchange and (iii) the criteria for directors set forth in the then current charter of the Company's Nominating Committee, and will not disqualify the Company from being able to conduct any public offering or private placement pursuant to either Rule 506 (b) or (c) and any "bad boy" provisions of any state securities laws. This provision shall terminate upon the expiration of the initial term of the PA Director at the Company's annual stockholders meeting to be held in June 2025 (the "**2025 Meeting**"), provided, however, the PA Director shall have the right to be on the slate of directors for re-election at the 2025 Meeting, subject to the approval of such nomination by the Board of Directors of the Company (or any committee thereof).

(g) In the event that less than \$10,000,000 in aggregate gross proceeds are received in the Offering, the Placement Agent shall have the right to send one (1) designee to attend all meetings of the Board of Directors in a non-voting observer capacity (the "**PA Observer**"). In this regard, the Company shall give the PA Observer copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that the PA Observer shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude the PA Observer from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel. In addition, as the PA Observer shall be entitled to receive reimbursement for all reasonable costs incurred in attending such meetings, including but not limited to, meals, lodging and transportation. This provision shall terminate three years from the date of the Final Closing.

#### 4. Subscription and Closing Procedures.

(a) The Company shall cause to be delivered to the Placement Agent copies of the Memorandum, consents to the use of such copies for the purposes permitted by the Act and applicable securities laws and in accordance with the terms and conditions of this Agreement, and hereby authorizes Placement Agent and its agents and employees to use the Memorandum in connection with the offering of the Shares until the earlier of (i) the Termination Date or (ii) the Final Closing. No person or entity is or will be authorized to give any information or make any representations other than those contained in the Memorandum or to use any offering materials other than those contained in the Memorandum in connection with the sale of the Shares.

(b) During the Offering Period, the Company shall make available to the Placement Agent and its representatives such information as may be reasonably requested in making a reasonable investigation of the Company Group and their respective affairs and shall provide access to such employees during normal business hours as shall be reasonably requested by the Placement Agent.

(c) Each prospective purchaser will be required to complete and execute an original signature pages to the Subscription Agreement (the “**Subscription Documents**”), which will be forwarded or delivered to the Placement Agent at the Placement Agent’s offices at the address set forth in Section 12 hereof, together with the subscriber’s wire transfer in the full amount of the purchase price for the number of Shares desired to be purchased, subject to the Escrow Agent’s (as defined below) right to accept a check in lieu of a wire transfer.

(d) All funds for subscriptions received by the Placement Agent from the Offering (not otherwise wired directly to the Escrow Agent) will be promptly forwarded by the Placement Agent and deposited into a non-interest-bearing escrow account (the “**Escrow Account**”) established for such purpose with Signature Bank, New York, New York (the “**Escrow Agent**”). All such funds for subscriptions will be held in the Escrow Account pursuant to the terms of an escrow agreement among the Company, the Placement Agent and the Escrow Agent (the “**Escrow Agreement**”). The Company will pay all fees related to the establishment and maintenance of the Escrow Account and comply with procedures required by the Escrow Agent. The Company will either accept or reject, for any or no reason, the Subscription Documents in a timely fashion and at each Closing, the Company will countersign the Subscription Documents and provide duplicate copies of such documents to the Placement Agent for distribution to the subscribers. The Placement Agent, on the Company’s behalf, will promptly return to subscribers incomplete, improperly completed, improperly executed and rejected subscriptions.

(e) If subscriptions for at least the Minimum Offering Amount have been accepted prior to the Termination Date, the funds therefor have been collected by the Escrow Agent and all of the conditions set forth elsewhere in this Agreement are fulfilled, the First Closing shall be held promptly with respect to Shares sold. Thereafter remaining Shares will continue to be offered and sold until the Termination Date and additional closings (each a “**Closing**”) may from time to time be conducted at times mutually agreed to by the Placement Agent and the Company with respect to additional Shares sold, with the final closing (“**Final Closing**”) to occur within ten (10) days after the earlier of the Termination Date and the date on which the all Shares has been fully subscribed for. Delivery of payment for the accepted subscriptions for Shares from funds held in the Escrow Account will be made at each Closing against delivery of the Shares by the Company. The Shares will be issued to the investors in the Offering in book entry format at each Closing.

(f) If Subscription Documents for at least the Minimum Offering Amount have not been received and accepted by the Company on or before the Termination Date for any reason, the Offering will be terminated, no Shares will be sold, and pursuant to the terms of the Escrow Agreement, the Escrow Agent will, at the Company’s and the Placement Agent’s written direction, cause all monies received from subscribers for the Shares to be promptly returned to such subscribers without interest, penalty, expense or deduction and the Placement Agent and Company will promptly cooperate to accomplish the foregoing, including providing Escrow Agent with any requested written instructions in such regard.

5. Further Covenants. The Company hereby covenants and agrees that:

(a) Except upon prior written notice to the Placement Agent, the Company shall not, at any time prior to the Final Closing, knowingly take any action which would cause any of the representations and warranties made by it in this Agreement not to be complete and correct in all material respects on and as of each Closing Date with the same force and effect as if such representations and warranties had been made on and as of each such date (except to the extent any representation or warranty relates to an earlier date).

(b) If, at any time prior to the Final Closing, any event shall occur that causes a Company Group Material Adverse Effect or otherwise which as a result it becomes necessary to amend or supplement the Memorandum so that the representations and warranties herein remain true and correct in all material respects, or in case it shall be necessary to amend or supplement the Memorandum to comply with Regulation D or any other applicable securities laws or regulations, the Company will promptly notify the Placement Agent and shall, at its sole cost, prepare and furnish to the Placement Agent copies of appropriate amendments and/or supplements in such quantities as the Placement Agent may reasonably request for delivery by the Placement Agent to potential subscribers. The Company will not at any time before the Final Closing prepare or use any amendment or supplement to the Memorandum of which the Placement Agent will not previously have been advised and furnished with a copy, or which is not in compliance in all material respects with the Act and other applicable securities laws. As soon as the Company is advised thereof, the Company will advise the Placement Agent and its counsel, and confirm the advice in writing, of any order preventing or suspending the use of the Memorandum, or the suspension of any exemption for such qualification or registration thereof for offering in any jurisdiction, or of the institution or threatened institution of any proceedings for any of such purposes, and the Company will use its reasonable best efforts to prevent the issuance of any such order and, if issued, to obtain as soon as reasonably possible the lifting thereof.

(c) The Company shall comply with the Act, the Exchange Act and the rules and regulations thereunder, all applicable state securities laws and the rules and regulations thereunder in the states in which the Company's blue sky counsel has advised the Placement Agent that the Shares are qualified or registered for sale or exempt from such qualification or registration, so as to permit the continuance of the sales of the Shares, and will file or cause to be filed with the SEC, and shall promptly thereafter forward or cause to be forwarded to the Placement Agent, any and all reports on Form D as are required.

(d) The Company shall use its best efforts to qualify the Shares for sale under the securities laws of such jurisdictions in the United States as may be mutually agreed to by the Company and the Placement Agent, and Company will make or cause to be made such applications and furnish information as may be required for such purposes, provided that Company will not be required to qualify as a foreign corporation in any jurisdiction or execute a general consent to service of process. The Company will, from time to time, prepare and file such statements and reports as are or may be required to continue such qualifications in effect for so long a period as the Placement Agent may reasonably request with respect to the Offering.

(e) The Company shall place a legend on the certificates representing the Shares and the Agent Warrants that the securities evidenced thereby have not been registered under the Act or applicable state securities laws, setting forth or referring to the applicable restrictions on transferability and sale of such securities under the Act and applicable state laws.

(f) The Company shall apply the net proceeds from the sale of the Shares for the purposes substantially as described in the Memorandum. Except as set forth in the Memorandum, the Company shall not use any of the net proceeds of the Offering to repay indebtedness to officers (other than accrued salaries incurred in the ordinary course of business), directors or shareholders of the Company without the prior written consent of the Placement Agent.

(g) During the Offering Period, the Company shall afford each prospective purchaser of Shares the opportunity to ask questions of and receive answers from an officer of the Company concerning the terms and conditions of the Offering and the opportunity to obtain such other additional information necessary to verify the accuracy of the Memorandum to the extent the Company possesses such information or can acquire it without unreasonable expense. In addition, to the extent that any purchaser of Shares has inquiries concerning any of the business or operations of any member of the Company Group, the Company shall use reasonable best efforts to ensure that officers of such members are made available to respond to such inquiries.

(h) Except upon obtaining the prior written consent of [\*\*\*], which consent shall not be unreasonably withheld, the Company shall not, at any time prior to the earlier of the Final Closing or the Termination Date, except as contemplated by the Memorandum (i) engage in or commit to engage in any transaction outside the ordinary course of business, (ii) issue, agree to issue or set aside for issuance any securities (debt or equity) or any rights to acquire any such securities; provided, however, that the Company shall be permitted to issue stock options and/or restricted stock to officers, advisors, directors and employees of the Company pursuant to its existing equity incentive plan as described in the SEC Reports, (ii) incur, outside of the ordinary course of business, any material indebtedness, (iii) dispose of any material assets, (iv) make any acquisition (except to the extent specifically referenced in the Memorandum) or (v) change its business or operations.

(i) The Company shall pay all reasonable expenses incurred in connection with the preparation and printing of all necessary offering documents and instruments related to the Offering and the issuance of the Shares and the Agent Warrants and will also pay its own expenses for accounting fees, legal fees and other costs involved with the Offering. All blue sky filings related to this Offering shall be prepared by the Company's counsel, at the Company's expense, with copies of all filings to be promptly forwarded to the Placement Agent. Further, as promptly as practicable after the Final Closing, the Company shall prepare, at its own expense, velobound "closing binders" relating to the Offering and will distribute one such binder to each of the Placement Agent and its counsel.

(j) Until the earlier of the Termination Date or the Final Closing, the Company will not, nor will any person or entity acting on Company's behalf, negotiate with any other placement agent or underwriter with respect to a private or public offering of such entity's debt or equity securities. Neither the Company nor anyone acting on the Company's behalf will, until the earlier of the Termination Date or the Final Closing, without the prior written consent of the Placement Agent, offer for sale to, or solicit offers to subscribe for any securities of the Company from, or otherwise approach or negotiate in respect thereof with, any other person.

(k) As reflected in its SEC filings, the Company is subject to (i) an Equity Distribution Agreement dated September 3, 2021 with two investment banks (the "**Agents**"), pursuant to which the Company may offer and sell, from time to time, through the Agents (the "**ATM Offering**"), up to \$75 million of its shares of common stock and (ii) a common stock purchase agreement dated March 25, 2022 (the "**Purchase Agreement**") with Tumim Stone Capital, LLC pursuant to which the Company has the right, but not the obligation, to sell to Tumim, and Tumim is obligated to purchase, up to \$10,000,000 of newly issued shares of the Company's common stock from time to time during the term of the Purchase Agreement (the "**ELOC**"). With respect to the ATM Offering and the ELOC, the Company agrees as follows:

- a. During the Offering Period, the Company shall not access funds or otherwise utilize either the ATM or the ELOC.
- b. If less than \$10,000,000 of gross proceeds is raised in the Offering, there shall be no restrictions to the Company's ability to access funds or otherwise utilize either the ATM or the ELOC
- c. If between \$10,000,000 and \$19,999,999 of gross proceeds is raised in the Offering, the Company shall not access funds or otherwise utilize either the ATM or the ELOC until the registration statement required to be filed pursuant to the Registration Rights Agreement is declared effective by the SEC ("**Effective Date**") and a period of 45 days have elapsed from such date; and
- d. If more than \$20,000,000 of gross proceeds is raised in the Offering, the ability of the Company to access funds or otherwise utilize either the ATM or the ELOC shall be permitted but only following obtaining the written consent of the Placement Agent; *provided, however*, the foregoing consent shall not be required after six (6) months following the Effective Date, after which time the Company shall have the ability to access funds or otherwise utilize either the ATM or the ELOC without restriction.

5A. Placement Agent Further Covenants. The Placement Agent shall not, at any time during the Offering Period, knowingly take any action which would cause any of the representations and warranties made by it in this Agreement not to be complete and correct in all material respects on and as of each Closing Date with the same force and effect as if such representations and warranties had been made on and as of each such date (except to the extent any representation or warranty relates to an earlier date). Offers and sales of the Shares by the Placement Agent will be made in accordance with this Agreement and in compliance with the provisions of Regulation D, Regulation S, if applicable, and the Securities Act.



6. Conditions of Placement Agent's Obligations. The obligations of the Placement Agent hereunder to effect a Closing are subject to the fulfillment, at or before each Closing, of the following additional conditions:

(a) Each of the representations and warranties made in this Agreement by the Company qualified as to materiality shall be true and correct at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date, and the representations and warranties made by the Company not qualified as to materiality shall be true and correct in all material respects at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date.

(b) The Company shall have performed and complied in all material respects with all agreements, covenants and conditions required to be performed and complied with by the Company at or before the Closing.

(c) The Memorandum shall not, and as of the date of any amendment or supplement thereto will not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) The Company shall have obtained all consents, waivers and approvals required to be obtained by such parties in connection with the consummation of the transactions contemplated hereby.

(e) No order suspending the use of the Memorandum or enjoining the Offering or sale of the Shares shall have been issued, and no proceedings for that purpose or a similar purpose shall have been initiated or pending, or, to Company's knowledge, threatened.

(f) The Placement Agent shall have received a certificate of an officer of the Company, dated as of the date of such Closing, certifying, as to the fulfillment of the conditions set forth in subparagraphs (a), (b), (c), (d) and (e) above.

(g) Prior to the First Closing, the Company shall have delivered to the Placement Agent: (i) a certified charter document and good standing certificate for the Company and each Subsidiary, each dated as of a date within ten (10) days prior to the First Closing from the secretary of state of its jurisdiction of incorporation or formation, as applicable, and (ii) resolutions of the Company's board of directors approving this Agreement and the transactions and agreements contemplated by this Agreement, certified by the Chief Executive Officer of the Company.

(h) At each Closing, the Company shall pay and/or issue to the Placement Agent the Agent Cash Fee and Agent Expense Allowance earned in such Closing. Promptly following the Final Closing, the Placement Agent shall provide the Company with instructions with respect to the issuance of the Agent Warrants and the Company shall promptly issue said Agent Warrants and deliver same to the Placement Agent.

(i) At each Closing, the Company shall deliver to the Placement Agent a signed opinion of Disclosure Law Group, counsel to the Company, dated as of each such Closing Date, substantially in the form annexed hereto as Exhibit A.

(j) Prior to each Closing, the Company shall provide evidence of the filing of the Certificate of Designation on the Series A Preferred Stock with the State of Delaware covering the Shares issued at such Closing.

(k) All proceedings taken at or prior to any Closing in connection with the authorization, issuance and sale of the Shares will be reasonably satisfactory in form and substance to the Placement Agent and its counsel, and such counsel shall have been furnished with all such documents and certificates as it may reasonably request upon reasonable prior notice in connection with the transactions contemplated hereby.

(l) At each Closing, the Company shall provide irrevocable instructions to its transfer agent to issue into treasury shares, and reserve for future and automatic issuance upon the requested conversion of the Shares by any holder, such number of shares of Common Stock issuable upon the conversion of the Shares sold in such Closing.

7. Conditions of Company's Obligations. The obligations of the Company hereunder to effect a Closing are subject to the fulfillment, at or before such Closing, of the following additional conditions or subject to the waiver of such condition or conditions by the Company:

(a) Each of the representations and warranties made in this Agreement by the Placement Agent qualified as to materiality shall be true and correct at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date, and the representations and warranties made by the Placement Agent not qualified as to materiality shall be true and correct in all material respects at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date.

(b) The Placement Agent shall have performed and complied in all material respects with all agreements, covenants and conditions required to be performed and complied with by it at or before the Closing.

(c) The Company shall have received a certificate of an officer of the Placement Agent, dated as of the Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (a) and (b) above.

(d) No order suspending the use of the Memorandum or enjoining the Offering or sale of the Shares shall have been issued, and no proceedings for that purpose or a similar purpose shall have been initiated or pending, or, to the Company's knowledge, be contemplated or threatened.

8. Indemnification.

(a) The Company will: (i) indemnify and hold harmless the Placement Agent, its officers, directors, partners, employees, agents (including subagents and selected dealers) and each person, if any, who controls the Placement Agent within the meaning of the Section 15 of the Act or Section 20(a) of the Exchange Act (each an “**Indemnitee**”) against, and pay or reimburse each Indemnitee for, any and all losses, claims, damages, liabilities or expenses whatsoever (or actions or proceedings or investigations in respect thereof), joint or several (which will, for all purposes of this Agreement, include, but not be limited to, all reasonable costs of defense and investigation and all reasonable attorneys’ fees, including appeals), to which any Indemnitee may become subject under the Act or otherwise, in connection with the offer and sale of the Shares, insofar as such losses, claims, damages, liabilities or expenses arise out of or relate to a breach of any representation, warranty or covenant made by the Company herein, regardless of whether such losses, claims, damages, liabilities or expenses shall result from any claim by any Indemnitee or by any third party; and (ii) reimburse each Indemnitee for any legal or other expenses reasonably and actually incurred in connection with investigating or defending against any such loss, claim, action, proceeding or investigation; *provided, however*, that the Company will not be liable in any such case to the extent that any such claim, damage or liability is finally judicially determined to have resulted primarily and directly from (A) an untrue statement or alleged untrue statement of a material fact made in the Memorandum, or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, made solely in reliance upon and in conformity with written information furnished to the Company by the Placement Agent specifically for use in the Memorandum, (B) any violations by the Placement Agent of the Act, state securities laws or any rules or regulations of FINRA, which does not result from a violation thereof by the Company or any of its affiliates, or (C) the Placement Agent’s willful misconduct or gross negligence. In addition to the foregoing agreement to indemnify and reimburse, the Company will indemnify and hold harmless each Indemnitee against any and all losses, claims, damages, liabilities or expenses whatsoever (or actions or proceedings or investigations in respect thereof), joint or several (which shall, for all purposes of this Agreement, include, but not be limited to, all reasonable costs of defense and investigation and all reasonable attorneys’ fees, including appeals) to which any Indemnitee may become subject insofar as such costs, expenses, losses, claims, damages or liabilities arise out of or are based upon the claim of any person or entity that he or it is entitled to broker’s or finder’s fees from any Indemnitee in connection with the Offering, other than fees due to the Placement Agent. The foregoing indemnity agreements will be in addition to any liability the Company may otherwise have.

(b) [\*\*\*] will indemnify and hold harmless the Company and its officers, directors, and each person, if any, who controls such entity within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act against, and pay or reimburse any such person for, any and all losses, claims, damages, liabilities or expenses whatsoever (or actions, proceedings or investigations in respect thereof) to which the Company or any such person may become subject under the Act or otherwise, whether such losses, claims, damages, liabilities or expenses shall result from any claim of the Company or by any third party, but only to the extent that such losses, claims, damages or liabilities are finally judicially determined to have resulted primarily from or as a result of (i) any untrue statement or alleged untrue statement of any material fact contained in the Memorandum made in reliance upon and in conformity with information contained in the Memorandum relating to the Placement Agent, or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in either case, if made or omitted in reliance upon and in conformity with written information furnished to the Company by the Placement Agent, specifically for use in the Memorandum or (ii) any violations by the Placement Agent of the Act or state securities laws which does not result from a violation thereof by the Issuer, the Operating Company or any of their respective affiliates, the Placement Agent's willful misconduct or gross negligence. The Placement Agent will reimburse the Company, and any such person for any legal or other expenses reasonably incurred in connection with investigating or defending against any such loss, claim, damage, liability or action, proceeding or investigation to which such indemnity obligation applies. The foregoing indemnity agreements are in addition to any liability which the Placement Agent may otherwise have. Notwithstanding the foregoing, in no event shall the Placement Agent's indemnification obligation hereunder exceed the aggregate amount of the Agent Cash Fees received by the Placement Agent hereunder.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, claim, proceeding or investigation (the "Action"), such indemnified party, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, will notify the indemnifying party of the commencement thereof, but the omission to so notify the indemnifying party will not relieve it from any liability that it may have to any indemnified party under this Section 8 unless the indemnifying party has been substantially prejudiced by such omission. The indemnifying party will be entitled to participate in and, to the extent that it may wish, jointly with any other indemnifying party, to assume the defense thereof subject to the provisions herein stated, with counsel reasonably satisfactory to such indemnified party. The indemnified party will have the right to employ separate counsel in any such Action and to participate in the defense thereof, but the fees and expenses of such counsel will not be at the expense of the indemnifying party if the indemnifying party has assumed the defense of the Action with counsel reasonably satisfactory to the indemnified party, *provided, however*, that if the indemnified party shall be requested by the indemnifying party to participate in the defense thereof or shall have concluded in good faith and specifically notified the indemnifying party either that there may be specific defenses available to it that are different from or additional to those available to the indemnifying party or that such Action involves or could have a material adverse effect upon it with respect to matters beyond the scope of the indemnity agreements contained in this Agreement, then the counsel representing it, to the extent made necessary by such defenses, shall have the right to direct such defenses of such Action on its behalf and in such case the reasonable fees and expenses of such counsel in connection with any such participation or defenses shall be paid by the indemnifying party. No settlement of any Action against an indemnified party will be made without the consent of the indemnifying party and the indemnified party, which consent shall not be unreasonably withheld, delayed or conditioned in light of all factors of importance to such party, and no indemnifying party shall be liable to indemnify any person for any settlement of any such claim effected without such indemnifying party's consent.

9. Contribution. To provide for just and equitable contribution, if: (i) an indemnified party makes a claim for indemnification pursuant to Section 8 hereof and it is finally determined, by a judgment, order or decree not subject to further appeal that such claims for indemnification may not be enforced, even though this Agreement expressly provides for indemnification in such case; or (ii) any indemnified or indemnifying party seeks contribution under the Act, the Exchange Act, or otherwise, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Placement Agent on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Placement Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the Offering (before deducting expenses) received by the Company bear to the total Agent Cash Fees received by the Placement Agent. The relative fault, in the case of an untrue statement, alleged untrue statement, omission or alleged omission will be determined by, among other things, whether such statement, alleged statement, omission or alleged omission relates to information supplied by the Company or by the Placement Agent, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement, alleged statement, omission or alleged omission. The Company and the Placement Agent agree that it would be unjust and inequitable if the respective obligations of the Company and the Placement Agent for contribution were determined by *pro rata* allocation of the aggregate losses, liabilities, claims, damages and expenses or by any other method or allocation that does not reflect the equitable considerations referred to in this Section 9. No person guilty of a fraudulent misrepresentation (within the meaning of Section 10(f) of the Act) will be entitled to contribution from any person who is not guilty of such fraudulent misrepresentation. For purposes of this Section 9, each person, if any, who controls the Placement Agent within the meaning of the Act will have the same rights to contribution as the Placement Agent, and each person, if any, who controls the Company within the meaning of the Act will have the same rights to contribution as the Company, subject in each case to the provisions of this Section 9. Anything in this Section 9 to the contrary notwithstanding, no party will be liable for contribution with respect to the settlement of any claim or action effected without its written consent. This Section 9 is intended to supersede, to the extent permitted by law, any right to contribution under the Act, the Exchange Act or otherwise available.

10. Termination.

(a) The Offering may be terminated by the Placement Agent at any time prior to the expiration of the Offering Period in the event that: (i) any of the representations, warranties or covenants of the Company contained herein or in the Memorandum shall prove to have been false or misleading in any material respect when actually made; (ii) the Company shall have failed to perform any of its material obligations hereunder or under any other Transaction Documents; (iii) there shall occur any event that could reasonably be expected to result in a Company Group Material Adverse Effect or (iv) the Placement Agent determines that it is reasonably likely that any of the conditions to Closing set forth herein will not, or cannot, be satisfied. In the event of any such termination by the Placement Agent pursuant to the above, the Placement Agent shall be entitled to retain any Agent Compensation already earned (if any, at such point in time) and receive from the Company, within five (5) business days of the Termination Date, in addition to other rights and remedies it may have hereunder, at law or otherwise, an amount equal the sum of upon presentation of a written accounting in reasonable detail, reimbursement of Placement Agent's reasonable and actual out-of-pocket expenses related to the Offering in excess of the foregoing retainer, including but not limited to fees and expenses of its legal counsel (not to exceed \$75,000), travel expenses and due diligence related expenditures (collectively, the "**PA Expense Reimbursement**") and the provisions of Sections 3(d) and 3(e) shall survive in full force and effect.

(b) This Offering may be terminated by the Company at any time prior to the expiration of the Offering Period on account of the Placement Agent's fraud, willful misconduct or gross negligence. In the event of any such termination pursuant to this Section 10(b), the Placement Agent shall not be entitled to any further compensation pursuant to these termination provisions.

(c) In the event the Company unilaterally decides for any reason (other than pursuant to Section 10(b) above) to terminate the Offering at any time prior to the earlier of the First Closing or the Termination Date (the "**Unilateral Termination**"), the Placement Agent shall be entitled to receive from the Company within five (5) business days of such termination the sum of \$100,000 plus the PA Expense Reimbursement. In addition, if within twelve (12) months after the Unilateral Termination, the Company conducts a public or private offering of its securities, other than pursuant to, or under the terms of the ELOC or the ATM Offering, then upon the closing of any such transaction, the Company shall pay the Placement Agent in cash, within five (5) business days of the closing of any such transaction, an amount equal to 1.5% of the gross proceeds from such private or public offering; provided that such percentage shall be the applicable percentages set forth in section 3(d) hereto with respect to any gross proceeds from Tail Investors.

(d) This Offering may be terminated upon mutual agreement of the Company and the Placement Agent, at any time prior to the expiration of the Offering Period. In addition, upon the expiration of the Offering Period, the Offering shall terminate without any further action of the parties hereto. If the Offering is terminated pursuant to this Section 10(d), then in cases in which no Closing had been theretofore consummated, the Company's sole obligation to the Placement Agent shall be the PA Expense Reimbursement which shall be paid within five (5) business days of such termination.

(e) Before any termination by the Placement Agent under Section 10(a) or by the Company under Section 10(b) shall become effective, the terminating party shall give written notice to the other party of its intention to terminate the Offering, which shall set forth the specific grounds for the proposed termination (the "**Termination Notice**"). If the specified grounds for termination, or their resulting adverse effect on the transactions contemplated hereby, are curable, then the other party shall have ten (10) days from the Termination Notice within which to remove such grounds or to eliminate all of their material adverse effects on the transactions contemplated hereby; otherwise, the Offering shall terminate.

(f) Upon any termination pursuant to this Section 10, the parties to this Agreement will promptly instruct Escrow Agent to cause all monies received with respect to the subscriptions for Shares not closed upon to be promptly returned to such subscribers without interest, penalty or deduction.

11. Survival.

(a) The obligations of the parties to pay any costs and expenses hereunder and to provide indemnification and contribution as provided herein shall survive any termination or completion of the Offering. In addition, the provisions of Sections 3(d), 3(e), 3(f), 3(g) and 10 through 17 hereof shall also survive the termination or expiration of this Offering.

(b) The respective indemnities, covenants, representations, warranties and other statements of Company and the Placement Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of, and regardless of any access to information by, the Company, the Company or the Placement Agent, or any of their officers or directors or any controlling person thereof, and will survive the sale of the Shares or any termination of the Offering hereunder for a period of two (2) years from the earlier to occur of the Final Closing or the termination of the Offering.

12. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered personally, or the date mailed if mailed by registered or certified mail (postage prepaid, return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like changes of address which shall be effective upon receipt) or sent by facsimile transmission, with confirmation received or email. If sent to the Placement Agent, such notice will be mailed, delivered or telefaxed and confirmed to [\*\*\*], if sent to Company, such notice will be mailed, delivered or telefaxed and confirmed to Super League Gaming, Inc., 2912 Colorado Ave. Suite #203, Santa Monica, CA 90404, Attention: Ann Hand, CEO, email: [ann.hand@superleague.com](mailto:ann.hand@superleague.com), with a copy (which shall not constitute notice) to: Disclosure Law Group, a professional corporation, 655 W. Broadway, Suite 870, San Diego, CA 92101, Attention: Daniel W. Rumsey, Esq, email: [drumsey@disclosurelawgroup.com](mailto:drumsey@disclosurelawgroup.com).

13. Governing Law, Jurisdiction. This Agreement shall be deemed to have been made and delivered in New York City and shall be governed as to validity, interpretation, construction, affect and in all other respects by the internal laws of the State of New York. **THE PARTIES AGREE THAT ANY DISPUTE, CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE TERMINATION OR VALIDITY HEREOF, ANY ALLEGED BREACH OF THIS AGREEMENT OR THE ENGAGEMENT CONTEMPLATED HEREBY (ANY OF THE FOREGOING, A "CLAIM") SHALL BE SUBMITTED TO THE JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS"), OR ITS SUCCESSOR, IN NEW YORK, FOR FINAL AND BINDING ARBITRATION IN FRONT OF A PANEL OF THREE ARBITRATORS WITH JAMS IN NEW YORK, NEW YORK UNDER THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES (WITH EACH OF THE PLACEMENT AGENT AND THE COMPANY CHOOSING ONE ARBITRATOR, AND THE CHOSEN ARBITRATORS CHOOSING THE THIRD ARBITRATOR). THE ARBITRATORS SHALL, IN THEIR AWARD, ALLOCATE ALL OF THE COSTS OF THE ARBITRATION, INCLUDING THE FEES OF THE ARBITRATORS AND THE REASONABLE ATTORNEYS' FEES OF THE PREVAILING PARTY, AGAINST THE PARTY WHO DID NOT PREVAIL. THE AWARD IN THE ARBITRATION SHALL BE FINAL AND BINDING. THE ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SEC. 1-16, AND THE JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED BY ANY COURT HAVING JURISDICTION THEREOF. THE COMPANY AND THE PLACEMENT AGENT AGREE AND CONSENT TO PERSONAL JURISDICTION, SERVICE OF PROCESS AND VENUE IN ANY FEDERAL OR STATE COURT WITHIN THE STATE AND COUNTY OF NEW YORK IN CONNECTION WITH ANY ACTION BROUGHT TO ENFORCE AN AWARD IN ARBITRATION.**

14. Miscellaneous. No provision of this Agreement may be changed or terminated except by a writing signed by the party or parties to be charged therewith. Unless expressly so provided, no party to this Agreement will be liable for the performance of any other party's obligations hereunder. Either party hereto may waive compliance by the other with any of the terms, provisions and conditions set forth herein; *provided, however*, that any such waiver shall be in writing specifically setting forth those provisions waived thereby. No such waiver shall be deemed to constitute or imply waiver of any other term, provision or condition of this Agreement. Neither party may assign its rights or obligations under this Agreement to any other person or entity without the prior written consent of the other party.

15. Entire Agreement; Severability. This Agreement together with any other agreement referred to herein supersedes all prior understandings and written or oral agreements between the parties with respect to the Offering and the subject matter hereof. If any portion of this Agreement shall be held invalid or unenforceable, then so far as is reasonable and possible (i) the remainder of this Agreement shall be considered valid and enforceable and (ii) effect shall be given to the intent manifested by the portion held invalid or unenforceable.

16. Limitation of Engagement to the Company. The Company acknowledges that the Placement Agent has been retained only by the Company, that the Placement Agent is providing services hereunder as an independent contractor (and not in any fiduciary or agency capacity) and that the Company's engagement of the Placement Agent is not deemed to be on behalf of, and is not intended to confer rights upon, any shareholder, owner or partner of the Company or any other person not a party hereto as against the Placement Agent or any of its affiliates, or any of its or their officers, directors, controlling persons (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), employees or agents, other than the indemnification and contribution provisions set forth in Sections 8 and 9 hereof. Unless otherwise expressly agreed in writing by the Placement Agent or as provided in Sections 8 or 9 hereof, no one other than the Company is authorized to rely upon this Agreement or any other statements or conduct of the Placement Agent, and no one other than the Company is intended to be a beneficiary of this Agreement.

17. Modification; Waiver. No provision of this Agreement may be changed or terminated except by a writing signed by the party or parties to be charged therewith. Any party hereto may waive compliance by the other with any of the terms, provisions and conditions set forth herein; *provided, however* that any such waiver shall be in writing specifically setting forth those provisions waived thereby. No such waiver shall be deemed to constitute or imply waiver of any other term, provision or condition of this Agreement.



18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement (and all signatures need not appear on anyone counterpart). Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, for example, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. This Agreement shall become effective when one or more counterparts has been signed and delivered by each of the parties hereto.

*[Signatures on following page.]*

If the foregoing is in accordance with your understanding of the agreement between the Company and the Placement Agent, kindly sign and return this Agreement, whereupon it will become a binding agreement between the Company and the Placement Agent in accordance with its terms.

**SUPER LEAGUE GAMING, INC.**

By: /s/ Ann Hand  
Ann Hand  
Chief Executive Officer

Accepted and agreed to this  
11 day of October 2022:

[\*\*\*]

By: /s/ [\*\*\*]  
[\*\*\*]

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**SCHEDULE OF EXCEPTIONS**

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**EXHIBIT A**

**FORM OF LEGAL OPINION**

1. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of Delaware. The Company has the corporate power and authority to own its properties and conduct its business as currently being carried on and as described in the Private Placement Memorandum.

2. The authorized capital stock of the Company on the date hereof is as follows: (i) \_\_\_\_\_ shares of Common Stock, \$0.0001 par value per share, and (ii) \_\_\_\_\_ shares of Preferred Stock, \$0.0001 par value per share.

3. Each of the Subscription Agreements, Placement Agency Agreement and the Registration Rights Agreement has been duly authorized, executed and delivered by the Company. The Placement Agent Warrants has been duly authorized by the Company but have not been executed and delivered by the Company at this time.

4. The Preferred Stock, the Placement Agent Warrants, the shares of Common Stock issuable upon the conversion of the Preferred Stock and the shares of Common Stock issuable (i) as dividends to the holders of Preferred Stock pursuant to the Certificate of Designation and (ii) upon exercise of the Placement Agent Warrants, have been duly authorized and, when issued and delivered by the Company in accordance with the terms of the Subscription Agreements, Certificate of Designation and Placement Agent Warrants, respectively, against payment of the consideration set forth therein, will be duly authorized, validly issued, fully paid and non-assessable.

5. The Subscription Agreements, Placement Agency Agreement, Registration Rights Agreement and Placement Agent Warrants each constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

6. No approval, authorization, consent or order of or filing with any governmental authority of the United States of America or the State of New York or under the DGCL, is required in connection with the issuance and sale of the Preferred Stock and consummation by the Company of the transactions contemplated in the Subscription Agreements and Placement Agency Agreement, other than as have been filed or obtained under the Securities Act.

7. The execution, delivery and performance of the Subscription Agreements, Placement Agency Agreement, Registration Rights Agreement and the Placement Agent Warrants by the Company, and the consummation by the Company of the transactions contemplated thereby to be consummated on the date hereof, do not violate (a) the Charter Documents, (b) any statute of the United States of America or the State of New York or the DGCL, or (c) any judgment, decree or order of any court or any other agency of government known to us that is applicable to the Company or its property or to our knowledge, result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or any other agreement or instrument, to which the Company is party and that has been filed as an exhibit in any report filed by the Company with the U.S. Securities and Exchange Commission (the "Commission").

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8. The execution and delivery of the Subscription Agreements, Placement Agency Agreement, Registration Rights Agreement and the Placement Agent Warrants, and the consummation by the Company of the transactions thereunder to be consummated as of the date hereof, do not and will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which with notice, lapse of time or both would result in any breach of or constitute a default under) any indenture, mortgage, deed of trust, bank loan or credit agreement, or other evidence of indebtedness, in each case, known to us, or any license, lease, contract or other agreement or instrument included as an exhibit in any report filed by the Company with the Commission.

9. To our knowledge, there are no actions, suits, claims, investigations or proceedings pending or threatened against the Company which are required to be described in the Private Placement Memorandum but are not so described.

10. To our knowledge, there are no preemptive rights, resale rights, rights of first refusal or other rights to subscribe for or purchase, nor any restriction on the voting or transfer of, the Preferred Stock.

11. Assuming the accuracy of the representations of the Purchasers contained in the Subscription Agreements and the accuracy of the representations of the Placement Agent contained in the Placement Agency Agreement (i) the offer, issuance, sale and delivery of the Preferred Stock and the Placement Agent Warrants, under the circumstances contemplated by the Transaction Documents, and (ii) assuming that the Preferred Stock are converted and Placement Agent Warrants are exercised on the date hereof in accordance with the terms and conditions of the Certificate of Designation and Placement Agent Warrants, respectively, the issuance of the shares of Common Stock issuable upon conversion of the Preferred Stock and upon the exercise of the Placement Agent Warrants, constitute exempt transactions under Rule 506 of Regulation D under the Securities Act.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [\*\*\*], HAS BEEN OMITTED BECAUSE SUPER LEAGUE GAMING, INC. HAS DETERMINED THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO SUPER LEAGUE GAMING, INC. IF PUBLICLY DISCLOSED.

## SUBSCRIPTION AGREEMENT

Super League Gaming, Inc.  
2912 Colorado Avenue, Suite 203  
Santa Monica, CA 90404

Ladies and Gentlemen:

**1. Subscription.** The undersigned (the “**Purchaser**”), intending to be legally bound, hereby irrevocably agrees to purchase from Super League Gaming, Inc., a Delaware corporation (the “**Company**”), shares of Series A Convertible Preferred Stock, par value \$0.001 (“**Preferred Stock**” or “**Preferred Shares**”), at a price of \$1,000.00 per Preferred Share (the “**Share Price**”). The minimum investment amount for each purchaser participating in the Offering is \$100,000, which minimum investment may be waived at the discretion of the Company and the Placement Agent. The Preferred Shares are being sold in the Offering (as defined below), as more fully described in the Memorandum (as defined below). This Subscription Agreement (this “**Subscription Agreement**”) is one in a series of similar subscription agreements (collectively, the “**Subscription Agreements**”) entered into pursuant to the Offering.

### 2. The Offering.

(a) This subscription is submitted to you in accordance with and subject to the terms and conditions described in this Subscription Agreement and the Confidential Private Placement Memorandum of the Company dated October 7, 2022, as amended or supplemented from time to time, including all attachments, schedules and exhibits thereto (the “**Memorandum**”), relating to the Offering by the Company (the “**Offering**”) of a minimum of 5,000 Preferred Shares (\$5,000,000) (the “**Minimum Offering Amount**”) and a maximum of 30,000 Preferred Shares (\$30,000,000) (the “**Maximum Offering Amount**”), with an over-allotment amount of up to 10,000 Preferred Shares (\$10,000,000) (the “**Over-Allotment Amount**”).

(b) [\*\*\*] (“[\*\*\*]”) has been engaged as exclusive placement agent in connection with the Offering (sometimes referred to as the “**Placement Agent**”). The terms of the Offering are more completely described in the Memorandum and such terms are incorporated herein in their entirety.

**3. Deliveries and Payment; Escrow of Funds.** Simultaneously with the execution hereof, the Purchaser shall: (a) deliver to the Placement Agent, in accordance with the Subscription Instructions attached hereto, (i) one (1) completed and executed omnibus signature page to this Subscription Agreement and the Registration Rights Agreement (page 15), (ii) a completed Accredited Investor Certification (pages 16-18), (iii) a completed Investor Profile (pages 19-20) and (iv) one (1) completed and executed Tax Certification for U.S. Persons or Non-U.S. Persons, as applicable (beginning on page 22); and (b) make a wire transfer payment to, “Signature Bank, Escrow Agent for Super League Gaming, Inc.” in an amount equal to the product of (i) the number of Preferred Shares being subscribed for by the Purchaser in the Offering as set forth on the signature page hereof, multiplied by (ii) the Share Price. Wire transfer instructions are set forth on page 15 hereof under the heading “To subscribe for Preferred Shares in the private offering of Super League Gaming, Inc.” Such funds will be held for the Purchaser’s benefit in a non-interest-bearing escrow account (the “**Escrow Account**”) until the earliest to occur of (a) a closing of the sale of the Minimum Offering Amount or more (the “**Initial Closing**”), or a subsequent closing if funds are deposited into the Escrow Account after the time of the Initial Closing, (b) the rejection of such subscription, or (c) the termination of the Offering by the Company or the Placement Agent. The Company and the Placement Agent may continue to offer and sell the Preferred Shares and conduct additional closings for the sale of additional Preferred Shares after the Initial Closing and until the termination of the Offering.

4. **Acceptance of Subscription.** The Purchaser understands and agrees that the Company, in its sole discretion, reserves the right to accept or reject this or any other subscription for Preferred Shares, in whole or in part, notwithstanding prior receipt by the Purchaser of notice of acceptance of this subscription. In furtherance of the foregoing, the Company shall have the right to require potential subscribers to supply additional information and execute additional documents in a satisfactory manner, which determination shall be at the sole discretion of the Company, prior to the acceptance of this Subscription Agreement. The Company shall have no obligation hereunder until the Company shall execute and deliver to the Purchaser an executed copy of this Subscription Agreement. If this subscription is rejected in whole, the Offering of Preferred Shares is terminated or the Minimum Offering Amount is not raised on or prior to December 5, 2022 (unless extended until February 3, 2023 in the discretion of the Company and the Placement Agent), all funds received from the Purchaser will be returned without interest or offset, and this Subscription Agreement shall thereafter be of no further force or effect. If this subscription is rejected in part, the funds for the rejected portion of this subscription will be returned without interest or offset, and this Subscription Agreement will continue in full force and effect to the extent this subscription was accepted.

5. **Representations and Warranties.**

The Purchaser hereby acknowledges, represents, warrants, and agrees as follows:

(a) None of the Shares or the securities issuable upon conversion of the Shares (the “**Conversion Securities**”) offered pursuant to the Memorandum are registered under the Securities Act of 1933, as amended (the “**Securities Act**”), or any state securities laws. The Purchaser understands that the offering and sale of the Preferred Shares is intended to be exempt from registration under the Securities Act, by virtue of Section 4(a)(2) thereof and/or the provisions of Rule 506(b) of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) thereunder, based, in part, upon the bona fide nature of the investment intent and the representations, warranties and agreements of the Purchaser contained in this Subscription Agreement.

(b) The Purchaser's substantive relationship with either the Company, the Placement Agent or subagent through which the Purchaser is subscribing for the Preferred Shares predates such Placement Agent's or any subagent's contact with the Purchaser regarding an investment in the Preferred Shares and the securities comprising the Preferred Shares.

(c) Prior to the execution of this Subscription Agreement, the Purchaser and the Purchaser's attorney, accountant, purchaser representative and/or tax adviser, if any (collectively, the "**Advisers**"), have received the Memorandum and all other documents requested by the Purchaser, have carefully reviewed them and understand the information contained therein.

(d) Neither the SEC nor any state securities commission or other regulatory authority has approved the Preferred Shares or the Conversion Securities or passed upon or endorsed the merits of the Offering or confirmed the accuracy or determined the adequacy of the Memorandum. The Memorandum has not been reviewed by any federal, state or other regulatory authority.

(e) All material information pertaining to the investment in the Preferred Shares (including, without limitation, the Memorandum) have been made available for inspection by such Purchaser and its Advisers, if any.

(f) The Purchaser and its Advisers, if any, have had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of the Company concerning the offering of the Preferred Shares and the business, financial condition and results of operations of the Company, and all such questions have been answered to the full satisfaction of the Purchaser and its Advisers, if any.

(g) In evaluating the suitability of an investment in the Company and the Preferred Shares, the Purchaser has not relied upon any representation or information (oral or written) other than as stated in the Memorandum and the Purchaser and its Advisers have had access, through the Memorandum and/or the EDGAR system, to true and complete copies of the Company's most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2021 (the "**10-K**") and all other reports filed by the Company pursuant to the Securities Exchange Act of 1934, as amended, since the filing of the 10-K and prior to the date hereof and have reviewed such filings (the "**SEC Reports**").

(h) The Purchaser is unaware of, is in no way relying on, and did not become aware of the Offering through or as a result of, any form of general solicitation or general advertising including, without limitation, any article, notice, advertisement or other communication published in any newspaper, magazine or similar media or broadcast over television, radio or the Internet (including, without limitation, internet "blogs," bulletin boards, discussion groups and social networking sites) in connection with the Offering and is not subscribing for the Preferred Shares and did not become aware of the Offering through or as a result of any seminar or meeting to which the Purchaser was invited by, or any solicitation of a subscription by, a person not previously known to the Purchaser in connection with investments in securities generally.

(i) The Purchaser has taken no action that would give rise to any claim by any person for brokerage commissions, finders' fees or the like relating to this Subscription Agreement, or the transactions contemplated hereby (other than commissions to be paid by the Company to the Placement Agent or as otherwise described in the Memorandum).

(j) The Purchaser, together with its Advisers, if any, has such knowledge and experience in financial, tax, and business matters, and, in particular, investments in securities, so as to enable it to utilize the information made available to it in connection with the Offering to evaluate the merits and risks of an investment in the Preferred Shares or the Conversion Securities and the Company and to make an informed investment decision with respect thereto.



(k) The Purchaser is not relying on the Company, the Placement Agent or any of their respective employees or agents with respect to the legal, tax, economic and related considerations of an investment in the Company and the Preferred Shares or the Conversion Securities, and the Purchaser has relied on the advice of, or has consulted with, only its own Advisers.

(l) The Purchaser is acquiring the securities comprising the Preferred Shares solely for such Purchaser's own account for investment purposes only and not with a view to or intent of resale or distribution thereof, in whole or in part. The Purchaser has no agreement or arrangement, formal or informal, with any person to sell or transfer all or any part of the Preferred Shares or the Conversion Securities, and the Purchaser has no plans to enter into any such agreement or arrangement.

(m) The Purchaser must bear the substantial economic risks of the investment in the Preferred Shares indefinitely because none of the Preferred Shares or Conversion Securities may be sold, hypothecated or otherwise disposed of unless subsequently registered under the Securities Act and applicable state securities laws or an exemption from such registration is available. Legends shall be placed on the Preferred Shares and the Conversion Securities to the effect that they have not been registered under the Securities Act or applicable state securities laws and appropriate notations thereof will be made in the Company's stock books. Stop transfer instructions will be placed with the transfer agent on the Preferred Shares or the Conversion Securities, if any. The Company has agreed that purchasers of the Preferred Shares will have, with respect to the Conversion Securities, the registration rights described in the Memorandum and Registration Rights Agreement. Notwithstanding such registration rights, there can be no assurance that there will be any market for the resale of the Preferred Shares or the Conversion Securities, nor can there be any assurance that such securities will be freely transferable at any time in the foreseeable future.

(n) The Purchaser has adequate means of providing for such Purchaser's current financial needs and foreseeable contingencies and has no need for liquidity from its investment in the Preferred Shares or the Conversion Securities for an indefinite period of time.

(o) The Purchaser is aware that an investment in the Preferred Shares is high risk, involving a number of very significant risks and has carefully read and considered the matters set forth under the caption "Risk Factors" in the Memorandum and in the SEC Reports, and, in particular, acknowledges that the Company has had significant operating losses since inception, and is engaged in highly competitive businesses and may not be able to accomplish the Company's business plan as described in the Memorandum.

(p) The Purchaser meets the requirements of at least one of the suitability standards for an "accredited investor" as that term is defined in Regulation D and as set forth on the Accredited Investor Certification contained herein.

(q) The Purchaser (i) if a natural person, represents that the Purchaser has reached the age of 21 and has full power and authority to execute and deliver this Subscription Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof; (ii) if a corporation, partnership, or limited liability company or partnership, or association, joint stock company, trust, unincorporated organization or other entity, represents that such entity was not formed for the specific purpose of acquiring the Preferred Shares or the Conversion Securities, such entity is duly organized, validly existing and in good standing under the laws of the state of its organization, the consummation of the transactions contemplated hereby is authorized by, and will not result in a violation of state law or its charter or other organizational documents, such entity has full power and authority to execute and deliver this Subscription Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof and to purchase and hold the Preferred Shares or the Conversion Securities, the execution and delivery of this Subscription Agreement has been duly authorized by all necessary action, this Subscription Agreement has been duly executed and delivered on behalf of such entity and is a legal, valid and binding obligation of such entity; or (iii) if executing this Subscription Agreement in a representative or fiduciary capacity, represents that it has full power and authority to execute and deliver this Subscription Agreement in such capacity and on behalf of the subscribing individual, ward, partnership, trust, estate, corporation, or limited liability company or partnership, or other entity for whom the Purchaser is executing this Subscription Agreement, and such individual, partnership, ward, trust, estate, corporation, or limited liability company or partnership, or other entity has full right and power to perform pursuant to this Subscription Agreement and make an investment in the Company, and represents that this Subscription Agreement constitutes a legal, valid and binding obligation of such entity. The execution and delivery of this Subscription Agreement will not violate or be in conflict with any order, judgment, injunction, agreement or controlling document to which the Purchaser is a party or by which it is bound.

(r) The Purchaser and the Advisers, if any, have had the opportunity to obtain any additional information, to the extent the Company has such information in its possession or could acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information contained in the Memorandum and all documents received or reviewed in connection with the purchase of the Preferred Shares and have had the opportunity to have representatives of the Company provide them with such additional information regarding the terms and conditions of this particular investment and the financial condition, results of operations, and business of the Company deemed relevant by the Purchaser or the Advisers, if any, and all such requested information, to the extent the Company has such information in their possession or could acquire it without unreasonable effort or expense, has been provided to the full satisfaction of the Purchaser and the Advisers, if any.

(s) Any information which the Purchaser has heretofore furnished or is furnishing herewith to the Company, or the Placement Agent is complete and accurate and may be relied upon by the Company, the Placement Agent and their respective legal counsel in determining the availability of an exemption from registration under federal and state securities laws in connection with the offering of securities as described in the Memorandum. The Purchaser further represents and warrants that it will notify and supply corrective information to the Company and the Placement Agent immediately upon the occurrence of any change therein occurring prior to the Company's issuance of the Preferred Shares or the Conversion Securities.

(t) The Purchaser has significant prior investment experience, including investment in non-listed and non-registered securities. The Purchaser is knowledgeable about investment considerations in development stage companies with limited operating histories. The Purchaser has a sufficient net worth to sustain a loss of its entire investment in the Company and the Preferred Shares or the Conversion Securities in the event such a loss should occur. The Purchaser's overall commitment to investments which are not readily marketable is not excessive in view of the Purchaser's net worth and financial circumstances and the purchase of the Preferred Shares or the Conversion Securities will not cause such commitment to become excessive. Investment in the Company and the Preferred Shares as contemplated by this Subscription Agreement is suitable for the Purchaser.

(u) The Purchaser is satisfied that the Purchaser has received adequate information with respect to all matters which it or the Advisers, if any, consider material to its decision to make an investment in the Company and the Preferred Shares as contemplated by this Subscription Agreement.

(v) The Purchaser acknowledges that it has been provided with, and has reviewed, [\*\*\*]' Regulation Form CRS and Best Interest Supplement in the form of Exhibit A hereto (the “**Form CRS and BI Supplement**”) and has had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of [\*\*\*] concerning the Form CRS and BI Supplement.

(w) The Purchaser acknowledges that any estimates or forward-looking statements or projections included in the Memorandum were prepared by the Company in good faith but that the attainment of any such projections, estimates or forward-looking statements cannot be guaranteed by the Company and should not be relied upon.

(x) No oral or written representations have been made, or oral or written information furnished, to the Purchaser or the Advisers, if any, in connection with the Offering which are in any way inconsistent with the information contained in the Memorandum.

(y) Within five (5) days after receipt of a request from the Company or the Placement Agent, the Purchaser will provide such information and deliver such documents as may reasonably be necessary to comply with any and all laws and ordinances to which the Company or the Placement Agent is subject.

(z) The Purchaser understands that the Preferred Shares and the Conversion Securities are “restricted securities” under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold such securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available.

(aa) THE PREFERRED SHARES OFFERED HEREBY (INCLUDING THE CONVERSION SECURITIES) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. SUCH SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. SUCH SECURITIES HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE MEMORANDUM OR THIS SUBSCRIPTION AGREEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

(bb) In making an investment decision in the Company and the Preferred Shares, investors must rely on their own examination of the Company and the terms of the Offering, including the merits and risks involved. The Purchaser is aware that it will be required to bear the financial risks of investment in the Company and the Preferred Shares and the Conversion Securities for an indefinite period of time.

(cc) **(For ERISA plans only)** The fiduciary of the ERISA plan (the “Plan”) represents that such fiduciary has been informed of and understands the Company’s investment objectives, policies and strategies, and that the decision to invest “plan assets” (as such term is defined in ERISA) in the Company is consistent with the provisions of ERISA that require diversification of plan assets and impose other fiduciary responsibilities. The Purchaser fiduciary or Plan (a) is responsible for the decision to invest in the Company; (b) is independent of the Company or any of its affiliates; (c) is qualified to make such investment decision; and (d) in making such decision, the Purchaser fiduciary or Plan has not relied primarily on any advice or recommendation of the Company or any of its affiliates.

(dd) **The Purchaser should check the Office of Foreign Assets Control (“OFAC”) website at <<http://www.treas.gov/ofac>> before making the following representations.** The Purchaser represents that the amounts invested by it in the Company in the Offering were not and are not directly or indirectly derived from activities that contravene federal, state or international laws and regulations, including anti-money laundering laws and regulations. Federal regulations and Executive Orders administered by OFAC prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals. The lists of OFAC prohibited countries, territories, persons and entities can be found on the OFAC website at <<http://www.treas.gov/ofac>>. In addition, the programs administered by OFAC (the “OFAC Programs”) prohibit dealing with individuals<sup>1</sup> or entities in certain countries regardless of whether such individuals or entities appear on the OFAC lists.

(ee) To the best of the Purchaser’s knowledge, none of: (1) the Purchaser; (2) any person controlling or controlled by the Purchaser; (3) if the Purchaser is a privately-held entity, any person having a beneficial interest in the Purchaser; or (4) any person for whom the Purchaser is acting as agent or nominee in connection with this investment is a country, territory, individual or entity named on an OFAC list, or a person or entity prohibited under the OFAC Programs. Please be advised that the Company may not accept any amounts from a prospective investor if such prospective investor cannot make the representation set forth in the preceding paragraph. The Purchaser agrees to promptly notify the Company and the Placement Agent should the Purchaser become aware of any change in the information set forth in these representations. The Purchaser understands and acknowledges that, by law, the Company may be obligated to “freeze the account” of the Purchaser, either by prohibiting additional subscriptions from the Purchaser, declining any redemption requests and/or segregating the assets in the account in compliance with governmental regulations, and the Placement Agent may also be required to report such action and to disclose the Purchaser’s identity to OFAC. The Purchaser further acknowledges that the Company may, by written notice to the Purchaser, suspend the redemption rights, if any, of the Purchaser if the Company reasonably deems it necessary to do so to comply with anti-money laundering regulations applicable to the Company and the Placement Agent or any of the Company’s other service providers. These individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanctions and embargo programs.

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<sup>1</sup> These individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanctions and embargo programs.

(ff) To the best of the Purchaser's knowledge, none of: (1) the Purchaser; (2) any person controlling or controlled by the Purchaser; (3) if the Purchaser is a privately-held entity, any person having a beneficial interest in the Purchaser; or (4) any person for whom the Purchaser is acting as agent or nominee in connection with this investment is a senior foreign political figure,<sup>2</sup> or any immediate family<sup>3</sup> member or close associate<sup>4</sup> of a senior foreign political figure, as such terms are defined in the footnotes below.

(gg) If the Purchaser is affiliated with a non-U.S. banking institution (a "**Foreign Bank**"), or if the Purchaser receives deposits from, makes payments on behalf of, or handles other financial transactions related to a Foreign Bank, the Purchaser represents and warrants to the Company that: (1) the Foreign Bank has a fixed address, other than solely an electronic address, in a country in which the Foreign Bank is authorized to conduct banking activities; (2) the Foreign Bank maintains operating records related to its banking activities; (3) the Foreign Bank is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities; and (4) the Foreign Bank does not provide banking services to any other Foreign Bank that does not have a physical presence in any country and that is not a regulated affiliate.

(hh) If the Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), the Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Preferred Shares or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Preferred Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Preferred Shares or the Conversion Securities. The Purchaser's subscription and payment for and continued beneficial ownership of the Preferred Shares and the Conversion Securities will not violate any applicable securities or other laws of the Purchaser's jurisdiction.

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<sup>2</sup> A "senior foreign political figure" is defined as a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a "senior foreign political figure" includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure.

<sup>3</sup> "Immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children and in-laws.

<sup>4</sup> A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

(ii) If Purchaser is a non-US investor, Purchaser represents and warrants to the Company and the Placement Agent that its purchase of the Preferred Shares, and the sale of the Preferred Shares to Purchaser by the Company, is in compliance with and does not violate any laws of the country in which Purchaser is located and Purchaser will be able to obtain any requisite permission under such country's foreign exchange laws to enable Purchaser to pay the purchase price for the Preferred Shares.

**6. Intentionally Omitted**

**7. Indemnification.** The Purchaser agrees to indemnify and hold harmless the Company, the Placement Agent (including its selected dealers, if any), and their respective officers, directors, employees, agents, control persons and affiliates from and against all losses, liabilities, claims, damages, costs, fees and expenses whatsoever (including, but not limited to, any and all expenses incurred in investigating, preparing or defending against any litigation commenced or threatened) based upon or arising out of any actual or alleged false acknowledgment, representation or warranty, or misrepresentation or omission to state a material fact, or breach by the Purchaser of any covenant or agreement made by the Purchaser herein or in any other document delivered in connection with this Subscription Agreement. Each Purchaser's obligation to indemnify shall be individual, not joint and several, and in no event shall the liability of any Purchaser hereunder be greater in amount than the dollar amount of the net proceeds received by such Purchaser upon the sale of the Shares acquired pursuant to this Subscription Agreement.

**8. Irrevocability; Binding Effect.** The Purchaser hereby acknowledges and agrees that the subscription hereunder is irrevocable by the Purchaser, except as required by applicable law, and that this Subscription Agreement shall survive the death or disability of the Purchaser and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives, and permitted assigns. If the Purchaser is more than one person, the obligations of the Purchaser hereunder shall be joint and several and the agreements, representations, warranties, and acknowledgments herein shall be deemed to be made by and be binding upon each such person and such person's heirs, executors, administrators, successors, legal representatives, and permitted assigns.

**9. Modification.** This Subscription Agreement shall not be modified or waived except by an instrument in writing signed by the party against whom any such modification or waiver is sought.

**10. Immaterial Modifications to the Registration Rights Agreement.** The Company may, at any time prior to the Initial Closing, modify the Registration Rights Agreement, if necessary, to clarify any provision therein, without first providing notice or obtaining prior consent of the Purchaser, if, and only if, such modification is not material in any respect.

**11. Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party notified, (b) when sent by confirmed email or facsimile if sent during normal business hours of the recipient, if not confirmed, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. The Company and the Purchaser hereby consent to the delivery of communications and notices to such parties at their respective address, email or facsimile number set forth on the signature page hereto, or to such other address as such party shall have furnished in writing in accordance with the provisions of this Section 11.

12. **Assignability.** This Subscription Agreement and the rights, interests and obligations hereunder are not transferable or assignable by the Purchaser and the transfer or assignment of the Preferred Shares or the Conversion Securities shall be made only in accordance with all applicable laws.

13. **Applicable Law.** This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts to be wholly performed within said State.

14. **Arbitration.** The parties agree to submit all controversies to arbitration in accordance with the provisions set forth below and understand that:

(a) Arbitration is final and binding on the parties.

(b) The parties are waiving their right to seek remedies in court, including the right to a jury trial.

(c) Pre-arbitration discovery is generally more limited and different from court proceedings.

(d) The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by arbitrators is strictly limited.

(e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(f) All controversies which may arise between the parties concerning this Subscription Agreement shall be determined by arbitration pursuant to the rules then pertaining to the Financial Industry Regulatory Authority, Inc. ("**FINRA**") in New York City, New York. Judgment on any award of any such arbitration may be entered in the Supreme Court of the State of New York or in any other court having jurisdiction of the person or persons against whom such award is rendered. Any notice of such arbitration or for the confirmation of any award in any arbitration shall be sufficient if given in accordance with the provisions of this Agreement. The parties agree that the determination of the arbitrators shall be binding and conclusive upon them.

15. **Blue Sky Qualification.** The purchase of the Preferred Shares under this Subscription Agreement and the issuance of the Conversion Shares is expressly conditioned upon the exemption from qualification of the offer and sale of the Preferred Shares from applicable federal and state securities laws. The Company shall not be required to qualify this transaction under the securities laws of any jurisdiction and, should qualification be necessary, the Company shall be released from any and all obligations to maintain its offer, and may rescind any sale contracted, in the jurisdiction.

16. **Use of Pronouns.** All pronouns and any variations thereof used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require.

17. **Confidentiality.** The Purchaser acknowledges and agrees that any information or data the Purchaser has acquired from or about the Company, not otherwise properly in the public domain, was received in confidence. The Purchaser agrees not to divulge, communicate or disclose, except as may be required by law or for the performance of this Agreement, or use to the detriment of the Company or for the benefit of any other person or persons, or misuse in any way, any confidential information of the Company, including any scientific, technical, trade or business secrets of the Company and any scientific, technical, trade or business materials that are treated by the Company as confidential or proprietary, including, but not limited to, ideas, discoveries, inventions, developments and improvements belonging to the Company and confidential information obtained by or given to the Company about or belonging to third parties.

18. **Miscellaneous.**

(a) This Subscription Agreement, together with the Registration Rights Agreement, constitute the entire agreement between the Purchaser and the Company with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings, if any, relating to the subject matter hereof. The terms and provisions of this Subscription Agreement may be waived, or consent for the departure therefrom granted, only by a written document executed by the party entitled to the benefits of such terms or provisions.

(b) The representations and warranties of the Purchaser made in this Subscription Agreement shall survive the execution and delivery hereof and delivery of the Preferred Shares and the Conversion Shares.

(c) Each of the parties hereto shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Subscription Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated.

(d) This Subscription Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

(e) Each provision of this Subscription Agreement shall be considered separable and, if for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalidity or illegality shall not impair the operation of or affect the remaining portions of this Subscription Agreement.

(f) Paragraph titles are for descriptive purposes only and shall not control or alter the meaning of this Subscription Agreement as set forth in the text.

(g) The Purchaser understands and acknowledges that there may be multiple closings for this Offering.



19. **Omnibus Signature Page.** This Subscription Agreement is intended to be read and construed in conjunction with the Registration Rights Agreement pertaining to the issuance by the Company of the Preferred Shares to subscribers pursuant to the Memorandum. Accordingly, pursuant to the terms and conditions of this Subscription Agreement and such related agreements it is hereby agreed that the execution by the Purchaser of this Subscription Agreement, in the place set forth herein, shall constitute agreement to be bound by the terms and conditions hereof and the terms and conditions of the Registration Rights Agreement, with the same effect as if each of such separate but related agreement were separately signed.

20. **Book Entry Registration of the Shares.** The Company will issue the Preferred Shares and the Conversion Securities by registering them in book entry form with the Company or the Company's transfer agent, if applicable, in Purchaser's name and the applicable restrictions will be noted in the records of the Company, or the Company's transfer agent, if applicable, and in the book entry system, except for investments made via custodian accounts such as pensions and IRAs in which case physical certificates evidencing the Preferred Shares and the Conversion Shares will be issued, if requested.

**PRIVATE PLACEMENT OFFERING OF  
SUPER LEAGUE GAMING, INC.**

**SUBSCRIPTION INSTRUCTIONS**

**To subscribe for Preferred Shares in the private offering of Super League Gaming, Inc.:**

1. **Date and Fill in** the number of Preferred Shares being purchased and **Complete and Sign** the Omnibus Signature Page to the Subscription Agreement and Registration Rights Agreement (page 15).
2. **Initial** the Accredited Investor Certification attached to the Subscription Agreement (pages 16-18).
3. **Complete** and return the Investor Profile (pages 19-20).
4. **Complete and Sign** the Tax Certification for U.S. Persons or Non-U.S. Persons, as applicable (beginning on page 22).
5. **Fax or scan and e-mail** all forms to [\*\*\*].
6. **Please wire funds directly to the escrow account pursuant to the following instructions (unless other arrangements have been made); checks and ACH payments cannot be accepted:**

**Bank Name: Signature Bank**

**Bank Address: [\*\*\*]**

**ABA Number: [\*\*\*]**

**SWIFT CODE: [\*\*\*]**

**A/C Name: [\*\*\*]**

**Super League Gaming, Inc. Address (if requested): 2912 Colorado Avenue, Suite 203, Santa Monica, CA 90404**

**A/C Number: [\*\*\*]**

**REF. outgoing wire with the following information**

**FBO: Investor Name**

**SSN/TIN**

**Address**

**ANTI MONEY LAUNDERING REQUIREMENTS**

<b>The USA PATRIOT Act</b>	<b>What is money laundering?</b>	<b>How big is the problem and why is it important?</b>
<p>The USA PATRIOT Act is designed to detect, deter, and punish terrorists in the United States and abroad. The Act imposes new anti-money laundering requirements on brokerage firms and financial institutions. Since April 24, 2002 all brokerage firms have been required to have new, comprehensive anti-money laundering programs.</p> <p>To help you understand these efforts, we want to provide you with some information about money laundering and the Placement Agent's efforts to implement the USA PATRIOT Act.</p>	<p>Money laundering is the process of disguising illegally obtained money so that the funds appear to come from legitimate sources or activities. Money laundering occurs in connection with a wide variety of crimes, including illegal arms sales, drug trafficking, robbery, fraud, racketeering, and terrorism.</p>	<p>The use of the U.S. financial system by criminals to facilitate terrorism or other crimes could well taint our financial markets. According to the U.S. State Department, one recent estimate puts the amount of worldwide money laundering activity at \$1 trillion a year.</p>

<b>What the Placement Agent is required to do to help eliminate money laundering?</b>	
<p>Under new rules required by the USA PATRIOT Act, the Placement Agent's anti-money laundering program must designate a special compliance officer, set up employee training, conduct independent audits, and establish policies and procedures to detect and report suspicious transaction and ensure compliance with the new laws.</p>	<p>As part of the Placement Agent's required program, it may ask you to provide various identification documents or other information. Until you provide the information or documents that the Placement Agent needs, it may not be able to effect any transactions for you.</p>

**SUPER LEAGUE GAMING, INC.**  
OMNIBUS SIGNATURE PAGE TO THE  
SUBSCRIPTION AGREEMENT AND REGISTRATION RIGHTS AGREEMENT

Purchaser hereby elects to subscribe under the Subscription Agreement for a total of \$ \_\_\_\_\_ of Preferred Shares at a price of \$1,000 per Preferred Share (NOTE: to be completed by subscriber) and, by execution and delivery hereof, Purchaser hereby executes the Subscription Agreement and agrees to be bound by the terms and conditions of the Subscription Agreement and the Registration Rights Agreement.

If the Purchaser is an INDIVIDUAL, and if purchased as JOINT TENANTS, as TENANTS IN COMMON, or as COMMUNITY PROPERTY:

_____ <b>Print Name(s)</b>	_____ <b>Social Security Number(s)</b>
_____ <b>Signature(s) of Purchaser(s)</b>	_____ <b>Signature(s) of Purchaser(s)</b>
_____ <b>Date</b>	_____ <b>Address</b>
_____ <b>Fax Number (if any)</b>	_____ <b>Email Address(s)</b>

If the Purchaser is a PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY or TRUST:

_____ <b>Name of Entity</b>	_____ <b>Federal Taxpayer Identification Number</b>
_____ <b>Signature(s) of Purchaser(s)</b>	_____ <b>Signature(s) of Purchaser(s)</b>
<b>By:</b> _____ <b>Name:</b> <b>Title:</b>	_____ <b>State of Organization</b>
_____ <b>Date</b>	_____ <b>Address</b>
_____ <b>Fax Number</b>	_____ <b>Email Address</b>
<b>SUPER LEAGUE GAMING, INC.</b>	<b>[***].</b>
<b>By:</b> _____ Authorized Officer	<b>By:</b> _____ Authorized Officer

**SUPER LEAGUE GAMING, INC.**  
**ACCREDITED INVESTOR CERTIFICATION**

**For Individual Investors Only**  
**(all Individual Investors must *INITIAL* where appropriate):**

**Initial** \_\_\_\_\_ I have an individual net worth, or joint net worth with my spouse or spousal equivalent, as of the date hereof in excess of \$1 million. For purposes of calculating net worth under this category, (i) the undersigned's primary residence shall not be included as an asset, (ii) indebtedness that is secured by the undersigned's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability, (iii) to the extent that the indebtedness that is secured by the primary residence is in excess of the fair market value of the primary residence, the excess amount shall be included as a liability, and (iv) if the amount of outstanding indebtedness that is secured by the primary residence exceeds the amount outstanding 60 days prior to the execution of this Subscription Agreement, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability.

**Initial** \_\_\_\_\_ I have had an annual gross income for the past two years of in excess of \$200,000 (or \$300,000 jointly with my spouse or spousal equivalent) and expect my income (or joint income, as appropriate) to reach the same level in the current year.

**Initial** \_\_\_\_\_ I am a director or executive officer of Super League Gaming, Inc.

**Initial** \_\_\_\_\_ I am a holder in good standing of the General Securities Representative license (Series 7), the Private Securities Offerings Representative license (Series 82), or the Licensed Investment Adviser Representative license (Series 65), each as issued by the Financial Industry Regulatory Authority, Inc.

**Initial** \_\_\_\_\_ I/we, am/are the grantor(s) of a revocable trust who meets one of the above categories (check all that apply).

**For Non-Individual Investors**  
**(all Non-Individual Investors must *INITIAL* where appropriate):**

**Initial** \_\_\_\_\_ The investor certifies that it is a partnership, corporation, limited liability company or business trust that is 100% owned by persons who meet at least one of the criteria for Individual Investors set forth above.

**Initial** \_\_\_\_\_ The investor certifies that it is a partnership, corporation, limited liability company or any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, Massachusetts or similar business trust that has total assets in excess of \$5,000,000 and was not formed for the purpose of investing in the Company.

- Initial**\_\_\_\_\_ The investor certifies that it is an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended, whose investment decision is made by a plan fiduciary (as defined in ERISA §3(21)) that is a bank, savings and loan association, insurance company or registered investment adviser.
- Initial**\_\_\_\_\_ The investor certifies that it is an employee benefit plan whose total assets exceed \$5,000,000 as of the date of this Agreement.
- Initial**\_\_\_\_\_ The investor certifies that it is a self-directed employee benefit plan whose investment decisions are made solely by persons who meet any of the criteria for Individual Investors.
- Initial**\_\_\_\_\_ The investor certifies that it is a U.S. bank, U.S. savings and loan association or other similar U.S. institution acting in its individual or fiduciary capacity.
- Initial**\_\_\_\_\_ The investor certifies that it is a broker-dealer registered pursuant to §15 of the Securities Exchange Act of 1934, as amended.
- Initial**\_\_\_\_\_ The investor certifies that it is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of investing in the Company, and whose purchase is directed by a person with such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment.
- Initial**\_\_\_\_\_ The investor certifies that it is a plan established and maintained by a state or its political subdivisions, or any agency or instrumentality thereof, for the benefit of its employees, and which has total assets in excess of \$5,000,000.
- Initial**\_\_\_\_\_ The investor certifies that it is an insurance company as defined in §2(a)(13) of the Securities Act.
- Initial**\_\_\_\_\_ The investor certifies that it is an investment company registered under the Investment Company Act of 1940, as amended, or a business development company as defined in Section 2(a)(48) of that Act.
- Initial**\_\_\_\_\_ The investor certifies that it is a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended.
- Initial**\_\_\_\_\_ The investor certifies that it is a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended.
- Initial**\_\_\_\_\_ The investor certifies that it is an investment adviser registered pursuant to Section 203 of the Investment Advisers Act of 1940, as amended, or registered pursuant to the laws of a state, or an investment adviser relying on the exemption from registering with the SEC under Section 203(l) or (m) of the Investment Advisers Act of 1940, as amended.

**Initial** \_\_\_\_\_ The investor certifies that is a Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act of 1972, as amended.

**Initial** \_\_\_\_\_ The investor certifies that (A) it is a “family office” as defined in Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, as amended, (i) with assets under management in excess of \$5,000,000, (ii) not formed for the specific purpose of acquiring the securities offered and (iii) whose investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment or (B) that it is a “family client” as defined in Rule 202(a)(11)(G)-1 of the Investment Advisers Act of 1940, as amended, of a family office meeting the criteria specified above.<sup>5</sup>

**Initial** \_\_\_\_\_ The investor certifies that it is an entity not listed above that owns “investments,”<sup>6</sup> in excess of \$5 million and that was not formed for the specific purpose of investing in the securities offered.<sup>7</sup>

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<sup>5</sup> “Family offices” are generally defined under 275.202(a)(11)(G)-1 as private advisory entities established by families to manage their assets, plan for their families’ financial future, provide other services to family members, and do not hold themselves out to the public as investment advisers. The SEC has previously observed that single family offices generally serve families with at least \$100 million or more of investable assets.

<sup>6</sup> Generally defined by Rule 2a51-1(b) under the Investment Company Act of 1940, as amended, as investments in independently controlled companies meeting certain minimum requirements and held for investment purposes.

<sup>7</sup> Such additional forms of entities covered by this clause include, but are not limited to, Indian tribes, governmental bodies, funds, and entities organized under the laws of foreign countries.

**SUPER LEAGUE GAMING, INC.**  
*Investor Profile (Must be completed by Investor)*

**Section A - Personal Investor Information**

**For All Purchasers**

Certificate Title: \_\_\_\_\_

Individual(s) executing this subscription: \_\_\_\_\_

Social Security Number(s) for **all** signatories: \_\_\_\_\_

**Entity** Federal Tax I.D. Number: \_\_\_\_\_

Date(s) of Birth: \_\_\_\_\_

Marital Status: \_\_\_\_\_

Years Investment Experience: \_\_\_\_\_

[\*\*\*]

Check if you are a FINRA member or affiliate of a FINRA member firm: \_\_\_\_\_

Check Investment Objective(s) (See definitions on following page): \_\_\_\_\_ Preservation of Capital \_\_\_\_\_

Income \_\_\_\_\_ Capital Appreciation \_\_\_\_\_ Trading Profits \_\_\_\_\_

Speculation \_\_\_\_\_ Other (please specify) \_\_\_\_\_

The source of funds for this investment is my personal or my entity's assets \_\_\_\_\_ Yes \_\_\_\_\_ No

**For Purchasers as Individual or as Joint Tenants, Tenants in Common, and Community Property**

Annual Income(s): \_\_\_\_\_

Liquid Net Worth(s): \_\_\_\_\_

Net Worth(s) (excluding value of primary residence): \_\_\_\_\_

Select Tax Bracket(s): \_\_\_\_\_ 15% or below \_\_\_\_\_ 25% - 27.5% \_\_\_\_\_ Over 27.5%

**For All Purchasers, by the Primary Contact**

Home Street Address: \_\_\_\_\_

Home City, State & Zip Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Home Fax: \_\_\_\_\_ Home Email: \_\_\_\_\_

Employer: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Employer Street Address: \_\_\_\_\_

Employer City, State & Zip Code: \_\_\_\_\_

Bus. Phone: \_\_\_\_\_ Bus. Fax: \_\_\_\_\_ Bus. Email: \_\_\_\_\_

**For All Purchasers**

If you are a **United States citizen**, please list the number and jurisdiction of issuance of any other government-issued document evidencing residence and bearing a photograph or similar safeguard (such as a driver's license or passport), and provide a photocopy of each of the documents you have listed.

If you are **NOT** a **United States citizen**, for each jurisdiction of which you are a citizen or in which you work or reside, please list (i) your passport number and country of issuance or (ii) alien identification card number **AND** (iii) number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard, and provide a photocopy of each of these documents you have listed.

**Government-Issued Identification Document Number(s) and Jurisdiction(s):** \_\_\_\_\_

*In addition, please provide a legible photocopy of your Identification Document(s) with your subscription*



**Section B – Investor Representations**  
**(Please Check Each)**

( ) I understand that an investment in the Preferred Shares and the Conversion Securities is speculative and this characterization is consistent with my overall investment objectives. I seek a significant increase in the principal value of my investments and are willing to accept a corresponding greater degree of risk by investing in securities that have historically demonstrated a high degree of risk of loss of principal value to pursue this objective.

( ) I understand that an investment in the Preferred Shares and the Conversion Securities is a long-term investment. It is consistent with my investment objectives and my financial situation that a return on an investment in the Preferred Shares and the Conversion Securities if there is a return at all, may take three to five years or longer. I have no current or anticipated need for liquidity in my investment in the Preferred Shares and the Conversion Securities that would require me to liquidate my investment over a shorter period of time and I can afford a loss of my entire investment in the Preferred Shares and the Conversion Securities.

( ) I confirm that I have reviewed the Placement Agent’s Regulation Best Interest Supplement in the form of Exhibit A hereto (the “**BI Supplement**”) and have had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of the Placement Agent concerning the BI Supplement.

**Section C – Securities Delivery Instructions**

- \_\_\_ Please deliver securities to the Employer Address listed in Section A.
- \_\_\_ Please deliver securities to the Home Address listed in Section A.
- \_\_\_ Please deliver securities to the following address: \_\_\_\_\_

**Section D –Wire Transfer Instructions**

- \_\_\_ I will wire funds from my outside account according to the “Subscription Instructions” Page.
- \_\_\_ I will wire funds from my [\*\*\*] Account.
- \_\_\_ The funds for this investment are rolled over, tax deferred from \_\_\_\_\_ within the allowed 60-day window.

\_\_\_\_\_  
**Investor Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Investor Signature**

\_\_\_\_\_  
**Date**

**Investment Objectives:** The typical investment listed with each objective are only some examples of the kinds of investments that have historically been consistent with the listed objectives. However, neither the Company nor the Placement Agent can assure that any investment will achieve your intended objective. You must make your own investment decisions and determine for yourself if the investments you select are appropriate and consistent with your investment objectives.

Neither the Company nor the Placement Agent assumes responsibility to you for determining if the investments you selected are suitable for you.

**Preservation of Capital:** An investment objective of *Preservation of Capital* indicates you seek to maintain the principal value of your investments and are interested in investments that have historically demonstrated a very low degree of risk of loss of principal value. Some examples of typical investments might include money market funds and high quality, short-term fixed income products.

**Income:** An investment objective of *Income* indicates you seek to generate income from investments and are interested in investments that have historically demonstrated a low degree of risk of loss of principal value. Some examples of typical investments might include high quality, short and medium-term fixed income products, short-term bond funds and covered call options.

**Capital Appreciation:** An investment objective of *Capital Appreciation* indicates you seek to grow the principal value of your investments over time and are willing to invest in securities that have historically demonstrated a moderate to above average degree of risk of loss of principal value to pursue this objective. Some examples of typical investments might include common stocks, lower quality, medium-term fixed income products, equity mutual funds and index funds.

**Trading Profits:** An investment objective of *Trading Profits* indicates you seek to take advantage of short-term trading opportunities, which may involve establishing and liquidating positions quickly. Some examples of typical investments might include short-term purchases and sales of volatile or low-priced common stocks, put or call options, spreads, straddles and/or combinations on equities or indexes. This is a high-risk strategy.

**Speculation:** An investment objective of *Speculation* indicates you seek a significant increase in the principal value of your investments and are willing to accept a corresponding greater degree of risk by investing in securities that have historically demonstrated a high degree of risk of loss of principal value to pursue this objective. Some examples of typical investments might include lower quality, long-term fixed income products, initial public offerings, volatile or low-priced common stocks, the purchase or sale of put or call options, spreads, straddles and/or combinations on equities or indexes, and the use of short-term or day trading strategies.

**Other:** Please specify.

**TAX CERTIFICATION FOR U.S. PERSONS OR NON-U.S. PERSONS**

1. IRS Form W-9 for U.S. Persons and Entities (see attached)
2. IRS Form W-8BEN for Non-U.S. Persons (see attached)
3. IRS Form W-8BEN-E for Non-U.S. Entities (see attached)

EXHIBIT A

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CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [\*\*\*], HAS BEEN OMITTED BECAUSE SUPER LEAGUE GAMING, INC. HAS DETERMINED THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO SUPER LEAGUE GAMING, INC. IF PUBLICLY DISCLOSED.

**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this “**Agreement**”) is made and entered into effective as of \_\_\_\_\_, 2022 (the “**Effective Date**”) between Super League Gaming, Inc., a Delaware corporation (the “**Company**”), and the persons who have executed the signature page(s) hereto (each, a “**Purchaser**” and collectively, the “**Purchasers**”).

**RECITALS:**

WHEREAS, the Company is conducting a private placement offering (the “**Offering**”) of a minimum of 5,000 (\$5,000,000) shares of Series A Convertible Preferred Stock, par value \$0.001 (“**Series A Preferred**” or “**Shares**”) and a maximum of 30,000 Shares (\$30,000,000), plus an over-allotment of an additional 10,000 (\$10,000,000) Shares; and

WHEREAS, in connection with the Offering, the Company agreed to provide certain registration rights related to the shares of Common Stock issuable upon conversion of the Series A Preferred (the “**Conversion Shares**”) on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants, and conditions set forth herein, the parties mutually agree as follows:

1. Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“Agreement” has the meaning given it in the preamble to this Agreement.

“Allowed Delay” has the meaning given it in Section 2(c)(2) of this Agreement.

“Approved Market” means the Over-the-Counter Bulletin Board, the OTC Markets, Nasdaq Stock Market, the New York Stock Exchange or the NYSE American.

“Blackout Period” means, with respect to a registration, a period, in each case commencing on the day immediately after the Company notifies the Purchasers that they are required, because of the occurrence of an event of the kind described in Section 3(f) hereof, to suspend offers and sales of Registrable Securities during which the Company, in the good faith judgment of its board of directors, determines (because of the existence of, or in anticipation of, any acquisition, financing activity, or other transaction involving the Company, or the unavailability for reasons beyond the Company’s control of any required financial statements, disclosure of information which is in its best interest not to publicly disclose, or any other event or condition of similar significance to the Company) that the registration and distribution of the Registrable Securities to be covered by such Registration Statement, if any, would be seriously detrimental to the Company or its stockholders and ending on the earlier of (1) the date upon which the MNPI commencing the Blackout Period is disclosed to the public or ceases to be material and (2) such time as the Company notifies the selling Holders that the Company will no longer delay such filing of the Registration Statement, recommence taking steps to make such Registration Statement effective, or allow sales pursuant to such Registration Statement to resume.

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“Commission” or “SEC” means the U.S. Securities and Exchange Commission or any other applicable federal agency at the time administering the Securities Act.

“Common Stock” means the common stock, par value \$0.001 per share, of the Company and any and all shares of capital stock or other equity securities of: (i) the Company which are added to or exchanged or substituted for the Common Stock by reason of the declaration of any stock dividend or stock split, the issuance of any distribution or the reclassification, readjustment, recapitalization or other such modification of the capital structure of the Company; and (ii) any other corporation, now or hereafter organized under the laws of any state or other governmental authority, with which the Company is merged, which results from any consolidation or reorganization to which the Company is a party, or to which is sold all or substantially all of the shares or assets of the Company, if immediately after such merger, consolidation, reorganization or sale, the Company or the stockholders of the Company own equity securities having in the aggregate more than 50% of the total voting power of such other corporation.

“Company” has the meaning given it in the preamble to this Agreement.

“Conversion Shares” has the meaning given it in the recitals of this Agreement.

“Effective Date” has the meaning given it in the preamble to this Agreement.

“Effectiveness Deadline” means the date that is ninety (90) days after the Registration Filing Date.

“Effectiveness Period” has the meaning given it in Section 2(a) of this Agreement

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

“Holder” means a Purchaser or any permitted transferee or assignee thereof to whom a Purchaser assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 6 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 6.

“Legend Removal Certificate” has the meaning given it in Section 3(l) of this Agreement.

“Legend Removal Shares” has the meaning given it in Section 3(l) of this Agreement.

“Majority Holders” means at any time holders of at least a majority of the Registrable Securities.

“MNPI” means material non-public information within the meaning of Regulation FD promulgated under the Exchange Act, which shall, in any case, include the receipt of the notice pursuant to Section 2(c) and the information contained in such notice.

“Piggyback Registration” means, in any registration of Common Stock as set forth in Section 2(d), the ability of holders of Registrable Securities to include Registrable Securities in such registration.

“Placement Agent” means [\*\*\*].

The terms “register,” “registered,” and “registration” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“Registrable Securities” means (i) the Conversion Shares issued or issuable upon conversion of the Series A Preferred, and (ii) any capital stock of the Company issued or issuable with respect to the Conversion Shares or the Series A Preferred as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversion of the Series A Preferred.

“Registration Filing Date” means the earlier of (i) date that the Registration Statement is filed with the Commission or (ii) sixty (60) days after the date of the final closing of the Offering.

“Registration Statement” means the registration statement that the Company is required to file pursuant to this Agreement to register the Registrable Securities.

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

“Rule 415” means Rule 415 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such rule.

“Securities Act” means the Securities Act of 1933, as amended, or any similar federal statute promulgated in replacement thereof, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

## 2. Registration.

(a) Mandatory Registration. Not later than the Registration Filing Date, the Company shall file with the Commission a Registration Statement on Form S-1, Form S-3 or any other appropriate form, relating to the resale by the Holders of all of the Registrable Securities, and the Company shall use commercially reasonable efforts to cause such Registration Statement to be declared effective by the Commission as soon as practicable thereafter, but in no event later than the Effectiveness Deadline and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the affected Holders (the “**Effectiveness Period**”). The registration rights under this Section 2 shall not apply or be available with respect to securities of the Company held by affiliates (as defined in Rule 405 under the Securities Act) and related persons (as defined in Rule 404 under the Securities Act) of the Placement Agent or the officers and directors of the Company and their affiliates.

(b) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Holders based on the number of Registrable Securities held by each Holder at the time the Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that a Holder sells or otherwise transfers any of such Holder's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor. Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Holders, pro rata based on the number of Registrable Securities then held by such Holders which are covered by such Registration Statement. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement without the prior written consent of the Majority Holders.

(c) (1) if the Commission allows the Registration Statement to be declared effective at any time before or after the Effectiveness Date, subject to the withdrawal of certain Registrable Securities from the Registration Statement, and the reason is the Commission's determination that (x) the offering of any of the Registrable Securities constitutes a primary offering of securities by the Company, (y) Rule 415 may not be relied upon for the registration of the resale of any or all of the Registrable Securities, and/or (z) a Holder of any Registrable Securities must be named as an underwriter, the Holders understand and agree the Company may reduce, on a *pro rata* basis, the total number of Registrable Securities to be registered on behalf of each such Holder. In any such *pro rata* reduction, the number of Registrable Securities to be registered on such Registration Statement will be reduced on a pro rata basis based on the total number of unregistered Conversion Shares. In addition, any such affected Holder shall be entitled to Piggyback Registration rights after the Registration Statement is declared effective by the Commission until such time as: (AA) all Registrable Securities have been registered pursuant to an effective Registration Statement, (BB) the Registrable Securities may be resold without restriction pursuant to SEC Rule 144 of the Securities Act or (CC) the Holder agrees to be named as an underwriter in any such registration statement. The Holders acknowledge and agree the provisions of this paragraph may apply to more than one Registration Statement; and



(2) For not more than thirty (30) consecutive days or for a total of not more than sixty (60) days in any twelve (12) month period, the Company may suspend the use of any prospectus included in any Registration Statement contemplated by this Section in the event that the Company determines in good faith that such suspension is necessary to (A) delay the disclosure of MNPI concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company or (B) amend or supplement the affected Registration Statement or the related prospectus so that (i) such Registration Statement shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein or (ii) such prospectus shall not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, including in connection with the filing of a post-effective amendment to such Registration Statement in connection with the Company's filing of an Annual Report on Form 10-K for any fiscal year (an "**Allowed Delay**"); provided, that the Company shall promptly (a) notify each Holder in writing of the commencement of an Allowed Delay, but shall not (without the prior written consent of an Holder) disclose to such Holder any MNPI giving rise to an Allowed Delay, (b) advise the Holders in writing to cease all sales under the Registration Statement until the end of the Allowed Delay and (c) use commercially reasonable efforts to terminate an Allowed Delay as promptly as practicable.

(d) Piggyback Registration Rights. In addition to the Company's agreement pursuant to Section 2(a) above, if the Company shall, at any time during the Effectiveness Period or as contemplated pursuant to Section 2(c) and ending when all Registrable Securities have been sold by Holders, determine (i) to register for sale any of its Common Stock in an underwritten offering, or (ii) to file a registration statement covering the resale of any shares of the Common Stock held by any of its shareholders (other than the registration contemplated in Section 2(a) above), the Company shall provide written notice to the Holders, which notice shall be provided no less than fifteen (15) calendar days prior to the filing of such applicable registration statement (the "**Company Notice**"). In that event, the right of any Holder to include the Registrable Securities in such a registration shall be conditioned upon such Holder's written request to participate which shall be delivered to the Company within ten (10) calendar days after the Company Notice, as well as such Holder's participation in such underwriting (if applicable, for purposes of this paragraph) and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to sell any of their Registrable Securities through such underwriting shall (together with the Company and any other stockholders of the Company selling their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter selected for such underwriting. Notwithstanding anything herein to the contrary, if the underwriter determines that marketing factors require a limitation on the number of shares of Common Stock or the amount of other securities to be underwritten, the underwriter may exclude some or all Registrable Securities from such registration and underwriting. The Company shall so advise all Holders (except those Holders who failed to timely elect to include their Registrable Securities through such underwriting or have indicated to the Company their decision not to do so), and indicate to each such Holder the number of shares of Registrable Securities that may be included in the registration and underwriting, if any. The number of Registrable Securities to be included in such registration and underwriting shall be allocated first to the Company, then to all other selling stockholders, including the Holders, who have requested to sell in the registration on a pro rata basis according to the number of shares requested to be included therein. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw such Holder's Registrable Securities therefrom by delivering a written notice to the Company and the underwriter. A Holder with Registrable Securities included in any registration shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required in order to comply with any applicable law or regulation in connection with the registration of such Holder's Registrable Securities or any qualification or compliance with respect to such Holder's Registrable Securities and referred to in this Agreement. The Company shall have the right to terminate or withdraw any registration initiated by it before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. Notwithstanding the foregoing, the Company shall not be required to register any Registrable Securities pursuant to this Section 2(d) that are eligible for resale pursuant to Rule 144 without restriction (including, without limitation, volume restrictions) or that are the subject of a then-effective Registration Statement. The Company may postpone or withdraw the filing or the effectiveness of a piggyback registration at any time in its sole discretion.

3. Registration Procedures for Registrable Securities. The Company will keep each Holder reasonably advised as to the filing and effectiveness of the Registration Statement. At its expense with respect to the Registration Statement, the Company will:

(a) prepare and file with the Commission with respect to the Registrable Securities, a Registration Statement on Form S-1, Form S-3, or any other form for which the Company then qualifies or which counsel for the Company shall deem appropriate and which form shall be available for the sale of the Registrable Securities in accordance with the intended methods of distribution thereof, and use its commercially reasonable efforts to cause such Registration Statement to become effective and shall remain effective during the Effectiveness Period. Thereafter, the Company shall be entitled to withdraw such Registration Statement and the Holders shall have no further right to offer or sell any of the Registrable Securities registered for resale thereon pursuant to the respective Registration Statement (or any prospectus relating thereto);

(b) if the Registration Statement is subject to review by the Commission, respond in a commercially reasonable manner to all comments and diligently pursue resolution of any comments to the satisfaction of the Commission;

(c) prepare and file with the Commission such amendments and supplements to such Registration Statement as may be necessary to keep such Registration Statement effective during the Effectiveness Period;

(d) furnish, without charge, to each Holder of Registrable Securities covered by such Registration Statement (i) a reasonable number of copies of such Registration Statement (including any exhibits thereto other than exhibits incorporated by reference), each amendment and supplement thereto as such Holder may reasonably request, (ii) such number of copies of the prospectus included in such Registration Statement (including each preliminary prospectus and any other prospectus filed under Rule 424 of the Securities Act) as such Holders may reasonably request, in conformity with the requirements of the Securities Act, and (iii) such other documents as such Holder may require to consummate the disposition of the Registrable Securities owned by such Holder, but only during the Effectiveness Period;

(e) use its commercially reasonable efforts to register or qualify such registration under such other applicable securities laws of such jurisdictions as any Holder of Registrable Securities covered by such Registration Statement reasonably requests and as may be necessary for the marketability of the Registrable Securities (such request to be made by the time the applicable Registration Statement is deemed effective by the Commission) and do any and all other acts and things necessary to enable such Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Holder; provided, that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph, (ii) subject itself to taxation in any such jurisdiction, or (iii) consent to general service of process in any such jurisdiction.

(f) notify each Holder of Registrable Securities, the disposition of which requires delivery of a prospectus relating thereto under the Securities Act, of the happening of any event (as promptly as practicable after becoming aware of such event), which comes to the Company's attention, that will after the occurrence of such event cause the prospectus included in such Registration Statement, if not amended or supplemented, to contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the Company shall promptly thereafter prepare and furnish to such Holder a supplement or amendment to such prospectus (or prepare and file appropriate reports under the Exchange Act) so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, unless suspension of the use of such prospectus otherwise is authorized herein or in the event of a Blackout Period, in which case no supplement or amendment need be furnished (or Exchange Act filing made) until the termination of such suspension or Blackout Period;

(g) comply, and continue to comply during the Effectiveness Period, in all material respects with the Securities Act and the Exchange Act and with all applicable rules and regulations of the Commission with respect to the disposition of all securities covered by such Registration Statement;

(h) as promptly as practicable after becoming aware of such event, notify each Holder of Registrable Securities being offered or sold pursuant to the Registration Statement of the issuance by the Commission of any stop order or other suspension of effectiveness of the Registration Statement;

(i) use its commercially reasonable efforts to cause all the Registrable Securities covered by the Registration Statement to be quoted on such Approved Market on which securities of the same class or series issued by the Company are then listed or quoted;

(j) provide a transfer agent and registrar, which may be a single entity, for the shares of Common Stock registered hereunder;

(k) though the Registrable Securities will be issued in book entry form, if requested by the Holders, cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statement, which certificates shall be free, to the extent permitted by applicable law, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may request;

(l) use commercially reasonable efforts to (i) cause its legal counsel, at the Company's expense, (a) to issue to the transfer agent for the Common Stock, within a reasonable period of time after the Effective Date, a "blanket" legal opinion in customary form to the effect that the Registrable Securities covered by the Registration Statement have been registered for resale under the Securities Act and, if such counsel has requested and received a signed certificate (a "**Legend Removal Certificate**") from a Holder of the Registrable Securities, may then be reissued without any legend or restriction relating to their status as "restricted securities" as defined in Rule 144 ("**Legend Removal Shares**") upon resale pursuant to such Registration Statement; and (b) promptly to amend such opinion to cause the Registrable Securities to be Legend Removal Shares after later receipt of a Legend Removal Certificate from the Holder, and (ii) cause the transfer agent for the Common Stock to issue such Registrable Securities without any such legend within three (3) trading days after the transfer agent's receipt of such legal opinion with respect to Legend Removal Shares or otherwise within three (3) trading days after the transfer agent's receipt of evidence in customary form that the Registrable Securities have been sold pursuant to an effective resale registration statement under the Securities Act, as certificates, DRS Statements or electronic book entry positions, as requested by a Holder; and

(m) take all other reasonable actions necessary to expedite and facilitate the disposition by the Holders of the Registrable Securities pursuant to the Registration Statement.

4. Suspension of Offers and Sales. Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(f) hereof or of the commencement of a Blackout Period, such Holder shall discontinue the disposition of Registrable Securities included in the Registration Statement until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(f) hereof or notice of the end of the Blackout Period, and, if so directed by the Company, such Holder shall deliver to the Company (at the Company's expense) all copies (including, without limitation, any and all drafts), other than permanent file copies, then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

5. Registration Expenses. The Company shall pay all expenses in connection with any registration obligation provided herein, including, without limitation, all registration, filing, stock exchange fees, printing expenses, all fees and expenses of complying with applicable securities laws, and the fees and disbursements of counsel for the Company and of its independent accountants; provided, that, in any registration, each party shall pay for its own underwriting discounts and commissions and transfer taxes. Except as provided in this Section 5 and Section 8, the Company shall not be responsible for the expenses of any attorney or other advisor employed by a Holder.

6. Assignment of Rights. The rights under this Agreement shall be automatically assignable by the Holders to any transferee of all or any portion of such Holder's Registrable Securities if: (i) the Holder agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company promptly after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned and (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

7. Information by Holder. A Holder with Registrable Securities included in any registration shall furnish to the Company (and any managing underwriter(s), where applicable) such information regarding itself, the Registrable Securities held by it, the intended method of disposition of such securities, and such other information as shall be required in order to comply with any applicable law or regulation in connection with the registration of such Holder's Registrable Securities or any qualification or compliance with respect to such Holder's Registrable Securities and referred to in this Agreement. A form of Selling Stockholder Questionnaire is attached as Exhibit A hereto.

8. Indemnification.

(a) In the event of the offer and sale of Registrable Securities under the Securities Act, the Company shall, and hereby does, indemnify and hold harmless, to the fullest extent permitted by law, each Holder, its directors, officers, partners, each other person who participates as an underwriter in the offering or sale of such securities, and each other person, if any, who controls or is under common control with such Holder or any such underwriter within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, and expenses to which the Holder or any such director, officer, partner or underwriter or controlling person may become subject under the Securities Act, the Exchange Act, or any other federal or state law, insofar as such losses, claims, damages, liabilities or expenses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon (1) in the case of any registration statement prepared and filed by the Company under which Registrable Securities were registered under the Securities Act, if such registration statement contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (2) in the case of any preliminary prospectus, final prospectus or summary prospectus contained in such registration statement, or any amendment or supplement thereto, if such preliminary prospectus, final prospectus or summary prospectus includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, or any violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law in connection with this Agreement; and the Company shall reimburse the Holder, and each such director, officer, partner, underwriter and controlling person for any legal or any other expenses reasonably and actually incurred by them in connection with investigating, defending or settling any such loss, claim, damage, liability, action or proceeding; provided, that such indemnity agreement found in this Section 8(a) shall in no event exceed the net proceeds from the Offering received by the Company; and provided further, that the Company shall not be liable in any such case (i) to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon an untrue statement in or omission from such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company by the Holder specifically for use in the preparation thereof or (ii) if the person asserting any such loss, claim, damage, liability (or action or proceeding in respect thereof) who purchased the Registrable Securities that are the subject thereof did not receive a copy of the preliminary prospectus or the final prospectus (or the final prospectus as amended or supplemented) at or prior to the written confirmation of the sale of such Registrable Securities to such person because of the failure of such Holder or underwriter to so provide such preliminary or final prospectus and the untrue statement or omission of a material fact made in such preliminary prospectus was corrected in the amended preliminary or final prospectus (or the final prospectus as amended or supplemented). Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Holders, or any such director, officer, partner, underwriter or controlling person and shall survive the transfer of such shares by the Holder.

(b) As a condition to including Registrable Securities in any registration statement filed pursuant to this Agreement, each Holder agrees to be bound by the terms of this Section 8 and to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors and officers, and each other person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, to which the Company or any such director or officer or controlling person may become subject under the Securities Act, the Exchange Act, or any other federal or state law, to the extent arising out of or based solely upon: (x) such Holder's failure to comply with the prospectus delivery requirements of the Securities Act or (y)(1), in the case of any registration statement prepared and filed by the Company under which Registrable Securities were registered under the Securities Act, if such registration statement contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (2) in the case of any preliminary prospectus, final prospectus or summary prospectus contained in such registration statement, or any amendment or supplement thereto, such preliminary prospectus, final prospectus or summary prospectus includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, (i) to the extent, but only to the extent, that such untrue statement or omission referred to in (y)(1) or (y)(2) above is contained in any information so furnished in writing by such Holder to the Company specifically for inclusion in the registration statement or such prospectus or (ii) to the extent that (1) such untrue statements or omissions referred to in (y)(1) or (y)(2) above are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such prospectus or such form of prospectus or in any amendment or supplement thereto or (2) in the case of an occurrence of an event of the type specified in Section 3(f) hereof, the use by such Holder of an outdated or defective prospectus after the Company has notified such Holder in writing that the prospectus is outdated or defective and prior to the receipt by such Holder of the advice contemplated in Section 3(f). Each Holder's obligation to indemnify shall be individual, not joint and several, and in no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in this Section (including any governmental action), such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the indemnifying party of the commencement of such action; provided, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under this Section, except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof, unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties arises in respect of such claim after the assumption of the defenses thereof or the indemnifying party fails to defend such claim in a diligent manner. If, in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties arises in respect of such claim after the assumption of the defenses thereof, the indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the reasonable fees and expenses to be paid by the indemnifying party. No indemnifying party shall be liable for any settlement of any action or proceeding effected without its consent. No indemnifying party shall, without the consent of the indemnified party (which consent shall not be unreasonably withheld, conditioned or delayed), consent to entry of any judgment or enter into any settlement, unless such consent to entry of judgment or settlement includes as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. Notwithstanding anything to the contrary set forth herein, and without limiting any of the rights set forth above, in any event any party shall have the right to retain, at its own expense, counsel with respect to the defense of a claim.

(d) If an indemnifying party does or is not permitted to assume the defense of an action pursuant to Section 8(c) or in the case of the expense reimbursement obligation set forth in Sections 8(a) and (b), the indemnification required by Sections 8(a) and 8(b) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills received or expenses, losses, damages, or liabilities are incurred provided that the indemnifying party is provided appropriate documentation.

(e) If the indemnification provided for in Section 8(a) or 8(b) is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall (i) contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense as is appropriate to reflect the proportionate relative fault of the indemnifying party on the one hand and the indemnified party on the other (determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission relates to information supplied by the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission), or (ii) if the allocation provided by clause (i) above is not permitted by applicable law or provides a lesser sum to the indemnified party than the amount hereinafter calculated, not only the proportionate relative fault of the indemnifying party and the indemnified party, but also the relative benefits received by the indemnifying party on the one hand and the indemnified party on the other, as well as any other relevant equitable considerations. No indemnified party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any indemnifying party who was not guilty of such fraudulent misrepresentation.

9. Rule 144. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit the Holders to sell the Registrable Securities to the public without registration, the Company agrees to use commercially reasonable efforts to: (i) to make and keep public information available as those terms are understood in SEC Rule 144, (ii) to file with the SEC in a timely manner all reports and other documents required to be filed by an issuer of securities registered under the Securities Act or the Exchange Act pursuant to SEC Rule 144, (iii) as long as any Holder owns any Registrable Securities, to furnish in writing upon such Holder's request a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 and of the Securities Act and the Exchange Act, and to furnish to such Holder a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed by the Company as may be reasonably requested in availing such Holder of any rule or regulation of the SEC permitting the selling of any such Registrable Securities without registration, (iv) with respect to the sale of any Registrable Securities by a Holder pursuant to SEC Rule 144 and subject to Holder providing necessary documentation to meet the requirements of such rule, to promptly furnish, without any charge to such Holder, a written legal opinion of its counsel to facilitate such sale and, if necessary, instruct its transfer agent in writing that it may rely on said written legal opinion of counsel with respect to said sale and (v) undertake any additional actions commercially necessary to maintain the availability of Rule 144.

10. Independent Nature of Each Purchaser's Obligations and Rights. The obligations of each Purchaser under this Agreement are several and not joint with the obligations of any other Purchaser, and each Purchaser shall not be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement. Nothing contained herein and no action taken by any Purchaser pursuant hereto, shall be deemed to constitute such Purchasers as a partnership, an association, a joint venture, or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.



11. Miscellaneous.

(a) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(b) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(c) Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, permitted transferees and assignees, executors and administrators of the parties hereto.

(d) No Inconsistent Agreements. The Company has not entered, as of the date hereof, and shall not enter, on or after the date of this Agreement, into any agreement with respect to its securities that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(e) Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof.

(f) Notices, etc. All notices or other communications which are required or permitted under this Agreement shall be in writing and sufficient if delivered by hand, by facsimile transmission, by registered or certified mail, postage pre-paid, by electronic mail, or by courier or overnight carrier, to the persons at the addresses set forth below (or at such other address as may be provided hereunder), and shall be deemed to have been delivered as of the date so delivered:

If to the Company to:

Super League Gaming, Inc.  
2912 Colorado Ave., Suite #203  
Santa Monica, CA 90404  
Attention: Attn: Ann Hand, CEO  
Email: [ann.hand@superleague.com](mailto:ann.hand@superleague.com)

With a copy (which shall not constitute notice) to:

Disclosure Law Group, A Professional Corporation  
655 W. Broadway, Suite 870  
San Diego, CA 92101  
Attention: Daniel Rumsey, Esq.  
Email: [drumsey@disclosurelawgroup.com](mailto:drumsey@disclosurelawgroup.com)

If to the Purchasers:

To each Purchaser at the address set forth on the signature page hereto or at such other address as any party shall have furnished to the Company in writing.

(g) Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any Holder, upon any breach or default of the Company under this Agreement, shall impair any such right, power or remedy of such Holder nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereunder occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Holder of any breach or default under this Agreement, or any waiver on the part of any Holder of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, or by law or otherwise afforded to any holder, shall be cumulative and not alternative.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission or electronic transmission via .PDF file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

(i) Severability. In the case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(j) Amendments. The provisions of this Agreement may be amended at any time and from time to time, and particular provisions of this Agreement may be waived, with and only with an agreement or consent in writing signed by the Company and the Majority Holders. The Purchasers acknowledge that by the operation of this Section, the Majority Holders may have the right and power to diminish or eliminate all rights of the Holders under this Agreement.

**[SIGNATURE PAGES FOLLOW]**

This Registration Rights Agreement is hereby executed as of the date first above written.

**COMPANY:**

**SUPER LEAGUE GAMING, INC.**

By: \_\_\_\_\_  
Name: Ann Hand  
Title: Chief Executive Officer

**EACH PURCHASER'S SIGNATURE TO THE SUBSCRIPTION AGREEMENT THAT IS DELIVERED IN CONNECTION WITH THE OFFERING SHALL CONSTITUTE SUCH PURCHASER'S SIGNATURE TO THIS REGISTRATION RIGHTS AGREEMENT.**

**Exhibit A**

**Selling Stockholder Notice and Questionnaire**

The undersigned beneficial owner of common stock (the "Registrable Securities") of Super League Gaming, Inc., a Delaware corporation (the "Company"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

**NOTICE**

The undersigned beneficial owner (the "Selling Stockholder") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

**QUESTIONNAIRE**

**1. Name.**

(a) Full Legal Name of Selling Stockholder

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(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

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(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

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**2. Address for Notices to Selling Stockholder:**

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Telephone:

Fax:

Contact Person:

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**3. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes  No

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes  No

Note: If “no” to Section 3(b), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes  No

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes  No

Note: If “no” to Section 3(d), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

**4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.**

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.*

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

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(b) Number of shares of Common Stock to be registered pursuant to this Notice for resale:

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**5. Relationships with the Company:**

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

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The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: \_\_\_\_\_

Beneficial Owner: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**PLEASE FAX A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:**

NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES ISSUABLE UPON THE EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND NEITHER SUCH SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS (1) A REGISTRATION STATEMENT WITH RESPECT THERETO IS EFFECTIVE UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR (2) AN EXEMPTION FROM SUCH REGISTRATION EXISTS AND THE COMPANY RECEIVES AN OPINION OF COUNSEL TO THE HOLDER OF SUCH SECURITIES, WHICH COUNSEL AND OPINION ARE SATISFACTORY TO THE COMPANY, THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR TRANSFERRED IN THE MANNER CONTEMPLATED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR APPLICABLE STATE SECURITIES LAWS.

Effective Date: [ ], 2023

Void After: [ ], 2027

**SUPER LEAGUE GAMING, INC.**

**WARRANT TO PURCHASE COMMON STOCK**

**Super League Gaming, Inc.**, a Delaware corporation (the "**Company**"), for value received on [ ], 2022, (the "**Effective Date**"), hereby issues to [ ] (the "**Holder**" or "**Warrant Holder**") this Warrant (the "**Warrant**") to purchase, [ ] shares (each such share as from time to time adjusted as hereinafter provided being a "**Warrant Share**" and all such shares being the "**Warrant Shares**") of the Company's Common Stock (as defined below), at the Exercise Price (as defined below), as adjusted from time to time as provided herein, on or before [ ], 2027 (the "**Expiration Date**"), all subject to the following terms and conditions. This Warrant is one of a series of placement agent warrants of like tenor that have been issued in connection with the Company's private offering of Series A Convertible Preferred Stock, pursuant to the terms of that certain Confidential Private Placement Memorandum of the Company dated October 12, 2022, as the same may have been amended and supplemented from time to time and the Placement Agency Agreement, dated October 12, 2022, as the same may have been amended from time to time.

As used in this Warrant, (i) "**Business Day**" means any day other than Saturday, Sunday or any other day on which commercial banks in the City of New York, New York, are authorized or required by law or executive order to close; (ii) "**Change of Control**" means (x) any transaction or series of related transactions (including any reorganization, merger or consolidation) that results in the transfer of 51% or more of the voting securities of the Company (excluding, for these purposes, private placements of newly issued shares), or (y) any transfer, disposition or sale of all or substantially all of the assets of the Company to another person; (iii) "**Common Stock**" means the common stock of the Company, par value \$0.0001 per share, including any securities issued or issuable with respect thereto or into which or for which such shares may be exchanged for, or converted into, pursuant to any stock dividend, stock split, stock combination, recapitalization, reclassification, reorganization or other similar event; (iii) "**Exercise Price**" means \$[ ] per share of Common Stock, subject to adjustment as provided herein; (iv) "**Trading Day**" means any day on which the Common Stock is traded (or available for trading) on its principal trading market; and (v) "**Affiliate**" means any person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, a person, as such terms are used and construed in Rule 144 promulgated under the Securities Act of 1933, as amended (the "**Securities Act**").



1. DURATION AND EXERCISE OF WARRANTS

(a) Exercise Period. The Holder may exercise this Warrant in whole or in part on any Business Day on or before 5:00 P.M., Eastern Time, on the Expiration Date, at which time this Warrant shall become void and of no value.

(b) Exercise Procedures.

(i) While this Warrant remains outstanding and exercisable in accordance with Section 1(a), in addition to the manner set forth in Section 1(b)(ii) below, the Holder may exercise this Warrant in whole or in part at any time and from time to time by:

(A) delivery to the Company of a duly executed copy of the Notice of Exercise attached as **Exhibit A**;

(B) surrender of this Warrant to the Secretary of the Company at its principal offices or at such other office or agency as the Company may specify in writing to the Holder; and

(C) payment of the then-applicable Exercise Price per share multiplied by the number of Warrant Shares being purchased upon exercise of the Warrant (such amount, the "**Aggregate Exercise Price**") made in the form of cash, or by certified check, bank draft or money order payable in lawful money of the United States of America or in the form of a Cashless Exercise to the extent permitted in Section 1(b)(ii) below.

(ii) At any time commencing six months after the Effective Date, the Holder may, in its sole discretion, exercise all or any part of the Warrant in a "cashless" or "net-issue" exercise (a "**Cashless Exercise**") by delivering to the Company (1) the Notice of Exercise and (2) the original Warrant, pursuant to which the Holder shall surrender the right to receive upon exercise of this Warrant, a number of Warrant Shares having a value (as determined below) equal to the Aggregate Exercise Price, in which case, the number of Warrant Shares to be issued to the Holder upon such exercise shall be calculated using the following formula:

$$X = \frac{Y * (A - B)}{A}$$

with: X = the number of Warrant Shares to be issued to the Holder

Y = the number of Warrant Shares with respect to which the Warrant is being exercised

A = the fair value per share of Common Stock on the date of exercise of this Warrant

B = the then-current Exercise Price of the Warrant

Solely for the purposes of this paragraph, “**fair value**” per share of Common Stock shall mean the Closing Price (as defined below) per share of Common Stock on the date prior to the date on which the Notice of Exercise is deemed to have been given to the Company pursuant to Section 11 hereto. “**Closing Price**” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market or any other national securities exchange, the closing price per share of the Common Stock for such date (or the nearest preceding date) on the primary eligible market or exchange on which the Common Stock is then listed or quoted; (b) if prices for the Common Stock are then quoted on the OTC Bulletin Board or any tier of the OTC Markets, the closing bid price per share of the Common Stock for such date (or the nearest preceding date) so quoted; or (c) if prices for the Common Stock are then reported in the “Pink Sheets” published by the National Quotation Bureau Incorporated (or a similar organization or agency succeeding to its functions of reporting prices), the most recent closing bid price per share of the Common Stock so reported. If the Common Stock is not publicly traded as set forth above, the “fair value” per share of Common Stock shall be reasonably and in good faith determined by the Board of Directors of the Company as of the date which the Notice of Exercise is deemed to have been sent to the Company.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for such shares shall be deemed to have commenced, on the Effective Date of this Warrant.

(iii) Upon the exercise of this Warrant in compliance with the provisions of this Section 1(b), and except as limited pursuant to the last paragraph of Section 1(b)(ii), the Company shall promptly issue and cause to be delivered to the Holder a certificate for the Warrant Shares purchased by the Holder. Each exercise of this Warrant shall be effective immediately prior to the close of business on the date (the “**Date of Exercise**”) that the conditions set forth in Section 1(b) have been satisfied, as the case may be. On the first Business Day following the date on which the Company has received each of the Notice of Exercise and the Aggregate Exercise Price (or notice of a Cashless Exercise in accordance with Section 1(b)(ii)) (the “**Exercise Delivery Documents**”), the Company shall transmit an acknowledgment of receipt of the Exercise Delivery Documents to the Company’s transfer agent (the “**Transfer Agent**”). On or before the third Business Day following the date on which the Company has received all of the Exercise Delivery Documents (the “**Share Delivery Date**”), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit Withdrawal Agent Commission system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and dispatch by overnight courier to the address as specified in the Notice of Exercise, a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of the Exercise Delivery Documents, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the certificates evidencing such Warrant Shares.

(iv) [RESERVED]

(c) Partial Exercise. This Warrant shall be exercisable, either in its entirety or, from time to time, for part only of the number of Warrant Shares referenced by this Warrant. If this Warrant is submitted in connection with any exercise pursuant to Section 1 and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the actual number of Warrant Shares being acquired upon such an exercise, then the Company shall as soon as practicable and in no event later than five (5) Business Days after any exercise and at its own expense, issue a new Warrant of like tenor representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised.

(d) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 16.

## 2. ISSUANCE OF WARRANT SHARES

(a) The Company covenants that all Warrant Shares will, upon issuance in accordance with the terms of this Warrant, be (i) duly authorized, fully paid and non-assessable, and (ii) free from all liens, charges and security interests, with the exception of claims arising through the acts or omissions of any Holder and except as arising from applicable Federal and state securities laws.

(b) The Company shall register this Warrant upon records to be maintained by the Company for that purpose in the name of the record holder of such Warrant from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner thereof for the purpose of any exercise thereof, any distribution to the Holder thereof and for all other purposes.

(c) The Company will not, by amendment of its certificate of incorporation, by-laws or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all action necessary or appropriate in order to protect the rights of the Holder to exercise this Warrant, or against impairment of such rights.

### 3. ADJUSTMENTS OF EXERCISE PRICE, NUMBER AND TYPE OF WARRANT SHARES

(a) The Exercise Price and the number of shares purchasable upon the exercise of this Warrant shall be subject to adjustment from time to time upon the occurrence of certain events described in this Section 3; provided, that notwithstanding the provisions of this Section 3, the Company shall not be required to make any adjustment if and to the extent that such adjustment would require the Company to issue a number of shares of Common Stock in excess of its authorized but unissued shares of Common Stock, less all amounts of Common Stock that have been reserved for issue upon the conversion of all outstanding securities convertible into shares of Common Stock and the exercise of all outstanding options, warrants and other rights exercisable for shares of Common Stock. If the Company does not have the requisite number of authorized but unissued shares of Common Stock to make any adjustment, the Company shall use its commercially best efforts to obtain the necessary stockholder consent to increase the authorized number of shares of Common Stock to make such an adjustment pursuant to this Section 3.

(i) Subdivision or Combination of Stock. In case the Company shall at any time subdivide (whether by way of stock dividend, stock split or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of Warrant Shares shall be proportionately increased, and conversely, in case the outstanding shares of Common Stock of the Company shall be combined (whether by way of stock combination, reverse stock split or otherwise) into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall be proportionately increased and the number of Warrant Shares shall be proportionately decreased. The Exercise Price and the Warrant Shares, as so adjusted, shall be readjusted in the same manner upon the happening of any successive event or events described in this Section 3(a)(i).

(ii) Dividends in Stock, Property, Reclassification. If at any time, or from time to time, all of the holders of Common Stock (or any shares of stock or other securities at the time receivable upon the exercise of this Warrant) shall have received or become entitled to receive, without payment therefore:

(A) any shares of stock or other securities that are at any time directly or indirectly convertible into or exchangeable for Common Stock, or any rights or options to subscribe for, purchase or otherwise acquire any of the foregoing by way of dividend or other distribution, or

(B) additional stock or other securities or property (including cash) by way of spin-off, split-up, reclassification, combination of shares or similar corporate rearrangement (other than shares of Common Stock issued as a stock split or adjustments in respect of which shall be covered by the terms of Section 3(a)(i) above),

then and in each such case, the Exercise Price and the number of Warrant Shares to be obtained upon exercise of this Warrant shall be adjusted proportionately, and the Holder hereof shall, upon the exercise of this Warrant, be entitled to receive, in addition to the number of shares of Common Stock receivable thereupon, and without payment of any additional consideration therefor, the amount of stock and other securities and property (including cash in the cases referred to above) that such Holder would hold on the date of such exercise had such Holder been the holder of record of such Common Stock as of the date on which holders of Common Stock received or became entitled to receive such shares or all other additional stock and other securities and property. The Exercise Price and the Warrant Shares, as so adjusted, shall be readjusted in the same manner upon the happening of any successive event or events described in this Section 3(a)(ii).

(iii) Fundamental Transaction. If at any time after the date on which this Warrant may be exercised: the Company proposes to engage in a “Fundamental Transaction” (as hereinafter defined) then, and in any one or more of such cases, the Company will give to the Holder at least 10 days’ prior written notice of the date on which the books of the Company will close or a record will be taken for determining rights to vote with respect to such Fundamental Transaction. Such notice will describe the nature of the Fundamental Transaction and will also specify the date on which the holders of the Warrant Shares will be entitled to exchange their securities for securities or other property deliverable upon the consummation of the Fundamental Transaction. A “Fundamental Transaction” is any (i) merger or consolidation of the Company with or into (whether or not the Company is the surviving corporation) another Person, (ii) any sale, assignment, transfer, conveyance or other disposition by the Company of all or substantially all of its assets in one or a series of related transactions; provided, however, that for avoidance of doubt, the granting of a lien on all or substantially all of the Company’s assets as collateral shall not be deemed a Fundamental Transaction hereunder, (iii) purchase, tender or exchange offer by the Company (or to which the Company is a party) that will be for more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), (iv) business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) requiring shareholder approval with another Person whereby such other Person acquires more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), or (v) reclassification of the Warrant Shares or any compulsory share exchange pursuant to which the Warrant Shares are effectively converted into or exchanged for other securities, cash or property.

Subject to the next sentence, if any Fundamental Transaction shall be effected, then, as a condition of such transaction, lawful and adequate provision shall be made whereby the Holder of this Warrant shall thereafter have the right to purchase and receive on exercise of this Warrant upon the basis and upon the terms and conditions specified in this Warrant and in lieu of the Warrant Shares immediately theretofore purchasable and receivable upon the exercise of this Warrant, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding Warrant Shares equal to the number of Warrant Shares immediately theretofore purchasable and receivable upon the exercise of this Warrant had such Fundamental Transaction not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the Holder of this Warrant to the end that the provisions of this Warrant (including, without limitation, provision for adjustment of the number of shares issuable upon the exercise of this Warrant) shall thereafter be applicable as nearly as may be possible in relation to any shares of stock, securities, or assets thereafter deliverable upon exercise of Warrant. Notwithstanding the foregoing, in the event of a Fundamental Transaction in which the holders of Warrant Shares receive in exchange, conversion or other transfer or disposition of their Warrant Shares solely cash, this Warrant will automatically be deemed to be exercised in full in the manner set forth in Section 1(b)(ii), without any further action on behalf of the Holder immediately prior to the closing of such Fundamental Transaction and the Holder shall be entitled solely to the cash price per share for each Warrant Share held following such exercise. Notwithstanding the foregoing, if the cash price per share paid in the Fundamental Transaction is less than the then-current Exercise Price of a Warrant Share, this Warrant will be null, void and of no force or effect.

(b) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment pursuant to this Section 3, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of this Warrant a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall promptly furnish or cause to be furnished to such Holder a like certificate setting forth: (i) such adjustments and readjustments; and (ii) the number of shares and the amount, if any, of other property which at the time would be received upon the exercise of the Warrant.

(c) Certain Events. If any event occurs as to which the other provisions of this Section 3 are not strictly applicable but the lack of any adjustment would not fairly protect the purchase rights of the Holder under this Warrant in accordance with the basic intent and principles of such provisions, or if strictly applicable would not fairly protect the purchase rights of the Holder under this Warrant in accordance with the basic intent and principles of such provisions, then the Company's Board of Directors will, in good faith, make an appropriate adjustment to protect the rights of the Holder; provided, that no such adjustment pursuant to this Section 3(c) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 3.

4. INTENTIONALLY OMITTED

5. TRANSFERS AND EXCHANGES OF WARRANT AND WARRANT SHARES

(a) Registration of Transfers and Exchanges. Subject to Section 5(c), upon the Holder's surrender of this Warrant, with a duly executed copy of the Form of Assignment attached as **Exhibit B**, to the Secretary of the Company at its principal offices or at such other office or agency as the Company may specify in writing to the Holder, the Company shall register the transfer of all or any portion of this Warrant. Upon such registration of transfer, the Company shall issue a new Warrant, in substantially the form of this Warrant, evidencing the acquisition rights transferred to the transferee and a new Warrant, in similar form, evidencing the remaining acquisition rights not transferred, to the Holder requesting the transfer.

(b) Warrant Exchangeable for Different Denominations. The Holder may exchange this Warrant for a new Warrant or Warrants, in substantially the form of this Warrant, evidencing in the aggregate the right to purchase the number of Warrant Shares which may then be purchased hereunder, each of such new Warrants to be dated the date of such exchange and to represent the right to purchase such number of Warrant Shares as shall be designated by the Holder. The Holder shall surrender this Warrant with duly executed instructions regarding such re-certification of this Warrant to the Secretary of the Company at its principal offices or at such other office or agency as the Company may specify in writing to the Holder.

(c) Restrictions on Transfers. This Warrant may not be transferred at any time without (i) registration under the Securities Act or (ii) an exemption from such registration and a written opinion of legal counsel addressed to the Company that the proposed transfer of the Warrant may be effected without registration under the Securities Act, which opinion will be in form and from counsel reasonably satisfactory to the Company.

(d) Permitted Transfers and Assignments. Notwithstanding any provision to the contrary in this Section 5, the Holder may transfer, with or without consideration, this Warrant or any of the Warrant Shares (or a portion thereof) to the Holder's Affiliates (as such term is defined under Rule 144 of the Securities Act) without obtaining the opinion from counsel that may be required by Section 5(c)(ii), provided, that the Holder delivers to the Company and its counsel certification, documentation, and other assurances reasonably required by the Company's counsel to enable the Company's counsel to render an opinion to the Company's Transfer Agent that such transfer does not violate applicable securities laws.

6. MUTILATED OR MISSING WARRANT CERTIFICATE

If this Warrant is mutilated, lost, stolen or destroyed, upon request by the Holder, the Company will, at its expense, issue, in exchange for and upon cancellation of the mutilated Warrant, or in substitution for the lost, stolen or destroyed Warrant, a new Warrant, in substantially the form of this Warrant, representing the right to acquire the equivalent number of Warrant Shares; provided, that, as a prerequisite to the issuance of a substitute Warrant, the Company may require satisfactory evidence of loss, theft or destruction as well as an indemnity from the Holder of a lost, stolen or destroyed Warrant.

7. PAYMENT OF TAXES

The Company will pay all transfer and stock issuance taxes attributable to the preparation, issuance and delivery of this Warrant and the Warrant Shares (and replacement Warrants) including, without limitation, all documentary and stamp taxes; provided, however, that the Company shall not be required to pay any tax in respect of the transfer of this Warrant, or the issuance or delivery of certificates for Warrant Shares or other securities in respect of the Warrant Shares to any person or entity other than to the Holder.

8. FRACTIONAL WARRANT SHARES

No fractional Warrant Shares shall be issued upon exercise of this Warrant. The Company, in lieu of issuing any fractional Warrant Share, shall round up the number of Warrant Shares issuable to nearest whole share.

9. NO STOCK RIGHTS AND LEGEND

No holder of this Warrant, as such, shall be entitled to vote or be deemed the holder of any other securities of the Company that may at any time be issuable on the exercise hereof, nor shall anything contained herein be construed to confer upon the holder of this Warrant, as such, the rights of a stockholder of the Company or the right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or give or withhold consent to any corporate action or to receive notice of meetings or other actions affecting stockholders (except as provided herein), or to receive dividends or subscription rights or otherwise (except as provide herein).

Each certificate for Warrant Shares initially issued upon the exercise of this Warrant, and each certificate for Warrant Shares issued to any subsequent transferee of any such certificate, shall be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY STATE SECURITIES LAWS, AND NEITHER SUCH SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS (1) A REGISTRATION STATEMENT WITH RESPECT THERETO IS EFFECTIVE UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR (2) AN EXEMPTION FROM SUCH REGISTRATION EXISTS AND THE COMPANY RECEIVES AN OPINION OF COUNSEL TO THE HOLDER OF SUCH SECURITIES, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR TRANSFERRED IN THE MANNER CONTEMPLATED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR APPLICABLE STATE SECURITIES LAWS.”

10. INTENTIONALLY OMITTED.



11. NOTICES

All notices, consents, waivers, and other communications under this Warrant must be in writing and will be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, if to the registered Holder hereof; or (d) seven days after the placement of the notice into the mails (first class postage prepaid), to the Holder at the address, facsimile number, or e-mail address furnished by the registered Holder to the Company, or if to the Company, to it at 82912 Colorado Ave. Suite #203, Santa Monica, CA 90404, Attn: CEO and CFO (or to such other address, facsimile number, or e-mail address as the Holder or the Company as a party may designate by notice the other party).

12. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Warrant invalid or unenforceable, the other provisions of this Warrant will remain in full force and effect. Any provision of this Warrant held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

13. BINDING EFFECT

This Warrant shall be binding upon and inure to the sole and exclusive benefit of the Company, its successors and assigns, the registered Holder or Holders from time to time of this Warrant and the Warrant Shares.

14. SURVIVAL OF RIGHTS AND DUTIES

This Warrant shall terminate and be of no further force and effect on the earlier of 5:00 P.M., Eastern Time, on the Expiration Date or the date on which this Warrant has been exercised in full.

15. GOVERNING LAW

This Warrant will be governed by and construed under the laws of the State of New York without regard to conflicts of laws principles that would require the application of any other law.

16. DISPUTE RESOLUTION

In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within two Business Days of receipt of the Notice of Exercise giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two Business Days, submit via facsimile (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

17. NOTICES OF RECORD DATE

Upon (a) any establishment by the Company of a record date of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or right or option to acquire securities of the Company, or any other right, or (b) any capital reorganization, reclassification, recapitalization, merger or consolidation of the Company with or into any other corporation, any transfer of all or substantially all the assets of the Company, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, or the sale, in a single transaction, of a majority of the Company's voting stock (whether newly issued, or from treasury, or previously issued and then outstanding, or any combination thereof), the Company shall mail to the Holder at least ten (10) Business Days, or such longer period as may be required by law, prior to the record date specified therein, a notice specifying (i) the date established as the record date for the purpose of such dividend, distribution, option or right and a description of such dividend, option or right, (ii) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up, or sale is expected to become effective and (iii) the date, if any, fixed as to when the holders of record of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

18. RESERVATION OF SHARES

The Company shall reserve and keep available out of its authorized but unissued shares of Common Stock for issuance upon the exercise of this Warrant, free from pre-emptive rights, such number of shares of Common Stock for which this Warrant shall from time to time be exercisable. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation. Without limiting the generality of the foregoing, the Company covenants that it will use commercially reasonable efforts to take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and use commercially reasonable efforts to obtain all such authorizations, exemptions or consents, including but not limited to consents from the Company's stockholders or Board of Directors or any public regulatory body, as may be necessary to enable the Company to perform its obligations under this Warrant.

19. NO THIRD PARTY RIGHTS

This Warrant is not intended, and will not be construed, to create any rights in any parties other than the Company and the Holder, and no person or entity may assert any rights as third-party beneficiary hereunder.

20. AMENDMENTS.

Any term of this Warrant may be amended, supplemented or waived upon the written consent of the Company and the holders of a majority in interest of all outstanding Placement Agent Warrants issued pursuant to the PAA, and such amendment, supplement or waiver shall be binding upon the Company and all holders of such Placement Agent Warrants, including the Holder, whether or not the Holder has consented to such amendment, supplement or waiver; *provided, however*, that any such amendment, supplement or waiver must apply to all outstanding Placement Agent Warrants issued pursuant to the PAA.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of the date first set forth above.

**SUPER LEAGUE GAMING, INC.**

By: \_\_\_\_\_  
Ann Hand  
Chief Executive Officer

EXHIBIT A

NOTICE OF EXERCISE

(To be executed by the Holder of Warrant if such Holder desires to exercise Warrant)

To Super League Gaming, Inc.:

The undersigned hereby irrevocably elects to exercise this Warrant and to purchase thereunder, \_\_\_\_\_ full shares of Super League Gaming, Inc. common stock issuable upon exercise of the Warrant and delivery of:

(1) \$ \_\_\_\_\_ (in cash as provided for in the foregoing Warrant) and any applicable taxes payable by the undersigned pursuant to such Warrant; and

(2) \_\_\_\_\_ shares of Common Stock (pursuant to a Cashless Exercise in accordance with Section 1(b)(ii) of the Warrant) (check here if the undersigned desires to deliver an unspecified number of shares equal the number sufficient to effect a Cashless Exercise [ ]).

The undersigned requests that certificates for such shares be issued in the name of:

\_\_\_\_\_  
(Please print name, address and social security or federal employer identification number (if applicable))

\_\_\_\_\_  
\_\_\_\_\_

The undersigned hereby affirms that the undersigned is an accredited investor as defined under Rule 501 of Regulation D of the Securities Act of 1933. If the Holder cannot make the foregoing affirmation because it is factually incorrect, it shall be a condition to the exercise of the Warrant that the Company receive such other representations as the Company considers necessary, acting reasonably, to assure the Company that the issuance of securities upon exercise of this Warrant shall not violate any United States or other applicable securities laws.

If the shares issuable upon this exercise of the Warrant are not all of the Warrant Shares which the Holder is entitled to acquire upon the exercise of the Warrant, the undersigned requests that a new Warrant evidencing the rights not so exercised be issued in the name of and delivered to:

\_\_\_\_\_  
(Please print name, address and social security or federal employer identification number (if applicable))

\_\_\_\_\_  
\_\_\_\_\_

Name of Holder (print): \_\_\_\_\_  
(Signature): \_\_\_\_\_  
(By:) \_\_\_\_\_  
(Title): \_\_\_\_\_  
Dated: \_\_\_\_\_

EXHIBIT B

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sells, assigns and transfers to each assignee set forth below all of the rights of the undersigned under the Warrant (as defined in and evidenced by the attached Warrant) to acquire the number of Warrant Shares set opposite the name of such assignee below and in and to the foregoing Warrant with respect to said acquisition rights and the shares issuable upon exercise of the Warrant:

Name of Assignee	Address	Number of Shares

If the total of the Warrant Shares are not all of the Warrant Shares evidenced by the foregoing Warrant, the undersigned requests that a new Warrant evidencing the right to acquire the Warrant Shares not so assigned be issued in the name of and delivered to the undersigned.

Name of Holder (print): \_\_\_\_\_  
(Signature): \_\_\_\_\_  
(By:) \_\_\_\_\_  
(Title): \_\_\_\_\_  
Dated: \_\_\_\_\_

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statements on Form S-8 (File Nos. 333-238143, 333-258996 and 333-269875) and Form S-3 (File Nos. 333-258946, 333-259347 and 265469) of Super League Gaming, Inc. of our report dated March 31, 2023, which expresses an unqualified opinion and includes an explanatory paragraph relating to the conditions and events that raise substantial doubt regarding the Company's ability to continue as a going concern, relating to the consolidated financial statements of Super League Gaming, Inc., appearing in this Annual Report on Form 10-K of Super League Gaming, Inc.

*/s/ Baker Tilly US, LLP*

Los Angeles, California  
March 31, 2023

**CERTIFICATION PURSUANT TO RULE 13A-14 OF THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ann Hand, President and Chief Executive Officer of Super League Gaming, Inc., certify that:

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

Date: March 31, 2023

/s/ Ann Hand  
Ann Hand  
President and Chief Executive Officer  
(Principal Executive Officer)



**CERTIFICATION PURSUANT TO RULE 13A-14 OF THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Clayton Haynes, Chief Financial Officer of Super League Gaming, Inc., certify that:

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

Date: March 31, 2023

/s/ Clayton Haynes  
Clayton Haynes  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Super League Gaming, Inc. (the “*Company*”) on Form 10-K for the year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “*Report*”), I, Ann Hand, President and Chief Executive Officer of the Company, and Clayton Haynes, Chief Financial Officer of the Company, each certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: March 31, 2023

/s/ Ann Hand  
Ann Hand  
President and Chief Executive Officer  
(Principal Executive Officer)

/s/ Clayton Haynes  
Clayton Haynes  
Chief Financial Officer  
(Principal Financial and Accounting Officer)