

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, 2020

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

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

Commission file number: 001-37862

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

30-1205798

State or other jurisdiction of  
incorporation or organization

(I.R.S. Employer  
Identification Number)

7800 Shoal Creek Blvd, Suite 230-S Austin, TX

78757

(Address of principal executive offices)

(Zip Code)

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

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

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

Securities registered pursuant to Section 12(g) of the Act: None

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

Indicate by check mark whether the registrant 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.

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

The aggregate market value of voting stock held by non-affiliates of the registrant was \$4,457,382 as of June 30, 2020, the last business day of the registrant's most recently completed second fiscal quarter (based on the closing sales price for the common stock on the Nasdaq Capital Market on such date).

As of March 23, 2021, 71,211,399 shares of common stock, par value \$0.0001 per share, were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the information called for by Part III of this Annual Report on Form 10-K are incorporated by reference from the definitive proxy statement for the registrant's annual meeting of stockholders to be filed with the Securities and Exchange Commission within 120 days after the registrant's fiscal year ended December 31, 2020. Except with respect to information specifically incorporated by reference in this Annual Report on Form 10-K, the definitive proxy statement is not deemed to be filed as part hereof.

## TABLE OF CONTENTS

	<b>PAGE</b>
<a href="#">Special Note Regarding Forward Looking Statements</a>	1
<a href="#">Summary of Risk Factors</a>	2
<b>PART I</b>	<b>4</b>
<a href="#">Item 1. Business</a>	4
<a href="#">Item 1A. Risk Factors</a>	12
<a href="#">Item 1B. Unresolved Staff Comments</a>	40
<a href="#">Item 2. Properties</a>	40
<a href="#">Item 3. Legal Proceedings</a>	40
<a href="#">Item 4. Mine Safety Disclosures</a>	40
<b>PART II</b>	<b>41</b>
<a href="#">Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	41
<a href="#">Item 6. Selected Financial Data</a>	42
<a href="#">Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	42
<a href="#">Item 7A. Quantitative and Qualitative Disclosures About Market Risk</a>	54
<a href="#">Item 8. Financial Statements and Supplementary Data</a>	55
<a href="#">Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	90
<a href="#">Item 9A. Controls and Procedures</a>	91
<a href="#">Item 9B. Other Information</a>	91
<b>PART III</b>	<b>93</b>
<a href="#">Item 10. Directors, Executive Officers and Corporate Governance</a>	93
<a href="#">Item 11. Executive Compensation</a>	93
<a href="#">Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	93
<a href="#">Item 13. Certain Relationships and Related Transactions, and Director Independence</a>	93
<a href="#">Item 14. Principal Accounting Fees and Services</a>	93
<b>PART IV</b>	<b>94</b>
<a href="#">Item 15. Exhibits and Financial Statement Schedules</a>	94
<a href="#">Item 16. Form 10-K Summary</a>	97

"Phunware," the Phunware design logo and the trademark or service marks of Phunware, Inc. and its subsidiaries appearing in this Annual Report on Form 10-K are the property of Phunware, Inc. Trade names, trademarks and service marks of other companies that may appear in this report are the property of their respective holders. We have omitted the ® and ™ designations, as applicable, for the trademarks used in this Annual Report on Form 10-K.

---

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

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

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

## SUMMARY OF RISK FACTORS

Below is a summary of the principal factors that could materially harm our business, operating results and/or financial condition, impair our future prospects and/or cause the price of our common stock to decline. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found below under the heading “*Risk Factors*” and should be carefully considered, together with other information in this Form 10-K and our other filings with the Securities and Exchange Commission (“SEC”) before making an investment decision regarding our common stock.

### Risks Related to Our Business, Operations and Industry

- Our revenue has declined, we have a history of losses, we expect to continue to incur losses and we may not achieve or sustain profitability in the future.
- The novel coronavirus (“COVID-19”) outbreak could adversely affect our business, operating results, cash flow and financial condition.
- Our recent reductions in workforce may prevent us from executing initiatives to improve the performance of our business effectively or at all.
- We have a concentration of sales with a key customer.
- Goodwill comprises a significant portion of our total assets.
- Current and future litigation could adversely affect us.
- Our results of operations and ability to grow could be negatively affected if we cannot adapt and expand our technology offerings and services in response to ongoing market changes.
- The actual market for our solutions could be significantly smaller than estimates.
- Our profitability could suffer if we are not able to manage large and complex projects and complete fixed price, fixed timeframe contracts on budget and on time.
- Future acquisitions could disrupt our business and may divert management’s attention and, if unsuccessful, harm our business.
- We could be held liable for damages or our reputation could suffer from security breaches or disclosure of confidential information or personal data.
- Our technology offerings and services could infringe upon the intellectual property rights of others.
- If we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties, our business could be adversely affected.
- Our global operations are subject to complex risks, some of which might be beyond our control.
- Because we recognize revenue from application development services as those obligations are transferred to customers and platform subscriptions over the term of the relevant contract, downturns or upturns in sales are not immediately reflected in full in our operating results.
- The length and unpredictability of the sales cycle for our technology offerings and services could delay new sales and cause our revenue and cash flows for any given quarter to fail to meet our projections or market expectations.
- If we fail to detect advertising fraud or other actions that impact our advertising campaign performance, we could harm our reputation with advertisers or agencies, which could cause our revenue and business to suffer.
- Any inability to deliver successful mobile advertising campaigns due to technological challenges or an inability to persuasively demonstrate success will prevent us from growing or retaining our current advertiser base.
- Our business practices with respect to data could give rise to liabilities, restrictions on our business or reputational harm as a result of evolving governmental regulation, legal requirements or industry standards relating to consumer privacy and data protection.
- Our large customers have substantial negotiating leverage, which may require that we agree to terms and conditions that may have an adverse effect on our business.
- Our business is subject to the risks of natural disasters, public health crises, political crises and other natural catastrophic events and to interruption by man-made problems such as computer viruses or terrorism.

### Risks Related to Capitalization Matters, Corporate Governance and Market Volatility

- A substantial number of shares of our common stock may be issued pursuant to the terms of our outstanding convertible notes and the exercise of a warrant issued in connection therewith.
- Restrictive covenants under the terms of our outstanding convertible notes could limit our growth and our ability to finance our operations, fund our capital needs, respond to changing conditions and engage in other business activities that may be in our best interests.
- The price of our common stock and warrants has been, and may continue to be, volatile.

- Our executive officers and directors collectively beneficially own approximately 12% of the outstanding shares of our common stock and continue to have substantial control over the Company.
- If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our common stock adversely, the price and trading volume of our common stock could decline.
- We do not currently intend to pay dividends on our common stock.
- Delaware law and our certificate of incorporation and bylaws contain certain provisions, including anti-takeover provisions that limit the ability of stockholders to take certain actions and could delay or discourage takeover attempts that stockholders may consider favorable.
- Our certificate of incorporation designates a state or federal court located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders, and also provide that the federal district courts will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act or Exchange Act, each of which could limit our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers, or employees.

#### **Risks Related to our Token Offerings and Digital Currencies**

- We have raised capital to fund a token generation event. There can be no assurance that tokens or digital currency will ever be issued and, any significant difficulties we may experience with the offerings could result in claims against us.
- Because there has been limited precedence set for the accounting of digital assets, it is unclear how the Company will be required to account for digital assets transactions in the future.
- The further development and acceptance of blockchain networks, which are part of a new and rapidly changing industry, are subject to a variety of factors that are difficult to evaluate.
- Because our tokens and/or digital currency will be a digital asset built and transacted initially on top of existing third-party blockchain technology, we will be reliant on another blockchain network, and users could be subject to the risk of wallet incompatibility and blockchain protocol risks.
- The development and operation of the Token Ecosystem will likely require technology and intellectual property rights.
- The PhunCoin Token Ecosystem is designed to distribute PhunCoin or Phun to consumers in exchange for their agreement to provide certain personal information to us. Providing this data exposes us to risks of privacy data breach and cybersecurity attacks.
- The Token Ecosystem may be the target of malicious cyberattacks or may contain exploitable flaws in its underlying code, which may result in security breaches and the loss or theft of PhunCoin. If Token Ecosystem's security is compromised or if the Token Ecosystem is subjected to attacks that frustrate or thwart our users' ability to access the Token Ecosystem, their PhunCoin or the Token Ecosystem products and services, users may cut back on or stop using the Token Ecosystem altogether, which could seriously curtail the utilization of PhunCoin.
- The Token Ecosystem is susceptible to mining attacks.
- There is no existing trading market for our PhunCoin.
- The regulatory regime governing blockchain technologies, cryptocurrencies, digital assets, utility tokens, security tokens and offerings of digital assets is uncertain, and new regulations or policies may materially adversely affect the development and the value of our tokens or digital currency.
- The prices of blockchain assets are extremely volatile. Fluctuations in the price of digital assets and/or waning interest of investors in the cryptocurrency industry could materially and adversely affect our business.

## PART I

### Item 1. Business.

#### Development of the Company and Business Combination

Phunware, Inc. (the "Company", "we", "us" or "our") was founded in 2009 and is incorporated in the state of Delaware.

On February 27, 2018, we entered into an Agreement and Plan of Merger (as amended, the "Merger Agreement") with Stellar Acquisition III, Inc. ("Stellar"). On December 26, 2018, Stellar, a Republic of the Marshall Islands corporation incorporated in December 2015, deregistered as a corporation in the Republic of the Marshall Islands and domesticated as a corporation incorporated under the laws of the State of Delaware upon the filing with and acceptance by the Secretary of State of Delaware of the certificate of domestication in accordance with Section 388 of the Delaware General Corporation Law (the "Domestication"). Upon the effectiveness of the Domestication, Stellar became a Delaware corporation and, upon the consummation of the Business Combination (as defined below), Stellar changed its corporate name to "Phunware, Inc." (the "Successor") and all outstanding securities of Stellar (Successor) were deemed to constitute outstanding securities of the Company. Also on December 26, 2018, STL R Merger Subsidiary Inc., a wholly-owned subsidiary of Stellar ("Merger Sub"), merged with and into the Company, with the Company surviving the merger (the "Merger") and becoming a wholly-owned subsidiary of the Successor (the "Business Combination"). Upon the consummation of the Business Combination, the Company (which became the wholly-owned subsidiary of the Successor), changed its corporate name to "Phunware OpCo, Inc." As of the open of trading on December 28, 2018, the common stock and warrants of the registrant began trading on the Nasdaq Capital Market as "PHUN" and "PHUNW," respectively.

There was no accounting effect or change in the carrying amount of the consolidated assets and liabilities as a result of the Domestication. The Business Combination is accounted for as a reverse merger and recapitalization in accordance with generally accepted accounting principles ("GAAP") in the United States. Accordingly, Stellar is the legal acquirer and Phunware is the accounting acquirer and predecessor. As such, our historical financial statements reflect the financial position, results of operations and cash flows of Phunware, Inc., and the cash proceeds of \$0.4 million (less transaction costs paid at closing) obtained from Stellar in the Business Combination is reflected as a capital infusion. Furthermore, the historical capitalization of Phunware, Inc, immediately before the Business Combination was adjusted based on the exchange ratio of 0.459 Successor shares for every one share of Phunware, Inc. capital stock.

#### Overview of Business

We are a provider of the Multiscreen-as-a-Service ("MaaS") platform, a fully integrated enterprise cloud platform for mobile that provides companies the services, products, and solutions necessary to engage, manage and monetize their mobile application portfolios and audiences at scale. According to eMarketer, in 2020 adults in the U.S. spent more than four hours daily on mobile internet, of which approximately 90% of that time was spent in mobile apps (versus mobile web). Given this reality, we believe brands must establish a strong identity on mobile, especially on devices and platforms specific to the Apple iOS and Google Android operating systems and ecosystems. Phunware helps brands define, create, launch, promote, monetize and scale their mobile identities as a means to anchor the consumer journey and improve brand interactions. Our MaaS platform provides the entire mobile lifecycle of applications through one procurement relationship.

Our MaaS platform allows for the licensing and creation of category-defining mobile experiences for brands and their application users worldwide. Since our founding in 2009, we have amassed a database of proprietary Phunware IDs. Phunware IDs are unique identifiers assigned to a mobile device when it becomes first visible across our network of mobile application portfolios. We measure and accumulate Phunware IDs through queries that count unique devices that access our mobile application portfolio across our network of mobile applications that we have developed and/or support. The data collected from our Phunware IDs contributes to our application transaction revenue product line by helping companies and brands boost campaign performance, target high-value users, maximize conversions and optimize spend.

#### Business Model

Our business model includes a combination of service, subscription and media transaction offerings that enable customers to engage, manage and monetize their mobile application portfolios throughout the mobile application lifecycle, which occurs in four phases:

[Table of Contents](#)

- Strategize — We help brands define the application experience and determine the operating systems, feature sets and use cases they want their mobile application to support.
- Create — We help brands build, buy or lease their application portfolio.
- Launch — We help brands launch their applications and build their mobile audience.
- Engage, Monetize and Optimize — We help brands activate, monetize and optimize their mobile application portfolios.

Our product and service offerings include cloud-based recurring software license subscriptions, with terms ranging from one to three years, application development and support services, and application transaction-based media.

Although a majority of our product and service offerings have been sold utilizing an internal sales team, we have also sold our product and service offerings through various channel partners. We continue to invest in these channel sales relationships.

## Our Products and Services

Our mobile software subscriptions and services and application transaction solutions include the following:

- Cloud-based mobile software licenses in software development kits (“SDKs”) form utilized inside mobile applications for the following:
  - Analytics (SDK that provides data related to application use and engagement);
  - Content Management (SDK that allows application admins to create and manage app content in a cloud-based portal);
  - Alerts, Notifications & Messaging (SDK that enables brands to send messages to app users through the app);
  - Marketing Automation (SDK that enables location-triggered messages and workflow);
  - Advertising (SDK that enables in-app audience monetization); and
  - Location-Based Services (module that include mapping, navigation, wayfinding, workflow, asset management and policy enforcement);
- Integration of our SDK licenses into existing applications maintained by our customers, as well as custom application development and support services;
- Cloud-based vertical solutions, which are off-the-shelf, iOS- and Android-based mobile application portfolios, solutions and services that address: the patient experience for healthcare, the shopper experience for retail, the fan experience for sports, the traveler experience for aviation, the luxury resident experience for real estate, the luxury guest experience for hospitality, the student experience for education and the generic user experience for all other verticals; and applications; and
- Application transactions, including re-occurring and one-time transactional media purchases for application discovery, user acquisition and audience building, audience engagement and audience monetization.

## Competitive Strengths

**Fully integrated and comprehensive solutions:** Our comprehensive solutions can be used across mobile application experience definition, application portfolio creation, user discovery, user acquisition, user engagement and user monetization. Data from application analytics and our database of over one petabyte can be used to inform business decisions related to mobile strategy, marketing, operations and more.

**Data reach and scale:** Since Phunware’s founding in 2009, our goal has been to use our software platform within application portfolios and brands to create a massive database of proprietary Phunware IDs for every device touching networks globally to then reach everyone, everywhere, indoors and outdoors, in real time, on a 1-to-1 basis.

**Built to be mobile-first, native-first, cloud-based:** Phunware was built from the ground up to focus on native mobile development, while other companies in the mobile space have attempted to create shortcuts with “write once, run anywhere” software. The result is almost a decade of platform-specific mobile expertise, a major competitive differentiator.

**Results-driven culture:** Our employees are granted restricted stock units upon hire and are encouraged to think of Phunware as a company they own rather than a company for which they work. We also promote from within to reward top performers and encourage leadership development. The result is an employee base singularly focused on solving problems and driving results.

**Intellectual property portfolio development and world-class engineering resources** Through our world-class in-house technical and engineering organization, we have focused developing our intellectual property, including methods of accessing wireless account information, rendering content on a wireless device, indoor navigation with a mobile device and more. We are developing creative solutions to solve complex technical problems and create competitive advantages for our customers.

## Our Growth Strategy

Key elements of our growth strategy include:

**Expand mobile products and services.** Mobile applications and in-application advertising media are among the fastest-growing and complex technology markets. We have made significant investments in research and development and plan to



continue extending the functionality and breadth of our applications in the future, including, but not limited to, our Smart Campus, Smart City and Smart Workplace solutions.

**Deepen existing customer relationships.** We believe that we are well positioned to identify new opportunities or enhance existing services and solutions within our existing customer base. We expect to create cross and upsell opportunities as our customers seek to deepen their approach to mobile application lifecycle management.

**Develop new relationships to expand our customer base.** We intend to continue to grow our customer base by expanding our team of sales professionals and developing our indirect channel relationships. We are able to leverage our mobile expertise and capabilities to compete effectively for new customers both directly and indirectly. Primary indirect channels include hardware, software, carriers and systems integrators/consultancies.

**Continue to grow our customer base through targeted marketing and outreach.** We intend to continue to opportunistically expand. Top expansion targets include entertainment, healthcare, retail and real estate — all verticals that benefit from our integrated solutions, comprehensive lifecycle approach and ability to engage users in both digital and physical worlds.

**Add new capabilities and geographic regions through strategic acquisition.** We operate in a fragmented market that offers significant consolidation opportunities. We plan to continue to evaluate strategic acquisitions and partnerships that enhance our capabilities and expand our geographic footprint, both domestically and internationally.

**Expand our partnership network with third-party providers of tools and services.** We are able to leverage our mobile expertise and capabilities to compete effectively for new customers both directly and indirectly. Primary indirect channels include hardware, software, carriers and systems integrators/consultancies. We are focused on building our brand to grow within existing and target end markets where there is strong demand for the products and solutions we provide.

## **Our Customers**

Our target customers are companies that are looking to enact digital transformation in their business — whether it is retail, healthcare, entertainment, real estate, smart living and workspaces or any other industry. We provide technology and solutions to support these organizations through every stage of the mobile application lifecycle.

We believe the multi-year contractual nature of our software and managed services provides revenue visibility. Our subscription and service agreements with our customers consist of terms relating to length of agreement (for subscriptions and application support), payment, liability, performance, cancellation and termination, confidentiality, and indemnification obligations, among other provisions. All of these agreements contain terms of service that are generally consistent across our customers. Our subscription and service agreements generally do not impose obligation upon us, such as exclusivity or other terms.

Our application transaction agreements, also known as insertion orders, are, for the most part, governed by the standard terms and conditions from the Interactive Advertising Bureau's ("IAB") Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less ("IAB Terms"). The IAB Terms provide that in the event that payments are not paid to the agency, then the media company, or us, agrees to hold the advertiser solely liable. We view the agreements as contracts that ordinarily accompany the business conducted by Phunware and, because of the lack of any commitments to provide a certain amount of business, we are not substantially dependent on the agreements.

### *Concentration of Major Customers*

During the year ended December 31, 2020, one major customer accounted for approximately 32% of our net revenue. During the year ended December 31, 2019, much of our sales were concentrated with Fox Networks Group ("Fox"), which accounted for 50% of our net revenue. As with our other subscriptions and services customers, our contractual arrangements with Fox were governed by standard terms of service and statements of work.

We completed our contractual obligations under our statement of work with Fox as of September 30, 2019. While the underlying master services agreement with Fox (setting forth general terms and conditions) remains in place, we do not have any currently active statements of work with Fox.

## **Sales and Marketing**

Our internal salesforce is focused on direct sales opportunities for our platform subscription and services and application transaction product lines. They are experienced across all verticals in which we serve and can assist small, mid-sized and large organizations. Our channel sales function works with our channel partners to identify sales opportunities, as well as identify new channel partner relationships. Our marketing efforts focus on building brand reputation, expanding market awareness, driving customer demand and enabling our sales team.

During our sales cycle, our sales organization is supported by our customer solutions team, which has deep technical expertise. Once contracted, our program management team collaborates with customers to ensure timely deliverables of contracted licenses and services. Post implementation, customers are supported post-sale by our customer success function managed within our program management team. Our sales cycle can range many months for large organizations.

## **Research and Development**

Our ability to compete depends in large part on our continuous commitment to research and development and our ability to rapidly introduce new applications, technologies, features and functionality into our solutions. Our research and development efforts are focused on improving and enhancing our existing service offerings by working closely with our customers, conducting quality assurance testing and improving our core technology as well as developing new proprietary services and solutions. Performance, security, functional depth and breadth, and usability of our solutions drive our technology decisions and product development. Research and development expenses were \$2.6 million and \$4.3 million for the fiscal years ended December 31, 2020 and 2019, respectively.

### *PhunCoin and Phun*

Our product research and development team is continuing our vision of a future in which consumers own, control and are rewarded for the use of their personal data and information. In 2019, we launched a dual token structure in conjunction with the commencement of the offering Phun token to interested parties outside the United States and Canada. In 2018, we began offering rights to future issuances of PhunCoin. The dual-token economy both empowers consumers and re-imagines how brands engage with audiences by creating a blockchain-enabled data exchange (the “Token Ecosystem”) that recognizes the value of data and engagement. PhunCoin is intended to be the “Value of Data” that empowers consumers to take control of and be compensated for their data. Phun is intended to act as the “Value of Engagement” that empowers consumers to monetize their digital activity and the data they share with brands. To date, we have not sold any Phun. We have sold rights to the future issuances of PhunCoin, although we currently do anticipate generating additional funds from sales of PhunCoin rights. To date, we have not issued any PhunCoins pursuant to the rights offering.

A multidisciplinary team (design engineering, quality assurance, and product) is actively developing all aspects of the Token Ecosystem for iOS and Android. In addition, PhunCoin wallet development, enhanced token management capabilities and additional securities features are being implemented. We are planning for future enhancements of the Token Ecosystem in 2021; however, there can be no assurance as to when (or if) we will be able to successfully launch the Token Ecosystem.

## **Competition**

The market for technology and solutions related to mobile application lifecycle management is evolving, highly competitive and significantly fragmented. With the introduction of new technologies and the potential entry of new competitors into the market, we expect competition to increase and intensify in the future, which could harm our ability to increase sales, maintain or increase renewals and maintain our prices.

We compete primarily with companies offering cloud-based software solutions for location-based services, mobile marketing automation, content management, analytics and audience monetization, as well as data and campaign management for audience building and engagement. We also sometimes compete with application development agencies, in-house mobile teams and products developed by software providers that allow customers to build and scale new mobile applications. Our competitors include Airship, Apadmi, Appcelerator, Mutual Mobile, Pointr, Purple and many more.

We believe the principal competitive factors in our market include the following:

- product features and functionality;
- location accuracy and latency;
- technology architecture;
- level of customer satisfaction;
- ease of use;
- deployment options and hardware flexibility;
- breadth and depth of application functionality;
- professional services and customer support;
- total costs of ownership;
- brand awareness and reputation;
- sophistication of technology platform;
- actionable insights through big data analytics;
- capability for customization, configurability, integration, security, scalability and reliability of applications;
- ability to innovate and respond to customer needs rapidly;
- domain expertise;
- global reach;
- size of customer base and level of user adoption; and
- ability to integrate with legacy enterprise infrastructures and third-party applications.

Some of our current competitors have, and future competitors may have, greater financial, technical, marketing and other resources, greater resources to devote to the development, promotion, sale and support of their products and services, more extensive customer bases and broader customer relationships, and/or longer operating histories and greater name recognition. As a result, these competitors may be better able to respond quickly to new technologies and to undertake more extensive marketing campaigns. In a few cases, some competitors may also be able to offer competing solutions at little or no additional cost by bundling them with their existing suite of solutions.

#### **Government Regulation**

We are subject to a variety of laws and regulations in the United States and abroad that involve matters central to our business. Many of these laws and regulations are still evolving and being tested in courts, and could be interpreted in ways that could harm our business including, but not limited to, privacy, data protection and personal information, rights of publicity, content, intellectual property, advertising, marketing, distribution, data security, data retention and deletion, and other communications, protection of minors, consumer protection, telecommunications, product liability, taxation, economic or other trade prohibitions or sanctions, anti-corruption law compliance and securities law compliance. In particular, we are subject to federal, state, and foreign laws regarding privacy and protection of people's data. Foreign data protection, privacy, content and other laws and regulations can impose different obligations or be more restrictive than those in the United States. U.S. federal and state and foreign laws and regulations, which in some cases can be enforced by private parties in addition to government entities, are constantly evolving and can be subject to significant change. As a result, the application, interpretation, and enforcement of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate, and may be interpreted and applied inconsistently from country to country and inconsistently with our current policies and practices.

Proposed or new legislation and regulations could also significantly affect our business. For example, the European General Data Protection Regulation (GDPR) took effect in May 2018 and applies to all of our products and services used by people in Europe. The GDPR includes operational requirements for companies that receive or process personal data of residents of the European Union that are different from those previously in place in the European Union, and includes significant penalties for non-compliance. The Brazilian General Data Protection Law will impose requirements similar to GDPR on products and services offered to users in Brazil, effective in August 2020. The California Consumer Privacy Act (CCPA), which took effect in January 2020, also establishes certain transparency rules and creates new data privacy rights for users. Similarly, there are a number of legislative proposals in the European Union, the United States, at both the federal and state level, as well as other jurisdictions that could impose new obligations or limitations in areas affecting our business, such as

liability for copyright infringement. 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.

New laws enacted by government or regulatory authorities could cause us to incur substantial costs, expose us to unanticipated civil and criminal liability or penalties (including substantial monetary remedies), interrupt or require us to change our business practices in a manner materially adverse to our business, divert resources and the attention of management from our business or subject us to other remedies that adversely affect our business.

## **Intellectual Property**

Our ability to protect our intellectual property, including our technologies, is an important factor in the success and continued growth of our business. We protect our intellectual property through trade secrets law, patents, copyrights, trademarks and contracts. We have established business procedures designed to maintain the confidentiality of our proprietary information such as the use of our license agreements with customers and our use of our confidentiality agreements and intellectual property assignment agreements with our employees, consultants, business partners and advisors where appropriate. Some of our technologies rely upon third party licensed intellectual property.

In the United States, we have 17 patents issued and 4 non-provisional patent applications. The issued patents expire between the years 2027 and 2036. In addition, we have registered “Phunware” as a trademark in the United States and Canada. We cannot assure you that any of our patent applications will result in the issuance of a patent or whether the examination process will require us to narrow our claims. Furthermore, even if a patent is issued, we cannot assure you that such patent will be adequate to protect our business. We also license software from third parties for integration into our solutions, including open source software and other software available on commercially reasonable terms.

Despite our efforts to protect our technology and proprietary rights through intellectual property rights, licenses and confidentiality agreements, unauthorized parties may still copy or otherwise obtain and use our software and other technology. In addition, if we expand international operations, an effective patent, copyright, trademark, and trade secret protections may not be available or may be limited in foreign countries.

Our industry is characterized by the existence of a large number of patents and claims and related litigation regarding patent and other intellectual property rights. In particular, leading companies in our markets have extensive patent portfolios and are regularly involved in litigation. From time to time, third parties, including certain of these leading companies, may assert patent, copyright, trade secret, and other intellectual property rights against us, our channel partners or our customers. Our standard license and other agreements may obligate us to indemnify our channel partners and customers against such claims. Successful claims of infringement by a third party could prevent us from continuing to offer our solution or performing certain services, require us to expend time and money to develop non-infringing solutions, or force us to pay substantial damages, including treble damages if we are found to have willfully infringed patents or copyrights, royalties or other fees. Competitors may also be more likely to claim that our solutions infringe their proprietary rights and seek an injunction against us from continuing to offer our platform. We cannot assure you that we do not currently infringe, or that we will not in the future infringe, upon any third-party patents or other proprietary rights.

## **Employees**

We leverage our employees’ long-standing, deep customer relationships and strong technical expertise to deliver complex solutions that meet customer needs and advance mobile technology. As of December 31, 2020, we had 58 employees, including 33 software developers, engineers, QA engineers and product managers. We employed a sales and marketing force of approximately 9 professionals. None of our employees are currently covered under any collective bargaining agreements. We believe our relations with our employees are good.

## **Corporate Information**

Our principal executive offices are located at 7800 Shoal Creek Boulevard, Suite 230-South, Austin, Texas 78757, and our telephone number is (512) 693-4199. Our website is <https://www.phunware.com>. The information on, or that can be

accessed through, our website is not part of this Annual Report on Form 10-K. We have included our website address as an inactive textual reference only.

**Available Information**

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act are available free of charge on our investor relations section of our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission ("SEC"). The SEC also maintains an Internet website that contains reports and other information regarding issuers, such as Phunware, that can be filed electronically with the SEC. The SEC's Internet website is located at <http://www.sec.gov>.

**Item 1A. Risk Factors.**

**Risk Factors**

*An investment in our securities involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information contained in this Annual Report, including our consolidated financial statements and related notes, before deciding to invest in our securities. If any of the following events occur, our business, financial condition and operating results may be materially adversely affected. In that event, the trading price of our securities could decline, and you could lose all or part of your investment. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business or results of operations.*

**Risks Related to Our Business, Operations and Industry**

*Our revenue has declined, we have a history of losses, we expect to continue to incur losses and we may not achieve or sustain profitability in the future.*

We have incurred significant losses in each fiscal year since our inception. We experienced a consolidated net loss for the years ended December 31, 2020 and December 31, 2019. These losses were due to both a reduction in revenue in 2019 and 2020, as compared to previous years, and the substantial investments we made to build our products and services, grow and maintain our business and acquire customers. You should not consider our historical revenue levels or operating expenses prior to recent periods as indicative of our future performance. Key elements of our growth strategy include acquiring new customers and continuing to innovate and build our brand. As a result, our operating expenses may continue to increase in the future due to expected increased sales and marketing expenses, operations costs, research and development costs and general and administrative costs and, therefore, our operating losses may continue or even potentially increase for the foreseeable future. In addition, as a public company we incur significant legal, accounting and other expenses. Furthermore, to the extent that we are successful in increasing our customer base, we may also incur increased expenses because costs associated with generating and supporting customer agreements are generally incurred up front. Revenue recognition may not occur during the same the same period in which we incur costs associated with our agreements. Our efforts to grow our business may be costlier than we expect and we may not be able to increase our revenue enough to offset our higher operating expenses. We may incur significant losses in the future for many reasons, including the other risks described in this Report and unforeseen expenses, difficulties, complications and delays and other unknown events. You should not rely upon future bookings we may announce or revenue growth as indicative of our future performance. We cannot assure you that we will reach profitability in the future or at any specific time in the future or that, if and when we do become profitable, we will sustain profitability. If we are ultimately unable to generate sufficient revenue to meet our financial targets, become profitable and have sustainable positive cash flows, investors could lose their investment.

*The novel coronavirus (“COVID-19”) outbreak could adversely affect our business, operating results, cash flow and financial condition.*

We are closely monitoring the impact of the 2019 novel coronavirus, or COVID-19, on all aspects of our business. In March 2020, the World Health Organization characterized COVID-19 as a pandemic and the President of the United States declared the COVID-19 outbreak a national emergency. Since then, the COVID-19 pandemic has rapidly spread across the globe and has already resulted in significant volatility, uncertainty and economic disruption. The future impacts of the pandemic and any resulting economic impact are largely unknown. It is possible that the COVID-19 pandemic, the measures taken by local, state and national governments and the resulting economic impact may materially and adversely affect our business, results of operations, cash flow and financial condition.

The COVID-19 pandemic may prevent us from conducting business activities at full capacity for an extended period of time, including due to spread of the disease or due to shutdowns that are requested or mandated by governmental authorities. For example, we have taken precautionary measures intended to help minimize the risk of the virus to our employees which may disrupt our operations, including implementing a work-from-home policy for our employees until we determine to reopen our offices, canceling marketing events and suspending travel. An extended period of remote work arrangements could strain our business continuity plans, introduce operational risk, including, but not limited to, cybersecurity risks, prevent us from expanding or upselling our customer base, prevent the timely delivery of contracts in progress and impair our ability to effectively manage our business.

In addition, any economic downturn or recession resulting from the COVID-19 pandemic will likely impact demand for our products and services and adversely affect our operations. We expect there to be volatility in customer demand and

buying habits as the pandemic continues and the resulting economic impacts are felt, including the possibilities that our end customers delay, decrease or cancel their planned purchases, or are unable to pay amounts owed to us.

The extent to which COVID-19 ultimately impacts our business, results of operations, cash flow and financial condition will depend on future developments, which are uncertain and cannot be predicted, including, but not limited to, the duration and spread of the outbreak, its severity, the actions taken by governments and authorities to contain the virus or treat its impact, and when and to what extent normal economic and operating conditions can resume. These uncertainties have resulted in volatility in securities and financial markets, which may prevent us from accessing the equity or debt capital markets on attractive terms or at all for a period of time, which could have an adverse effect on our liquidity position. Even after the COVID-19 pandemic has subsided, we may continue to experience materially adverse impacts to our business as a result of its global economic impact, including as a result of any recession that may occur. The impact of the COVID-19 pandemic may also exacerbate other risks discussed in this “*Risk Factors*” section and elsewhere in this Annual Report on Form 10-K. For these reasons, the current level of uncertainty over the economic and operational impacts of COVID-19 means the impact on our business, results of operations, cash flows and financial position cannot be reasonably estimated at this time.

***Our recent reductions in workforce may prevent us from executing initiatives to improve the performance of our business effectively or at all.***

We have been and are currently implementing certain initiatives to improve the performance of our business, and our recent reduction in workforce could prevent us from engaging in certain initiatives we had previously considered, and could prevent us from executing such initiatives effectively. During 2019, we conducted two reductions in our workforce by a combined 44 persons. In response to the COVID-19 outbreak, we furloughed 37 persons, or approximately 42%, of our workforce in March 2020.

These reductions in our workforce could prevent us from engaging in certain initiatives to improve the performance of our business, due to an insufficiency of workforce size or an insufficiency of certain required skills, and could prevent us from executing initiatives effectively, which could have a material adverse effect on our financial results, business and prospects.

***We have a concentration of sales with a key customer and any substantial reduction in sales to such customer would have a material adverse effect on our results of operations and financial condition.***

During the year ended December 31, 2020, one major customer accounted for approximately 32% of our net revenue. During the year ended December 31, 2019, our sales were concentrated with Fox Networks Group (“Fox”), which accounted for 50% of our net sales.

***Goodwill comprises a significant portion of our total assets. We assess goodwill for impairment at least annually, which could result in a material, non-cash write-down and could have a material adverse effect on our results of operations, financial condition and our future operating results.***

The carrying value of our goodwill was \$25.9 million, or approximately 81% of our total assets, as of December 31, 2020. We perform an analysis on our goodwill balances to test for impairment on an annual basis or whenever events occur that may indicate impairment possibly exists. Goodwill is deemed to be impaired if the net book value of a reporting unit exceeds the estimated fair value.

We completed our annual goodwill impairment analysis as of September 30, 2020, and we concluded an impairment of goodwill was not necessary. We further updated this analysis at December 31, 2020 and concluded an impairment was not necessary as of this date, as well.

Goodwill impairment analysis and measurement is a process that requires significant judgment. Several factors could result in impairment of a material amount of our goodwill balance in future periods, including, but not limited to:

- (i) A decline in our stock price and resulting market capitalization, if we determine that the decline is sustained and is indicative of a reduction in the fair value of any of our reporting units below its carrying value.
- (ii) Weakening of the world-wide economy, weakness in the business in which we operate or failure to reach our internal forecasts could impact our ability to achieve our forecasted levels of cash flows and reduce the estimated discounted cash flow value of our reporting units.

It is not possible at this time to determine if any such future impairment charge would result from these factors, or, if it does, whether such charge would be material. We will continue to review our goodwill for possible impairment. We cannot be

certain that a future downturn in our business, changes in market conditions or a longer-term decline in the quoted market price of our stock will not result in an impairment of goodwill and the recognition of resulting expenses in future periods, which could adversely affect our results of operations for those periods.

***Current and future litigation could adversely affect us.***

We, along with our executive officers and former and current board members, are parties to legal proceedings with Wild Basin Investments, LLC as further described on our Current Report on Form 8-K filed with the SEC on January 10, 2020. We, along with our officers and directors, may also become subject to other legal proceedings in our ordinary course of business. We cannot predict with certainty the outcome of this legal proceeding. The outcome of this or future legal proceeding could require us to take, or refrain from taking, actions which could negatively affect our operations. Such legal proceedings involve substantial costs, including the costs associated with investigation, litigation and possible settlement, judgment, penalty, or fine. As a smaller company, the collective costs of litigation proceedings represent a drain on our cash resources, and require an inordinate amount of our management's time and attention. An adverse ruling with respect to our current or any other litigation could have a material adverse effect on our results of operations and financial condition. Negative publicity surrounding such legal proceedings may also harm our reputation and adversely impact our business and results. Moreover, as more fully described in Note 9 "Commitments and Contingencies" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K, in October 2020 the Company, including our Chief Executive Officer, settled its ongoing lawsuit with Uber Technologies, Inc. We must make total settlement payments to Uber of \$4.5 million over the course of three equal installments with the final installment due September 30, 2021. These settlement payments will divert cash resources and could adversely impact our business, results of operations and financial condition.

***Our results of operations and ability to grow could be negatively affected if we cannot adapt and expand our technology offerings and services in response to ongoing market changes.***

The collaboration and technology solutions business and markets are characterized by rapid technological change, evolving industry standards, changing customer preferences and new product and service introductions. Our success depends on our ability to continue to develop and implement technology offerings and services that anticipate or timely respond to rapid and continuing changes in technology and industry developments and offerings by new technology providers to serve the evolving needs of our customers. Examples of areas of significant change in the industry include cloud, software defined infrastructure, virtualization, security, mobility, data analytics and IoT, the continued shift from maintenance to managed services and ultimately to cloud based services, as-a-service solutions, security and information technology automation. In addition, enterprises are continuing to shift from on-premise, hardware infrastructure to software centric hosted solutions. Technological developments such as these may materially affect the cost and use of technology and services by our customers and could affect the nature of how our revenue is generated. These technologies and others that may emerge, could reduce and, over time, replace some of our current business. In addition, customers may delay spending under existing contracts and engagements and may delay entering into new contracts while they evaluate new technologies. If we do not sufficiently invest in new technology, industry developments and our personnel, or evolve and expand our business at sufficient speed and scale, or if we do not make the right strategic investments to respond to these developments and successfully drive innovation, our technology offerings and services, our results of operations and our ability to develop and maintain a competitive advantage and growth could be negatively affected.

In addition, if we are unable to keep up with changes in technology and new hardware, software and services offerings, for example, by providing the appropriate training to our customer solutions team, sales directors, program management team, channel partners and software development and product engineers to enable them to effectively sell and deliver such new offerings to customers, our business, results of operations, or financial condition could be adversely affected.

***If we are unable to expand or renew sales to existing customers, or attract new customers, our growth could be slower than expected and our business may be harmed.***

Our future growth depends upon expanding sales and renewals of our technology offerings and services with existing customers. Our customers may not purchase our technology offerings and services, or our customers may reduce their purchase rate of services, if we do not demonstrate the value proposition for their investment and we may not be able to replace existing customers with new customers. In addition, our customers may not renew their contracts with us on the same terms, or at all, because of dissatisfaction with our product or service offerings. If our customers do not renew their contracts, our revenue may grow more slowly than expected, may not grow at all, or may decline.

Additionally, increasing incremental sales to our current customer base may require increasingly sophisticated and costly sales efforts that are targeted at senior management. We plan to continue expanding our sales efforts but we may be



unable to hire qualified sales personnel, may be unable to successfully train those sales personnel that we are able to hire and sales personnel may not become fully productive on the timelines that we have projected, or at all. Additionally, although we dedicate significant resources to sales and marketing programs, these sales and marketing programs may not have the desired effect and may not expand sales. We cannot assure you that our efforts will increase sales to existing customers or generate additional revenue. If our efforts to upsell to our customers are not successful, our future growth may grow more slowly than expected, may not grow at all, or may decline.

Our ability to achieve significant growth in revenue in the future will also depend upon our ability to attract new customers. This may be particularly challenging where an organization has already invested substantial personnel and financial resources to integrate competing technology offerings and services. An organization may be reluctant or unwilling to invest in new technology offerings and services. If we fail to attract new customers and maintain and expand those customer relationships, our revenue may grow more slowly than expected, may not grow at all, or may decline and our business may be harmed.

***Demand for our technology offerings and services could be adversely affected by volatile, negative, or uncertain economic conditions, including, but not limited to those caused by the COVID-19 pandemic, and the effects of these conditions on our customers' businesses.***

Our revenue and profitability depend on the demand for our technology offerings and services, which could be negatively affected by numerous factors, many of which are beyond our control. Volatile, negative, or uncertain economic conditions, including those caused by the COVID-19 pandemic affect our customers' businesses and the markets we serve. Such economic conditions in our markets have undermined and could in the future undermine, business confidence in our markets and cause our customers to reduce or defer their spending on new technology offerings and services, or may result in customers reducing, delaying or eliminating spending under existing contracts with us, which would negatively affect our business. Growth in the markets we serve could be at a slow rate, or could stagnate or contract, in each case for an extended period of time. Ongoing economic volatility and uncertainty and changing demand patterns affect our business in a number of other ways, including making it more difficult to accurately forecast customer demand and effectively build our revenue and resource plans.

Economic volatility and uncertainty is particularly challenging because it may take some time for the effects and changes in demand patterns resulting from these and other factors to manifest themselves in our business and results of operations. Changing demand patterns from economic volatility and uncertainty could have a significant negative impact on our business, results of operations, or financial condition.

***The actual market for our solutions could be significantly smaller than estimates of total potential market opportunity and if customer demand for our services does not meet expectations, our ability to generate revenue and meet our financial targets could be adversely affected.***

While we expect strong growth in the markets for our products, it is possible that the growth in some or all of these markets may not meet our expectations, or materialize at all. The methodology on which our estimate of our total potential market opportunity is based includes several key assumptions based on our industry knowledge and customer experience. If any of these assumptions proves to be inaccurate, then the actual market for our solutions could be significantly smaller than our estimates of our total potential market opportunity. If the customer demand for our services or the adoption rate in our target markets does not meet our expectations, our ability to generate revenue from customers and meet our financial targets could be adversely affected.

***Substantial competition could reduce our market share and significantly harm our financial performance.***

The market in which we operate is highly competitive, with relatively low barriers to entry for some software or service organizations. Some customers may be hesitant to switch vendors or to adopt cloud-based software such as ours and prefer to maintain their existing relationships with their legacy software vendors. Some of our competitors are larger and have greater name recognition, much longer operating histories, larger marketing budgets and significantly greater resources than we do. We also face competition from custom-built software vendors and from vendors of specific applications, some of which offer cloud-based solutions. We may also face competition from a variety of vendors of cloud-based and on-premise software products that address only a portion of our platform. In addition, other companies that provide cloud-based software in different target markets may develop software or acquire companies that operate in our target markets, and some potential customers may elect to develop their own internal software. With the introduction of new technologies and market entrants, we expect this competition to intensify in the future.

Many of our competitors are able to devote greater resources to the development, promotion and sale of their products and services. Furthermore, our current or potential competitors may be acquired by third parties with greater available resources and the ability to initiate or withstand substantial price competition. In addition, many of our competitors have established marketing relationships, access to larger customer bases and major distribution agreements with consultants, system integrators and resellers. Our competitors may also establish cooperative relationships among themselves or with third parties that may further enhance their product offerings or resources. If our platform does not become more accepted relative to our competitors', or if our competitors are successful in bringing their products or services to market earlier than ours, or if their products or services are more technologically capable than ours, then our revenues could be adversely affected. In addition, some of our competitors may offer their products and services at a lower price. If we are unable to achieve our target pricing levels, our operating results may be negatively affected. Pricing pressures and increased competition could result in reduced sales, reduced margins, losses or a failure to maintain or improve our competitive market position, any of which could adversely affect our business.

***Our future results will depend on our ability to continue to focus our resources and manage costs effectively.***

We are continually focusing on measures intended to further improve cost efficiency. We may be unable to realize all expected cost savings in connection with these efforts within the expected time frame, or at all, and we may incur additional and/or unexpected costs to realize them. Further, we may not be able to sustain any achieved savings in the future. Future results will depend on the success of these efforts.

If we are unable to control costs, our operating margins could decrease and we may incur additional losses. Our future profitability will depend on our ability to manage costs or increase productivity. An inability to effectively manage costs could adversely impact our business, results of operations or financial condition.

**Our profitability could suffer if we are not able to manage large and complex projects and complete fixed price, fixed timeframe contracts on budget and on time.**

Our profitability and operating results are dependent on the scale of our projects and the prices we are able to charge for our technology offerings and services. We perform a significant portion of our work through fixed price contracts, in which we assume full control of the project team and manage all facets of execution. As a significant portion of our projects are on a fixed price model, we may be unable to accurately estimate the appropriate project price and successfully manage such projects. Although we use specified technical processes and our past experience to reduce the risks associated with estimating, planning and performing fixed price and fixed timeframe projects, we face the risk of cost overruns, completion delays and wage inflation in connection with these projects. If we fail to accurately estimate the resources or time required for a project or future rates of wage inflation, or if we fail to perform contractual obligations within the contractual timeframe, our profitability could suffer.

The challenges of managing larger and more complex projects include:

- maintaining high quality control and process execution standards;
- maintaining planned resource utilization rates on a consistent basis;
- maintaining productivity levels and implementing necessary process improvements;
- controlling project costs;
- maintaining close customer contact and high levels of customer satisfaction;
- recruiting and retaining sufficient numbers of skilled engineering, design and program management professionals; and
- maintaining effective customer relationships.

In addition, large and complex projects may involve multiple engagements or stages and there is a risk that a customer may choose not to retain us for additional stages or may cancel or delay additional planned engagements. Such cancellations or delays may make it difficult to plan our project resource requirements and may result in lower profitability levels than we anticipated upon commencing engagements.

***Our business strategy is evolving. Investments in new services and technologies may not be successful and may involve pursuing new lines of business or strategic transactions and investments, or dispositions of assets or businesses that may no longer help us meet our objectives. Such efforts may not be successful.***

We continue to invest in new services and technologies, including adding additional vertical solutions to our product offerings and blockchain. The complexity of these solutions, our learning curve in developing and supporting them and significant competition in the markets for these solutions could make it difficult for us to market and implement these solutions successfully. Additionally, there is a risk that our customers may not adopt these solutions widely, which could prevent us from realizing expected returns on these investments. Even if these solutions are successful in the market, they may rely on third-party technology, software, services and our ability to meet stringent service levels. If we are unable to deploy these solutions successfully or profitably, it could adversely impact our business, results of operations, or financial condition.

Our industry is undergoing significant change and our business strategy is continuing to evolve to meet these changes. In order to profitably grow our business, we may need to expand into new lines of business beyond our current focus of mobile engagement analytics products, mobile application advertising and services, which may involve pursuing strategic transactions, including potential acquisitions of, or investments in, related or unrelated businesses. In addition, we may seek divestitures of existing businesses or assets. There can be no assurance that we will be successful with our efforts to evolve our business strategy and we could suffer significant losses as a result, which could have a material adverse effect on our business, financial condition and results of operations.

If we decide to sell assets or a business, we may encounter difficulty in finding buyers or alternative exit strategies on acceptable terms in a timely manner, which could delay the achievement of our strategic objectives. We may also dispose of a business at a price or on terms that are less desirable than we had anticipated. In addition, we may experience greater dis-synergies than expected and the impact of the divestiture on our revenue may be larger than projected.

***Future acquisitions could disrupt our business and may divert management's attention and, if unsuccessful, harm our business.***

We may choose to expand by making additional acquisitions that could be material to our business. We have in the past made several acquisitions of complementary businesses, including acquisitions of Odyssey, Simplikate, Digby, Tapit! and GoTV. Acquisitions involve many risks, including the following:

- an acquisition may negatively affect our results of operations and financial condition because it may require us to incur charges or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by third parties, including intellectual property claims and disputes, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition;
- we may encounter difficulties or unforeseen expenditures in integrating the business, technologies, products, personnel, or operations of any company that we acquire, particularly if key personnel of the acquired company decide not to work for us;
- an acquisition may disrupt our ongoing business, divert resources, increase our expenses, or distract our management;
- an acquisition may result in a delay or reduction of customer purchases for both us and the company we acquired due to customer uncertainty about continuity and effectiveness of service from either company;
- we may encounter difficulties in, or may be unable to, successfully sell any acquired technology offerings or services;
- an acquisition may involve the entry into geographic or business markets in which we have little or no prior experience or where competitors have stronger market positions;
- the challenges inherent in effectively managing an increased number of employees in diverse locations;
- the potential strain on our financial and managerial controls and reporting systems and procedures;
- the potential known and unknown liabilities associated with an acquired company;
- our use of cash to pay for acquisitions would limit other potential uses for our cash;
- if we incur additional debt to fund such acquisitions, such debt may subject us to additional material restrictions on our ability to conduct our business as well as additional financial maintenance covenants;
- the risk of impairment charges related to potential write-downs of acquired assets or goodwill in future acquisitions;
- to the extent that we issue a significant amount of equity or equity linked securities in connection with future acquisitions, existing stockholders may be diluted and earnings per share may decrease; and
- managing the varying intellectual property protection strategies and other activities of an acquired company.

We may not succeed in addressing these or other risks or any other problems encountered in connection with the integration of any acquired business. The inability to integrate successfully the business, technologies, products, personnel, or operations of any acquired business, or any significant delay in achieving integration, could harm our business, results of operations, or financial condition.

***We may not be able to recognize revenue in the period in which our services are performed, which may cause our margins to fluctuate.***

Our services are performed under both fixed-price and time and material contract arrangements. All revenue is recognized pursuant to applicable accounting standards. Our failure to meet all the obligations, or otherwise meet a customer's expectations, may result in us having to record the cost related to the performance of services in the period that services were rendered, but delay the timing of revenue recognition to a future period in which all obligations have been met.

***Our financial results may be adversely affected by changes in accounting principles applicable to us.***

U.S. generally accepted accounting principles (“GAAP”) is subject to interpretation by the Financial Accounting Standards Board (“FASB”), the SEC, and other various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results for periods prior and subsequent to such change. For example, recent new standards issued by the FASB that could materially impact our financial statements include revenue from contracts with customers, costs of obtaining a contract and accounting for leases. We may adopt one or more of these standards retrospectively to prior periods and the adoption may result in an adverse change to previously reported results.

For example, in February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842). Under this guidance, companies will be required to recognize all leases on their balance sheets by recording a lessee’s rights and obligations. When the rules are effective, we will be required to account for the leases as assets and liabilities on our balance sheet, where previously we accounted for such leases on an “off balance sheet” basis. We plan to implement this guidance the first quarter of our fiscal year 2021 on a modified retrospective basis. As a result, a significant amount of lease related assets and liabilities will be recorded on our balance sheet and we may be required to make other changes to the recording and classification of our lease related expenses. Though these changes will not have any direct impact on our overall financial condition, these changes could cause investors or others to believe that we are highly leveraged and could change the calculations of financial metrics, as well as third-party financial models regarding our financial condition.

To adopt new standards, we may have to implement new modules in our accounting system, hire consultants and increase our spending on audit fees, thereby increasing our general and administrative expense. Any difficulties in implementing changes in accounting standards or adequately accounting after adoption could cause us to fail to meet our financial reporting obligations, which could result in regulatory discipline and harm investors’ confidence in us.

*We may experience quarterly fluctuations in our operating results due to a number of factors, which makes our future results difficult to predict and could cause our operating results to fall below expectations.*

Our quarterly operating results have fluctuated in the past and we expect them to fluctuate in the future due to a variety of factors, many of which are outside of our control. As a result, our past results may not be indicative of our future performance and comparing our operating results on a period-to-period basis may not be meaningful. In addition to the other risks described herein, factors that may affect our quarterly operating results include:

- the amount and timing of completion application development services and other service-related engagements;
- changes in spending on subscriptions, services and application transactions media offerings and services by our current or prospective customers;
- pricing our technology offerings and services effectively so that we are able to attract and retain customers without compromising our operating results;
- one-time, non-recurring revenue events;
- attracting new customers and increasing our existing customers' use of our technology offerings and services;
- the mix between new contracts and renewals;
- customer renewal rates and the amounts for which agreements are renewed;
- seasonality and its effect on customer demand;
- awareness of our brand;
- changes in the competitive dynamics of our market, including consolidation among competitors or customers and the introduction of new technologies and technology enhancements;
- our ability to manage our existing business and future growth;
- unforeseen costs and expenses related to the expansion of our business, operations and infrastructure, including disruptions in our hosting network infrastructure and privacy and data security;
- customer delays in purchasing decisions in anticipation of new products or product enhancements by us or our competitors;
- budgeting cycles of our customers;
- changes in the competitive dynamics of our market, including consolidation among competitors or customers;
- the amount and timing of payment for operating expenses, particularly research and development and sales and marketing expenses (including marketing events and commissions and bonuses associated with performance) and employee benefit expenses;
- changes to the commission plans, quotas and other compensation related metrics for our sales representatives;
- the amount and timing of non-cash expenses, including stock-based compensation, goodwill impairments and other non-cash charges;
- the amount and timing of costs associated with recruiting, training and integrating new employees;
- the amount and timing of cash collections from our customers and the mix of quarterly and annual billings;
- unforeseen costs and expenses related to the expansion of our business, operations and infrastructure;
- changes in the levels of our capital expenditures;
- foreign currency exchange rate fluctuations; and
- general economic and political conditions.

We may not be able to accurately forecast the amount and mix of future technology offerings and services, size or duration of contracts, revenue and expenses and, as a result, our operating results may fall below our estimates.

***We could be held liable for damages or our reputation could suffer from security breaches or disclosure of confidential information or personal data.***

We are dependent on technology networks and systems to process, transmit and securely store electronic information and to communicate among our locations and with our customers. Security breaches of this infrastructure could lead to shutdowns or disruptions of our systems and potential loss or unauthorized disclosure of confidential information or data, including personal data. In addition, many of our engagements involve projects that are critical to the operations of our customers' businesses. The theft and/or unauthorized use or publication of our, or our customers', confidential information or other proprietary business information as a result of such an incident could adversely affect our competitive position and reduce marketplace acceptance of our services. Any failure in the networks or computer systems used by us or our customers could result in a claim for substantial damages against us and significant reputational harm, regardless of our responsibility for the failure.

In addition, we often have access to or are required to manage, utilize, collect and store sensitive or confidential customer or employee data, including personal data. As a result, we are subject to numerous U.S. and non-U.S. laws and regulations designed to protect this information, such as the European Union's GDPR and various U.S. federal and state laws governing the protection of personal data. If any person, including any of our employees, negligently disregards or intentionally breaches controls or procedures with which we are responsible for complying with respect to such data, or otherwise mismanages or misappropriates that data, or if unauthorized access to or disclosure of data in our possession or control occurs, we could be subject to liability and penalties in connection with any violation of applicable privacy laws and/or criminal prosecution, as well as significant liability to our customers or our customers' clients' for breaching contractual confidentiality and security provisions or privacy laws. These risks will increase as we continue to grow our cloud-based product offerings and services and store and process increasingly large amounts of our customers' confidential information and data and host or manage parts of our customers' businesses, especially in industries involving particularly sensitive data such as the healthcare industry we serve. The loss or unauthorized disclosure of sensitive or confidential customer or employee data, including personal data, whether through breach of computer systems, systems failure, employee negligence, fraud or misappropriation, or otherwise, could damage our reputation and cause us to lose customers. Similarly, unauthorized access to or through our information systems and networks or those we develop or manage for our customers, whether by our employees or third parties, could result in negative publicity, legal liability and damage to our reputation, which could in turn harm our business, results of operations, or financial condition.

***If we cause disruptions in our customers' businesses or provide inadequate service, our customers may have claims for substantial damages against us, which could cause us to lose customers, have a negative effect on our corporate reputation and adversely affect our results of operations.***

If we make errors in the course of delivering services to our customers or fail to consistently meet our service-level obligations or other service requirements of our customers, these errors or failures could disrupt our customers' business, which could result in a reduction in our revenue or a claim for substantial damages against us. In addition, a failure or inability by us to meet a contractual requirement could subject us to penalties, cause us to lose customers or damage our brand or corporate reputation and limit our ability to attract new business.

The services we provide are often critical to our customers' businesses. Certain of our customer contracts require us to comply with security obligations including maintaining network security and backup data, ensuring our network is virus free, maintaining business continuity planning procedures and ensuring our employees conduct their job functions with the a high level of integrity. Any failure in a customer's system, failure of our data center, cloud or other offerings, or breach of security relating to the services we provide to the customer could damage our reputation or result in a claim for substantial damages against us. Any significant failure of our equipment or systems, or any major disruption to basic infrastructure in the locations in which we operate, such as power and telecommunications, could impede our ability to provide services to our customers, have a negative impact on our reputation, cause us to lose customers and adversely affect our results of operations.

Under our customer contracts, our liability for breach of our obligations is in some cases limited pursuant to the terms of the contract. Such limitations may be unenforceable or otherwise may not protect us from liability for damages. In addition, certain liabilities, such as claims of third parties for which we may be required to indemnify our customers, are generally not limited under our contracts. The successful assertion of one or more large claims against us in amounts greater than those covered by our current insurance policies could harm our business, results of operations, or financial condition. Even if such assertions against us are unsuccessful, we may incur reputational harm and substantial legal fees.

***Our technology offerings and services could infringe upon the intellectual property rights of others or we might lose our ability to use intellectual property of others.***

We cannot be sure that our brand, software solution product offerings and services do not infringe on the intellectual property rights of third parties, which could claim that we or our customers are infringing upon their intellectual property rights. These claims could harm our reputation, cause us to incur substantial costs or prevent us from offering some products or services in the future, or require us to rebrand. Any related proceedings could require us to expend significant resources over an extended period of time. In most of our contracts, we agree to indemnify our customers for expenses and liabilities resulting from claimed infringements of the intellectual property rights of third parties. In some instances, the amount of these indemnities could be greater than the revenue we receive from the customer. Any claims or litigation in this area, regardless of merit, could be time-consuming and costly, damage our reputation, and/or require us to incur additional costs to obtain the right to continue to offer a service or solution to our customers. If we cannot secure this right at all or on reasonable terms, or, alternatively, substitute a non-infringing technology, our business, results of operations, or financial condition could be harmed. Similarly, if we are unsuccessful in defending a trademark claim, we could be forced to re-brand, which could harm our business, results of operations, or financial condition. Additionally, in recent years, individuals and firms have purchased intellectual property assets where their sole or primary purpose is to assert claims of infringement against technology providers and customers that use such technology. Any such action naming us or our customers could be costly to defend or lead to an expensive settlement or judgment against us. Moreover, such an action could result in an injunction being ordered against our customer or our own services or operations, causing further damages.

***If we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties, our business could be adversely affected.***

Our success depends, in part, upon our ability to protect our proprietary methodologies and other intellectual property. Existing laws offer only limited protection of our intellectual property rights and the protection in some countries in which we operate or may operate in the future may be very limited. We rely upon a combination of confidentiality policies, nondisclosure and other contractual arrangements and trade secret, copyright and trademark laws to protect our intellectual property rights. These laws are subject to change at any time and could further limit our ability to protect our intellectual property. There is uncertainty concerning the scope of available intellectual property protection for software and business methods, which are fields in which we rely on intellectual property laws to protect our rights. The validity and enforceability of any intellectual property right we obtain may be challenged by others and, to the extent we have enforceable intellectual property rights, those intellectual property rights may not prevent competitors from reverse engineering our proprietary information or independently developing technology offerings and services similar to or duplicative of us. Further, the steps we take in this regard might not be adequate to prevent or deter infringement or other misappropriation of our intellectual property by competitors, former employees or other third parties and we might not be able to detect unauthorized use of, or take appropriate and timely steps to enforce, our intellectual property rights. Enforcing our rights might also require considerable time, money and oversight and we may not be successful in enforcing our rights.

***If we are unable to collect our receivables from, or bill our unbilled services to, our customers, our business, results of operations or financial condition could be adversely affected.***

Our business depends on our ability to successfully obtain payment from our customers of the amounts they owe us for technology offerings sold or services performed. We typically evaluate the financial condition of our customers and usually bill and collect on relatively short cycles. We maintain allowances against receivables and unbilled services for which we believe collection is doubtful. Actual losses on customer balances could differ from those that we currently anticipate and, as a result, we might need to adjust our allowances. There is no guarantee that we will accurately assess the creditworthiness of our customers. Macroeconomic conditions could also result in financial difficulties for our customers, including limited access to the credit markets, insolvency, or bankruptcy, and, as a result, could cause customers to delay payments to us, request modifications to their payment arrangements that could increase our receivables balance, or default on their payment obligations to us. Timely collection of customer balances also depends on our ability to complete its contractual commitments and bill and collect our contracted revenue. If we are unable to meet our contractual requirements, we might experience delays in collection of and/or be unable to collect our customer balances and if this occurs, our business, results of operations, or financial condition could be adversely affected. In addition, if we experience an increase in the time to bill and collect for our services, our cash flows could be adversely affected.



***Increased costs of labor and employee health and welfare benefits may adversely impact our results of operations.***

Labor related costs represent a significant portion of our expenses. An increase in labor costs, for example, as a result of increased competition for skilled labor, or employee benefit costs, such as health care costs or otherwise, could adversely impact our business, results of operations or financial condition.

***Our global operations are subject to complex risks, some of which might be beyond our control.***

Although international revenue currently represents a small portion of our revenue, our business from outside of the United States may expand in the future as we expand our international presence, including but not limited to our subscription, application transaction, services and digital currency offerings. As a result, we may be subject to risks inherently associated with international operations, including risks associated with foreign currency exchange rate fluctuations, difficulties in enforcing intellectual property and/or contractual rights, the burdens of complying with a wide variety of foreign laws and regulations, potentially adverse tax consequences, tariffs, quotas and other barriers, potential difficulties in collecting accounts receivable, international hostilities, terrorism and natural disasters. Expansion of international operations also increases the likelihood of potential or actual violations of domestic and international anti-corruption laws, such as the Foreign Corrupt Practices Act, or of U.S. and international export control and sanctions regulations. We may also face difficulties integrating any new facilities in different countries into our existing operations, as well as integrating employees that we hire in different countries into our existing corporate culture. If we are unable to manage the risks of our global operations, our business, results of operations, or financial condition could be adversely affected.

***Economic uncertainties or downturns in the general economy or the industries in which our customers operate could disproportionately affect the demand for our products and services solutions and negatively impact our operating results.***

General worldwide economic conditions could experience a significant downturn causing market volatility widespread uncertainty. As a result, we and our customers could find it extremely difficult to accurately forecast and plan future business activities. In addition, these conditions could cause our customers or prospective customers to reduce their marketing and sales budgets, which could decrease corporate spending on our product and service offerings, resulting in delayed and lengthened sales cycles, a decrease in new customer acquisition and/or loss of customers. Furthermore, during challenging economic times, our customers may face issues with their cash flows and with gaining timely access to sufficient credit or obtaining credit on reasonable terms, which could impair their ability to make timely payments to us, impact customer renewal rates and adversely affect our revenue. If such conditions occur, we may be required to increase our reserves, allowances for doubtful accounts and write-offs of accounts receivable and our operating results would be harmed. In addition, a downturn in the technology-related spend by our customers may disproportionately affect us. We cannot predict the timing, strength or duration of any economic slowdown or recovery, whether global, regional or within specific markets. If the conditions of the general economy or markets in which we operate worsen, our business could be harmed. In addition, even if the overall economy does not worsen or improves, the market for product and service offerings may not experience growth or we may not experience growth.

***If platform subscriptions renewal rates decrease, or we do not accurately predict subscription renewal rates, our future revenue and operating results may be harmed.***

Our customers have no obligation to renew their subscriptions for our solutions after the expiration of their subscription period, which generally ranges from one to three years. In addition, our customers may renew for lower subscription amounts or for shorter contract lengths. We may not accurately predict renewal rates for our customers. Our renewal rates may decline or fluctuate as a result of a number of factors, including customer usage, pricing changes, number of applications used by our customers, customer satisfaction with our service, increased competition, the acquisition of our customers by other companies and deteriorating general economic conditions. If our customers do not renew their subscriptions for our solutions or decrease the amount they spend with us, our revenue will decline and our business will suffer.

***If we are unable to attract new customers or sell additional services and functionality to our existing customers, our revenue growth will be adversely affected.***

To increase our revenue, we must add new customers, encourage existing customers to renew their subscriptions on terms favorable to us, increase their usage of our solutions and sell additional functionality and services to existing customers. As our industry matures, as interactive channels develop further, or as competitors introduce lower cost and/or differentiated products or services that are perceived to compete with ours, our ability to sell and renew based on pricing, technology and functionality could be impaired. In addition, attracting, retaining and growing our relationship with customers may require us to effectively employ different strategies than we have historically used with current customers and we may face challenges in doing so. As a result, we may be unable to renew our agreements with existing customers or attract new customers or new

business from existing customers on terms that would be favorable or comparable to prior periods, which could have an adverse effect on our revenue and growth.

***Because we recognize revenue from application development services as those obligations are transferred to customers and platform subscriptions over the term of the relevant contract, downturns or upturns in sales are not immediately reflected in full in our operating results.***

We recognize revenue related to application development services upon the transfer of control to the customer of those services. We recognize software subscription revenue over the term of each of our contracts, which, generally ranges from one to three years. As a result, much of the revenue we report each quarter results from contracts entered into during previous quarters. Consequently, a shortfall in demand for our professional services and software solutions or a decline in new, expanded or renewed contracts in any one quarter may not significantly reduce our revenue for that quarter but could negatively affect our revenue in the future. Accordingly, the effect of significant downturns in new or expanded sales or renewals of our professional services or software license solutions will not be reflected in full in our operating results until future periods. Our revenue recognition model also makes it difficult for us to rapidly increase our revenue through additional sales in any period.

***If we fail to forecast our revenue accurately, or if we fail to match our expenditures with corresponding revenue, our operating results could be adversely affected.***

The lengthy sales cycle for the evaluation and implementation of our solutions, which typically extends for several months, may cause us to experience a delay between increasing operating expenses for such sales efforts, and, upon successful sales, the generation of corresponding revenue. Accordingly, we may be unable to prepare accurate internal financial forecasts or replace anticipated revenue that we do not receive as a result of delays arising from these factors. As a result, our operating results in future reporting periods may be significantly below the expectations of the public market, equity research analysts or investors, which could harm the price of our common stock.

***The length and unpredictability of the sales cycle for our technology offerings and services could delay new sales and cause our revenue and cash flows for any given quarter to fail to meet our projections or market expectations.***

The sales cycle between our initial contact with a potential customer and the signing of a contract to provide technology offerings and services varies. As a result of the variability and length of the sales cycle, we have a limited ability to forecast the timing of sales. A delay in or failure to complete transactions could harm our business and financial results and could cause our financial results to vary significantly from quarter to quarter. Our sales cycle varies widely, reflecting differences in our potential customers' decision-making processes, procurement requirements and budget cycles and is subject to significant risks over which we have little or no control, including:

- our customers' budgetary constraints and priorities;
- the timing of our customers' budget cycles; and
- the length and timing of customers' approval processes.

***If we fail to detect advertising fraud or other actions that impact our advertising campaign performance, we could harm our reputation with advertisers or agencies, which could cause our revenue and business to suffer.***

Our business relies on our ability to deliver successful and effective advertising campaigns. Some of those campaigns may experience fraudulent and other invalid impressions, clicks or conversions that advertisers may perceive as undesirable, such as non-human traffic generated by machines that are designed to simulate human users and artificially inflate user traffic on websites. These activities could overstate the performance of any given advertising campaign and could harm our reputation. It may be difficult for us to detect fraudulent or malicious activity because we do not own content and rely in part on our digital media partners to control such activity. These risks become more pronounced as the digital video industry shifts to programmatic buying. Both governmental and industry self-regulatory bodies have increased their scrutiny and awareness of and have taken recent actions to address, advertising fraud and other malicious activity. While we routinely review the campaign performance, such reviews may not detect or prevent fraudulent or malicious activity. If we fail to detect or prevent fraudulent or other malicious activity, the affected advertisers may experience or perceive a reduced return on their investment and our reputation may be harmed. High levels of fraudulent or malicious activity could lead to dissatisfaction with our solutions, refusals to pay, refund or future credit demands or withdrawal of future business. In addition, advertisers increasingly rely on third party vendors to measure campaigns against audience guarantee, viewability and other requirements and to detect fraud. If we are unable to successfully integrate our technology with such vendors, or our measurement and fraud detection differs from their findings, our customers could lose confidence in our solutions, we may not get paid for certain campaigns and

our revenues could decrease. Further, if we are unable to detect fraudulent or other malicious activities and advertisers demand fraud-free inventory, our supply could fall drastically, making it impossible to sustain our current business model. If we fail to detect fraudulent or other malicious activities that impact the performance of our brand advertising campaigns, we could harm our reputation with our advertisers or agencies and our revenue and business could suffer.

***If we do not maintain and grow a critical mass of advertisers and distribution partners, the value of our services could be adversely affected.***

Our success depends, in large part, on the maintenance and growth of a critical mass of advertisers and distribution partners. Advertisers will generally seek the most competitive return on investment from advertising and marketing services. Distribution partners will also seek the most favorable payment terms available in the market. Advertisers and distribution partners may change providers or the volume of business with a provider, unless the product and terms are competitive. In this environment, we must compete to acquire and maintain our network of advertisers and distribution partners. If our business is unable to maintain and grow our base of advertisers, our current distribution partners may be discouraged from continuing to work with us and this may create obstacles for us to enter into agreements with new distribution partners. Our business also depends in part on certain of our large reseller partners and agencies to grow their base of advertisers, as these advertisers become increasingly important to our business and our ability to attract additional distribution partners and opportunities. Similarly, if our distribution network does not grow and does not continue to improve over time, current and prospective advertisers and distribution partners and agencies may reduce or terminate this portion of their business with us. Any decline in the number of advertisers and distribution partners could adversely affect the value of our services.

***Any inability to deliver successful mobile advertising campaigns due to technological challenges or an inability to persuasively demonstrate success will prevent us from growing or retaining our current advertiser base.***

It is critical that we deliver successful mobile advertising campaigns on behalf of our advertisers. Factors that may adversely affect our ability to deliver successful mobile advertising campaigns include:

- Inability to accurately process data and extract meaningful insights and trends, such as the failure to accurately process data to place ads effectively at digital media properties;
- Faulty or out-of-date algorithms that fail to properly process data or result in inability to capture brand-receptive audiences at scale;
- Technical or infrastructure problems causing digital video not to function, digital video or impressions to not display properly or be placed next to inappropriate context;
- Inability to control video completion rates, maintain user attention or prevent end users from skipping advertisements;
- Inability to detect and prevent advertising fraud and other malicious activity;
- Inability to fulfill audience guarantee or viewability requirements of advertiser customers;
- Inability to integrate with third parties that measure campaigns against audience guarantee or viewability requirements;
- Unavailability of campaign data for advertisers to effectively measure the success of their campaigns; and
- Access to quality inventory at sufficient volumes to meet the needs of advertisers' campaigns.

Our ability to deliver successful advertising campaigns also depends on the continuing and uninterrupted performance of our own internal and third party managed systems, which we utilize to place ads, monitor the performance of advertising campaigns and manage advertising inventory. Our revenue depends on the technological ability of our solutions to deliver ads and measure them. Sustained or repeated system failures that interrupt our ability to provide solutions to customers, including security breaches and other technological failures affecting our ability to deliver ads quickly and accurately and to collect and process data in connection with these ads, could significantly reduce the attractiveness of our solutions to advertisers, negatively impact operations and reduce our revenue. Our systems are vulnerable to damage from a variety of sources, including telecommunications failures, power outages, malicious human acts and natural disasters. In addition, any steps we take to increase the reliability and redundancy of systems may be expensive and may not be successful in preventing system failures. Also, advertisers may perceive any technical disruption or failure in ad performance on digital media partners' platforms to be attributable to us and our reputation could similarly suffer, or advertisers may seek to avoid payment or demand future credits for disruptions or failures, any of which could harm our business and results of operations. If we are unable to deliver

successful advertising campaigns, our ability to attract potential advertisers and retain and expand business with existing advertisers could be harmed and our business, financial condition and operating results could be adversely affected.

***We may be unable to deliver advertising in a context that is appropriate for mobile advertising campaigns, which could harm our reputation and cause our business to suffer.***

It is very important to advertisers that their brand advertisements not be placed in or near content that is unlawful or could be deemed offensive or inappropriate by their customers. Unlike advertising on television, where the context in which an advertiser's ad will appear is highly predictable and controlled, digital media content is more unpredictable and we cannot guarantee that digital video advertisements will appear in a context that is appropriate for the brand. We rely on continued access to premium ad inventory in high-quality and brand-safe environments, viewable to consumers across multiple screens. If we are not successful in delivering context appropriate advertising campaigns for advertisers, our reputation will suffer and our ability to attract potential advertisers and retain and expand business with existing advertisers could be harmed, or our customers may seek to avoid payment or demand future credits for inappropriately placed advertisements, any of which could harm our business, financial condition and operating results.

***Activities of our application transaction customers with which we do business could damage our reputation or give rise to legal claims against us.***

We do not monitor or have the ability to control whether our advertising customers' advertising of their products and solutions complies with federal, state, local and foreign laws. Failure of our application transaction customers to comply with federal, state, local or foreign laws or our policies could damage our reputation and expose us to liability under these laws. We may also be liable to third parties for content in the ads we deliver if the content involved violates copyrights, trademarks or other intellectual property rights of third parties or if the content is defamatory, unfair and deceptive, or otherwise in violation of applicable laws. A third party or regulatory authority may file a claim against us even if our advertising customer has represented that its ads are lawful and that they have the right to use any copyrights, trademarks or other intellectual property included in an ad. Any of these claims could be costly and time-consuming to defend and could also hurt our reputation within the advertising industry. Further, if we are exposed to legal liability, we could be required to pay substantial fines or penalties, redesign our business methods, discontinue some of our solutions or otherwise expend significant resources. Similarly, we do not monitor or have the ability to control whether digital media property owners with which we do business are in compliance with applicable laws and regulations, or intellectual property rights of others and their failure to do so could expose us to legal liability. Third parties may claim that we should be liable to them for content on digital media properties if the content violates copyrights, trademarks or other intellectual property rights of third parties or if the content is defamatory, unfair and deceptive, or otherwise in violation of applicable laws or other brand protection measures. These risks become more pronounced as the digital video industry shifts to programmatic buying.

***Our business depends on our ability to collect and use data to deliver ads and to disclose data relating to the performance of our ads; any limitation on these practices could significantly diminish the value of our solutions and cause us to lose customers and revenue.***

When we deliver an ad to an internet-connected device, we are able to collect information about the placement of the ad and the interaction of the device user with the ad, such as whether the user visited a landing page or watched a video. We are also able to collect information about the user's IP address, device, mobile location and some demographic characteristics. We may also contract with one or more third parties to obtain additional pseudonymous information about the device user who is viewing a particular ad, including information about the user's interests. As we collect and aggregate this data provided by billions of ad impressions, we analyze it in order to optimize the placement and scheduling of ads across the advertising inventory provided to us by digital media properties.

Although the data we collect does not enable us to determine the actual identity of any individual, our customers or end users might decide not to allow us to collect some or all of the data or might limit our use of it. For example, a digital media partner might not agree to provide us with data generated by interactions with the content on its apps, or device users might not consent to share their information about device usage. Any limitation on our ability to collect data about user behavior and interaction with content could make it more difficult for us to deliver effective advertising programs that meet the demands of our customers. This in turn could harm our revenue and impair our business.

Although our contracts with advertisers generally permit us to aggregate data from advertising campaigns, sometimes an advertiser declines to permit the use of this data, which limits the usefulness of the data that we collect. Furthermore, advertisers may request that we discontinue using data obtained from their campaigns that have already been aggregated with other advertisers' campaign data. It would be difficult, if not impossible, to comply with these requests and complying with

these kinds of requests could cause us to spend significant amounts of resources. Interruptions, failures or defects in our data collection, mining, analysis and storage systems, as well as privacy concerns and regulatory restrictions regarding the collection, use and processing of data, could also limit our ability to aggregate and analyze the data from our customers' advertising campaigns. If that happens, we may not be able to optimize the placement of advertising for the benefit of our advertising customers, which could make our solutions less valuable, and, as a result, we may lose customers and our revenue may decline.

***Our business practices with respect to data could give rise to liabilities, restrictions on our business or reputational harm as a result of evolving governmental regulation, legal requirements or industry standards relating to consumer privacy and data protection.***

In the course of providing our solutions, we collect, transmit and store information related to and seeking to correlate internet-connected devices, user activity and the ads we place. Federal, state and international laws and regulations govern the collection, use, processing, retention, sharing and security of data that we collect across our advertising solutions. We strive to comply with all applicable laws, regulations, policies and legal obligations relating to privacy and data collection, processing use and disclosure. However, the applicability of specific laws may be unclear in some cases and domestic and foreign government regulation and enforcement of data practices and data tracking technologies is expansive, not clearly defined and rapidly evolving. In addition, it is possible that these requirements may be interpreted and applied in a manner that is new or inconsistent from one jurisdiction to another and may conflict with other rules or our practices. Any actual or perceived failure by us to comply with U.S. federal, state or international laws, including laws and regulations regulating privacy, data, security or consumer protection, or disclosure or unauthorized access by third parties to this information, could result in proceedings or actions against us by governmental entities, competitors, private parties or others. Any proceedings or actions against us alleging violations of consumer or data protection laws or asserting privacy-related theories could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, adversely affect the demand for our solutions and ultimately result in the imposition of monetary liability. We may also be contractually liable to indemnify and hold harmless our customers from the costs or consequences of litigation resulting from using our solutions or from the disclosure of confidential information, which could damage our reputation among our current and potential customers, require significant expenditures of capital and other resources and cause us to lose business and revenue.

The regulatory framework for privacy issues is evolving worldwide. It is possible that new laws and regulations will be adopted in the United States and internationally, or existing laws and regulations may be interpreted in new ways, that could affect our business, particularly with regard to collection or use of data to target ads and communication with consumers and the international transfer of data from Europe to the U.S. In particular, the GDPR extends the jurisdictional scope of European data protection law. As a result, we are subject to the GDPR when we provide our targeting services in Europe. The GDPR imposes stricter data protection requirements that may necessitate changes to our services and business practices. Potential penalties for non-compliance with the GDPR include administrative fines of up to 4% of annual worldwide revenue.

While we have not collected data that is traditionally considered personal data, such as name, email address, physical address, phone numbers or social security numbers, we typically collect and store IP addresses, geo-location information and device or other persistent identifiers that are or may be considered personal data in some jurisdictions or otherwise may be the subject of legislation or regulation. For example, some jurisdictions in the EU regard IP addresses as personal data and certain regulators have advocated for including IP addresses, GPS-level geolocation data and unique device identifiers as personal data. Moreover, with the effectiveness of the CCPA in California on January 1, 2020, the use of geo-location gathering in California should be approached with care to ensure compliance. Furthermore, the GDPR makes clear that online identifiers (such as IP addresses and other device identifiers) will be treated as "personal data" going forward and therefore subject to stricter data protection rules.

Evolving definitions of personal data within the United States, European Union and elsewhere, especially relating to the classification of IP addresses, machine or device identifiers, geo-location data and other such information, may cause us to change our business practices, diminish the quality of our data and the value of our solution and hamper our ability to expand our offerings.

Complying with any new regulatory requirements could force us to incur substantial costs or require us to change our business practices in a manner that could reduce our revenue or compromise our ability to effectively pursue our growth strategy. Our failure to comply with evolving interpretations of applicable laws and regulations, or to adequately protect personal data, could result in enforcement action against us or reputational harm, which could have a material adverse impact on our business, financial condition and results of operations.

In addition to compliance with government regulations, we voluntarily participate in trade associations and industry self-regulatory groups that promulgate best practices or codes of conduct addressing the provision of internet advertising. We could be adversely affected by changes to these guidelines and codes in ways that are inconsistent with our practices or in conflict with the laws and regulations of U.S. or international regulatory authorities. For instance, new guidelines, codes, or interpretations, by self-regulatory organizations or government agencies, may require additional disclosures, or additional consumer consents, such as “opt-in” permissions to share, link or use data, such as health data from third parties, in certain ways. If we fail to abide by, or are perceived as not operating in accordance with, industry best practices or any industry guidelines or codes with regard to privacy, our reputation may suffer and we could lose relationships with advertisers and digital media partners.

***Our agreements with partners, employees and others may not adequately prevent disclosure of trade secrets and other proprietary information.***

We rely in part on confidentiality agreements and other restrictions with our customers, partners, employees, consultants and others to protect our proprietary technology and other proprietary information. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. Despite our efforts to protect our proprietary technology, processes and methods, unauthorized parties may attempt to misappropriate, reverse engineer or otherwise obtain and use them. Moreover, policing unauthorized use of our technologies, products and intellectual property is difficult, expensive and time-consuming, particularly in foreign countries where applicable laws may be less protective of intellectual property rights than those in the United States and where enforcement mechanisms for intellectual property rights may be weak. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights and failure to obtain or maintain trade secret protection could adversely affect our competitive business position.

***We could be subject to additional income tax liabilities.***

We are generally subject to income taxes in the United States. We use significant judgment in evaluating our worldwide income-tax provision. During the ordinary course of business, we conduct many transactions for which the ultimate tax determination is uncertain. For example, our effective tax rates could be adversely affected by changes in the valuation of our deferred tax assets and liabilities or by changes in the relevant tax, accounting and other laws, regulations, principles and interpretations. We are subject to audit in various jurisdictions, and such jurisdictions may assess additional income tax against us. Although we believe our tax estimates are reasonable, the final determination of tax audits and any related litigation could be materially different from our historical income-tax provisions and accruals. The results of an audit or litigation could have a material effect on our operating results or cash flows in the period or periods for which that determination is made.

***Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, value-added or similar taxes, and we could be subject to liability with respect to past or future sales, which could adversely affect our operating results.***

We do not collect sales and use, value-added or similar taxes in all jurisdictions in which we have sales, based on our belief that such taxes are either not applicable or an exemption from such taxes applies. Sales and use, value-added and similar tax laws and rates vary greatly by jurisdiction. Certain jurisdictions in which we do not collect such taxes may assert that such taxes are applicable, which could result in tax assessments, penalties and interest, and we may be required to collect such taxes in the future, including as a result of a change in law. Such tax assessments, penalties and interest or future requirements may adversely affect our business, financial condition and results of operations.

***Our net operating loss carryforwards may expire unutilized or underutilized, which could prevent us from offsetting future taxable income.***

We may be limited in the portion of net operating loss carryforwards that we can use in the future to offset taxable income for U.S. Federal income tax purposes, including any limitations that may be imposed under Section 382 of the Code as a result of our past ownership changes or an ownership change in connection with the Business Combination. At December 31, 2020, we had federal net operating loss carryforwards of approximately \$126.3 million, of which \$40.6 million will never expire and \$85.7 million will expire at various dates beginning in 2030. At December 31, 2020, we had state and local net operating loss carryforwards of approximately \$60.9 million, with the majority beginning to expire in 2030 if not utilized.

We periodically assess the likelihood that we will be able to recover net deferred tax assets. We consider all available evidence, both positive and negative, including historical levels of income, expectations and risks associated with estimates of future taxable income and ongoing prudent and feasible profits. As a result of this analysis of all available evidence, both

positive and negative, we concluded that a valuation allowance against our net U.S. deferred tax assets should be applied as of December 31, 2020. To the extent we determine that all or a portion of our valuation allowance is no longer necessary, we will recognize an income tax benefit in the period this determination is made for the reversal of the valuation allowance. Once the valuation allowance is eliminated or reduced, its reversal will no longer be available to offset our current tax provision. These events could have a material impact on our reported results of operations.

***Our large customers have substantial negotiating leverage, which may require that we agree to terms and conditions that may have an adverse effect on our business.***

Our large customers have substantial purchasing power and leverage in negotiating contractual arrangements with us. These customers may request us to develop additional features without providing us additional revenue, may require penalties for failure to deliver such features, may seek discounted product or service pricing and may seek more favorable contractual terms. As we sell more products and services to this class of customer, we may be required to agree to such terms and conditions. Such large customers also have substantial leverage in negotiating the resolution of any disagreements or disputes that may arise between us. Any of the foregoing factors could have a material adverse effect on our business, financial condition and results of operations.

***If some of our customers experience financial distress or suffer disruptions in their business, their weakened financial position could negatively affect our own financial position and results.***

We have a diverse customer base and, at any given time, one or more customers may experience financial distress, file for bankruptcy protection, go out of business, or suffer disruptions in their businesses. If a customer with whom we do a substantial amount of business experiences financial difficulty or suffers disruptions in its business, it could delay or jeopardize the collection of accounts receivable, result in significant reductions in services provided by us and may have a material adverse effect on our business, financial condition and results of operations.

***If we are unable to obtain and maintain adequate insurance, our financial condition could be adversely affected in the event of uninsured or inadequately insured loss or damage. Our ability to effectively recruit and retain qualified officers and directors may also be adversely affected if we experience difficulty in maintaining adequate directors' and officers' liability insurance.***

We may not be able to obtain and maintain insurance policies on terms affordable to us that would adequately insure our business and property against damage, loss or claims by third parties. To the extent our business or property suffers any damages, losses or claims by third parties that are not covered or adequately covered by insurance, our financial condition may be materially adversely affected. We currently have directors' and officers' liability insurance. If we are unable to maintain sufficient insurance as a public company to cover liability claims made against our officers and directors, we may not be able to retain or recruit qualified officers and directors to manage our company, which could have a material adverse effect on our business, financial condition and results of operations.

***It may be difficult for us to retain or attract qualified officers and directors, which could adversely affect our business and our ability to maintain the listing of our common stock on the Nasdaq Capital Market.***

We may be unable to attract and retain qualified officers, directors and members of board committees required for publicly-held companies, including, but not limited to, certifications from executive officers and requirements for financial experts on boards of directors. The perceived increased personal risk may deter qualified individuals from accepting these roles. Further, applicable rules and regulations of the SEC and Nasdaq Capital Market heighten the requirements for board or committee membership, particularly with respect to an individual's independence from the corporation and level of experience in finance and accounting matters. We may have difficulty attracting and retaining directors with the requisite qualifications. If we are unable to attract and retain qualified officers and directors, our business and our ability to maintain the listing of our shares of common stock on Nasdaq Capital Market could be adversely affected.

***The requirements of being a public company may strain our systems and resources, divert management's attention and be costly.***

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules and regulations of Nasdaq Capital Market. The requirements of these rules and regulations will increase our legal, accounting and financial compliance costs, will make some activities more difficult, time consuming and costly and may also place undue strain on our personnel, systems and



resources. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and results of operations.

We are required to maintain various other control and business systems related to our equity, finance, treasury, information technology, other recordkeeping systems and other operations. As a result of these maintenance obligations, management's attention may be diverted from other business concerns, which could adversely affect our business. Furthermore, we supplement our internal team with third party software and system providers to support our reporting obligations to achieve effective internal controls.

To the extent we do not sufficiently manage third party service providers, and they fail to provide us with adequate service, we may not effectively manage our future growth which may result in ineffective internal controls over financial reporting and an increased cost of compliance. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us, and our business may be adversely affected.

In addition, compliance with new laws, rules and regulations would make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain appropriate levels of coverage. These factors could also make it more difficult for us to attract and retain qualified executive officers and members of our board of directors, particularly members to serve on our audit committee.

As a result of disclosure of information in this Annual Report and in other filings required of a public company, our business and financial condition will become more visible, which we believe may result in threatened or actual litigation by third parties. If such claims are successful, our business and results of operations could be adversely affected, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the time and resources of our management and adversely affect our business and results of operations.

***We are an "emerging growth company" and a "smaller reporting company" and, because we have opted to use the reduced reporting requirements available to us, this may make our common stock less attractive to investors.***

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act, or the JOBS Act and a "smaller reporting company". For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. 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. As permitted under the JOBS Act, we have irrevocably elected to delay adopting new or revised accounting standards until such time as those standards apply to private companies, unless an early adoption provision is available to private companies. We will cease being an emerging growth company on December 31, 2021.

Even after we no longer qualify as an emerging growth company, we may still qualify as a smaller reporting company which would allow us to take advantage of many of the same exemptions from disclosure requirements including reduced disclosure obligations regarding to executive compensation in our period reports and proxy statements and we also may still qualify as a "non-accelerated filer" which provides for exemption from compliance with auditor attestation requirements of Section 404.

We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.



***Our business is subject to the risks of natural disasters, public health crises, political crises and other natural catastrophic events and to interruption by man-made problems such as computer viruses or terrorism.***

Our systems and operations are vulnerable to damage or interruption from earthquakes, fires, floods, power losses, telecommunications failures, terrorist attacks, acts of war, human errors, break-ins and similar events. For example, a significant natural disaster, such as a tornado, earthquake, hurricane, mudslides, fire, flood, snow, ice or extreme temperatures could have a material adverse effect on our business, results of operations and financial condition and our insurance coverage may be insufficient to compensate us for losses that may occur. We have an office and at least one data center located in California, a region known for earthquakes and mudslides. A significant amount of our development and ad operations work is located in California. We also have corporate offices in Texas and Florida, both of which are susceptible to floods, hurricanes and extreme temperatures. In addition, acts of terrorism, which may be targeted at metropolitan areas that have higher population density than rural areas, could cause disruptions in our or our advertisers' businesses or the economy as a whole. Our servers may also be vulnerable to computer viruses, break-ins, denial-of-service attacks and similar disruptions from unauthorized tampering with our computer systems, which could lead to interruptions, delays, loss of critical data. We may not have sufficient protection or recovery plans in some circumstances, such as natural disasters affecting California, Texas or Florida. In late 2019, a strain of the coronavirus was reported to have surfaced and spread to the United States. The full extent to which COVID-19 may impact our results is unknown. As we rely heavily on our data centers, computer and communications systems and the internet to conduct our business and provide high-quality customer service, such disruptions could negatively impact our ability to run our business and either directly or indirectly disrupt our customers' business, which could have a material adverse effect on our business, results of operations and financial condition.

#### **Risks Related to Capitalization Matters, Corporate Governance and Market Volatility**

***A substantial number of shares of our common stock may be issued pursuant to the terms of our 2020 Convertible Notes and the exercise of the warrant, which could cause the price of our common stock to decline.***

On July 15, 2020 we issued a Series A Senior Convertible Note (a "Series A Note") and a Series B Senior Convertible Note (a "Series B Note," and together with the Series A Note, the "2020 Convertible Notes") to an institutional investor. As of December 31, 2020, the principal amount owed under the 2020 Convertible Notes was \$6.1 million.

The 2020 Convertible Notes are convertible into shares of our common stock at a conversion price of \$2.25 per share, after taking into account an adjustment to the conversion price relating to our public offering of common stock that closed in February 2021. The noteholder may also exercise the warrant in connection therewith in full for 2,160,000 shares (without taking into account the limitations on the conversion of the 2020 Convertible Notes and exercise of the warrant) at an exercise price of \$2.25 per share. The issuance of these shares will dilute our other equity holders, which could cause the price of our common stock to decline.

***Restrictive covenants under the 2020 Convertible Notes could limit our growth and our ability to finance our operations, fund our capital needs, respond to changing conditions and engage in other business activities that may be in our best interests.***

The 2020 Convertible Notes and related ancillary agreements contain a number of affirmative and negative covenants regarding the incurrence of certain indebtedness, the existence of liens, the repayment of indebtedness, the payment of cash in respect to dividends, distributions or redemptions, and the transfer of assets among other matters. We are also subject to a financial covenant that requires us to maintain available cash in the amount of \$500,000 at the end of each figure quarter, subject to a right of cure.

Our ability to comply with these covenants may be adversely affected by events beyond our control, and we cannot assure you that we can maintain compliance with these covenants. The financial covenants could limit our ability to make needed expenditures or otherwise conduct necessary or desirable business activities.

***Our loans under the Paycheck Protection Program ("PPP") may not be forgiven or may subject us to challenges and investigations regarding qualification for the loan.***

On April 10, 2020, we received a loan under the PPP, which was established under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), in the aggregate principal amount of approximately \$2.85 million. Pursuant to the CARES Act, we may apply for and be granted forgiveness for all or a portion of the PPP loan. Such forgiveness will be determined, subject to limitations, based on the use of the loan proceeds for qualifying expenses, which include payroll costs, rent, and utility costs over the allowable measurement period following receipt of the loan proceeds.

In addition to changes enacted by the U.S. Congress, the Small Business Administration (“SBA”) continues to develop and issue new and updated guidance regarding the PPP loan application process, including guidance regarding required borrower certifications and requirements for forgiveness of loans made under the program. We continue to track the guidance as it is released and assess and re-assess various aspects of its application as necessary based on the guidance. However, given the evolving nature of the guidance and based on our projected ability to use the loan proceeds for qualifying expenses, we cannot give any assurance that the PPP loan will be forgiven in whole or in part, as anticipated.

Additionally, the PPP loan application required us to certify that the current economic uncertainty made the PPP loan request necessary to support our ongoing operations. While we made this certification in good faith after analyzing, among other things, our financial situation and access to alternative forms of capital, and believe that we satisfied all eligibility criteria for the PPP loan and that our receipt of the PPP loan is consistent with the broad objectives of the PPP of the CARES Act, the certification described above does not contain any objective criteria and is subject to interpretation. In addition, the SBA has stated that it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith. The lack of clarity regarding loan eligibility under the program has resulted in significant media coverage and controversy with respect to public companies applying for and receiving loans. If, despite our good faith belief that we satisfied all eligibility requirements for the PPP loan, we are found to have been ineligible to have received the PPP loan or in violation of any of the laws or regulations that apply to us in connection with the PPP loan, including the False Claims Act, we may be subject to penalties, including significant civil, criminal and administrative penalties and could be required to repay the PPP loan. In the event that we seek forgiveness of all or a portion of the PPP loan, we will also be required to make certain certifications which will be subject to audit and review by governmental entities and could subject us to significant penalties and liabilities if found to be inaccurate. In addition, our receipt of the PPP loan may result in adverse publicity and damage to our reputation, and a review or audit by the SBA or other government entity or claims under the False Claims Act could consume significant financial and management resources. Any of these events could harm our business, results of operations and financial condition.

***The price of our common stock and warrants has been, and may continue to be, volatile, and you could lose all or part of your investment.***

Technology stocks have historically experienced high levels of volatility. The trading price and volume of our common stock and warrants have fluctuated, and may continue to fluctuate, substantially due to a variety of 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.

In addition, if the market for technology stocks or the stock market in general experiences a loss of investor confidence, the trading price of our common stock and/or warrants could decline for reasons unrelated to our business, results of operations or financial condition. The trading price of our common stock and warrants might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. In the past, following periods of volatility in the trading price of a company’s securities, securities class action litigation has often been brought against that company. If our stock price is volatile, we may become the target of securities litigation. Securities litigation could result in substantial costs and divert our management’s attention and resources from our business. This could have an adverse effect on our business, results of operations and financial condition.

Specifically, while we cannot state for certainty what circumstances are causing volatility in our stock price, such volatility may be attributable in part to the following factors:

- price and volume fluctuations in the overall stock market from time to time;
- the announcement of new products, solutions or technologies, investments, commercial relationships, acquisitions or other events by us or our competitors;
- changes in how customers perceive the benefits of our products and future offerings;
- the addition or departure of key personnel;
- the public's reaction to our press releases, other public announcements and filings with the SEC;
- sales of large blocks of our common stock or warrants;
- developments concerning intellectual property rights;
- changes in legal, regulatory and enforcement frameworks impacting our products;
- variations in our and our competitors' results of operations;
- whether our results of operations meet the expectations of securities analysts or investors;
- actual or anticipated fluctuations in our quarterly and annual results and those of other public companies in our industry;
- the failure of securities analysts to publish research about us, or shortfalls in our results of operations compared to levels forecast by securities analysts;
- actual or perceived significant data breach involving our products or website;
- litigation involving us, our industry or both;
- governmental or regulatory actions or audits;
- general economic conditions and trends;
- flash crashes, "freeze flashes" or other glitches that disrupt trading on the securities exchange on which we are listed; and
- major catastrophic events in our domestic and foreign markets, such as, but not limited to, natural disasters, terrorist attacks, cyber attacks or disease outbreak, epidemic or pandemic.

Furthermore, the trading price of our Common Stock has recently increased significantly. From January 4, 2021 through March 23, 2021 the last reporting closing price of our Common Stock on the Nasdaq Capital Market has ranged from a low of \$1.11 per share to a high of \$3.04 per share. We believe the increase in the trading price and price range of our Common Stock may be the result of a number of factors outside our control. The recent increase in the trading price of our Common Stock may not be sustained. In the event of a rapid decrease in the trading price of our Common Stock, investors could lose a significant portion of their investment.

***Future sales or issuances of our common stock, or the perception that such sales could occur, could depress the trading price of our common stock.***

We filed a Registration Statement on Form S-3 (as amended), which was declared effective on February 11, 2021. As a result, we may sell up to \$100 million of shares of our common stock, preferred stock, warrants, units or combinations thereof. On February 17, 2021, we consummated an offering of 11,761,111 shares of common stock at an offering price of \$2.25 per share for which a final prospectus related to this offering was filed with the SEC on February 12, 2021. Proceeds from the offering were approximately \$24.7 million, after deducting underwriting discounts, commissions and other estimated offering expenses. We cannot predict the effect, if any, that future sales of our common stock or other securities or the availability of our common stock or additional securities for future sale, will have on the market price of shares of our common stock. Future sales or issuances of our common stock may dilute the ownership interests of our existing stockholders. In addition, future sales or issuances of substantial amounts of our common stock may adversely impact the market price of our common stock and the terms upon which we may obtain additional equity financing in the future. The perception that such sales or issuances may occur could also negatively impact the market price of our common stock.

***Our executive officers and directors collectively beneficially own approximately 12% of the outstanding shares of our common stock and continue to have substantial control over us, which will limit your ability to influence the outcome of important transactions, including a change in control.***

As of December 31, 2020, our executive officers and directors and their affiliates, in the aggregate, beneficially own approximately 12% of the outstanding shares of our common stock. As a result, these stockholders, if acting together, will be able to influence or control matters requiring approval by our stockholders, including the election of directors and the approval of mergers, acquisitions or other extraordinary transactions. They may also have interests that differ from yours and may vote in a way with which you disagree and which may be adverse to your interests. This concentration of ownership may have the effect of delaying, preventing or deterring a change in control of our company, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company and might ultimately affect the market price of our common stock.

***If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our common stock adversely, the price and trading volume of our common stock could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. We currently have a limited number of securities and industry analysts who publish research on us. If we are unable to increase our analysts coverage or these current analysts cease to publish research on us, our stock price and trading volume could be negatively impacted. If any of the analysts who cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, the price of our common stock could decline. If any analyst who may cover us were to cease coverage of us or fail to regularly publish reports, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline.

***We do not currently intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.***

We have never declared nor paid any cash dividends on our capital stock. We currently intend to retain any future earnings to finance the operation and expansion of our business, and we do not expect to declare or pay any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors. As a result, stockholders must rely on sales of their common stock after price appreciation as the only way to realize any future gains on their investment, if any.

***Delaware law and our certificate of incorporation and bylaws contain certain provisions, including anti-takeover provisions that limit the ability of stockholders to take certain actions and could delay or discourage takeover attempts that stockholders may consider favorable.***

Our certificate of incorporation, bylaws and the Delaware General Corporation Law ("DGCL") contain provisions that could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our board of directors and therefore could depress the trading price of our common stock and warrants. These provisions could also make it difficult for stockholders to take certain actions, including effecting changes in our management. Among other things, our certificate of incorporation and bylaws include provisions regarding:

- a classified board of directors with three-year staggered terms, which could delay the ability of stockholders to change the membership of a majority of our board of directors;
- the ability of our board of directors to issue shares of preferred stock, including "blank check" preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- the limitation of the liability of, and the indemnification of, our directors and officers;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of our board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- the requirement that directors may only be removed from our board of directors for cause;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of stockholders and could delay the ability of stockholders to force consideration of a stockholder proposal or to take action, including the removal of directors;
- the requirement that a special meeting of stockholders may be called only by our board of directors, the chairperson of our board of directors, chief executive officer or president (in the absence of a chief executive officer), which could delay the ability of stockholders to force consideration of a proposal or to take action, including the removal of directors;
- controlling the procedures for the conduct and scheduling of board of directors and stockholder meetings;
- the requirement for the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then outstanding shares of the voting stock, voting together as a single class, to amend, alter, change or repeal any provision of our certificate of incorporation or bylaws, which could preclude stockholders from bringing matters before annual or special meetings of stockholders and delay changes in our board of directors and also may inhibit the ability of an acquirer to effect such amendments to facilitate an unsolicited takeover attempt;
- the ability of our board of directors to amend the bylaws, which may allow our board of directors to take additional actions to prevent an unsolicited takeover and inhibit the ability of an acquirer to amend the bylaws to facilitate an unsolicited takeover attempt; and
- advance notice procedures with which stockholders must comply to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which could preclude stockholders from bringing matters before annual or special meetings of stockholders and delay changes in our board of directors and also may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of the Company.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our board of directors or management.

In addition, as a Delaware corporation, we are subject to provisions of Delaware law, including Section 203 of the DGCL, which may generally prohibit certain stockholders holding 15% or more of our outstanding capital stock from engaging in certain business combinations with us for a specified period of time unless certain conditions are met.

Any provision of our certificate of incorporation, bylaws or Delaware law that has the effect of delaying or preventing a change in control could limit the opportunity for stockholders to receive a premium for their shares of our capital stock and could also affect the price that some investors are willing to pay for our common stock.

***Our certificate of incorporation designates a state or federal court located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders, and also provides that the federal district courts will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act or Exchange Act, each of which could limit our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers, or employees.***

Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee or agent to us or our stockholders, (iii) any action asserting a claim against us arising pursuant to any provision of the DGCL or our certificate of incorporation or bylaws, (iv) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws, or (v) any action asserting a claim against us governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act or the Exchange Act.

Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. These exclusive-forum provisions may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find either exclusive-forum provision in our certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could harm its results of operations.

### **Risks Related to our Token Offerings and Digital Currencies**

***We have raised capital to fund a Token Generation Event, through an offering by our wholly-owned subsidiary, PhunCoin, Inc., of rights to receive future PhunCoin. Through our wholly-owned subsidiary, Phun Token International, we may also sell Phun tokens. There can be no assurance that PhunCoin or Phun will ever be issued and, any significant difficulties we, PhunCoin, Inc., or Phun Token International may experience with the offerings of PhunCoin or Phun could result in claims against us. Additionally, the Token Generation Event and the offerings of PhunCoin and Phun could subject us to various other business and regulatory uncertainties.***

In June 2018, PhunCoin, Inc. launched an offering to raise capital by offering investors the right to acquire PhunCoin ("Rights") pursuant to Rule 506(c) of Regulation D as promulgated under the Securities Act. In addition, in 2019, PhunCoin, Inc. commenced an offering of Rights pursuant to Regulation CF, which closed May 1, 2019. As of December 31, 2020, a total of \$1.2 million has been raised in both Rights offerings.

During the second quarter of 2019, Phunware announced the launch of a separate token, Phun, by its wholly owned subsidiary, Phun Token International, which enables consumers to participate in our planned blockchain-enabled data exchange and mobile loyalty ecosystem. As of December 31, 2020, no Phun has been sold.

We will use our commercially reasonable efforts to cause PhunCoin, Inc. and Phun Token International to develop and issue PhunCoin and Phun, respectively, but there is no assurance that such efforts will be successful. The Token Generation Event, defined as the launch of the Token Ecosystem, may not be consummated or the sales of PhunCoin and Phun may not result in substantial proceeds. If the Token Generation Event is not consummated PhunCoin or Phun is not adopted commercially, we may have to reduce our planned expenditures. Also, any significant difficulties we may experience with the Token Generation Event or the development of PhunCoin or Phun could result in claims against us which could have a material adverse effect on the Company and its stockholders.

***Because there has been limited precedence set for financial accounting of digital assets, it is unclear how the Company will be required to account for digital assets transactions in the future.***

There has been limited precedent set for the financial accounting of digital assets, including accounting for the issuance of our digital assets, PhunCoin and Phun. It is unclear how the Company will be required to account for issuances of its own digital assets and the digital assets, such as Bitcoin, it may hold on its balance sheet. Furthermore, a change in

regulatory or financial accounting standards could result in the necessity to restate the Company's financial statements. Such a restatement could negatively impact the Company's business, prospects, financial condition and results of operations. Such circumstances could have an effect on the Company's decision to pursue this segment at all, which could have a material adverse effect on the business, prospects or operations of the Company and potentially the value of any cryptocurrencies the Company holds or expects to acquire for its own account, including PhunCoin and Phun, to the detriment of the Company's stockholders.

***The further development and acceptance of blockchain networks, which are part of a new and rapidly changing industry, are subject to a variety of factors that are difficult to evaluate. The slowing or stopping of the development or acceptance of blockchain networks and blockchain assets could have a material adverse effect on PhunCoin, Inc.'s and Phun Token International's business plans, which may have a material adverse effect on the Company and its stockholders.***

The growth of the blockchain industry in general, as well as the networks on which PhunCoin will rely to consummate the Token Generation Event, is subject to a high degree of uncertainty. The cryptocurrency and cryptosecurities industries as a whole have been characterized by rapid changes and innovations and are constantly evolving. The slowing or stopping of the development, general acceptance and adoption and usage of blockchain networks and blockchain assets may materially adversely affect our business plans to launch and maintain PhunCoin and Phun. For example, given the regulatory complexity with respect to cryptocurrency and related digital assets, complying with such regulations, which could change in the future or be subject to new interpretations, could have a material and adverse effect on our ability to develop, launch and continue to operate PhunCoin, Phun and the Token Ecosystem. In addition, the tax and accounting consequences to us of the Token Generation Event, PhunCoin and Phun are uncertain, which could lead to incorrect reporting, classification or liabilities. If the Token Generation Event occurs and PhunCoin and Phun are developed, the structural foundation of PhunCoin and Phun, and the software applications and other interfaces or applications upon which PhunCoin, Phun and the Token Ecosystem rely or on which PhunCoin, Phun and the Token Ecosystem may rely in the future, are and will be unproven. There can be no assurances that PhunCoin or Phun will be fully secure, which may result in impermissible transfers, a complete loss of users' PhunCoin or Phun on the Token Ecosystem, or an unwillingness of users to access, adopt and utilize PhunCoin or Phun, whether through system faults or malicious attacks. Any such faults or attacks on PhunCoin or Phun may materially and adversely affect our business.

***Because our tokens and/or digital currency will be a digital asset built and transacted initially on top of existing third-party blockchain technology, Phunware is reliant on another blockchain network, and users could be subject to the risk of wallet incompatibility and blockchain protocol risks.***

Reliance upon another blockchain technology to create the Token Ecosystem subjects us and Token Ecosystem users to the risk of digital wallet incompatibility, or additional ecosystem malfunction, unintended function, unexpected functioning of, or attack on, the providers' blockchain protocol, which may cause PhunCoin or Phun to malfunction or function in an unexpected manner, including, but not limited to, slowdown or complete cessation in functionality of the Token Ecosystem.

***The development and operation of the Token Ecosystem will likely require technology and intellectual property rights.***

The ability of the Company to develop and operate the Token Ecosystem that may be developed in the future may depend on technology and intellectual property rights that the Company may license from unaffiliated third parties. If for any reason the Company were to fail to comply with its obligations under any applicable license agreement, or were unable to provide or were to fail to provide the technology and intellectual property that the Token Ecosystem requires, it would be unable to operate, which would have a material adverse effect on the Company's operations and financial condition and its ability to develop, enhance, and maintain the Token Ecosystem.

Some of our code and protocols rely on open source code publicly available. The open-source structure of some of the Token Ecosystem protocols means that the Token Ecosystem may be susceptible to developments by users or contributors that could damage the Token Ecosystem and our reputation and could affect the utilization of the Token Ecosystem and PhunCoin.

It is our intention that the Token Ecosystem will operate partially based on an open-source code maintained by the Company and other public contributors. The open-source nature of the Token Ecosystem protocol will mean that it may be difficult for the Company or contributors maintain or develop the Token Ecosystem and the Company may not have adequate resources to address emerging issues or malicious programs that develop within the Token Ecosystem adequately or in a timely manner. Third parties not affiliated with the Company may introduce weaknesses or bugs into the core infrastructure elements of the Token Ecosystem and open-source code which may negatively impact the Token Ecosystem. Such events may result in a loss of trust in the security and operation of the Token Ecosystem and a decline in user activity and could negatively impact the PhunCoin.

Our use of “open source” software could negatively affect our ability to offer the Token Ecosystem and subject us to possible litigation.

A substantial portion of the Token Ecosystem incorporates so-called “open source” software, and we may incorporate additional open source software in the future. Open source software is generally freely accessible, usable and modifiable. Certain open source licenses may, in certain circumstances, require us to offer the components of our system that incorporate the open source software for no cost, that we make available source code for modifications or derivative works we create based upon, incorporating or using the open source software and that we license such modifications or derivative works under the terms of the particular open source license. If an author or other third party that distributes open source software we use were to allege that we had not complied with the conditions of one or more of these licenses, we could be required to incur significant legal expenses defending against such allegations and could be subject to significant damages, including being enjoined from the offering of the components of our system that contained the open source software and being required to comply with the foregoing conditions, which could disrupt our ability to offer the affected software. We could also be subject to suits by parties claiming ownership of what we believe to be open source software. Litigation could be costly for us to defend, have a negative effect on our operating results and financial condition and require us to devote additional research and development resources to change our products.

***The Token Ecosystem is designed to distribute PhunCoin or Phun to consumers in exchange for their agreement to provide certain personal information to us. Providing this data exposes us to risks of privacy data breach and cybersecurity attacks.***

We utilize a substantial amount of electronic information. This includes transaction information and sensitive personal information of the users of the Token Ecosystem. The service providers used by us, may also use, store, and transmit such information. We intend to implement detailed cybersecurity policies and procedures and an incident response plan designed to protect such information and prevent data loss and security breaches.

There can be no assurances that PhunCoin, Phun or a user’s data will be fully secure, which may result in impermissible transfer, a complete loss of users’ PhunCoin, Phun or data on the Token Ecosystem or an unwillingness of users to access, adopt and utilize PhunCoin and Phun, whether through system faults or malicious attacks. Any such faults or attacks on PhunCoin, Phun or users’ data may materially and adversely affect PhunCoin, Phun and the Token Ecosystem. There are a number of data protection, security, privacy and other government- and industry-specific requirements, including those that require companies to notify individuals of data security incidents involving certain types of personal data. Security compromises could harm the Token Ecosystem’s reputation, erode user confidence in the effectiveness of its security measures, negatively impact its ability to attract new users, or cause existing users to stop using the Token Ecosystem, PhunCoin and Phun. We may be compelled to disclose personal information about a user or users of the Token Ecosystem to federal or state government regulators or taxation authorities. Accordingly, certain information concerning users may be shared outside Phunware.

***The Token Ecosystem may be the target of malicious cyberattacks or may contain exploitable flaws in its underlying code, which may result in security breaches and the loss or theft of PhunCoin. If Token Ecosystem’s security is compromised or if the Token Ecosystem is subjected to attacks that frustrate or thwart our users’ ability to access the Token Ecosystem, their PhunCoin or the Token Ecosystem products and services, users may cut back on or stop using the Token Ecosystem altogether, which could seriously curtail the utilization of PhunCoin.***

The Token Ecosystem will use new technology. There are no guarantees that such technology will be bug-free or accepted by the marketplace. Thus, even if the Token Ecosystem should become operational, PhunCoin may be subject to the risk of theft, loss, malfunction, or reputational risk, any of which can significantly degrade the potential use of PhunCoin.

The Token Ecosystem structural foundation, the open-source protocols, the software application and other interfaces or applications built upon the Token Ecosystem are still in an early development stage and are unproven, and there can be no assurances that the Token Ecosystem and the creation, transfer or storage of the PhunCoin will be uninterrupted or fully secure which may result in a complete loss of users’ PhunCoin or an unwillingness of users to access, adopt and utilize the Token Ecosystem. Further, the Token Ecosystem may also be the target of malicious attacks seeking to identify and exploit weaknesses in the software or the Token Ecosystem which may result in the loss or theft of PhunCoin. For example, if PhunCoin and the Token Ecosystem are subject to unknown and known security attacks (such as double-spend attacks, 51% attacks, or other malicious attacks), such attacks may materially and adversely affect the Token Ecosystem. In any such event, if the System Launch does not occur or if the Token Ecosystem is not widely adopted, Purchasers may lose all of their investment.



***The Token Ecosystem is susceptible to mining attacks.***

As with other decentralized cryptographic tokens and cryptocurrencies, the blockchain used in connection with PhunCoin and the Token Ecosystem may be susceptible to mining attacks, including double-spend attacks, majority mining power attacks, selfish-mining attacks, and race condition attacks. Any successful attacks present a risk to the Token Ecosystem and PhunCoin. Despite the efforts of the Company team, the risk of known or novel mining attacks exists.

Alternative platforms or networks may be established that compete with or are more widely used than the Token Ecosystem. It is possible that alternative platforms or networks could be established that utilize the same or similar protocols underlying the Token Ecosystem or attempt to facilitate services that are materially similar to the Token Ecosystem's services. The introduction of these alternative networks and the potential entry of new competitors into the market could harm our ability to increase sales, which could negatively impact the Token Ecosystem and PhunCoin.

***There is no existing trading market for our PhunCoin.***

Our PhunCoin is a new crypto asset for which there is no established public market and peer-to-peer transfers will not be permitted unless and until PhunCoin holders are notified otherwise by the Company and informed of the requirements and conditions to do so. Even if we register or qualify the PhunCoin under the Securities Act or under a comparable foreign regulatory regime, there can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide the holders of our PhunCoin with liquidity of investment or that it will continue for the life of the PhunCoin. The liquidity of any market for our PhunCoin will depend on a number of factors, including, but not limited to: (i) the number of holders of our PhunCoin; (ii) the performance of the PhunCoin; (iii) the market for similar crypto assets; (iv) the interest of traders in making a market in the PhunCoin; (v) regulatory developments in the digital token or cryptocurrency industries and (vi) legal restrictions on transfer. In the event that the PhunCoins remain untradeable for a significant period of time or indefinitely, the value of the PhunCoins would be materially adversely affected.

***The regulatory regime governing blockchain technologies, cryptocurrencies, digital assets, utility tokens, security tokens and offerings of digital assets is uncertain, and new regulations or policies may materially adversely affect the development and the value of PhunCoin and Phun.***

Regulation of digital assets, like PhunCoin and Phun, cryptocurrencies, blockchain technologies and cryptocurrency exchanges, is currently undeveloped and likely to rapidly evolve as government agencies take greater interest in them. Regulation also varies significantly among international, federal, state and local jurisdictions and is subject to significant uncertainty. Various legislative and executive bodies in the United States and in other countries may in the future adopt laws, regulations, or guidance, or take other actions, which may severely impact the permissibility of tokens generally and the technology behind them or the means of transaction or in transferring them. In addition, any violations of laws and regulations relating to the safeguarding of private information in connection with PhunCoin and Phun could subject us to fines, penalties or other regulatory actions, as well as to civil actions by affected parties. Any such violations could adversely affect the ability of Phunware to maintain PhunCoin and Phun, which could have a material adverse effect on our operations and financial condition. Failure by us to comply with any laws, rules and regulations, some of which may not exist yet or are subject to interpretation and may be subject to change, could result in a variety of adverse consequences, including civil penalties and fines.

***The prices of blockchain assets are extremely volatile. Fluctuations in the price of digital assets and/or waning interest of investors in the cryptocurrency industry could materially and adversely affect our business.***

The prices of blockchain assets such as Bitcoin and Ether have historically been subject to dramatic fluctuations and are highly volatile. Several factors may influence the interest in cryptocurrency and blockchain asset investments such as PhunCoin, including, but not limited to:

- Global blockchain asset supply;
- Global blockchain asset demand, which can be influenced by the growth of retail merchants' and commercial businesses' acceptance of blockchain assets like cryptocurrencies as payment for goods and services, the security of online blockchain asset exchanges and digital wallets that hold blockchain assets, the perception that the use and holding of blockchain assets is safe and secure, and the regulatory restrictions on their use;
- Purchasers' expectations with respect to the rate of inflation;
- Changes in the software, software requirements or hardware requirements underlying the Token Ecosystem;
- Changes in the rights, obligations, incentives, or rewards for the various participants in the Token Ecosystem;
- Interest rates;
- Currency exchange rates, including the rates at which digital assets may be exchanged for fiat currencies;

[Table of Contents](#)

- Fiat currency withdrawal and deposit policies of blockchain asset exchanges on which users may trade cryptocurrency and blockchain assets and liquidity on such exchanges;
- Interruptions in service from or failures of major blockchain asset exchanges in which users may trade cryptocurrency and blockchain assets;
- Investment and trading activities of large investors, including private and registered funds, that may directly or indirectly invest in PhunCoin or other blockchain assets;
- Monetary policies of governments, trade restrictions, currency devaluations and revaluations;
- Regulatory measures that may affect the use of blockchain assets such as PhunCoin;
- The maintenance and development of the open-source software protocol of certain blockchain assets;
- Global or regional political, economic or financial events and situations; or
- Expectations among the Token Ecosystem or other blockchain assets participants that the value and/or utility of other blockchain assets will soon change.

**Item 1B. Unresolved Staff Comments.**

None.

**Item 2. Properties.**

Our corporate headquarters is located in Austin, Texas, where we currently lease approximately 10,600 square feet under a lease agreement set to expire in 2022. We also lease facilities in Irvine, California; San Diego, California; and Miami, Florida. We believe our current facilities are adequate to meet our ongoing needs and that, to accommodate growth, we will seek additional facilities as needed to satisfy our growth.

**Item 3. Legal Proceedings.**

The information set forth under the subheading "*Litigation*" in Note 9 "*Commitments and Contingencies*" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K is incorporated herein by reference.

**Item 4. Mine Safety Disclosures.**

Not applicable.

**PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.****Market Information**

The Company's common stock, \$0.0001 par value began trading on the Nasdaq Capital Market on December 28, 2018 under the symbol "PHUN".

**Holders**

On March 23, 2021, there were approximately 191 holders of record of our common stock. We believe the number of beneficial owners of our common stock are substantially greater than the number of record holders because a large portion of our outstanding common stock is held of record in broker "street name" for the benefit of individual investors.

**Dividends**

We have not paid any cash dividends on our common stock to date. The payment of any cash dividends will be dependent upon our revenue, earnings and financial condition from time to time. The payment of any dividends will be within the discretion of our board of directors. It is presently expected that we will retain all earnings for use in our business operations and, accordingly, it is not expected that our board of directors will declare any dividends in the foreseeable future.

**Securities Authorized for Issuance Under Equity Compensation Plans**

All of the Company's equity compensation plans were previously approved by its stockholders and the Company maintains no equity compensation plans not approved by stockholders. The following table sets forth our equity compensation plan information as of December 31, 2020.

	Number of securities to be issued upon exercise of outstanding options and rights (a)	Weighted-average exercise price of outstanding options and rights (b)	Number of securities remaining available for issuance under equity compensation plans (c)
2018 Equity Incentive Plan (the "2018 Plan") (1)	1,677,060	\$1.41	2,551,720
2018 Employee Stock Purchase Plan (the "2018 ESPP") (2)	—	—	272,942
2009 Equity Incentive Plan (the "2009 Plan") (3)	1,208,740	\$0.80	—

(1) The shares of common stock reserved for issuance under the 2018 Plan also will include any shares of common stock subject to stock options, restricted stock units or similar awards granted under the 2009 Plan, that, on or after the Business Combination, are assumed in connection with the Business Combination, expire or otherwise terminate without having been exercised in full and shares of common stock issued pursuant to awards granted under the 2009 Plan that, on or after the Business Combination, are forfeited to or repurchased by us. As of December 31, 2020, the maximum number of shares of common stock that may be added to the 2018 Plan pursuant to the foregoing equal to 1,209,314, which is not included in the column (c) above.

(2) As of December 31, 2020, we had not consummated an enrollment or offering period related to the 2018 ESPP.

(3) The 2009 Plan terminated in connection with the consummation of the Business Combination, and accordingly, no shares will be available for issuance under the 2009 Plan following the consummation of the Business Combination. The 2009 Plan will continue to govern outstanding awards granted thereunder.

For additional information on the Company's equity compensation plans, refer to Note 12 "Stock-Based Compensation" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

**Recent Sales of Unregistered Securities**

None.

**Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

None.

**Item 6. Selected Financial Data.**

Not required.

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes to those statements appearing elsewhere in this Annual Report on Form 10-K. As discussed in the section titled "*Special Note Regarding Forward-Looking Statements*," the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of many factors, including, but not limited to, those discussed in the section titled "*Risk Factors*" and elsewhere in this Annual Report.

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

**Key Events and Recent Developments**

On March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus ("COVID-19") as a pandemic. The outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. The COVID-19 outbreak in the United States has caused business disruption through mandated and voluntary closing of businesses and cancellation of events for which the Company's application transition business serves. Furthermore, the Company's platform software and services business serves healthcare and hospitals throughout the United States. While the disruption is currently expected to be temporary, there is considerable uncertainty around the duration of the closings and cancellations.

The related financial impact and duration cannot be reasonably estimated at this time. We implemented a work-from-home policy for our employees effective March 16, 2020 and we are taking steps to implement measures to reduce operating expenses. To that end, on March 27, 2020, the Company committed to cost reduction by furloughing 37 persons, or approximately 42% of its workforce. From March 27, 2020 to December 31, 2020, the Company recalled seven employees from furlough and ten voluntary terminated.

Refer to "*Liquidity and Capital Resources*" below for further discussion on key events and recent developments.

## Overview

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

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

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

## Key Business Metrics

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

**Backlog and Deferred Revenue.** Backlog represents future amounts to be invoiced under our current customer agreements. At any point in the contract term, there can be amounts that we have not yet been contractually able to invoice. Until such time as these amounts are invoiced, they are not recorded in revenues, deferred revenue, accounts receivable or elsewhere in our consolidated financial statements, and are considered by us to be backlog. We expect backlog to fluctuate up or down from period to period for several reasons, including the timing and duration of customer contracts, varying billing cycles and the timing and duration of customer renewals. We reasonably expect approximately half of our backlog as of December 31, 2020 will be invoiced during the subsequent 12-month period, primarily due to the fact that our contracts are typically one to three years in length.

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

The following table sets forth our backlog and deferred revenue:

	December 31,	
	2020	2019
	(in thousands)	
Backlog	\$ 3,991	\$ 5,496
Deferred revenue	5,075	7,124
Total backlog and deferred revenue	\$ 9,066	\$ 12,620

**Non-GAAP Financial Measures**

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

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

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

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

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

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

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
	(\$ in thousands)	
Adjusted gross profit <sup>(1)</sup>	\$ 6,939	\$ 10,311
Adjusted gross margin <sup>(1)</sup>	69.4 %	53.8 %
Adjusted EBITDA <sup>(2)</sup>	\$ (8,353)	\$ (10,173)

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

(2) Adjusted EBITDA is a non-GAAP financial measure. We believe adjusted EBITDA provides helpful information with respect to operating performance as viewed by management, including a view of our business that is not dependent on (i)

the impact of our capitalization structure and (ii) items that are not part of day-to-day operations. We define adjusted EBITDA as net loss plus (i) interest expense, (ii) income tax expense, (iii) depreciation, (iv) amortization, and further adjusted for (v) one-time adjustments and (vi) stock-based compensation expense.

**Reconciliation of Non-GAAP Financial Measures**

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

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
	(\$ in thousands)	
Gross profit	\$ 6,644	\$ 10,130
Add back: Amortization of intangibles	21	35
Add back: Stock-based compensation	274	146
Adjusted gross profit	<u>\$ 6,939</u>	<u>\$ 10,311</u>
Adjusted gross margin	69.4 %	53.8 %

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
	(in thousands)	
Net loss	\$ (22,199)	\$ (12,871)
Add back: Depreciation and amortization	153	328
Add back: Interest expense	3,413	581
Add back: Income tax expense	2	5
EBITDA	<u>(18,631)</u>	<u>(11,957)</u>
Add Back: Stock-based compensation	4,492	1,784
Add Back: Legal settlement	4,500	—
Add Back: Loss on extinguishment of debt	2,158	—
Less: Fair value adjustment for warrant liabilities	(872)	—
Adjusted EBITDA	<u>\$ (8,353)</u>	<u>\$ (10,173)</u>

## Components of Results of Operations

### *Revenue and Gross Profit*

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

*Platform Subscriptions and Services Revenue.* Subscription revenue is derived from software license fees, which comprise subscription fees from customers licensing our Software Development Kits (SDKs), which includes accessing the MaaS platform; application development service revenue from the development of customer applications, or apps, which are built and delivered to customers; and support fees.

Subscription revenue from SDK licenses gives the customer the right to access our MaaS platform. Application development revenue is derived from development services around designing and building new applications or enhancing existing applications. Support revenue is comprised of support and maintenance fees of customer applications, software updates and technical support for application development services for a support term.

From time to time, we also provide professional services by outsourcing employees' time and materials to customers.

Platform subscriptions and services gross profit is equal to subscriptions and services revenue less the cost of personnel and related costs for our support and professional services employees, external consultants, stock-based compensation and allocated overhead. Costs associated with our development and project management teams are generally recognized as incurred. Costs directly attributable to the development or support of applications relating to platform subscription customers are included in cost of sales, whereas costs related to the ongoing development and maintenance of Phunware's MaaS platform are expensed in research and development. As a result, platform subscriptions and services gross profit may fluctuate from period to period.

*Application Transaction Revenue.* We also generate revenue by charging advertisers to deliver advertisements (ads) to users of mobile connected devices. Depending on the specific terms of each advertising contract, we generally recognize revenue based on the activity of mobile users viewing these ads. Fees from advertisers are commonly based on the number of ads delivered or views, clicks or actions by users on mobile advertisements delivered, and we recognize revenue at the time the user views, clicks, or otherwise acts on the ad. We sell ads through several offerings: cost per thousand impressions and cost per click.

Application transaction gross profit is equal to application transaction revenue less cost of revenue associated with application transactions. Application transaction gross profit is impacted by the cost of advertising traffic we pay to our suppliers and amount of traffic which we can purchase from those suppliers. As a result, our application transaction gross profit may fluctuate from period to period due to variable costs of advertising traffic.

### *Gross Margin*

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

### *Operating Expenses*

Our operating expenses include sales and marketing expenses, general and administrative expenses, research and development expenses, depreciation and amortization of acquired intangible assets. Personnel costs are the most significant component of operating expenses and consist of salaries, benefits, bonuses, stock-based compensation and, in sales and marketing expense, commissions. Legal settlements pertaining to litigation brought as a result of the Company's operations is also included in operating expenses.

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



*General and Administrative Expense.* General and administrative expense is comprised of compensation and benefits of administrative personnel, including variable incentive pay and stock-based compensation, bad debt expenses and other administrative costs such as facilities expenses, professional fees and travel expenses. We expect to incur additional general and administrative expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC and listing standards of Nasdaq, additional insurance expenses, investor relations activities and other administrative and professional services. We also expect to increase the size of our general and administrative function to support the growth of our business. As a result, we expect that our general and administrative expenses will increase in absolute dollars but may fluctuate as a percentage of our total revenue from period to period.

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

#### ***Interest Expense***

Interest expense includes interest related to our outstanding debt, including amortization of discounts and deferred issuance costs, as well as, factoring fees related to our factoring financing arrangement.

During 2020, we maintained a factoring financing arrangement and our board of directors has authorized various debt offerings. Refer to Note 7 *"Factoring Agreement"* and Note 8 *"Debt"* of the notes to consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K for more information on our factoring arrangement and debt offerings, respectively.

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

#### ***Income Tax Expense***

We are subject to U.S. Federal income taxes, state income taxes net of federal income tax effect and nondeductible expenses. Our effective tax rate will vary depending on permanent non-deductible expenses and other factors.

**Results of Operations**
**Comparison of Fiscal Years Ended December 31, 2020 and 2019**
**Net Revenue**

	Year Ended December 31,		Change	
	2020	2019	Amount	%
<b>Net Revenue</b>	(\$ in thousands)			
Platform subscriptions and services	\$ 9,108	\$ 17,243	\$ (8,135)	(47.2)%
Application transaction	893	1,907	(1,014)	(53.2)%
<b>Total revenue</b>	<b>\$ 10,001</b>	<b>\$ 19,150</b>	<b>\$ (9,149)</b>	<b>(47.8)%</b>
Platform subscriptions and services as a percentage of total revenue	91.1 %	90.0 %		
Application transactions as a percentage of total revenue	8.9 %	10.0 %		

Total revenue decreased \$9.1 million, or (47.8)%, in the year ended December 31, 2020 compared to the corresponding period in 2019.

Platform subscriptions and services revenue decreased \$8.1 million, or (47.2)% driven by the completion of our statement of work with Fox Networks Group ("Fox") on September 30, 2019. Revenue from Fox was approximately \$9.5 million for the year ended December 31, 2019. This decrease was partially offset higher revenues from a particular customer in 2020 as compared to 2019. Revenue from this customer was 32% and 8% of our total net revenues for the years ended December 31, 2020 and 2019, respectively.

See the subheading titled, "Disaggregation of Revenue" in Note 3 "Revenue" of the notes to consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Application transaction revenue decreased 1.0 million, or (53.2)%, primarily because the various decreased or ceased advertising campaigns and decrease in app store revenue.

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

	Year Ended December 31,		Change	
	2020	2019	Amount	%
	(\$ in thousands)			
<b>Cost of Revenue</b>				
Platform subscriptions and services	\$ 3,180	\$ 8,538	\$ (5,358)	(62.8)%
Application transaction	177	482	(305)	(63.3)%
<b>Total cost of revenue</b>	<b>\$ 3,357</b>	<b>\$ 9,020</b>	<b>\$ (5,663)</b>	<b>(62.8)%</b>
<b>Gross Profit</b>				
Platform subscriptions and services	\$ 5,928	\$ 8,705	\$ (2,777)	(31.9)%
Application transaction	716	1,425	(709)	(49.8)%
<b>Total gross profit</b>	<b>\$ 6,644</b>	<b>\$ 10,130</b>	<b>\$ (3,486)</b>	<b>(34.4)%</b>
<b>Gross Margin</b>				
Platform subscriptions and services	65.1 %	50.5 %		
Application transaction	80.2 %	74.7 %		
<b>Total gross margin</b>	<b>66.4 %</b>	<b>52.9 %</b>		

Total gross profit decreased \$3.5 million, or (34.4)%, in the year ended December 31, 2020 compared to the corresponding period of 2019 primarily attributable to the revenue items described above.

**Operating Expenses**

	Year Ended December 31,		Change	
	2020	2019	Amount	%
	(\$ in thousands)			
<b>Operating expenses</b>				
Sales and marketing	\$ 1,653	\$ 2,706	\$ (1,053)	(38.9)%
General and administrative	15,361	15,403	(42)	(0.3)%
Research and development	2,628	4,333	(1,705)	(39.3)%
Legal settlement	4,500	—	4,500	100.0 %
<b>Total operating expenses</b>	<b>\$ 24,142</b>	<b>\$ 22,442</b>	<b>\$ 1,700</b>	<b>7.6 %</b>

*Sales and Marketing*

Sales and marketing expense decreased \$1.1 million, or (38.9)% for the year ended December 31, 2020 compared to the corresponding period of 2019 primarily due to \$0.6 million of reduced employee compensation costs due to lower headcount and \$0.5 million related to other expenditure decreases such as marketing events, contractor spend and travel.

*General and Administrative*

General and administrative expense decreased \$42 thousand, or (0.3)%, for the year ended December 31, 2020, compared to the corresponding period of 2019 due to decreases of \$1.1 million in software and hosting expenses, \$0.5 million in professional and contract labor expenses, \$0.4 million for payroll and related costs due to a decrease in headcount, \$0.2 million in travel expense, \$0.2 million in depreciation and amortization expense and \$0.5 million in net positive settlements of accounts payable balances previously expensed. These decreases were primarily offset by the increase in stock-based compensation expense of \$2.7 million and \$0.2 million in bad debt expense.

*Research and Development*

Research and development expense decreased \$1.7 million, or (39.3)% for the year ended December 31, 2020, compared to the corresponding period of 2019 as a result of a decrease of \$1.4 million related to employee headcount and contract spend. Other decreases of \$0.3 million include expenditures such as stock-based compensation, contractor spend and travel.

*Legal Settlement*

The legal settlement expense of \$4.5 million relates to the settlement of our litigation with Uber as described in detail in Note 9 "Commitments and Contingencies" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

**Other income (expense)**

	Year Ended December 31,		Change	
	2020	2019	Amount	%
	(\$ in thousands)			
<b>Other income (expense)</b>				
Interest expense	\$ (3,413)	\$ (581)	\$ (2,832)	487.4 %
Loss on extinguishment of debt	(2,158)	—	(2,158)	— %
Fair value adjustment for warrant liabilities	872	—	872	— %
Other income (expense)	—	27	(27)	(100.0)%
<b>Total other expense</b>	<b>\$ (4,699)</b>	<b>\$ (554)</b>	<b>\$ (4,145)</b>	<b>748.2 %</b>

Other expense increased \$(4.1) million for the year ended December 31, 2020 when compared to 2019, primarily due to losses on extinguishment of debt and interest related to our debt borrowings as further described in Note 8 "Debt" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K. This is partially

offset by gain in fair value adjustment for warrant liabilities and a decrease in interest related to our factoring financing arrangement due to lower usage.

## Liquidity and Capital Resources

As of December 31, 2020, we held total cash (including restricted cash) of \$4,031, all of which was held in the United States.

On October 9, 2020, we entered into a settlement agreement with Uber Technologies, Inc. ("Uber") and certain other parties related to our complaint against Uber, Uber's cross-complaint and amended cross-complaint against us and certain individual defendants. The settlement agreement provides that we will pay to Uber a total sum of \$4.5 million in a series of installments. We recorded a charge in the third quarter of 2020 related to the settlement agreement. As of December 31, 2020, we owe \$3 million related to the settlement, which will be paid in various installments ending no later than September 30, 2021. For further information related to the Uber settlement agreement, refer to Note 9 "*Commitments and Contingencies*" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

As of December 31, 2020, the principal balance of our debt was approximately \$10.1 million, from various debt, including a Paycheck Protection Program ("PPP") loan and convertible debt offerings. The debt we believe will have the most significant impact on our future liquidity and capital resources is discussed below. For further information on all our debt outstanding as of December 31, 2020, refer to Note 8 "*Debt*" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

In April 2020, we received a PPP loan of approximately \$2.85 million, which bears interest at a rate of 0.98% per annum. The Paycheck Protection Flexibility Act of 2020, extended the deferral period for loan payments. The Company currently anticipates its first PPP loan payment will be made in the third quarter of 2021. Although we intend to apply for forgiveness, as currently provided for under terms of the PPP loan and the CARES Act, there can be no assurance that any part of our PPP loan will be forgiven. The PPP loan matures in April 2022.

During 2020, we issued a series of convertible notes to an institutional investor. As of December 31, 2020, the unrestricted principal balance of our Series A Convertible Note and Series B Convertible Note (collectively, the "2020 Convertible Notes") was \$2.48 million and \$3.58 million, respectively. The 2020 Convertible Notes were issued with an original issue discount of 8% and each bear an interest rate of 7% per annum, which further includes a make-whole of interest (for unrestricted principal amounts) from the date of issuance through the maturity date of December 31, 2021. Outstanding principal on the 2020 Convertible Notes is subject to monthly installment payments in cash of 107% of the installment amount due. The noteholder has various redemption rights, such as the right to redeem an amount equal to 40% of the net proceeds from a qualified capital raise, or upon change of control or company default. The noteholder may also convert 2020 Convertible Notes into shares of our common at a current adjusted conversion price of \$2.25 per share. Upon consummation of the issuance of the 2020 Convertible Notes, we also issued the note holder a warrant for the purchase of up to 2,160,000 shares of our common stock, which has a current adjusted exercise price of \$2.25 per share. We also have the right to redeem the full amount of the outstanding principal under the 2020 Convertible Notes. As of December 31, 2020, the restricted principal balance of the Series A Convertible Note and Series B Convertible Note was \$0 and \$11.1 million, respectively. Upon issuance of the 2020 Convertible Notes, the noteholder issued an investor note to us, which offsets the combined restricted balances of the 2020 Convertible Notes. In March 2020, the noteholder exercised its right to redeem all amounts outstanding under the investor note. As a result, all principal under the Series B Convertible Note has become unrestricted.

In January 2021, we issued 2,670,121 shares of common stock for aggregate proceeds of \$5.1 million, net of \$0.2 million of commissions (and before noteholder redemption payment) pursuant to the terms of an at-the-market offering, which has concluded. In February 2021, we also issued 11,761,111 shares of our common stock for aggregate proceeds of \$24.7 million in an underwritten public offering, net of \$1.7 million of underwriter commissions and other underwriter costs.

As a result of the fundraising events above, the holder of our 2020 Convertible Notes elected to require us to use forty percent (40%) of the net proceeds satisfy obligations under the 2020 Convertible Notes, pursuant to which we paid approximately \$11.5 million to the noteholder. In March 2021, the noteholder voluntarily prepaid an aggregate of \$10.3 million pursuant to the terms of the investor note. As a result, we received cash proceeds of \$10.3 million and the corresponding amount of principal of the Series B Note, representing the entire remaining amount of restricted principal, along with \$0.8 million of original issue discount became unrestricted and outstanding. On March 25, 2021, we delivered a Company Optional Redemption Notice to the holder of our Series B Note exercising our right to redeem and fully satisfy all obligations under the Series B Note on April 5, 2021.

Given the financings achieved above, we believe our current cash position is expected to be sufficient to meet our projected operating requirements for at least the next twelve months from the filing of this Annual Report on Form 10-K.

We have a history of operating losses and negative operating cash flows. As we continue to focus on growing our revenues, we expect these trends to continue into the foreseeable future. Our future capital requirements will depend on many

[Table of Contents](#)

factors, including our pace of growth, subscription renewal activity, the timing and extent of spend to support development efforts, the expansion of sales and marketing activities and the market acceptance of our products and services. We believe that it is likely we will in the future enter into arrangements to acquire or invest in complementary businesses, technologies and intellectual property rights. We may be required to seek additional equity or debt financing. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us, or at all. If we are unable to raise additional capital when desired and/or on acceptable terms, our business, operating results and financial condition could be adversely affected.

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

	Year Ended December 31,		Change	
	2020	2019	Amount	%
<i>(\$ in thousands)</i>				
<b>Consolidated statement of cash flows</b>				
Net cash used in operating activities	\$ (10,973)	\$ (6,187)	\$ (4,786)	77.4 %
Net cash provided by investing activities	—	70	(70)	(100.0)%
Net cash provided by financing activities	14,596	99	14,497	14,643.4 %

#### *Operating Activities*

Our primary source of cash from operating activities is receipts from the sale of our platform subscriptions and services and application transactions to our customers. Our primary uses of cash from operating activities are payments to employee for compensation and related expenses, publishers and other vendors for the purchase of digital media inventory and related costs, sales and marketing expenses and general operating expenses.

We utilized \$(11.0) million of cash from operating activities during 2020 primarily resulting from a net loss of \$(22.2) million, as adjusted for non-cash charges related to stock-based compensation of \$4.5 million, \$2.2 million for amortization of debt discount and deferred financing costs, \$0.2 million for bad debt expense, \$(0.5) million for accounts payable settlements, \$(0.9) million for gain on the change in fair value of warrants and \$2.2 million for loss on extinguishment of debt. In addition, during 2020 certain changes in our operating assets and liabilities resulted in cash increases (decreases) as follows: \$1.5 million from an increase in accounts payable and accrued expenses, \$3.0 million accrued legal settlement balance as of December 31, 2020 related to our settlement with Uber, \$0.8 million from an decrease in account receivable and \$(2.0) million from an decrease in deferred revenue.

We utilized \$(6.2) million of cash from operating activities during 2019 primarily resulting from a net loss of \$(12.9) million, as adjusted for non-cash charges related to stock-based compensation of \$1.8 million, depreciation and amortization of \$0.3 million and allowance for doubtful receivables of \$0.1 million. In addition, during 2019 certain changes in our operating assets and liabilities resulted in cash increases (decreases) as follows: \$1.1 million from an increase in accrued expenses mainly related to accrued compensation, \$0.7 million from an increase in accounts payable related to increase in payables for legal fees, \$1.8 million from a decrease in accounts receivable mainly attributable to the conclusion of our statement of work with Fox, \$0.6 million from deferred revenue and \$0.2 million from prepaid expenses.

#### *Investing Activities*

Investing activities during 2019 primarily consisted of proceeds received from the sale of digital currencies.

#### *Financing Activities*

Our financing activities during 2020 consisted of proceeds from various debt borrowings offset by repayments on our various debt offerings and financing factoring agreement. We acquired \$14.6 million of cash from financing activities during 2020, as a result of \$15.4 million from new issuances of debt (inclusive of \$0.6 million from related parties), \$9.2 million from our at-the-market offering of common stock and \$0.1 million in proceeds from stock option exercises. These sources of financing were partially offset of \$(9.0) million of payments on debt (inclusive of \$0.6 million to related parties) and \$(1.1) million in net repayments on our factoring financing agreement.

Our financing activities during 2019 consisted primarily of the proceeds from warrant exercises offset by redemptions of Series A convertible preferred stock. We acquired \$0.1 million of cash from financing activities during 2019, primarily as follows: \$6.1 million provided by warrant exercises; \$1.1 million from our debt financings, which includes \$0.2 million

received from an affiliate associated with our Chief Executive Officer; \$0.3 million from proceeds of exercises of options to purchase our common stock; and \$0.2 million from proceeds received from PhunCoin deposits. These sources of financing were offset by (\$6.2) million in payments for the redemption of Series A convertible preferred stock and (\$1.4) million in net payments on our factoring financing arrangement.

### **Contractual Obligations**

We lease various office facilities, including our corporate headquarters in Texas and offices in California and Florida, under non-cancellable operating lease agreements that expire through 2025. The terms of the lease agreements provide for rental payments on a graduated basis. We recognize rent expense on a straight-line basis over the lease periods. Rent expense under operating leases totaled \$0.8 million and \$0.7 million for the years ended December 31, 2020 and 2019, respectively.

The following table sets forth our contractual obligations as of December 31, 2020 (in thousands):

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating lease obligations	\$ 3,000	\$ 836	\$ 1,347	\$ 817	\$ —

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

During the years ended December 31, 2020 and 2019, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

### **Indemnification Agreements**

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

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

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

The critical accounting policies requiring estimates, assumptions and judgments that we believe have the most significant impact on our consolidated financial statements are set forth below. For further information on all significant accounting policies, refer to Note 2 "Summary of Significant Accounting Policies" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

### **Revenue**

We derive our revenue primarily from MaaS subscription fees, application development and support fees. Revenue is recognized when control of these products or services are transferred to our customers in an amount that reflects the consideration we expect to be entitled to in exchange for those services. Our revenue recognition policy follows guidance from Accounting Standards Codification No. 606, *Revenue from Contracts with Customers (Topic 606)*.

We determine revenue recognition through the following five-step framework:

- Identification of the contract, or contracts, with a customer;
- Identification of the performance obligations in the contract or contracts;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when, or as, we satisfy a performance obligation.

Our contracts with customers often include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. When a customer contract consists of licensing, application development and support services, we consider these separate performance obligations, which would require an allocation of consideration. For contracts with multiple performance obligations, the contract price is allocated to separate performance obligations on a relative standalone basis for which significant judgment is required. Judgment is required to determine whether a software license is considered distinct and accounted for separately, or not distinct and accounted for together with the software support and services and recognized over time.

#### ***Goodwill***

We review goodwill for impairment annually during the fourth quarter or more frequently if events or changes in circumstances would more likely than not reduce the fair value of our single reporting unit below its carrying value. As of December 31, 2020, no impairment of goodwill has been identified.

#### ***Convertible Notes***

In March 2020, we issued a convertible note with a cash conversion feature. In accounting for the issuance of the note, we separated the note into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have a convertible feature.

In July 2020, we also issued additional convertible notes to the same investor as the March 2020 convertible note. Our net cash proceeds after the payoff of the March 2020 convertible note and transaction costs were approximately \$1.8 million. We also issued a warrant exercisable for 3 years for the purchase of an aggregate of up to 2,160,000 shares of our common stock at an initial exercise price of \$4.00 per share in conjunction with the issuance of the convertible notes. We evaluated all of the financial instruments, including the warrants to purchase common stock issued in conjunction with convertible debt, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives in accordance with ASC with ASC Topic 815-40, *Derivatives and Hedging - Contracts in an Entity's Own Stock*. The warrants are accounted for as liabilities and 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 statement of operations. We used a Black-Scholes option-pricing model to value the warrants at inception and subsequent valuation dates. The initial and subsequent valuation of the warrants requires significant judgment. For the assumptions used to value at warrants at issuance and at December 31, 2020, refer to Note 8 "*Debt*" of the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

#### **Recent Accounting Standards**

Recent accounting standards applicable to our business are described under the subheading "*Recently Adopted Accounting Policies*" in Note 2 "*Summary of Significant Accounting Policies*" of the notes to consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

#### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

We are a "smaller reporting company" as defined by Rule 12b-2 of the Exchange Act, and as such, is not required to provide the information required under this Item.



**Item 8. Financial Statements and Supplementary Data.**

**INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS**

<a href="#">Report of Independent Registered Public Accounting Firm</a>	56
<a href="#">Consolidated Balance Sheets</a>	57
<a href="#">Consolidated Statements of Operations and Comprehensive Loss</a>	58
<a href="#">Consolidated Statements of Changes in Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)</a>	59
<a href="#">Consolidated Statements of Cash Flows</a>	60
<a href="#">Notes to Consolidated Financial Statements</a>	62

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Stockholders and Board of Directors of:  
Phunware, Inc.

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Phunware, Inc. (the “Company”) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive loss, changes in redeemable convertible preferred stock and stockholders’ equity and cash flows for each of the two years in the period ended December 31, 2020, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

**Change in Accounting Principle**

As discussed in Note 2 to the consolidated financial statements, the Company has changed its method of accounting for revenue in 2019 due to the adoption of the guidance in ASC 606, Revenue from Contracts with Customers.

**Basis for Opinion**

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s 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 the 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 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 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Marcum LLP

Marcum LLP

We have served as the Company’s auditor since 2018.

Houston, TX  
March 31, 2021

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

	December 31, 2020	December 31, 2019
<b>Assets</b>		
Current assets:		
Cash	\$ 3,940	\$ 276
Accounts receivable, net of allowance for doubtful accounts of \$356 and \$3,179 at December 31, 2020 and 2019, respectively	664	1,671
Prepaid expenses and other current assets	304	368
Total current assets	4,908	2,315
Property and equipment, net	13	24
Goodwill	25,900	25,857
Intangible assets, net	111	253
Deferred tax asset	537	241
Restricted cash	91	86
Other assets	276	276
<b>Total assets</b>	<b>31,836</b>	<b>29,052</b>
<b>Liabilities and stockholders' equity (deficit)</b>		
Current liabilities:		
Accounts payable	\$ 8,462	\$ 10,159
Accrued expenses	5,353	4,035
Accrued legal settlement	3,000	—
Deferred revenue	2,397	3,360
PhunCoin deposits	1,202	1,202
Factored receivables payable	—	1,077
Current maturities of long-term debt, net	4,435	—
Warrant liability	1,614	—
Total current liabilities	26,463	19,833
Long-term debt	3,762	910
Long-term debt - related party	195	195
Deferred tax liability	537	241
Deferred revenue	2,678	3,764
Deferred rent	180	83
<b>Total liabilities</b>	<b>33,815</b>	<b>25,026</b>
Commitments and contingencies (Note 9)		
<b>Stockholders' equity (deficit)</b>		
Common stock, \$0.0001 par value; 1,000,000,000 shares authorized at December 31, 2020 and 2019; 56,380,111 and 39,817,917 shares issued and outstanding as of December 31, 2020 and 2019, respectively	6	4
Additional paid-in capital	144,156	128,008
Accumulated other comprehensive loss	(338)	(382)
Accumulated deficit	(145,803)	(123,604)
<b>Total stockholders' equity (deficit)</b>	<b>(1,979)</b>	<b>4,026</b>
<b>Total liabilities and stockholders' equity (deficit)</b>	<b>31,836</b>	<b>29,052</b>

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

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

	Year Ended December 31,	
	2020	2019
Net revenues	\$ 10,001	\$ 19,150
Cost of revenues	3,357	9,020
Gross profit	6,644	10,130
Operating expenses:		
Sales and marketing	1,653	2,706
General and administrative	15,361	15,403
Research and development	2,628	4,333
Legal Settlement	4,500	—
Total operating expenses	24,142	22,442
Operating loss	(17,498)	(12,312)
Other income (expense):		
Interest expense	(3,413)	(581)
Loss on extinguishment of debt	(2,158)	—
Fair value adjustment for warrant liabilities	872	—
Other income	—	27
Total other expense	(4,699)	(554)
Loss before taxes	(22,197)	(12,866)
Income tax expense	(2)	(5)
Net loss	(22,199)	(12,871)
Cumulative translation adjustment	44	36
Comprehensive loss	\$ (22,155)	\$ (12,835)
Loss per share, basic and diluted	\$ (0.50)	\$ (0.35)
Weighted-average common shares used to compute loss per share, basic and diluted	44,269	36,879

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

**Phunware, Inc.**  
**Consolidated Statements of Changes in Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)**  
*(In thousands)*

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balances as of December 31, 2018	6	\$ 5,377	27,253	\$ 3	\$ 118,062	\$ (111,820)	\$ (418)	\$ 5,827
Cumulative-effect adjustment resulting from the adoption of ASU 2014-09	—	—	—	—	—	1,087	—	1,087
Exercise of stock options, net of vesting of restricted shares	—	—	506	—	287	—	—	287
Exercise of common stock warrants for cash	—	—	617	—	6,184	—	—	6,184
Exercise of common stock warrants pursuant to cashless provisions	—	—	10,913	1	(1)	—	—	—
Series A convertible preferred stock redeemed for cash	(6)	(5,377)	—	—	(863)	—	—	(863)
Waiver of sponsor promissory note originally issued in conjunction with reverse merger	—	—	—	—	1,993	—	—	1,993
Stock-based compensation expense	—	—	—	—	1,784	—	—	1,784
Cumulative translation adjustment	—	—	—	—	—	—	36	36
Vesting of restricted stock units	—	—	45	—	—	—	—	—
Issuance of common stock for payment of bonus and legal fees	—	—	477	—	562	—	—	562
Net loss	—	—	—	—	—	(12,871)	—	(12,871)
Balances as of December 31, 2019	—	\$ —	39,811	\$ 4	\$ 128,008	\$ (123,604)	\$ (382)	\$ 4,026
Exercise of stock options, net of vesting of restricted shares	—	—	188	—	99	—	—	99
Vesting of restricted stock units	—	—	1,631	—	—	—	—	—
Issuance of common stock for payment of legal, earned bonus, and board of director fees	—	—	1,348	—	1,283	—	—	1,283
Sales of common stock, net of issuance costs	—	—	11,629	1	9,177	—	—	9,178
Stock-based compensation expense	—	—	—	—	4,492	—	—	4,492
Issuance of common stock upon partial conversions of Senior Convertible Note	—	—	1,764	1	2,266	—	—	2,267
Reacquisition of equity component of Senior Convertible Notes	—	—	—	—	(1,388)	—	—	(1,388)
Equity classified cash conversion feature of Senior Convertible Notes	—	—	—	—	219	—	—	219
Cumulative translation adjustment	—	—	—	—	—	—	44	44
Net Loss	—	—	—	—	—	(22,199)	—	(22,199)
Balances as of December 31, 2020	—	\$ —	56,371	\$ 6	\$ 144,156	\$ (145,803)	\$ (338)	\$ (1,979)

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

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

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Operating activities</b>		
Net loss	\$ (22,199)	\$ (12,871)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation	11	59
Amortization of acquired intangibles	142	268
Amortization of debt discount and deferred financing costs	2,185	—
Gain on change in fair value of warrants	(872)	—
Loss on sale of digital currencies	—	4
Loss on extinguishment of debt	2,158	—
Non-cash interest expense	55	—
Bad debt (recovery) expense	205	114
Settlement of accounts payable	(453)	—
Stock-based compensation	4,492	1,784
Deferred income taxes	—	—
Changes in operating assets and liabilities:		
Accounts receivable	796	1,817
Prepaid expenses and other assets	65	184
Accounts payable	427	740
Accrued expenses	1,064	1,133
Accrued legal settlement	3,000	—
Deferred revenue	(2,049)	581
Net cash used by operating activities	(10,973)	(6,187)
<b>Investing activities</b>		
Proceeds received from sale of digital currencies	—	88
Capital expenditures	—	(18)
Net cash provided by investing activities	—	70
<b>Financing activities</b>		
Proceeds from borrowings, net of issuance costs	14,815	1,105
Proceeds from related party bridge loans	560	—
Payments on convertible notes	(8,418)	—
Payments on related party notes	(560)	—
Proceeds from PhunCoin deposits	—	212
Net repayments on factoring agreement	(1,077)	(1,357)
Proceeds from sales of common stock, net of issuance costs	9,177	—
Proceeds from warrant exercises	—	6,092
Proceeds from exercise of stock options	99	287
Series A convertible preferred stock redemptions and dividend payments	—	(6,240)
Net cash provided for financing activities	14,596	99
Effect of exchange rate on cash and restricted cash	46	36
Net increase (decrease) in cash and restricted cash	3,669	(5,982)
Cash and restricted cash at the beginning of the period	362	6,344
Cash and restricted cash at the end of the period	\$ 4,031	\$ 362
<b>Supplemental disclosure of cash flow information</b>		
Interest paid	\$ 1,251	\$ 603

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

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

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Supplemental disclosure of non-cash information</b>		
Issuance of common stock for payment of legal, earned bonus and board of director fees	\$ 1,283	\$ 562
Issuance of common stock upon partial conversions of Senior Convertible Note	\$ 2,266	\$ —
Reacquisition of equity component of Senior Convertible Note	\$ (1,388)	\$ —
Equity classified cash conversion feature of Senior Convertible Note	\$ 219	\$ —
Waiver of sponsor promissory note	\$ —	\$ 1,993

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

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

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

***The Company***

Phunware, Inc. and its subsidiaries (the "Company", "we", "us", or "our") offers a fully integrated software platform that equips companies with the products, solutions and services necessary to engage, manage and monetize their mobile application portfolios globally at scale. Phunware's Multiscreen-as-a-Service ("MaaS") platform provides the entire mobile lifecycle of applications and media in one login through one procurement relationship. The Company's MaaS technology is available in software development kit form for organizations developing their own application, via customized development services and prepackaged solutions. Through its integrated mobile advertising platform of publishers and advertisers, the Company provides in-app application transactions for mobile audience building, user acquisition, application discovery, audience engagement and audience monetization. Founded in 2009, we are a Delaware corporation headquartered in Austin, Texas.

***Basis of Presentation***

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

***Reclassifications of Prior Year Presentation***

Certain amounts in the financial statements of prior periods have been reclassified to conform to the current period financial statement presentation. This reclassification had no effect on our reported results of operations. A reclassification was made to the consolidated balance sheet as of December 31, 2019 to identify related parties for debt issuances.

***Going Concern***

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

Our assessment included the preparation of a detailed cash forecast that included all projected cash inflows and outflows. We continue to focus on growing our revenues. Accordingly, operating expenditures may exceed the revenue we expect to receive for the foreseeable future. Furthermore, we have a history of operating losses and negative operating cash flows and expect these trends to continue into the foreseeable future.

During the year ended December 31, 2020, we secured financings through the issuance of new convertible notes and the sale of its common stock through an at-the-market offering (both more fully described below). Furthermore, as more fully noted in Note 16 "*Subsequent Events*", we have raised additional cash proceeds from the issuance of shares of our common stock. Subsequent to December 31, 2020, we raised net cash proceeds totaling approximately \$29,780, of which \$5,058 was cash proceeds from our existing at-the-market offering in January 2021 and \$24,722 was net cash proceeds from an underwritten offering in February 2021. The holder of our Convertible Notes (defined below) elected to require us to use forty percent (40%) of the net proceeds from both fund raising events to satisfy obligations to redeem the 2020 Convertible Notes.

We have a history of net losses and although we anticipate our future cash outflows to exceed cash inflows as we continue to invest in revenue growth, as a result of the subsequent cash financings described above, we believe we have sufficient cash on-hand to fund potential net cash outflows for one year following the filing date of this Annual Report on Form 10-K. Accordingly, we believe there does not exist any indication of substantial doubt about our ability to continue as a going concern for one year following the filing date of this Annual Report on Form 10-K.



As of the date of this Annual Report on Form 10-K, while we believe we have adequate capital resources to complete our near-term operations, there is no guarantee that such capital resources will be sufficient until such time we reach profitability. We may access capital markets to fund strategic acquisitions or ongoing operations on terms we believe are favorable. The timing and amount of capital that may be raised is dependent on market conditions and the terms and conditions upon which investors would require to provide such capital. The Company may utilize debt or sell newly issued equity securities through public or private transactions, or through the use of another at-the-market facility. We currently have an effective "shelf" registration statement on Form S-3 we may utilize for financings for the issuance of our common stock, preferred stock, warrants or units.

There can be no assurance that we will be able to obtain additional funding on satisfactory terms or at all. In addition, no assurance can be given that any such financing, if obtained, will be adequate to meet our capital needs and support our growth. If additional funding cannot be obtained on a timely basis and on satisfactory terms, our operations would be materially negatively impacted; however, we have been successful in accessing capital markets in the past, and we are confident in our ability to access capital markets again, if needed.

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

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

### ***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make certain 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 expenses during the reporting period. Items subject to the use of estimates include, but are not limited to, the standalone selling price for our products and services, stock-based compensation, useful lives of long-lived assets including intangibles, fair value of intangible assets and the recoverability or impairment of tangible and intangible assets, including goodwill, reserves and certain accrued liabilities, the benefit period of deferred commissions, fair value of debt component of the convertible note at issuance, the fair value of the convertible note outstanding upon derecognition, assumptions used in Black-Scholes valuation method, such as expected volatility, risk-free interest rate and expected dividend rate and provision for (benefit from) income taxes. Actual results could differ from those estimates and such differences could be material to the consolidated financial statements.

### ***Recently Adopted Accounting Standards***

On January 1, 2020, we adopted Accounting Standards Update ("ASU") 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"). ASU 2017-04 simplifies how all entities assess goodwill for impairment by eliminating Step 2 from the goodwill impairment test. As amended, the goodwill impairment test will consist of one step; comparing the fair value of a reporting unit with its carrying amount. An entity should recognize a goodwill impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. The adoption of this standard had no impact on the Company's consolidated financial statements or related disclosures.

During 2020, we also adopted ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement* ("ASU 2018-13"). ASU 2018-13 improves the effectiveness of disclosures by removing, modifying or adding certain disclosures about fair value measurements required under ASC 820. The amendments added disclosures regarding changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements and the narrative description of measurement uncertainty. The applicable amendments were applied prospectively. As ASU 2018-13 only revised disclosure requirements, it did not have a material impact on our consolidated financial statements.

### ***Revenue Recognition***

On January 1, 2019, we adopted ASC 606, *Revenue from Contracts with Customers* ("ASC 606"). Generally, the provisions of ASC 606 state that revenue is recognized upon transfer of control of promised products or services in an amount that reflects the consideration we expect to receive in exchange for those products or services. We enter into contracts that can include various combinations of products and services, which are generally capable of being distinct, distinct within the context of the contract and accounted for as separate performance obligations.

### *Contract Balances*

The timing of revenue recognition may differ from the timing of invoicing for contracts with customers. When the timing of revenue recognition differs from the timing of invoicing, the Company uses judgment to determine whether the contract includes a significant financing component requiring adjustment to the transaction price. Various factors are considered in this determination including the duration of the contract, payment terms and other circumstances. Generally, we determine that contracts do not include a significant financing component. We apply a practical expedient for instances where, at contract inception, the expected timing difference between when promised goods or services are transferred and associated payment will be one year or less. Payment terms vary by contract type; however, contracts typically stipulate a requirement for the customer to pay within 30 days.

Transaction price may be allocated to performance obligations that are unsatisfied or are partially unsatisfied. Amounts relating to remaining performance obligations on non-cancelable contracts include both the deferred revenue balance and amounts that will be invoiced and recognized as revenue in future periods.

### *Significant Judgments*

Our contracts with customers often include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. For contracts with multiple performance obligations, the contract price is allocated to separate performance obligations on a relative standalone basis for which significant judgment is required. Judgment is required to determine whether a software license is considered distinct and accounted for separately, or not distinct and accounted for together with the software support and services and recognized over time.

### *Platform Subscriptions and Services Revenue*

We derive subscription revenue from software license fees, which comprise subscription fees from customers licensing our Software Development Kits (SDKs), which include accessing the MaaS platform and/or MaaS platform data; application development service revenue from the development of customer applications, or apps, which are built and delivered to customers; and support fees. Our contract terms generally range from one to three years. License fees are typically billed annually in advance.

Subscription revenue from SDK licenses gives the customer the right to access our MaaS platform. In accordance with ASC 606, a 'right to access' license is recognized over the license period.

Application development revenue is derived from development services around designing and building new applications or enhancing existing applications. We recognize application development revenue upon the transfer of control of the completed application or application development services. We typically bill for application development revenue in advance at contract signing, but may at times, bill one-half in advance at contract execution and one-half upon completion.

Support and maintenance revenue is comprised of support fees for customer applications, software updates, and technical support for application development services for a support term. Support revenue is recognized ratably over the support term. Support and maintenance is typically billed annually in advance.

When a customer contract consists of licensing, application development and support and maintenance, we consider these separate performance obligations, which would require an allocation of consideration.

From time to time, we may also provide professional services by outsourcing employees to customers on a time and materials basis. Revenues from these arrangements are recognized as the services are performed. The Company typically bills professional service customers in the month in which the services are performed.

### *Application Transaction Revenue*

We also generate revenue by charging advertisers to deliver advertisements (ads) to users of mobile connected devices. Depending on the specific terms of each advertising contract, the Company generally recognizes revenue based on the activity of mobile users viewing these ads. Fees from advertisers are commonly based on the number of ads delivered or views, clicks or actions by users on mobile advertisements delivered, and the Company recognizes revenue at the time the user views, clicks or otherwise acts on the ad. We sell ads through several offerings: cost per thousand impressions, on which advertisers are charged for each ad delivered to 1,000 consumers; cost per click, on which advertisers are charged for each ad clicked or

touched on by a user; and cost per action, on which advertisers are charged each time a consumer takes a specified action, such as downloading an app. In addition, we generate application transaction revenue thru in-app purchases from an application on our platform.

In the normal course of business, we may act as an intermediary in executing transactions with third parties. The determination of whether revenue should be reported on a gross or net basis is based on an assessment of whether we are acting as the principal or an agent in its transactions with advertisers. Control is a determining factor in assessing principal versus agent relation. The determination of whether we are acting as a principal or an agent in a transaction involves judgment and is based on an evaluation of the terms of each arrangement. ASC 606 provides indicators of when an entity controls specified goods or services and is therefore acting as a principal. Based on the indicators of control, we have determined that we are the principal in all advertising arrangements because we are responsible for fulfilling the promise to provide the specified advertisements to advertising agencies or companies; establishing the selling prices of the advertisements sold; and credit risk with its advertising traffic providers. Accordingly, we act as the principal in all advertising arrangements and therefore report revenue earned and costs incurred related to these transactions on a gross basis.

***Deferred Commissions***

We defer commission costs and amortize them in a manner consistent with how we recognize revenue. Key judgments that impact our commission expense include estimating our customer life and the determination of the impairment of commission assets we deem to be unrecoverable. The Company applies a practical expedient and expenses these costs as incurred if the amortization period is one year or less.

Deferred commissions are recorded in prepaid and other current assets in our consolidated balance sheets. Changes in deferred commissions for the years ended December 31, 2020 and 2019 are as follows:

	<b>2020</b>	<b>2019</b>
Balance, beginning of the period	\$ 309	\$ 369
Deferral of commissions earned	94	171
Recognition of commission expense	(193)	(231)
Balance, end of the period	<u>\$ 210</u>	<u>\$ 309</u>

***Concentrations of Credit Risk***

Our financial instruments that are exposed to concentrations of credit risk consist primarily of cash and trade accounts receivable. Although we limit our exposure to credit loss by depositing our cash with established financial institutions that management believes have good credit ratings and represent minimal risk of loss of principal, our deposits, at times, may exceed federally insured limits. Collateral is not required for accounts receivable, and we believe the carrying value approximates fair value.

The following table sets forth our concentration of accounts receivable, net of specific allowances for doubtful accounts.

	<b>December 31,</b>	
	<b>2020</b>	<b>2019</b>
Customer A	— %	15 %
Customer B	55 %	11 %
Customer C	16 %	2 %
Customer D	13 %	5 %
Customer E	— %	10 %
Customer F	5 %	23 %

***Cash, Cash Equivalents, and Restricted Cash***

We consider all investments with a maturity of three months or less from the date of acquisition to be cash equivalents. The Company had no cash equivalents at December 31, 2020 or 2019.

As a result of certain debt financings, we are required to maintain restricted balances. We had \$91 and \$86 in restricted cash as of December 31, 2020 and 2019, respectively.

**Accounts Receivable and Reserves**

Accounts receivable are presented net of allowances. We consider receivables past due based on the contractual payment terms. We make judgments as to our ability to collect outstanding receivables and record a bad debt allowance for receivables when collection becomes doubtful. The allowances are based upon historical loss patterns, current and prior trends in our aged receivables, credit memo activity, and specific circumstances of individual receivable balances. Accounts receivable consisted of the following:

	December 31,	
	2020	2019
Accounts receivable	\$ 1,020	\$ 4,850
Less allowances for doubtful accounts	(356)	(3,179)
Accounts receivable, net	<u>\$ 664</u>	<u>\$ 1,671</u>

Changes in the allowance for doubtful accounts are as follows:

	December 31,	
	2020	2019
Balance, beginning of period	\$ 3,179	\$ 3,276
Allowances for bad debt	205	114
Issuance of credit memos and write offs	(3,028)	(211)
Balance, end of period	<u>\$ 356</u>	<u>\$ 3,179</u>

**Property and Equipment**

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets, generally ranging from three to seven years. Leasehold improvements are amortized over the shorter of their useful lives or the remaining terms of the related leases.

Net book value of property and equipment was \$13 and \$24 at December 31, 2020 and 2019, respectively, and total depreciation expense was \$11 and \$59 for the years ended December 31, 2020 and 2019, respectively.

**Goodwill and Intangible Assets**

Goodwill arises from purchase business combinations and is measured as the excess of the cost of the business acquired over the sum of the acquisition-date fair values of tangible and identifiable intangible assets acquired, less any liabilities assumed.

In accordance with ASC 350, *Intangibles — Goodwill and Other*, we do not amortize goodwill or intangible assets with indefinite lives but rather assesses their carrying value for indications of impairment annually, or more frequently if events or changes in circumstances indicate that the carrying amount may be impaired.

As discussed above, we adopted ASU 2017-04 on January 1, 2020, which states an entity should recognize a goodwill impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. We attribute goodwill to a sole reporting unit for impairment testing.

We derived the fair value from the market capitalization approach, whereby we utilize the historical market price of our common stock traded on the Nasdaq to estimate the fair value of our reporting unit. The determination of whether goodwill has become impaired involves a significant level of judgment in the assumptions underlying the approach used to determine the value of the reporting unit. Changes in our strategy and/or market conditions could significantly impact these judgments and require adjustments to recorded amounts of goodwill.

Identifiable intangible assets consist of acquired trade names, customer lists, technology, in-process research and development and order backlog associated with the acquired businesses. Amortization of finite-lived intangible assets is calculated using either the straight-line or accelerated amortization model based on the Company's best estimate of the distribution of the economic value of the identifiable intangible assets.

We did not recognize any goodwill or intangible impairment losses in the years ended December 31, 2020 or 2019.

#### ***Long-Lived Assets***

Long-lived asset with definite lives are reviewed for impairment whenever events or changes in circumstances indicate that an asset's carrying value may not be recoverable. In accordance with authoritative guidance, we evaluate the recoverability of each of our long-lived assets, including property and equipment, by comparing its carrying amount to the undiscounted future cash flows expected to be generated. If the total of undiscounted future cash flows is less than the carrying amount of an asset, an impairment would be recognized for the amount by which the carrying amount of the asset exceeds its fair value.

We did not recognize any impairment losses relating to our long-lived assets during the years ended December 31, 2020 or 2019.

#### ***Convertible Debt***

In March 2020, we issued a 7% convertible note with a principal amount of \$3,000 for gross proceeds at closing of \$2,371. In accounting for the issuance, we separated the note into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of similar liabilities that do not have an associated convertible feature. The carrying amount of the equity component representing the conversion option was determined by deducting the carrying amount of the liability component from the par value of the note. The difference represents the debt discount, recorded as a reduction of the senior convertible note on our consolidated balance sheet, and is amortized to interest expense over the term of the note using the effective interest rate method. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. In accounting for the issuance costs related to the note, we allocated the total amount of issuance costs incurred to liability and equity components based on their relative values. Issuance costs attributable to the liability component are being amortized using the effective interest rate method, to interest expense over the term of the notes. The issuance costs attributable to the equity component are recorded as a reduction of the equity component within additional paid-in capital.

In July 2020, we issued a convertible note with an initial principal amount of \$320. After the payoff of convertible note issued in March 2020 and deducting transaction costs, aggregate net cash proceeds to the Company was \$1,751. In accordance with ASC Topic 815-40, *Derivatives and Hedging - Contracts in an Entity's Own Stock*, we evaluated all of the convertible note's financial instruments, including warrants to purchase common stock issued in conjunction with convertible debt, 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 statement of operations and comprehensive loss. We use a Black-Scholes option-pricing model to value the warrants at inception and subsequent valuation dates. Refer to *Fair Value of Financial Instruments* below.

Direct costs incurred to issue non-revolving debt instruments are recognized as a reduction to the related debt balance in the accompanying consolidated balance sheets and amortized to interest expense over the contractual term of the related debt using the effective interest method.

#### ***Leases***

Leases are reviewed and classified as capital or operating at their inception. For leases that contain rent escalations or periods during the lease term where rent is not required, we recognize rent expense based on allocating the total rent payable on a straight-line basis over the term of the lease excluding lease extension periods. The difference between rent payments and straight-line rent expense is recorded as deferred rent. Deferred rent that will be recognized during the succeeding 12-month period is recorded as the current portion of deferred rent and is included in accrued expenses and other and the remainder is recorded in deferred rent on the consolidated balance sheets.

***Advertising Costs***

Advertising costs are expensed as incurred. We did not incur any advertising costs for the years ended December 31, 2020 and 2019, respectively.

***Stock-Based Compensation***

Compensation expense related to stock-based transactions, including employee and non-employee director awards, is measured and recognized in the financial statements based on fair value on the grant date of the award. We recognize stock-based compensation expense for awards with only service conditions on a ratable basis over the requisite service period of the related award, generally the vesting period of the award. We have not granted any awards with market or performance conditions. Forfeitures of all stock-based awards are accounted for when they occur.

***Retirement Plan***

At December 31, 2020, we administered one employee retirement plan that qualified as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the retirement plan, participating employees may contribute a portion of their pretax earnings, up to the Internal Revenue Service annual contribution limit. No employer matching contributions were made to the retirement plan during the years ended December 31, 2020 or 2019.

***Income Taxes***

We account for income taxes in accordance with ASC 740, *Income Taxes* ("ASC 740"). Under ASC 740, deferred tax assets and liabilities reflect the future tax consequences of the differences between the financial reporting and tax bases of assets and liabilities using current enacted tax rates. Valuation allowances are recorded when the realizability of such deferred tax assets does not meet the more-likely-than-not threshold under ASC 740.

Significant judgment is required in determining any valuation allowance recorded against deferred tax assets. In assessing the need for a valuation allowance, we consider all available evidence, including past operating results, estimates of future taxable income and the feasibility of tax planning strategies. In the event of a change in the determination as to the amount of deferred tax assets that can be realized, an adjustment of the valuation allowance with a corresponding impact to the provision for income taxes will be made in the period in which such determination was made.

The guidance on accounting for uncertainty in income taxes prescribes a recognition threshold and measurement attribute criterion for financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities. We have not recognized interest or penalties on the consolidated balance sheets or statements of operations and comprehensive loss.

***Comprehensive Loss***

We apply the guidance in ASC 220, *Comprehensive Income*, for the reporting and display of comprehensive loss and its components in the consolidated financial statements. Comprehensive loss comprises net loss and cumulative foreign currency translation adjustments. The accumulated comprehensive loss at December 31, 2020 and 2019 was due to foreign currency translation adjustments.

***Loss per Common Share***

Basic loss per common share is computed by dividing net loss applicable to common stockholders by the weighted average number of shares of common stock outstanding during the period. Restricted shares subject to repurchase provisions relating to early exercises under our 2009 Equity Incentive Plan were excluded from basic shares outstanding. Diluted loss per common share is computed by giving effect to all potential shares of common stock, including those related to our outstanding warrants and stock equity plans, to the extent dilutive. For all periods presented, these shares were excluded from the calculation of diluted loss per share of common stock because their inclusion would have been anti-dilutive. As a result, diluted loss per common share is the same as basic loss per common share for all periods presented.

[Table of Contents](#)

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

	December 31,	
	2020	2019
Convertible notes	5,733,712	21,740
Warrants	5,996,112	3,836,112
Options	1,208,740	1,465,450
Restricted stock units	1,677,060	2,436,968
Restricted shares	574	6,219
Total	14,616,198	7,766,489

#### *Fair Value of Financial Instruments*

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

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

Determining which category an asset or liability falls within the hierarchy requires significant judgment. Our financial instruments measured at fair value as of December 31, 2020 are set forth below:

	Level 1	Level 2	Level 3	Total
Liabilities:				
Warrant liability	\$ —	\$ 1,614	\$ —	\$ 1,614
Total	\$ —	\$ 1,614	\$ —	\$ 1,614

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

#### *Loss Contingencies*

We are subject to the possibility of various loss contingencies arising in the ordinary course of business. We accrue for loss contingencies when it is probable that an asset has been impaired or a liability has been incurred and the amount of loss can be reasonably estimated. If we determine that a loss is possible and the range of the loss can be reasonably determined, then we disclose the range of the possible loss. We regularly evaluate current information available to us to determine whether an accrual is required, an accrual should be adjusted or a range of possible loss should be disclosed.

From time to time, we are involved in disputes, litigation, and other legal actions. However, there are many uncertainties associated with any litigation, and these actions or other third-party claims against us may cause us to incur substantial settlement charges, which are inherently difficult to estimate and could adversely affect our results of operations.

The actual liability in any such matters may be materially different from our estimates, which could result in the need to adjust our liability and record additional expenses.

### ***Subsequent Events***

In accordance with U.S. GAAP, we have evaluated events that have occurred after the date of the financial statements through the date the financial statements are issued to determine if events or transactions occurring after the date of the financial statements require potential adjustment to or disclosure in the financial statements. See Note 16 for additional discussion on our subsequent events.

### ***Emerging Growth Company and Smaller Reporting Company***

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). We currently anticipate that we will cease being an emerging growth company on December 31, 2021. The JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such an election to opt out is irrevocable. We did not elect not to opt out of such extended transition period.

We are also a "smaller reporting company" as defined by the Exchange Act. Even after we no longer qualify as an emerging growth company, we may still qualify as a smaller reporting company which would allow us to take advantage of many of the same exemptions from disclosure requirements. Smaller reporting company status is determined on an annual basis.

### ***Recent Accounting Standards Not Yet Adopted***

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* ("ASU 2016-02"). The core principle of ASU 2016-02 is that a lessee should recognize the assets and liabilities that arise from leases. For operating leases, a lessee is required to recognize a right-of-use asset and a lease liability, initially measured at the present value of the lease payments, in the statement of financial position. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. Under current U.S. GAAP, we recognize rent expense on a straight-line basis for all operating leases, taking into account fixed accelerations, as well as reasonably assured renewal periods. As noted above, we believe we will lose our "emerging growth company" status as of December 31, 2021. Accordingly, we will adopt ASU 2016-02 on January 1, 2021. As a result of the new standard, we expect to record a lease liability of approximately \$2.1 million and a corresponding right-of-use asset of approximately \$1.9 million for leases designated as operating leases in Note 9, "*Commitments and Contingencies*" upon adoption. We currently do not expect ASU 2016-02 to materially impact our results of operations and we do not plan on recasting prior periods.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"). ASU 2016-13 introduces a model based on expected losses for most financial assets and certain other instruments. In addition, for available-for-sale debt securities with unrealized losses, the losses will be recognized as allowances rather than reductions in the amortized cost of the securities. As a smaller reporting company, the standard is currently effective for us for annual reporting periods beginning after December 15, 2022, with early adoption permitted for annual reporting periods beginning after December 15, 2019. We currently intend to adopt this new standard effective January 1, 2023. We currently do not expect the adoption of ASU 2016-13 to have a material impact on our consolidated financial statements and disclosures.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"). ASU 2019-12 includes the removal of certain exceptions to the general principles of ASC 740 and simplifies the accounting for income taxes by clarifying and amending existing guidance. We plan to adopt the update January 1, 2021 and at this time, we do not expect the adoption of this new standard to have a material impact on our consolidated financial statements or disclosures.

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815 – 40)*, ("ASU 2020-06"). ASU 2020-06 simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. ASU 2020-06 is effective for smaller reporting companies for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. Early adoption is permitted, but no earlier



than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. We are currently evaluating the impact of this guidance on our consolidated financial statements.

### 3. Revenue

#### *Disaggregation of Revenue*

The following table sets forth our net revenues by category:

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
Net revenues		
Platform subscriptions and services	\$ 9,108	\$ 17,243
Application transaction	893	1,907
Net revenues	<u>\$ 10,001</u>	<u>\$ 19,150</u>

We generate revenue in domestic and foreign regions and attribute net revenue to individual countries based on the location of the contracting entity. We derived 97% and 99% of our net revenues from within the United States for the years ended December 31, 2020 and 2019, respectively. Revenue by geographic location is as follows:

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
Net revenues		
United States	\$ 9,686	\$ 18,950
Europe	1	17
Other international revenue	314	183
Net revenues	<u>\$ 10,001</u>	<u>\$ 19,150</u>

The following table sets forth our concentration of revenue sources as a percentage of total net revenues.

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
Customer A	32 %	8 %
Customer G	12 %	7 %

In addition to the above, revenue from Fox Networks Group was 50% of total net revenues for the year ended December 31, 2019.

**Deferred Revenue**

Our deferred revenue balance consisted of the following:

	December 31,	
	2020	2019
Current deferred revenue		
Platform subscriptions and services revenue	\$ 2,317	\$ 3,278
Application transaction revenue	80	82
Total current deferred revenue	<u>\$ 2,397</u>	<u>\$ 3,360</u>
Non-current deferred revenue		
Platform subscriptions and services revenue	\$ 2,678	\$ 3,764
Total non-current deferred revenue	\$ 2,678	\$ 3,764
Total deferred revenue	<u>\$ 5,075</u>	<u>\$ 7,124</u>

Deferred revenue consists of customer billings or payments received in advance of the recognition of revenue under the arrangements with customers. We recognize deferred revenue as revenue only when revenue recognition criteria are met. During the twelve months ended December 31, 2020, the Company recognized revenue of \$4,568 that was included in its deferred revenue balance as of December 31, 2019.

**Remaining Performance Obligations**

Remaining performance obligations were \$9,202 as of December 31, 2020, of which we expect to recognize 41% as revenue over the next 12 months and the remainder thereafter.

**4. Cash, Cash Equivalents, and Restricted Cash**

The following table sets forth our cash and restricted cash balances as of December 31, 2020 and 2019:

	December 31,	
	2020	2019
Cash	\$ 3,940	\$ 276
Restricted cash	91	86
Total cash and restricted cash	<u>\$ 4,031</u>	<u>\$ 362</u>

**5. Goodwill and Other Intangible Assets**

**Goodwill**

Changes in the Company's goodwill balance for the years ended December 31, 2020 and 2019, are summarized in the table below:

	2020	2019
Balance, beginning of period	\$ 25,857	\$ 25,886
Foreign currency translation	43	(29)
Balance, end of period	<u>\$ 25,900</u>	<u>\$ 25,857</u>

### Intangible Assets

Our intangible assets, excluding goodwill, consist of intangible assets acquired in business combinations and were recorded at their estimated fair values on the date of acquisition. The finite-lived intangible assets that are being amortized are summarized in the table below:

	Weighted Average Useful Life (years)	December 31, 2020			December 31, 2019		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trade name	4.6	\$ 651	\$ (651)	\$ —	\$ 649	\$ (649)	\$ —
Acquired technology	5.1	4,828	(4,821)	7	4,828	(4,798)	30
In-process research and development	5.0	94	(94)	—	94	(94)	—
Customer relationships	5.7	4,636	(4,532)	104	4,604	(4,381)	223
Order backlog	1.5	329	(329)	—	329	(329)	—
		<u>\$ 10,538</u>	<u>\$ (10,427)</u>	<u>\$ 111</u>	<u>\$ 10,504</u>	<u>\$ (10,251)</u>	<u>\$ 253</u>

Amortization expense for the years ended December 31, 2020 and 2019, was approximately \$42 and \$268 respectively.

Expected future annual amortization expense for finite-lived intangible assets as of December 31, 2020, is as follows:

Future amortization expense for the years ending December 31,	Amortization
2021	\$ 90
2022	21
Total	<u>\$ 111</u>

### 6. Accrued Expenses

Accrued expenses consist of the following:

	December 31,	
	2020	2019
Payroll related expenses	\$ 4,112	\$ 3,202
Accounts payable settlement (see Note 9)	627	—
Other	449	355
Taxes	165	323
Partner revenue share	—	155
Total accrued expenses	<u>\$ 5,353</u>	<u>\$ 4,035</u>

### 7. Factoring Agreement

On June 15, 2016, the Company entered into a factoring agreement with CSNK Working Capital Finance Corp. (d/b/a Bay View Funding) (“Bay View”) whereby it sells select accounts receivable with recourse.

Under the terms of the agreement, Bay View may advance us amounts representing up to 80% of the net amount of eligible accounts receivable. The factor facility was collateralized by a general security agreement over all the Company’s personal property and interests. Fees paid to Bay View for factored receivables are 1.80% for the first 30 days and is 0.65% for

every ten days thereafter, to a maximum of 90 days total outstanding. We bear the risk of credit loss on the receivables. These receivables are accounted for as a secured borrowing arrangement and not as a sale of financial assets

The amount of the factored receivables outstanding was \$0 and \$1,077 as of December 31, 2020 and 2019, respectively. Future advances available under the factoring line amounted to \$3,000 and \$1,923 as of December 31, 2020 and 2019, respectively. We terminated our factoring agreement with Bay View effective March 22, 2021.

## 8. Debt

The following table sets forth our various debt obligations:

	December 31,	
	2020	2019
Series A Note (principal amount)	\$ 2,481	\$ —
Series B Note (principal amount)	3,585	—
Paycheck Protection Program Loan	2,850	—
Convertible Notes	250	250
Promissory Notes	905	855
Total debt	\$ 10,071	\$ 1,105
Debt discount - warrants (2020 Convertible Notes)	(1,029)	—
Debt discount - issuance costs (2020 Convertible Notes)	(650)	—
Less: current maturities of long-term debt	(4,435)	—
Less: related-party debt	(195)	(195)
Long-term debt	<u>\$ 3,762</u>	<u>\$ 910</u>

### 2020 Convertible Notes

On July 15, 2020, we issued a Series A Senior Convertible Note (a "Series A Note") to an institutional investor with an initial principal amount of \$320 (reflecting an original issue discount of \$320) in a private placement. We repaid in full the outstanding principal balance, accrued and unpaid interest and make-whole amount on the Senior Convertible Note (described below) issued on March 20, 2020 to the same investor. After the payoff of the Senior Convertible Note and deducting transaction costs, net cash proceeds to the Company was \$1,751.

On the same date, we issued a Series B Senior Secured Convertible Note (a "Series B Note," and together with the Series A Note, the "2020 Convertible Notes") to the same investor with an initial principal amount of \$17,280 (reflecting an original issue discount of \$1,280). The investor paid for the Series B Note by delivering a secured promissory note (the "Investor Note") with an initial principal amount of \$16,000.

We receive cash under the Series B Note only upon cash repayment of the corresponding Investor Note. The investor may, at its option and at any time, voluntarily prepay the Investor Note, in whole or in part. Until the Investor Note is repaid, the principal (and related original issue discount) of the Series B Note is considered to be "restricted." The Series B Note and the Investor Note are subject to the terms of a Master Netting Agreement between us and the noteholder. Upon repayment of the Investor Note, an equal amount of the Series B Note will become "unrestricted" and recorded as debt in our consolidated balance sheets.

In addition, the Investor Note is subject to mandatory prepayment, in whole or in part, upon the occurrence of certain events. The equity and other conditions include minimum price and volume thresholds and a minimum market capitalization of at least \$40 million. Mandatory prepayments of principal outstanding under the Investor Note that, together with the unrestricted principal may not exceed the lesser of (i) \$5,000 and (ii) 10% of the 30 trading day market capitalization of the Company.

During 2020, we exercised our right under the Investor Note to require a mandatory prepayment of the Investor Note of \$1,000 and the noteholder voluntarily prepaid an aggregate of \$4,750 pursuant to the terms of the Investor Note, for aggregate cash proceeds to us \$5,750. As a result, \$5,750 in principal and \$460 of original issue discount became

"unrestricted". As of December 31, 2020, the restricted balance of the Series B Note is \$1,070 (including original issue discount).

Under certain circumstances, the unrestricted principal of the Series B Note is automatically netted against the principal amount of the corresponding Investor Note. Under certain circumstances, upon such netting, the original issue discount under the Series B Note associated with the principal amount thereof being redeemed will be deemed satisfied.

The Series A Note and outstanding unrestricted principal balance on the Series B Note each bear interest at a rate of 7% per annum and includes a make-whole of interest from the date of issuance through the maturity date of December 31, 2021. The restricted principal of the Series B Note bears interest at a rate of 3% per annum. The 2020 Convertible Notes mature on December 31, 2021.

For the year ended December 31, 2020, we recorded a loss on extinguishment of debt in the amount of \$,343 as a result of monthly installment payments and optional redemption payments elected by the noteholder related to our various capital raises, as more fully described below.

#### *Monthly Payments*

Starting on July 31, 2020 and on the last trading day of each month thereafter, and on the maturity date, we are required to make monthly installment payments, interest on the 2020 Convertible Notes and make-whole (the "Installment Amount"), which must be satisfied in cash at a redemption price equal to 107% of the Installment Amount.

#### *Redemption*

We may redeem the 2020 Convertible Notes at a price equal to 107% of the outstanding principal of the 2020 Convertible Notes (or, if greater, the market value of the shares underlying the 2020 Convertible Notes) and accrued and unpaid interest.

Subject to certain limited exceptions, the noteholder will have the right to have us redeem a portion of each 2020 Convertible Note not in excess of 40% of the net proceeds from a qualified capital fund raise at a redemption price of 107% of the portion of the 2020 Convertible Note subject to redemption or, if greater, the market value of the shares underlying the 2020 Convertible Note.

In connection with an Event of Default, the noteholder may require us to redeem in cash any or all of the 2020 Convertible Notes. The redemption price will equal 115% of the outstanding principal of the 2020 Convertible Notes to be redeemed, and accrued and unpaid interest.

In connection with a Change of Control (as defined in the 2020 Convertible Notes), the noteholder may require us to redeem all or any portion of the 2020 Convertible Notes. The redemption price per share will equal the greatest of (i) 115% of the outstanding principal to be redeemed, and accrued and unpaid interest, (ii) 115% of the market value of the shares of our common stock and (iii) 115% of the aggregate cash consideration that would have been payable in respect of the shares of our common stock underlying the 2020 Convertible Notes.

#### *Conversion*

The 2020 Convertible Notes are convertible, at the option of the noteholder, into shares of our common stock at a conversion price of \$,00 per share. The conversion price is subject to full ratchet anti-dilution protection and standard adjustments in the event of any stock split, stock dividend, stock combination, recapitalization or other similar transaction.

If an Event of Default has occurred under the 2020 Convertible Notes, the noteholder may elect to alternatively convert the 2020 Convertible Notes at a redemption premium of 115% at an alternate conversion price equal to the lower of (x) the conversion price then in effect and (y) the greater of the Floor Price (as defined in the 2020 Convertible Notes) and 85% of the lowest volume weighted average price in the 10 days prior to the applicable conversion date.

#### *Covenants*

We will be subject to certain customary affirmative and negative covenants regarding the issuance of certain 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. We are also subject to a financial covenant that requires us to maintain available cash in the amount of \$00 at the end of each fiscal quarter, subject to a right to cure.

#### *Warrant*

In conjunction with the issuance of the 2020 Convertible Notes, we issued a warrant exercisable for 3 years for the purchase of an aggregate of up to 2,160,000 shares of the Company's common stock, at an exercise price of \$4.00 per share to the same investor. The number of shares and exercise price are each subject to adjustment provided under the warrant. If, at the time of exercise of the warrant, there is no effective registration statement registering, or no current prospectus available for, the issuance of the shares, then the warrant may also be exercised, in whole or in part, by means of a "cashless exercise." The warrant may not be exercised if, after giving effect to the exercise, the investor would beneficially own amounts in excess of those permissible under the terms of the warrant.

The following table sets forth the assumptions used and calculated aggregated fair values of the liability classified warrants:

	<b>December 31, 2020</b>	<b>July 15, 2020</b>
Strike price per share	\$ 4.00	\$ 4.00
Closing price per share	\$ 1.26	\$ 1.44
Term (years)	2.53	3
Volatility	146 %	177 %
Risk-free rate	0.17 %	0.18 %
Dividend Yield	—	—

Upon issuance of the warrant, we recorded a warrant liability as a discount to the 2020 Convertible Notes of \$2,486. A summary of the change in fair value of the warrant liability is set forth below:

	<b>2020</b>
Balance, beginning of period	\$ —
Warrant issued	2,486
Change in fair value of warrant liability	(872)
Balance, end of period	<u>\$ 1,614</u>

#### *Registration Rights Agreement*

We were required to file a registration statement covering the resale of the shares underlying the 2020 Convertible Notes and to have the registration statement declared effective within 90 days of after the closing of the 2020 Convertible Notes. We filed a registration statement, which was declared effective by the SEC on October 27, 2020. We obtained a waiver of the Registration Delay Payments (as defined in the Registration Rights Agreement) from the noteholder.

#### *Participation Rights*

In addition, we granted the noteholder participation rights in future equity and equity-linked offerings of securities, subject to certain limited exceptions, during the two years after the later of (a) the closing or (b) the date the Investor Note no longer remains outstanding, in an amount of up to 30% of the securities being sold in such offerings.

#### *Paycheck Protection Program ("PPP") Loan*

On April 10, 2020, we received loan proceeds in the amount of \$2,850 from JPMorgan Chase, N.A. pursuant to the PPP under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), which was enacted on March 27, 2020. The loan, which was in the form of a note dated April 9, 2020, matures on April 9, 2022, bears interest at a rate of 0.98% per annum. The Paycheck Protection Flexibility Act of 2020, extended the deferral period for loan payments to either (i) the date that SBA remits the borrower's loan forgiveness amount to the lender or (ii) if the borrower does not apply for loan forgiveness,

ten months after the end of the borrower's loan forgiveness covered period. The note may be prepaid by us at any time prior to the maturity with no prepayment penalties.

The principal amount of our PPP loan is subject to forgiveness upon request to the extent that our loan proceeds were used to pay expenses permitted by the CARES Act. Although we currently anticipate a portion of the loan to be forgiven, there can be no assurance that any will be. We currently expect our first payment under our PPP loan to be due in the third quarter of 2021.

#### ***Senior Convertible Note***

In March 2020, we issued a Senior Convertible Note to an institutional investor with an initial principal amount of \$1,000 (the "Senior Convertible Note") for cash proceeds of \$2,760 (reflecting an original issue discount of \$240) in a private placement. After deducting the placement agent fee and other estimated expenses, net cash proceeds at the closing were approximately \$2,371. The Senior Convertible Note bore an interest at a rate of 7% per annum and includes a make-whole of interest from the date of issuance through the maturity date of December 31, 2021.

#### ***Monthly Payments and Conversion***

Starting on April 30, 2020 and on the last trading day of the month and on the maturity date, we were required to make monthly payments. On each payment date, we are required to settle a principal repayment of approximately \$143 plus interest thereon (the "Payment Amount") which were to be satisfied in shares of our common stock at 100% of the Payment Amount, or at our election, in whole or in part, in cash, at 105% of the Payment Amount. Installment payments made in common stock were subject to customary equity conditions (including minimum floor price and volume thresholds), and were calculated on a conversion price equal to the lower of (x) the conversion price then in effect and (y) the greater of the Floor Price (as defined in the Senior Convertible Note) and 85% of the lowest volume weighted average price in the 10 days prior to the payment date.

In addition to the monthly payments described above, during the second quarter of 2020, the noteholder elected an acceleration of payments of monthly principal, interest and make-whole payments pursuant to certain provisions of the Senior Convertible Note. These accelerated payments were made in the form of shares of our common stock at the rate then in effect in accordance with the Senior Convertible Note. As a result, we issued an aggregate of 1,763,675 shares for principal, interest and make-whole payments to the noteholder. In accounting for the accelerated conversions, the Company followed the guidance as prescribed in ASC 470 in accounting for derecognition (or conversion) of convertible debt with a cash conversion feature. We determined the fair value of the debt immediately prior to derecognition, with the difference between the consideration transferred to the noteholder and the fair value of the debt representing the reacquisition of the embedded conversion option. A loss on extinguishment of \$81 was recorded based on the difference between the calculated fair value of the debt immediately prior to derecognition and the carrying amount of the debt component, including any unamortized debt discount or issuance costs.

#### ***Redemption***

In conjunction with the issuance of the 2020 Convertible Notes, we redeemed the Senior Convertible Note in July 2020 at a price equal to 10% of the outstanding principal accrued and unpaid interest and make-whole interest. The payoff to the noteholder to satisfy the Senior Convertible Note was in the amount \$2,084. The redemption of the Senior Convertible Note resulted in a loss on extinguishment of \$734.

#### ***Related-Party Bridge Loans***

During the first quarter of 2020, various related parties loaned us \$560. The Related-Party Bridge Loans ("RPBLs") bore interest at 10% per annum and had a stated maturity date of November 14, 2024. The RPBLs and amounts thereof were made by the following related parties: (i) \$204 by Cane Capital, LLC, an entity owned in part by our Chief Executive Officer; (ii) \$151 by Curo Capital Appreciation Fund, LLC, an entity in which the Company's Chief Executive Officer and Chief Technology Officer serve as co-presidents; (iii) \$155 by various individuals associated by familiar relationship with our Chief Executive Officer; and (iv) \$0 by Luan Dang, the Company's Chief Technology Officer. Transaction costs related to the RPBLs were not significant.

As of December 31, 2020, the RPBLs have been paid in full with no early payment penalty.

### ***Convertible Notes***

In April 2019, our board of directors authorized the issuance of \$20,000 of convertible promissory notes (the “Convertible Notes”), which may be paid by investors in the form of cash or, in our discretion, cryptocurrency, such as Bitcoin or Ethereum. The Convertible Notes will be sold in reliance on an exemption from registration. We may not issue Convertible Notes under the Purchase Agreement in excess of \$20,000, in the aggregate, unless otherwise agreed by the holders of a majority in interest of the principal outstanding under the Convertible Notes. Transaction costs related to the issuance of the Convertible Note were immaterial.

The Convertible Notes bear ordinary interest at a rate of 7% per annum. Interest under the Convertible Notes is payable quarterly beginning on September 30, 2019, and interest and principal under the Convertible Notes is payable monthly beginning on June 30, 2021. However, at the holder’s election, interest payments may be deferred until the earlier of (i) repayment in full of all remaining unpaid principal and (ii) conversion. The Convertible Notes mature on June 3, 2024.

The Convertible Notes are convertible into shares of the Company’s common stock at a price of \$1.50 per share. Each Convertible Note will convert voluntarily upon a holder’s election, or automatically upon the closing sale price of the Company’s common stock equals or exceeds \$17.25 per share for 20 out of 30 consecutive trading days, if a registration statement is then in effect covering the disposition of the converted shares. Assuming the Convertible Notes in an aggregate principal amount of \$20,000 are sold under the Purchase Agreement, and assuming that all interest payments are deferred until maturity, the Convertible Notes would be convertible to a maximum total of approximately 2,347,826 shares of the Company’s common stock. We have not filed a registration statement with the SEC covering the shares of stock that could be issued pursuant to the Convertible Notes.

### ***Promissory Notes***

In October 2019, our board of directors authorized the issuance of \$20,000 of promissory notes (the “Notes”), which may be paid by investors in the form of cash or, in our discretion, cryptocurrency, such as Bitcoin or Ethereum. The Notes will be sold in reliance on an exemption from registration. We may prepay the Notes at any time without penalty. We may not issue Notes under the Purchase Agreement in excess of \$20,000, in the aggregate, unless otherwise agreed by the holders of a majority in interest of the principal outstanding under the Notes. Transaction costs related to the issuance of the Notes were immaterial.

The Notes bear ordinary interest at a rate of 10% per annum. Interest under the Notes is payable monthly beginning on November 30, 2019. During the term of the Notes, we are required to maintain a restricted bank account with a minimum balance of one year of interest payments on the aggregate principal balance of all Notes, which will be available for use exclusively to satisfy any payments owed by us under the Notes. The principal and unpaid accrued interest on the Notes will be due and payable on demand by the majority Note holders on or after the date that is 60 months following November 15, 2019. If an event of default occurs under the Notes, the majority Note holders may cause all principal and unpaid interest under the Notes to become immediately due and payable. In such event, the Notes will thereafter accrue interest at a rate of 12% per annum. Upon agreement between us and any senior creditor, the Notes will be subject to subordination in the right of payment to all current and future indebtedness or obligations of the Company for borrowed money to banks, commercial finance lenders, and other institutions regularly engaged in the business of lending money, or for factoring arrangements to parties providing such factoring.

During 2019, the Company issued a Note in the principal amount of \$195, in exchange for cash consideration, to Cane Capital, LLC, an entity owned in part by Alan S. Knitowski, the Company’s Chief Executive Officer and a member of its board of directors.



### *Interest Expense*

The following table sets forth interest expense for our various debt obligations included on the consolidated statements of operations and comprehensive loss:

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
2020 Convertible Notes	\$ 722	\$ —
Accretion of debt discount - issuance costs	686	—
Accretion of debt discount - warrants	1,457	—
Senior Convertible Note	197	—
Factoring financing agreement	175	555
All other debt and financing obligations	176	26
<b>Total</b>	<b>\$ 3,413</b>	<b>\$ 581</b>

### **9. Commitments and Contingencies**

#### *Leases*

We have operating office space leases in Austin, Texas; Irvine, California; San Diego, California; and Miami, Florida. Rent expense under operating leases totaled \$843 and \$727 for the years ended December 31, 2020 and 2019, respectively.

Future minimum annual lease payments under the Company's operating leases are as follows:

<b>Future minimum lease obligations for the years ending December 31,</b>	<b>Lease obligations</b>
2021	\$ 836
2022	725
2023	622
2024	609
2025	208
Thereafter	—
<b>Total</b>	<b>\$ 3,000</b>

## ***Litigation***

In 2017, we filed a breach of contract complaint against Uber Technologies, Inc. ("Uber") seeking payment for unpaid invoices for advertising campaign services provided for Uber in the first quarter of 2017. The case, captioned Phunware, Inc. v. Uber Technologies, Inc., Case No. CGC-17-561546 was filed in the Superior Court of the State of California, County of San Francisco. Uber generally denied the allegations in our complaint and also filed a cross-complaint against Phunware and Fetch Media, Ltd., the advertising agency Uber retained to run its mobile advertising campaign for the period 2014 through the first quarter of 2017, asserting numerous fraud and contract-based claims. In 2019, Uber filed its First Amended Cross-Complaint, naming new individual cross-defendants, Alan S. Knitowski, who serves as a director and the Company's Chief Executive Officer and member of our board of directors and former Phunware employees D. Stasiuk, M. Borotsik, and A. Cook, (collectively, the "Individual Defendants") alleging civil RICO violations and civil conspiracy to violate RICO, in addition to fraud, negligence, and unfair competition-based claims, and adding a fraud-based claim against Phunware. Uber's First Amended Cross-Complaint alleges that cross-defendants fraudulently obtained approximately \$17,000 from Uber, and claimed treble damages, general and punitive damages, and attorneys' fees and costs. On October 9, 2020, we entered into a settlement agreement with Uber and certain other parties related to our complaint against Uber, Uber's cross-complaint against us and Uber's amended cross-complaint against us and the Individual Defendants. As provided in the settlement agreement, both parties have agreed to fully and finally settle, compromise, and resolve all disputes, differences and disagreements that have existed, now exist, or may exist between them that fall within the subject matter lawsuit. Furthermore, each party denies engaging in any wrongdoing whatsoever and specifically denies each and every allegation of wrongdoing alleged in the lawsuit. The settlement agreement provides that Phunware and its insurance carriers will pay a total sum of \$6,000 to Uber, of which our insurance carrier will pay \$1,500 to settle Uber's claims against the Individual Defendants while we will pay a total of \$4,500 to Uber in a series of installments beginning no later than December 31, 2020, and ending no later than September 30, 2021. The settlement agreement further provides that we and the Individual Defendants fully release claims against Uber relating to the lawsuit and upon receipt of the payments, Uber will fully release claims against us and the Individual Defendants relating to the lawsuit. The court will retain jurisdiction over the case until the terms of the settlement agreement have been fully satisfied. The court has set a dismissal review hearing for November 16, 2021. If the terms of the settlement are fulfilled before that date, the parties will file requests to dismiss the action and the hearing will be taken off calendar. On November 5, 2020, Uber filed a request for dismissal with prejudice of claims against the Individual Defendants; Uber's claims against Phunware remain until the terms of the settlement agreement have been fully satisfied. We recorded a loss of \$4,500 for our portion of the settlement in legal settlement in our consolidated statements of operations and comprehensive loss for the year ended December 31, 2020 and \$3,000 is recorded in accrued legal settlement in our consolidated balance sheet as of December 31, 2020 related to the settlement.

On December 17, 2019, certain stockholders filed a lawsuit against Phunware. The case, captioned Wild Basin Investments, LLC, et al. v. Phunware, Inc., et al.; Cause No. D-1-GN-19-008846 was filed in the 126th Judicial District Court of Travis County, Texas. The plaintiffs invested in various early rounds of financing while the Company was private and claim Phunware should not have subjected their shares to a 180-day "lock up" period. According to the plaintiffs, the price of our stock dropped significantly during the lock up period. The plaintiffs seek unspecified damages in excess of \$1,000. We maintain the plaintiffs' claims are without merit and intends to contest vigorously the claims asserted in the lawsuit, but there can be no guarantees that a favorable resolution will be successful. All defendants have answered. The court has not yet set a trial date or pretrial deadlines. The case is in early stage of discovery. Given the preliminary stage of the case, we are unable to predict the outcome of this dispute, or estimate the loss or range of loss, if any, associated with this matter.

On March 9, 2020, Ellenoff Grossman & Schole LLP ("EGS") filed a lawsuit against us. The complaint, captioned Ellenoff Grossman & Schole LLP versus Stellar Acquisition III, Corp a/k/a Stellar Acquisition III, Inc. ("Stellar") n/k/a Phunware, Inc., was filed in the Supreme Court of the State of New York, New York County (Case No. 152585/2020). Pursuant to the complaint, EGS sought monetary damages in the amount of \$690 for alleged unpaid invoices related to legal services rendered for Stellar in conjunction with the reverse merger with Phunware, plus legal and court costs. On September 29, 2020, we entered into a settlement agreement with EGS. The settlement agreement provides that we pay a total sum of \$600 to EGS in a series of installments beginning no later than October 15, 2020, and ending no later than October 15, 2023. There is no penalty for prepayments. Pursuant to the terms of the settlement, on September 30, 2020, EGS filed a Stipulation of Voluntary Discontinuance with Prejudice with the court. In conjunction with the execution of the settlement agreement, we also signed an Affidavit of Confession of Judgment ("Confession of Judgment"), which provides that should we default in any payment obligations under the settlement agreement, EGS shall be entitled to enter the Confession of Judgment with the court against us for \$690 less any payments already made under the settlement. We reclassified \$690 from accounts payable to accrued expenses in the consolidated balance sheet as of December 31, 2020 related to the settlement. In accordance with authoritative guidance, we will defer any settlement gain, if any, until it has fulfilled its payment obligations under the settlement.

On April 24, 2020, Sha-Poppin Gourmet Popcorn, LLC, individually and on behalf of a class of similarly situated parties (the "Popcorn Company"), filed a lawsuit against certain defendants, including Phunware. The case captioned, Sha-

Poppin Gourmet Popcorn, LLC v. JPMorgan Chase Bank, N.A., RCSH Operations, LLC, RCSH Operations, Inc. (together d/b/a Ruth's Chris Steakhouse) and Phunware, Inc., was filed in the Northern District of Illinois, Eastern Division. The Popcorn Company alleges that we were unjustly enriched by JPMorgan Chase for our loan made pursuant to the PPP under the CARES Act. (See Note 8 for discussion related to our PPP loan). We filed a motion to dismiss the single claim against us and dispute the court's jurisdiction and the basis of the claim. On March 5, 2021, the trial court dismissed all of the Popcorn Company's claims for lack of subject matter jurisdiction.

From time to time, we are and may become involved in various legal proceedings in the ordinary course of business. The outcomes of our legal proceedings are inherently unpredictable, subject to significant uncertainties, and could be material to our operating results and cash flows for a particular reporting period. In addition, for the matters disclosed above that do not include an estimate of the amount of loss or range of losses, such an estimate is not possible, and we may be unable to estimate the possible loss or range of losses that could potentially result from the application of non-monetary remedies.

## 10. PhunCoin and PhunToken

### *PhunCoin*

In June 2018, PhunCoin, Inc., our wholly-owned subsidiary, launched an offering pursuant to Rule 506(c) of Regulation D as promulgated under the Securities Act of 1933 (the "Rights") to acquire the PhunCoin token. In 2019, PhunCoin, Inc. commenced an offering of Rights pursuant to Regulation CF, which closed May 1, 2019. We accept payment in the form of cash and digital currencies for purchases of the Rights. The amount of PhunCoin to be issued to the purchaser is equal to the dollar amount paid by the purchaser divided by the price of the PhunCoin at the time of issuance of the PhunCoin during the launch of the Token Ecosystem (as defined below) before taking into consideration any applicable discount rate, which is based on the time of the purchase.

Through December 31, 2020, we received aggregate net cash proceeds from our Rights offerings of \$1,202. Proceeds from the Rights are recorded as PhunCoin deposits in the consolidated balance sheet as of December 31, 2020 and 2019. We currently do not plan to raise additional proceeds under the PhunCoin Rights offering.

### *Issuance of PhunCoin*

PhunCoin is expected to be issued to Rights holders the earlier of (i) the launch of PhunCoin's, Inc.'s blockchain technology enabled rewards marketplace and data exchange ("Token Ecosystem" or "Token Generation Event"), (ii) one (1) year after the issuance of the Rights to the purchaser or (iii) the date PhunCoin, Inc. determines that it has the ability to enforce resale restrictions with respect to PhunCoin pursuant to applicable federal securities laws. Proceeds from the Rights offering are generally not refundable if the Token Generation Event is not consummated.

We currently anticipate that PhunCoin will be issued to the holders of the Rights in 2021. Holders of the Rights may be issued PhunCoin even if the Token Ecosystem is not yet operational. PhunCoin will have no usefulness until the Token Ecosystem is operational because PhunCoin is expected to only be useable on the Token Ecosystem. We further anticipate reducing the number of PhunCoins (through a reverse PhunCoin split or otherwise) prior to issuance to promote a healthier token economy and adhere to listing exchange requirements. As of the date of this Report, we do not yet know the number of PhunCoin we will be issuing pursuant to the Rights.

There can be no assurance as to when (or if) the Company will be able to successfully launch the Token Ecosystem. The Company is currently developing multiple aspects of the Token Ecosystem, as well as coordinating with trading platforms to support the compliant trading of PhunCoin. The final software readiness date of the Token Ecosystem may be adjusted based on user feedback, additional aspects of the Token Ecosystem currently under development and the ability to meet compliance requirements; therefore, a specific launch date is difficult to determine at this time, as it is based on many external factors outside of our control.

### *Termination of the Token Rights Agreement*

Termination of the Token Rights Agreement occurs on the earlier of (i) PhunCoin being issued to the Rights holder pursuant to the provisions noted above, (ii) the payment, or setting aside of payment with respect to a dissolution event (as described below) or (iii) twelve months from the date of the Token Rights Agreement with the Rights holder, which PhunCoin, Inc. may extend at its sole discretion for six months if a Token Generation Event has not occurred. Upon termination of the Token Rights Agreement, PhunCoin, Inc. has no further obligation to the Rights holder. While the Token Rights Agreement has terminated in accordance with its terms (with respect to all Rights holders), as of the date of this Report, PhunCoin, Inc. has determined to continue its obligations under the Token Rights Agreement.

*Dissolution Event*

A dissolution event occurs if there has been (i) a voluntary termination of PhunCoin, Inc.'s operations, (ii) a general assignment for the benefit of PhunCoin, Inc.'s creditors, (iii) a change of U.S. laws that make the use or issuance of PhunCoin or the Token Generation Event impractical or unfeasible or (iv) any other liquidation, dissolution or winding up of PhunCoin, Inc.

In the event a dissolution event occurs prior to the termination of the Token Rights Agreement, if there are any remaining proceeds from the Rights offering that have not been utilized by PhunCoin, Inc. in its operations or for the development of the PhunCoin Ecosystem, such remaining proceeds would be distributed pro rata to purchasers in the Rights offering following any distributions to holders of PhunCoin, Inc.'s capital stock or debt, if any.

*No Voting Rights or Profit Share*

Rights holders (and eventual PhunCoin holders) have no voting rights and are not entitled to share in the profits or residual interest of Phunware, PhunCoin, Inc. or any subsidiaries of the Company. However, PhunCoin holders will be provided fractional interests in the Token Ecosystem, including ongoing monthly PhunCoin dividends to PhunCoin holders, based on their respective pro rata ownership percentage of PhunCoin, totaling 2.5% of the monthly credits purchased by Phunware customers.

*PhunCoin Warrant*

In 2018, we issued warrants to receive PhunCoin to sixty-eight (68) stockholders. At the time of issuance, we determined there should be no value assigned to the warrants of PhunCoin issued to the stockholders, for the following reasons: (i) the warrants (x) lacked characteristics of financial instruments and derivatives, and (y) did not obligate us to achieve the Token Generation Event or launch and distribute PhunCoin to the warrant holders and (ii) there was not a market for PhunCoin and they did not exist.

Should we complete a Token Generation Event, the stockholders would receive their requisite amount of PhunCoin. As stated above, the exact number of PhunCoin to be issued to holders of the warrants is unknown at this time.

***PhunToken ("Phun")***

In 2019, we announced the launch of a separate token, Phun, which is meant to act as a medium of exchange within the Token Ecosystem. Phun will be available initially only to persons outside of the United States and Canada. As currently envisioned, consumers may receive Phun for actively engaging in marketing campaigns; developers and publishers may receive Phun for utilizing Phunware's loyalty software development kit in order to better engage, manage and monetize their consumers; and brands will gain access to more relevant, verifiable data by accessing Phunware's data exchange and using Phun for their own loyalty programs. As of December 31, 2020, we had not issued or sold any Phun.

**11. Stockholders' Equity**

***Common Stock***

Total common stock authorized to be issued as of December 31, 2020 was 1,000,000,000 shares with a par value of \$0.0001 per share. At December 31, 2020 and 2019, there were 56,380,111 and 39,817,917 shares outstanding, inclusive of 574 and 6,219 restricted shares subject to repurchase for unvested shares related to early option exercises related to our 2009 Equity Incentive Plan (more fully described below), respectively.

On August 14, 2020, we entered into an At-The-Market Issuance Sales Agreement (the "Sales Agreement") with Ascendant Capital Markets, LLC ("Ascendant"), as sales agent, pursuant to which we agreed to offer and sell, from time to time, through Ascendant shares of common stock for an aggregate offering price of up to \$15,000. Subject to the terms and conditions of the Sales Agreement, Ascendant agreed to use commercially reasonable efforts consistent with its normal trading and sales practices to sell shares from time to time based upon our instructions, including any price, time or size limits specified by us. Under the Sales Agreement, Ascendant was permitted to sell shares by any method deemed to be an "at the market" offering as defined in Rule 415 under the U.S. Securities Act of 1933, as amended, or any other method permitted by law, including in privately negotiated transactions. During the year ended December 31, 2020, we sold 11,629,160 shares of common stock for gross proceeds of \$9,578. Offering costs totaled \$401.

[Table of Contents](#)

During 2019, we issued an aggregate of 11,530,442 shares of common stock related to various cash and cashless (net) exercises of warrants for common stock. Cash exercises for warrants for 617,296 shares of common stock resulted in aggregate gross proceeds of approximately \$6,184, of which \$6,092 was received in cash and \$92 was received in digital currencies. Furthermore, there were 13,975,359 warrants exercised under cashless (net) provisions resulting in the issuance of 10,913,146 shares of common stock. See further discussion regarding details of our various warrants below.

### *Dividends*

Dividends are paid on a when-and-if-declared basis. We did not declare any dividends during 2020 or 2019.

### *Warrants*

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

Warrant Type	Cash exercise price per share	December 31,	
		2020	2019
2020 Convertible Note warrants	\$ 4.00	2,160,000	—
Common stock warrant (Series D-1)	\$ 5.54	14,866	14,866
Common stock warrants (Series F)	\$ 9.22	377,402	377,402
Public Warrants (PHUNW)	\$ 11.50	1,761,291	1,761,291
Private Placement Warrants	\$ 11.50	1,658,381	1,658,381
Unit Purchase Option Warrants	\$ 11.50	24,172	24,172
Total		5,996,112	3,836,112

In 2012, we issued a warrant to purchase an aggregate of 14,866 shares of the Company's common stock with an exercise price of \$5.54 per share to a banking institution with which we previously had a revolving line of credit. The term of the warrant is the earlier of (i) the tenth anniversary of the date of issuance, (ii) the closing of the initial registered public offering of the Company's common stock, or (iii) the closing of an acquisition (as defined in the warrant) where the consideration consisting of cash or publicly traded securities payable in connection with the acquisition for each share is at least three (3) times the exercise price. The reverse merger with Stellar did not trigger an expiration of the warrant pursuant to term (ii) or (iii) above. The warrant is fully vested.

In 2018, but prior to our reverse merger with Stellar, we issued warrants (Series F above) to purchase an aggregate of 1,085,059 shares of common stock with an exercise price of \$9.22 per share. The term of the warrants is the earlier of (i) the fifth anniversary of the date of issuance, (ii) an acquisition, merger, or consolidation of the Company or a sale, lease or other disposition of all or substantially all of the assets of Phunware and its subsidiaries, except (a) any sale of stock for capital raising purposes, (b) purpose of changing the Company's state of incorporation, and (c) where the stockholders of Phunware immediately before such transaction retain at least a majority of the voting power immediately following such transaction; or (iii) immediately prior to an initial public offering. The reverse merger with Stellar did not trigger an expiration of the warrant pursuant to term (ii) or (iii) above. These warrants are fully vested.

We have common stock warrants trading under the Nasdaq ticker symbol PHUNW (the "Public Warrants"). Each Public Warrant entitles the holder to purchase one share of common stock at an exercise price of \$11.50 per share and are fully exercisable by the holder. No fractional shares will be issued upon exercise of the Public Warrants. We may redeem the outstanding Public Warrants in whole and not in part at a price of \$0.01 per Public Warrant upon a minimum of 30 days' prior written notice of redemption, only in the event that the last sale price of shares of our common stock equals or exceeds \$21.00 per share for any 20 trading days within the 30-trading day period ending on the third trading day before the Company sends the notice of redemption to the Public Warrant holders. The Public Warrants will expire December 26, 2023 or earlier upon redemption or liquidation.

The Private Placement Warrants entitle the holder to purchase one share of common stock at an exercise price of \$11.50 per share and are fully exercisable by the holder. The Private Placement Warrants are exercisable for cash or on a cashless basis, at the holder's option and will not be redeemable in each case so long as they are still held by the initial purchasers or their affiliates. The Private Placement Warrants will expire December 26, 2023.

The Unit Purchase Option Warrants noted in the table above have the same terms as the Private Placement Warrants as described above.

## 12. Stock-Based Compensation

### 2018 Equity Incentive Plan

In 2018, our board of directors adopted, and our stockholders approved, the 2018 Equity Incentive Plan (the “2018 Plan”). The purposes of the 2018 Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentives to employees, directors and consultants who perform services for the Company, and to promote the success of our business. These incentives are provided through the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, performance units and performance shares.

The number of shares of common stock available for issuance under the 2018 Plan will also include an annual increase on the first day of each fiscal year, equal to the lesser of: (i) 10% of the post-closing outstanding shares of common stock; (ii) 5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year; or (iii) such other amount as our board of directors may determine.

In addition, the shares of common stock reserved for issuance, the 2018 Plan also will include any shares of common stock subject to stock options, restricted stock units or similar awards granted under the 2009 Equity Incentive Plan (the “2009 Plan”) that expire or otherwise terminate without having been exercised in full and are forfeited to or repurchased by us. As of December 31, 2020, the maximum number of shares of common stock that may be added to the 2018 Plan pursuant to the foregoing is 1,209,314.

For the year ended December 31, 2020, the restricted stock units were the only stock-based incentives granted under the 2018 Plan. A summary of our restricted stock unit activity is set forth below:

	Shares	Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2019	2,436,968	\$ 3.15
Granted	2,622,029	1.01
Released	(2,978,983)	2.28
Forfeited	(402,954)	2.88
Outstanding as of December 31, 2020	<u>1,677,060</u>	<u>\$ 1.41</u>

Not including the maximum number of shares from the 2009 Plan that may be added to the 2018 Plan noted above, the 2018 Plan had 2,551,720 and 205,206 shares of common stock reserved for future issuances as of December 31, 2020 and 2019, respectively.

During the first quarter of 2020, we granted 123,084 restricted stock units to non-employee directors, each with a grant date fair value of \$1.25 per share in lieu of cash compensation board fees for services provided. The awards vested immediately. We also granted 125,523 restricted stock units to non-employee directors, with a grant date fair value of \$1.25 per share. The awards vest over ten months in four equal installments on March 26, 2020, June 26, 2020, September 18, 2020, and December 25, 2020, respectively, and are subject to service conditions. We also granted 746,000 restricted stock unit awards to team members with an average grant date fair value of \$1.25 per share. The awards granted to team members vest over an average of 42 months with various installment and vesting dates, and are subject to service conditions. We also granted 630,000 restricted stock units to a non-employee service provider that were for the satisfaction of legal fees owed and other consulting fees. The awards granted to the legal service provider vested immediately and had an average grant date fair value \$0.88.

During the second quarter of 2020, we granted 85,996 restricted stock units to non-employee directors, each with a grant date fair value of \$0.71 per share in lieu of cash compensation board fees for services provided. The awards vested immediately. We also granted 375,000 restricted stock unit awards to team members with an average grant date fair value of \$0.67 per share. The awards granted to team members vest over 4 years with 25% vesting May 18, 2021, then equal quarterly installments thereafter until the final vesting period of May 18, 2024 and are subject to service conditions. We also granted 250,000 restricted stock units to a non-employee service provider that were for the satisfaction of legal fees owed. The awards granted to the legal service provider vested immediately and had an average grant date fair value \$0.67.

During the third quarter of 2020, we granted 39,426 restricted stock units to non-employee directors, each with a grant date fair value of \$1.28 per share in lieu of cash compensation board fees for services provided. The awards vested immediately. We also granted 12,000 restricted stock unit awards to team members with an average grant date fair value of \$1.68 per share. The awards granted to team members vest over 4 years with 25% vesting May 18, 2021, then equal quarterly installments thereafter until the final vesting period of May 18, 2024 and are subject to service conditions. We also granted 155,000 restricted stock units to non-employee service providers that were for the satisfaction of legal and professional fees. The awards granted to the service providers have various vesting dates and had an average grant date fair value \$1.52.

During the fourth quarter of 2020, we granted 30,000 restricted stock units to team members, 50,000 restricted stock units to non-employees directors with an average grant date fair value of \$0.85 per share. The awards granted to team members vest over 4 years with 25% vesting November 18, 2021, then equal quarterly installments thereafter until the final vesting period of November 18, 2024 and are subject to service conditions. The restricted stock units granted to the non-employee service provider were for satisfaction of legal fees owed. The awards granted to the legal service provider vested immediately.

#### ***2018 Employee Stock Purchase Plan***

Also, in 2018, our board of directors adopted, and our stockholders approved, the 2018 Employee Stock Purchase Plan (the “2018 ESPP”). The 2018 ESPP will be administered by our board of directors or a committee appointed by the board (the “administrator”). The purpose of the 2018 ESPP is to provide eligible employees with an opportunity to purchase shares of our common stock through accumulated contributions. The 2018 ESPP permits participants to purchase shares of common stock through contributions (generally in the form of payroll deductions) of up to an amount of their eligible compensation determined by the administrator. Subject to certain other limitations or unless otherwise determined by the administrator, a participant may purchase a maximum of 2,000 shares of common stock during a purchase period. The offering periods under the 2018 ESPP will begin on such date as determined by the administrator and expire on the earliest to occur of (a) the completion of the purchase of shares on the last exercise date occurring within 27 months of the applicable enrollment date of the offering period on which the purchase right was granted, or (b) a shorter period established by the administrator prior to an enrollment date for all options to be granted on such enrollment date. Amounts deducted and accumulated by the participant are used to purchase shares of common stock on each exercise date. The purchase price of the shares will be determined by the administrator but in no event will be less than 85% of the lower of the fair market value of common stock on the enrollment date or on the exercise date. Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase shares of common stock. Participation ends automatically upon termination of employment with the Company.

The number of shares of common stock that may be made available for sale under the 2018 ESPP also includes an annual increase on the first day of each fiscal year beginning for the fiscal year following the fiscal year in which the first enrollment date (if any) occurs equal to the lesser of (i) 3% of the expected post-closing outstanding shares of common stock; (ii) 1.5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year; or such other amount as the administrator may determine.

As of December 31, 2020, we had not consummated an enrollment or offering period related to the 2018 ESPP. The 2018 ESPP had 72,942 shares of common stock available for sale and reserved for issuance as of December 31, 2020 and 2019.

#### ***2009 Equity Incentive Plan***

In 2009, we adopted the 2009 Plan, which allowed for the granting of incentive and non-statutory stock options, as defined by the Internal Revenue Code, to employees, directors, and consultants. The exercise price of the options granted was generally equal to the value of our common stock on the date of grant, as determined by our board of directors. The awards are exercisable and vest, generally over four years, in accordance with each option agreement. The term of each option is no more than ten years from the date of the grant. The 2009 Plan allows for options to be immediately exercisable, subject to the Company’s right of repurchase for unvested shares at the original exercise price. The total amount received in exchange for these shares has been included in accrued expenses on the accompanying consolidated balance sheets and is reclassified to equity as the shares vest. As of December 31, 2020 and 2019, 574 and 6,219 shares were unvested amounting to \$1 and \$3 in accrued expenses, respectively. Upon exercise, shares will be delivered electronically to the holder pursuant to an effective registration statement. Effective with the adoption of the 2018 Plan, no additional grants will be made under the 2009 Plan.

A summary of our stock option activity under the 2009 Plan and related information is set forth below:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2019	1,465,450	\$ 0.80	6.86	\$ 771
Granted	—	—		
Exercised	(185,234)	1.06		
Cancelled/Expired	(71,476)	1.77		
Outstanding as of December 31, 2020	<u>1,208,740</u>	\$ 0.80	6.19	\$ 700
Exercisable as of December 31, 2020	<u>1,073,148</u>	\$ 0.75	6.08	\$ 642

The Company did not grant any options under the 2009 Plan during the year ended December 31, 2020 or 2019. We have historically used the Black-Scholes option pricing model to estimate the fair value of our stock option awards.

The aggregate intrinsic value is based on our stock price trading price on the Nasdaq Capital Market. The aggregate intrinsic value of options exercised was \$8 and \$7,619 for the years ended December 31, 2020 and 2019, respectively, and is calculated based on the difference between the estimated fair value of our common stock at the date of exercise and the exercise price.

The total fair value for options vested during the years ended December 31, 2020 and 2019, was \$30 and \$348, respectively.

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

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

	Year Ended December 31,	
	2020	2019
<b>Stock-based compensation</b>		
Cost of revenues	\$ 274	\$ 146
Sales and marketing	64	12
General and administrative	4,083	1,417
Research and development	71	209
Total stock-based compensation	<u>\$ 4,492</u>	<u>\$ 1,784</u>

As of December 31, 2020 and 2019, there was approximately \$2,135 and \$6,328, respectively, of total unrecognized compensation cost related to unvested restricted stock units under the 2018 Plan. This unrecognized compensation cost is expected to be recognized over an estimated weighted-average period of approximately 2.8 years.

As of December 31, 2020 and 2019, there was \$80 and \$221, respectively, of total unrecognized compensation cost related to unvested stock options under the 2009 Plan. This unrecognized compensation cost is expected to be recognized over an estimated weighted-average amortization period of approximately 1.2 years.

### **13. Income Taxes**

Deferred income taxes are recognized for the tax consequences in future years for differences between the tax bases of assets and liabilities and their financial reporting amounts at each year-end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is the combination of the tax payable for the year and the change during the year in deferred tax assets and liabilities.



[Table of Contents](#)

For the years ended December 31, 2020 and 2019, we had net losses before income taxes of \$2,197 and \$12,866, respectively. Net losses relating to U.S. operations for were \$22,194 and \$12,766, respectively.

The difference between income taxes expected at the U.S. federal statutory income tax rate of 21% and the reported income tax expense (benefit) are summarized as follows:

	Year Ended December 31,	
	2020	2019
Income tax at statutory rate	\$ (4,661)	\$ (2,703)
Valuation allowance	4,408	2,948
State income tax, net of federal benefit	(330)	(606)
Business tax credit net of reserves	—	—
Non-deductible expenses	585	365
Foreign income taxes at different rate	—	1
Income tax expense	<u>\$ 2</u>	<u>\$ 5</u>
Effective tax rate	<i>(0.01)%</i>	<i>(0.04)%</i>

The provision expense for income taxes consists of the following:

	Year Ended December 31,	
	2020	2019
<b>Current:</b>		
Federal	\$ —	\$ —
State	2	5
Foreign	—	—
Total current	<u>2</u>	<u>5</u>
<b>Deferred:</b>		
Federal	—	—
State	—	—
Foreign	—	—
Total deferred	<u>—</u>	<u>—</u>
Total	<u>\$ 2</u>	<u>\$ 5</u>

The components of net deferred income taxes consist of the following:

	December 31,	
	2020	2019
<b>Deferred tax assets:</b>		
Net operating loss	\$ 30,705	\$ 26,285
Reserves and accruals	3,739	3,842
Tax credits	1,193	1,463
Gross deferred tax assets	<u>35,637</u>	<u>31,590</u>
Less valuation allowance	(35,100)	(31,349)
Total deferred tax assets	<u>537</u>	<u>241</u>
<b>Deferred tax liabilities:</b>		
Amortization of acquired intangibles	(537)	(241)
Total deferred tax liabilities	<u>(537)</u>	<u>(241)</u>
Net deferred tax liabilities	<u>\$ —</u>	<u>\$ —</u>

## [Table of Contents](#)

As of December 31, 2020, we had net operating loss carryforwards of \$126,303 and \$60,929 for federal and state income tax purposes, respectively. The federal net operating losses of \$85,674 which were generated in tax years beginning before January 1, 2018, will begin to expire in 2030 if not utilized. The balance of the net operating losses, \$40,629 do not expire. The state net operating losses expire at various times depending on the state with a majority beginning to expire in 2030 if not utilized.

As of December 31, 2020, we had R&D credit carryforwards of approximately \$1,482 and \$1,145 for federal and state income tax purposes, respectively. The federal and Texas R&D credits will begin to expire in 2034, unless previously utilized. California R&D credits carry forward indefinitely.

Utilization of the net operating losses ("NOL") and tax credit 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 (IRC) of 1986, as amended (the "Code"), as well as similar state and foreign provisions. These ownership changes may limit the amount of NOL and tax credit carryforwards that can be utilized annually to offset future taxable income. In general, an "ownership change" as defined by Section 382 of the Code results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than fifty (50) percentage points of the outstanding stock of a company by certain stockholders.

As of December 31, 2020, we had not yet completed its analysis of the deferred tax assets for its NOL and tax credits. The future utilization of our net operating loss to offset future taxable income may be subject to an annual limitation under IRC Section 382 as a result of ownership changes that may have occurred previously or that could occur in the future. We have not yet determined whether such an ownership change has occurred. In order to make this determination, we will need to complete an analysis regarding the limitation of the net operating loss.

We have established a full valuation allowance for our deferred tax assets due to uncertainties that preclude us from determining that it is more likely than not that we will be able to generate sufficient taxable income to realize such assets. We monitor positive and negative factors that may arise in the future as we assess the need for a valuation allowance against our deferred tax assets. As of December 31, 2020 and 2019, we have a valuation allowance of \$35,100 and \$31,349, respectively, against our deferred tax assets.

The technical merits of a tax position derive from both statutory and judicial authority (legislation and statutes, legislative intent, regulations, rulings, and case law) and their applicability to the facts and circumstances of the tax position. If a tax position does not meet the more-likely-than-not recognition threshold, the benefit of that position is not recognized in the financial statements. The second step is measurement. A tax position that meets the more-likely-than-not recognition threshold is measured to determine the amount of benefit to recognize in the financial statements. The tax position is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate resolution with a taxing authority.

Uncertain tax positions are evaluated based upon the facts and circumstances that exist at each reporting period. Subsequent changes in judgment based upon new information may lead to changes in recognition, de-recognition, and measurement. Adjustments may result, for example, upon resolution of an issue with the taxing authorities, or expiration of a statute of limitations barring an assessment for an issue.

[Table of Contents](#)

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits:

	December 31,	
	2020	2019
Unrecognized tax benefits, beginning of period	\$ 1,531	\$ 1,516
Tax positions taken in prior periods:		
Gross increases	69	—
Gross decreases	(297)	—
Tax positions taken in current period:		
Gross increases	11	15
Settlements	—	—
Lapse of statute of limitations	—	—
Unrecognized tax benefits, end of period	<u>\$ 1,314</u>	<u>\$ 1,531</u>

Our practice is to recognize interest and/or penalties related to income tax matters in income tax expense. We have no accrual for interest and penalties on the consolidated balance sheets and has not recognized interest and/or penalties in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2020 and 2019.

We are subject to taxation in the United States and various state jurisdictions. Our tax years from inception are subject to examination by the United States and state taxing authorities due to the carryforward of unutilized NOLs.

On January 22, 2018, the FASB released guidance on the accounting for tax on the Global Intangible Low-Taxed Income ("GILTI") provisions of H.R. 1, "The Tax Cuts and Jobs Act" signed into law in 2017 (the "Tax Act"). Under U.S. GAAP, the Company is allowed to make an accounting policy election of either (1) treating taxes due on the future U.S. inclusions in taxable income related to GILTI as a current-period expense when incurred, or the period cost method, or (2) factoring such amounts into the Company's measurement of its deferred taxes, or the deferred method. The Company has selected the period cost method as its accounting policy with respect to the potential GILTI tax obligations.

We have ownership interest in controlled foreign corporations. During 2020, we analyzed the potential impact of the Global Intangible Low-Taxed Income and the Base Erosion and Anti-Abuse Tax provisions of the Tax Cuts and Jobs Act signed into law in 2017. Based on the foreign subsidiaries' tax position, we will not incur any impact relating to these two provisions.

The CARES Act was enacted in the United States on March 27, 2020. The CARES Act includes several U.S. income tax provisions related to, among other things, net operating loss carrybacks, alternative minimum tax credits, modifications to the net interest deduction limitations, and technical amendments regarding the income tax depreciation of qualified improvement property placed in service after December 31, 2017. The CARES Act does not have a material impact on our financial results for the year ended December 31, 2020.

The Consolidated Appropriations Act, 2021 (the "Act") was enacted in the United States on December 27, 2020. The Act enhances and expands certain provisions of the CARES Act. The Act does not have a material impact on our financial results for the year ended December 31, 2020.

#### 14. Segment and Geographic Information

Our chief operating decision maker is our Chief Executive Officer ("CEO"). Our CEO reviews the financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. Accordingly, we have determined that the Company operates in a single reporting segment.

Identifiable long-lived assets attributed to the United States and international geographies are based upon the country in which the asset is located or owned. As of December 31, 2020 and 2019, all of our identifiable long-lived assets were in the United States.

## 15. Related-Party Transactions

As consideration for the Private Placement Warrants transferred to Phunware stockholders, a promissory note was issued to certain executives of Stellar, one of which is currently a member of our board of directors. The amount of the note was approximately \$1,993, which represented \$0.50 per warrant transferred to former stockholders of Phunware. The note bore no interest and was to mature on December 26, 2019. The note was waived and forgiven by the noteholders on January 15, 2019.

In connection with the reverse merger with Stellar, we assumed \$255 in payables for Nautilus Energy Management Corporation, an affiliate of a current member and former member of our board of directors. This balance is included in accounts payable in our consolidated balance sheets as of December 31, 2020 and 2019.

As more fully discussed in Note 9, *Debt*, the Company entered into a Note and RPBLs (both defined above) with certain related parties.

## 16. Subsequent Events

The Company has evaluated subsequent events through March 31, 2021, the date the financial statements were issued.

In January 2021, we issued 2,670,121 shares of our common stock pursuant to the terms of our at-the-market offering and Sales Agreement with Ascendant, as noted in Note 11 above. Aggregate net cash proceeds received totaled \$5,058 and transaction costs were \$156.

In February 2021, we entered into an underwriting agreement with Northland Securities, Inc. and Roth Capital Partners, LLC, relating to an underwritten public offering to which we issued 11,761,111 shares of our common stock at an offering price of \$2.25 per share. Aggregate net proceeds totaled \$24,722 and transaction costs were \$1,740.

As a result of the fundraising events above, the holder of our 2020 Convertible Notes elected to require us to use forty percent (40%) of the net proceeds satisfy obligations under the 2020 Convertible Notes. The redemption obligation satisfied the full balance of the 2020 Convertible Notes outstanding as of the redemption date, notwithstanding future payments the investor could initiate pursuant to the Investor Note that would further result in unrestricted Series B Note principal to be due and outstanding. We paid approximately \$11,507, to which \$5,541 was to pay the then outstanding principal on the 2020 Senior Convertible Notes, \$349 for interest and make-whole and \$5,717 to loss on extinguishment of debt. Furthermore, as a result of the underwritten equity raise, the conversion price of the 2020 Convertible Notes decreased from \$3.00 to \$2.25 per share and the exercise price per share of the warrants decreased from \$4.00 per share to \$2.25 per share.

In March 2021, the noteholder voluntarily prepaid an aggregate of \$10,250 pursuant to the terms of the Investor Note. As a result, we received cash proceeds of \$10,250 and this amount of principal of the Series B Note, along with \$820 of original issue discount became "unrestricted" and outstanding. After the aforementioned aggregate payments on the Investor Note, there is no unrestricted balance remaining under of the Series B Note.

On March 25, 2021, we delivered a Company Optional Redemption Notice to the holder of our Series B Note exercising our right to redeem and fully satisfy all obligations under the Series B note on April 5, 2021.

On March 16, 2021, we entered into a sublease agreement pursuant to which we will sublease our existing office space in Irvine, California. The term of the sublease commences on April 1, 2021 and terminates on March 31, 2025. The subtenant will pay us base rent in an initial amount of approximately \$17 per month, which is subject to certain discounts throughout the lease, as well as rent escalations.

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

Reference is made to Item 4.01 on the Company's Current Report on Form 8-K filed with the SEC on January 2, 2019 regarding changes in accounting firm and is hereby incorporated by reference.

## **Item 9A. Controls and Procedures.**

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

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer (together, the "Certifying Officers"), we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2020. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our Certifying Officers, as appropriate to allow timely decisions regarding required disclosure.

Based on the foregoing, our Certifying Officers concluded that our disclosure controls and procedures were effective as of December 31, 2020.

### **Management's Report on Internal Controls Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of 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 financial statements for external purposes in accordance with generally accepted accounting principles.

Under the supervision and with the participation of our management, including our Certifying Officers, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2020, based on the criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission for newly public companies (COSO). Based on this evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2020.

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

There were no changes in our internal control over financial reporting identified in conjunction with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### **Limitation on the Effectiveness of Controls**

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

**Item 9B. Other Information.**

On March 24, 2021, Ms. Blythe Masters notified the Company of her resignation from our board of directors (the “Board”) and from the Audit Committee of the Board, to be effective May 1, 2021. Ms. Masters serves as chairperson of our Board and Audit Committee. Ms. Master’s resignation is related to anticipated increased responsibilities arising from her nomination to the Credit Suisse board and is not due to any disagreement with the Company, its management, the Board or any committee thereof, or with respect to any matter relating to our operations, policies or practices. Ms. Masters will continue to serve as a strategic advisor to the Company.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance.**

Information required by this item will be set forth in our proxy statement for our 2020 Annual Meeting of Stockholders ("2021 Proxy Statement") or an amendment to this Annual Report on Form 10-K, to be filed with the SEC within 120 days of our fiscal year ended December 31, 2020 and is incorporated herein by reference.

**Item 11. Executive Compensation.**

Information required by this item will be set forth in our 2021 Proxy Statement or an amendment to this Annual Report on Form 10-K, to be filed with the SEC within 120 days of our fiscal year ended December 31, 2020 and is incorporated herein by reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

Information required by this item will be set forth in our 2021 Proxy Statement or an amendment to this Annual Report on Form 10-K, to be filed with the SEC within 120 days of our fiscal year ended December 31, 2020 and is incorporated herein by reference.

**Item 13. Certain Relationships and Related Transactions, and Director Independence.**

Information required by this item will be set forth in our 2021 Proxy Statement or an amendment to this Annual Report on Form 10-K, to be filed with the SEC within 120 days of our fiscal year ended December 31, 2020 and is incorporated herein by reference.

**Item 14. Principal Accounting Fees and Services.**

Information required by this item will be set forth in our 2021 Proxy Statement or an amendment to this Annual Report on Form 10-K, to be filed with the SEC within 120 days of our fiscal year ended December 31, 2020 and is incorporated herein by reference.

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules.**

(a) The following documents are filed as part of this Annual Report:

(1) Consolidated Financial Statements

Our Consolidated Financial Statements are listed in the *"Index to the Consolidated Financial Statements"* under Part II, Item 8 of this Annual Report on Form 10-K.

(2) Financial Statements Schedule

All financial statement schedules are omitted because they are not applicable or the amounts are immaterial and not required, or the required information is presented in the Consolidated Financial Statements or notes thereto included in Part II, Item 8 *"Financial Statements and Supplementary Data"* of this Annual Report on Form 10-K.

(3) Exhibits

We hereby file as part of this Report the exhibits listed in the attached Exhibit Index. Exhibits which are incorporated herein by reference can be inspected and copied at the public reference facilities maintained by the SEC, 100 F Street, N.E., Room 1580, Washington D.C. 20549. Copies of such material can also be obtained from the Public Reference Section of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates or on the SEC website at [www.sec.gov](http://www.sec.gov).

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
2.1	<a href="#">Agreement and Plan of Merger, dated February 27, 2018, by and among Stellar, STLR Merger Subsidiary Inc. and Phunware, Inc (Incorporated by reference to Exhibit 2.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on February 28, 2018, and also included as Annex C to the joint proxy statement/prospectus).</a>
2.2	<a href="#">First Amendment to Agreement and Plan of Merger, dated November 1, 2018, by and among Stellar, Phunware, Inc. and the Holder Representative named therein (Incorporated by reference to Annex C-1 to the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on November 13, 2018).</a>
3.1	<a href="#">Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019). Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
3.2	<a href="#">Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
3.3	<a href="#">Certificate of Designation (Incorporated by reference to Exhibit 3.3 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on January 2, 2019).</a>
4.1	<a href="#">Specimen common stock certificate of the Registrant (Incorporated by reference to Exhibit 4.3 of Stellar's Form S-4/A (File No. 333-224227), filed with the SEC on November 6, 2018).</a>
4.2	<a href="#">Form of Unit Purchase Option between Maxim Group LLC and the Registrant (Incorporated by reference to Exhibit 4.5 of the Registrant's Form S-1/A (File No. 333-212377) filed with the SEC on August 15, 2016).</a>
4.3	<a href="#">Warrant Agreement, dated August 18, 2016, between Continental Stock Transfer &amp; Trust Company and the Registrant (Incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on August 24, 2016).</a>
4.4	<a href="#">Second Amended and Restated Sponsor Warrant Purchase Agreement, dated August 12, 2016 among the Registrant and certain security holders (Incorporated by reference to Exhibit 10.9 of the Registrant's Form S-1/A (File No. 333-212377), filed with the SEC on August 15, 2016).</a>
4.5	<a href="#">Registration Rights Agreement, dated August 18, 2016, between the Registrant and certain security holders (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on August 24, 2016).</a>
4.6	<a href="#">Form of Securities Subscription Agreement, dated January 29, 2016, among the Registrant and certain security holders (Incorporated by reference to Exhibit 10.7 of the Registrant's Form S-1 (File No. 333-212377), filed with the SEC on June 30, 2016).</a>



[Table of Contents](#)

4.7	<a href="#">Amended and Restated Investors' Rights Agreement, as amended, between Phunware, Inc. and certain holders of Phunware, Inc.'s capital stock named therein (Incorporated by Reference to Exhibit 4.7 of the Registrant's Form S-1 (File No. 333-229524) filed with the SEC on February 5, 2019).</a>
4.8	<a href="#">Form of Warrant to Purchase Shares of Series F Preferred Stock and Phuncoins of Phunware, Inc. (Incorporated by reference to Exhibit 10.22 of the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on October 2, 2018).</a>
4.9	<a href="#">Securities Purchase Agreement, dated December 26, 2018, between the Stellar and the Purchaser, dated January 29, 2016, among Stellar and certain security holders (Incorporated by reference to Exhibit 10.9 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
4.10	<a href="#">Registration Rights Agreement, dated December 26, 2018, between the Stellar and the Purchaser, dated January 29, 2016, among Stellar and certain security holders (Incorporated by reference to Exhibit 10.10 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
4.11	<a href="#">Form of Convertible Promissory Note (Incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on June 5, 2019.)</a>
4.12	<a href="#">Form of Promissory Note (Incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on November 21, 2019).</a>
4.13	<a href="#">Form of Note, dated April 9, 2020, between the Company and JPMorgan Chase (Incorporated by reference to Exhibit 4.1 of the Registrants Form 8-K filed with the SEC on April 16, 2020).</a>
4.14	<a href="#">Form of Senior Convertible Note, dated March 20, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 4.1 of the Registrants Form 8-K filed with the SEC on March 23, 2020).</a>
4.15*	<a href="#">Description of Securities.</a>
10.1	<a href="#">Form of Indemnification Agreement between Phunware and its directors and officers (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
10.2+	<a href="#">Phunware, Inc. 2018 Equity Incentive Plan Amended and Restated as of December 4, 2020 (Incorporated by reference to Annex A of the Registrant's Schedule 14A (File No. 001-37862), filed with the SEC on October 16, 2020).</a>
10.3+	<a href="#">Phunware, Inc. 2018 Employee Stock Purchase Plan (Incorporated by reference to Annex E of the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on November 13, 2018).</a>
10.4+	<a href="#">Phunware, Inc. 2009 Equity Incentive Plan (Incorporated by reference to Exhibit 10.15 of the Registrant's Form S-4 (File No. 333-224227), filed with the SEC on April 11, 2018).</a>
10.5	<a href="#">Property Lease commencing on November 1, 2011 with HUB Properties Trust for premises located at 7800 Shoal Creek Blvd., Suite-230S, Austin, TX 78757, as amended by First Amendment to Property Lease dated September 6, 2012, and Second Amendment to Property Lease dated July 3, 2013 (Incorporated by reference to Exhibit 10.16 of the Registrant's Form S-4 (File No. 333-224227), filed with the SEC on April 11, 2018).</a>
10.6	<a href="#">Factoring Agreement with CSNK Working Capital Finance Corp d/b/a Bay View Funding dated June 14, 2016, as amended by Amendment No. 1 to Factoring Agreement dated June 22, 2016 (Incorporated by reference to Exhibit 10.17 of the Registrant's Form S-4 (File No. 333-224227), filed with the SEC on April 11, 2018).</a>
10.7	<a href="#">Form of Voting Agreement (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (file No. 001-37862), filed with the SEC on February 28, 2018).</a>
10.8	<a href="#">Form of Sponsor Voting Agreement (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K (file No. 001-37862), filed with the SEC on February 28, 2018).</a>
10.9	<a href="#">Form of Lock-up Agreement (Incorporated by reference to Exhibit 10.3 of the Registrant's Form 8-K (file No. 001-37862), filed with the SEC on February 28, 2018).</a>
10.10	<a href="#">Form of Sponsor Lock-up Agreement (Incorporated by reference to Exhibit 10.4 of the Registrant's Form 8-K (file No. 001-37862), filed with the SEC on February 28, 2018).</a>
10.11	<a href="#">Form of Token Rights Agreement (Incorporated by reference to Exhibit 10.23 of the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on October 2, 2018).</a>
10.12	<a href="#">Form of Purchase Agreement (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on June 5, 2019).</a>
10.13	<a href="#">Form of Cryptocurrency Payment Agreement (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on June 5, 2019).</a>
10.14	<a href="#">Form of Note Purchase Agreement (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on November 21, 2019).</a>
10.15	<a href="#">Form of Cryptocurrency Payment Agreement (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on November 21, 2019).</a>

[Table of Contents](#)

10.16	<a href="#">Standard office lease dated July 16, 2019, between the Company and BRE CA Office Owner, LLC (Incorporated by reference to Exhibit 10.3 of the Registrant's Form 10-Q (File No. 001-37862), filed with the SEC on August 13, 2019).</a>
10.17	<a href="#">Lease agreement and first amendment thereto dated March 2013 and May 18, 2018, respectively, between the Company and 3050 Biscayne Properties, LLC (Incorporated by reference to Exhibit 10.5 of the Registrant's Form 10-Q (File No. 001-37862), filed with the SEC on August 13, 2019).</a>
10.18	<a href="#">Lease agreement dated October 1, 2014, between the Company and Promontory Associates, GP (Incorporated by reference to Exhibit 10.4 of the Registrant's Form 10-Q (File No. 001-37862), filed with the SEC on August 13, 2019).</a>
10.19	<a href="#">First amendment to Lease dated November 12, 2019, between the Company and Promontory Associates (Incorporated by reference to Exhibit 10.3 of the Registrant's Form 10-Q (File No. 001-37862), filed with the SEC on November 14, 2019).</a>
10.20	<a href="#">Third amendment to Lease dated August 20, 2019, between the Company and Seamless Shoal Creek, LLC (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 10-Q (File No. 001-37862), filed with the SEC on November 14, 2019).</a>
10.21+	<a href="#">Employment Agreement between the Registrant and Alan Knitowski (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
10.22+	<a href="#">Employment Agreement between the Registrant and Matt Aune (Incorporated by reference to Exhibit 10.3 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
10.23+	<a href="#">Employment Agreement between the Registrant and Randall Crowder (Incorporated by reference to Exhibit 10.4 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
10.24+	<a href="#">Employment Agreement between the Registrant and Luan Dang (Incorporated by reference to Exhibit 10.6 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
10.25	<a href="#">Form of Securities Purchase Agreement, dated March 19, 2020 (Incorporated by reference to Exhibit 10.1 of the Registrants Form 8-K filed with the SEC on March 23, 2020).</a>
10.26	<a href="#">Form of Registration Rights Agreement, dated March 20, 2020 (Incorporated by reference to Exhibit 10.1 of the Registrants Form 8-K filed with the SEC on March 23, 2020).</a>
10.27	<a href="#">Form of Security Purchase Agreement, dated July 14, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.28	<a href="#">Form of Series A Senior Convertible Note, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.29	<a href="#">Form of Series B Senior Convertible Note, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.3 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.30	<a href="#">Form of Note Purchase Agreement, dated July 14, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.4 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.31	<a href="#">Form of Secured Promissory Note, dated July 14, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.5 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.32	<a href="#">Form of Master Netting Agreement, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.6 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.33	<a href="#">Form of Warrant to Purchase Common Stock, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.7 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.34	<a href="#">Form of Registration Rights Agreement, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.8 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).</a>
10.35	<a href="#">At-The-Market Issuance Sales Agreement, by and between Phunware, Inc. and H.C. Ascendant Capital Markets, LLC, dated August 14, 2020 (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K filed with the SEC on August 14, 2020).</a>
10.36	<a href="#">Settlement Agreement and Mutual General Release, dated October 9, 2020, between the Company, Uber Technologies, Inc., and certain Individual Defendants (Incorporated by reference to Exhibit 10.12 of the Registrants Form 10-Q (File No. 001-37862), filed with the SEC on November 12, 2020).</a>

[Table of Contents](#)

14.1	<a href="#">Code of Business Conduct and Ethics as of December 26, 2018 (Incorporated by reference to Exhibit 14.1 of the Registrant's Form 10-K (File No. 001-37862), filed with the SEC on March 20, 2019).</a>
16.1	<a href="#">Letter regarding Change in Independent Registered Public Accounting Firm, dated December 26, 2018 (Incorporated by reference to Exhibit 16.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
21.1*	<a href="#">List of Subsidiaries of the Registrant.</a>
23.1*	<a href="#">Consent of Independent Registered Public Accounting Firm.</a>
24.1*	<a href="#">Power of Attorney (contained in signature page to this Annual Report on Form 10-K).</a>
31.1*	<a href="#">Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2*	<a href="#">Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1*	<a href="#">Certification of the Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema*
101.CAL	XBRL Taxonomy Calculation Linkbase*
101.LAB	XBRL Taxonomy Label Linkbase*
101.PRE	XBRL Definition Linkbase Document*
101.DEF	XBRL Definition Linkbase Document*

\* Filed herewith

+ Indicates a management contract or compensatory plan or arrangement

**Item 16. Form 10-K Summary.**

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Act of 1934, the Registrant has duly caused this Annual Report to be signed on its behalf by the undersigned, thereunto duly authorized.

### PHUNWARE, INC.

Date: March 31, 2021

By: /s/ Alan S. Knitowski  
Title: Chief Executive Officer  
(Principal Executive Officer)

Date: March 31, 2021

By: /s/ Matt Aune  
Title: Chief Financial Officer  
(Principal Accounting and Financial Officer)

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Alan S. Knitowski and Matt Aune, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to act on, sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact, proxy, and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact, proxy and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Alan S. Knitowski</u> Alan S. Knitowski	Chief Executive Officer and Director (Principal Executive Officer)	March 31, 2021
<u>/s/ Matt Aune</u> Matt Aune	Chief Financial Officer (Principal Accounting and Financial Officer)	March 31, 2021
<u>/s/ Keith Cowan</u> Keith Cowan	Director	March 31, 2021
<u>/s/ Randall Crowder</u> Randall Crowder	Chief Operating Officer and Director	March 31, 2021
<u>/s/ Eric Manlunas</u> Eric Manlunas	Director	March 31, 2021
<u>/s/ Lori Tauber Marcus</u> Lori Tauber Marcus	Director	March 31, 2021
<u>/s/ Blythe Masters</u> Blythe Masters	Director	March 31, 2021
<u>/s/ Kathy Tan Mayor</u> Kathy Tan Mayor	Director	March 31, 2021
<u>/s/ George Syllantavos</u> George Syllantavos	Director	March 31, 2021

## DESCRIPTION OF SECURITIES

As of March 31, 2021, Phunware, Inc. (the “Company,” “we,” “us” or “our”) had two classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”): (i) our common stock (the “Common Stock”) and (ii) our warrants to purchase common stock (the “Public Warrants”).

### General

The following is a summary of the rights of our securities and certain provisions of our certificate of incorporation, amended and restated bylaws and the Warrant Agreement reflecting the terms of the Public Warrants. This summary does not purport to be complete and is qualified in its entirety by reference to such documents.

We are a Delaware corporation. Our authorized capital stock consists of 1,000,000,000 shares of Common Stock, par value \$0.0001 per share, and 100,000,000 shares of preferred stock, par value \$0.0001 per share (the “Preferred Stock”).

### Common Stock

We have Common Stock trading under the Nasdaq Capital Market ticker symbol “PHUN.”

### Dividend Rights

Subject to preferences that may apply to any shares of Preferred Stock outstanding at the time, the holders of our Common Stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine.

### Voting Rights

Holders of shares of our Common Stock shall be entitled to cast one vote for each share held on all matters submitted to a vote of our stockholders. Holders of shares of our Common Stock have no cumulative voting rights with respect to the election of directors. Our certificate of incorporation establishes a classified board of directors that is divided into three classes with staggered three-year terms. Only the directors in one class will be subject to election by a plurality of votes cast at each annual meeting of our stockholders, with the directors in the other classes continuing for the remainder of their respective three-year terms.

### No Preemptive or Similar Rights

Our Common Stock is not entitled to preemptive rights and is not subject to conversion, redemption or sinking fund provisions.

### Right to Receive Liquidation Distributions

If we become subject to a liquidation, dissolution, or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our Common Stock and any participating Preferred Stock outstanding at that time, subject to prior satisfaction of all

---

outstanding debt and liabilities and the preferential rights and payment of liquidation preferences, if any, on any outstanding shares of Preferred Stock.

#### Certain Anti-Takeover Effects of Our Certificate of Incorporation, Bylaws and Delaware Law

Our certificate of incorporation and amended and restated bylaws contain provisions that could have the effect of delaying, deferring, or discouraging another party from acquiring control of us. These provisions and certain provisions of Delaware law, which are summarized below, could discourage takeovers, coercive or otherwise. These provisions are also designed, in part, to encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire us.

#### Undesignated Preferred Stock

Our board of directors has the ability to designate and issue Preferred Stock with voting or other rights or preferences that could deter hostile takeovers or delay changes in our control or management.

#### Limits on Ability of Stockholders to Act by Written Consent or Call a Special Meeting

Our certificate of incorporation provides that our stockholders may not act by written consent. This limit on the ability of stockholders to act by written consent may lengthen the amount of time required to take stockholder actions. As a result, the holders of a majority of our capital stock are not able to amend the amended and restated bylaws or remove directors without holding a meeting of stockholders called in accordance with the amended and restated bylaws.

In addition, our certificate of incorporation and amended and restated bylaws provide that special meetings of the stockholders may be called only by our board of directors, the chairperson of our board of directors, our chief executive officer or our president. A stockholder may not call a special meeting, which may delay the ability of our stockholders to force consideration of a proposal or for holders controlling a majority of our capital stock to take any action, including the removal of directors.

#### Requirements for Advance Notification of Stockholder Nominations and Proposals

Our amended and restated bylaws contain advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee of the board of directors. These advance notice procedures may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed and may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempt to obtain control of our company.

#### Board Classification

Our board of directors is divided into three classes. The directors in each class serve for a three-year term, one class being elected each year by our stockholders. This system of electing and removing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

---

## Delaware Anti-Takeover Statute

We are subject to the provisions of Section 203 of the Delaware General Corporation Law regulating corporate takeovers. In general, Section 203 prohibits a publicly held Delaware corporation from engaging, under certain circumstances, in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder unless:

- prior to the date of the transaction, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding but not the outstanding voting stock owned by the interested stockholder, (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to the date of the transaction, the business combination is approved by our board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, owned 15% or more of a corporation's outstanding voting stock. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. We also anticipate that Section 203 may discourage attempts that might result in a premium over the market price for the shares of Common Stock held by stockholders.

The provisions of Delaware law and the provisions of our certificate of incorporation and amended and restated bylaws could have the effect of discouraging others from attempting hostile takeovers and as a consequence, they might also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions might also have the effect of preventing changes in our management. It is also possible that these provisions could make it more difficult to accomplish transactions that stockholders might otherwise deem to be in their best interests.

## **Preferred Stock**

Pursuant to our amended and restated certificate of incorporation, our board of directors has the authority, without further action by our stockholders, to issue from time to time shares of Preferred Stock in one or more series. Our board of directors may designate the rights, preferences, privileges and restrictions of the Preferred Stock, including dividend rights, conversion rights, voting rights, redemption rights, liquidation preference, sinking fund terms and the number of shares constituting any series or the designation of any series. The issuance of Preferred Stock could have the effect of restricting dividends on our Common Stock, diluting the voting power of our Common Stock, impairing the liquidation rights of our Common Stock, or delaying, deterring or preventing a change in control. Such issuance could have the effect of decreasing the market price of our Common Stock.

---

## Public Warrants

We have Public Warrants for the purchase of our Common Stock trading under the Nasdaq Capital Market ticker symbol “PHUN.”

Public Warrants for the purchase of up to 1,761,291 shares of Common Stock were outstanding on December 31, 2021. Each Public Warrant entitles the registered holder to purchase shares of Common Stock at a price of \$11.50 per full share, subject to adjustment as discussed below. Pursuant to the Warrant Agreement (as defined below), a Public Warrant holder may exercise its warrants only for a whole number of shares. This means that only an even number of warrants may be exercised at any given time by a warrant holder. We may redeem the outstanding Public Warrants in whole and not in part at a price of \$0.01 per warrant upon a minimum of 30 days’ prior written notice of redemption, only in the event that the last sale price of shares of our Common Stock equals or exceeds \$21.00 per share for any 20 trading days within the 30-trading day period ending on the third trading day before the Company sends the notice of redemption to the Public Warrant holders. The Public Warrants will expire December 26, 2023 or earlier upon redemption or liquidation.

If we call the Public Warrants for redemption as described above, our management will have the option to require all holders that wish to exercise warrants to do so on a “cashless basis.” In such event, each holder would pay the exercise price by surrendering the Public Warrants for that number of shares of Common Stock equal to the quotient obtained by dividing (x) the product of the number of shares underlying the warrants, multiplied by the difference between the exercise price of the warrants and the “fair market value” (defined below) by (y) the fair market value. The “fair market value” shall mean the average reported last sale price of the Common Stock for the 10 trading days ending on the third trading day prior to the date on which the notice of redemption is sent to the holders of the Public Warrants.

The Public Warrants are issued in registered form under the Warrant Agreement (the “Warrant Agreement”) between Continental Stock Transfer & Trust Company, as warrant agent, and Phunware. The Warrant Agreement provides that the terms of the Public Warrants may be amended without the consent of any holder to cure any ambiguity or correct any defective provision, but requires the approval, by written consent or vote, of the registered holders of 65% of the then outstanding Public Warrants in order to make any change that adversely affects the interests of the registered holders.

The exercise price and number of shares of Common Stock issuable on exercise of the Public Warrants may be adjusted in certain circumstances including in the event of a share dividend, extraordinary dividend or our recapitalization, reorganization, merger or consolidation. However, the Public Warrants will not be adjusted for issuances of Common Stock at a price below their respective exercise prices. We are also permitted, in our sole discretion, to lower the exercise price (but not below the par value of a share of Common Stock) at any time prior to the expiration date for a period of not less than 20 business days; provided, however, that we provide at least 20 business days prior written notice of such reduction to registered holders of the warrants and that any such reduction will be applied consistently to all of the Public Warrants.



**List of Subsidiaries of the Registrant**

Subsidiaries:

Phunware OpCo, Inc. (EIN: 26-4413774)

GoTV Networks, Inc. (Delaware corporation)

Taurus Merger Company, LLC (Delaware corporation)

GoTV Studios, LLC (California LLC)

Rain Acquisition, LLC

Faith Based Apps, LLC (California LLC)

Rain – US LLC

Phunware NL Cooperatief U.A.

SendDroid, LLC (Delaware LLC)

Simplikate Systems LLC (Delaware LLC)

30 Second Software, Inc. (Delaware corporation)

Chengdu Digby Technology Co., Ltd. (Chinese company)

Phunware UK Ltd (United Kingdom)

Odyssey Mobile Asia Pte. Ltd. (Singapore)

Rain Acquisition Sub, Inc.

Dutch Holdings CV (Netherlands)

Phunware Europe BV

PhunCoin, Inc. (Wyoming)

PhunToken International (Cayman Islands)

Independent Registered Public Accounting Firm's Consent

We consent to the incorporation by reference in the Registration Statement of Phunware, Inc. on Form S-3 (File No. 333-235896), Form S-3 (File No. 333-248618), Form S-3 (File No. 333-252694), Form S-8 (File No. 333-231104), Form S-8 (File No. 333-236145) and Form S-8 (File No. 333-251903), with respect to our audits of the consolidated financial statements of Phunware, Inc. as of December 31, 2020 and 2019 and for each of the two years in the period ended December 31, 2020, which report is included in this Annual Report on Form 10-K of Phunware, Inc. for the year ended December 31, 2020.

Our report on the consolidated financial statements refers to a change in the method of accounting for revenue in 2019 due to the adoption of the guidance in ASC 606, *Revenue from Contracts with Customers*.

/s/ Marcum LLP

Marcum LLP  
Houston, TX  
March 31, 2021

## CERTIFICATION

I, Alan S. Knitowski, certify that:

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

Date: March 31, 2021

By: /s/ Alan S. Knitowski  
Alan S. Knitowski  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION

I, Matt Aune, certify that:

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

Date: March 31, 2021

By: /s/ Matt Aune  
Matt Aune  
Chief Financial Officer  
(Principal Accounting and Financial Officer)

**CERTIFICATION**

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

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2020, to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 31, 2021

**Phunware, Inc.**

By: /s/ Alan S. Knitowski  
Name: Alan S. Knitowski  
Title: Chief Executive Officer  
(Principal Executive Officer)

By: /s/ Matt Aune  
Name: Matt Aune  
Title: Chief Financial Officer  
(Principal Accounting and Financial Officer)

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