

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

30-1205798

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

**1002 West Avenue, Austin, Texas 78701
(512) 693-4199**

(Address of Principal Executive Offices)

**2022 Inducement Plan
2018 Equity Incentive Plan
2018 Employee Stock Purchase Plan**

(Full title of the plan)

**Russell Buyse, Chief Executive Officer
Phunware, Inc.
1002 West Avenue
Austin, Texas 78701
(512) 693-4199**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Alex R. Allemann, Esq.
Jeffrey M. McPhaul, Esq.
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
(512) 370-2800**

**Matt Aune
J. Brendhan Botkin
Phunware, Inc.
1002 West Avenue
Austin, Texas 78701
(512) 693-4199**

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

EXPLANATORY NOTE

Phunware, Inc. (the "Company" or the "Registrant") is filing this Registration Statement on Form S-8 for the purpose of registering the offer and sale of an additional annual increase of 5,157,666 shares of common stock of the Registrant, par value \$0.0001 per share ("Common Stock"), issuable to eligible persons under the Phunware, Inc. 2018 Equity Incentive Plan (Amended and Restated as of November 11, 2022) (the "2018 Plan"), an additional 2,108,164 shares of Common Stock, issuable to eligible persons under the 2018 Plan, as approved by the Company's stockholders at its Annual Meeting held on November 11, 2022, an additional increase of 818,824 shares of Common Stock, issuable to eligible persons under the Phunware, Inc. 2018 Employee Stock Purchase Plan (the "2018 ESPP") and 1,470,588 shares of Common Stock, issuable to a grantee under the Phunware, Inc. 2022 Inducement Plan.

The number of shares of Common Stock reserved and available for issuance under the 2018 Plan is subject to an automatic annual increase on each January 1st, by an amount equal to five percent (5%) of the number of shares of Common Stock issued and outstanding on the immediately preceding December 31st or such lesser number of shares of Common Stock as approved by the Administrator (as defined in the 2018 Plan). Accordingly, on January 1, 2023, the number of shares of Common Stock reserved and available for issuance under the 2018 Plan increased by 5,157,666 shares. At the 2022 Annual Meeting of Stockholders held on November 11, 2022, the Company's stockholders approved an increase of an additional 2,108,164 shares of Common Stock to be reserved and available for future issuance under the 2018 Plan.

The number of shares of Common Stock reserved and available for issuance under the 2018 ESPP is subject to an automatic annual increase on each January 1st, by the lesser of (i) 818,824 shares of Common Stock, (ii) one and one-half percent (1.5%) of the number of shares of Common Stock issued and outstanding on the immediately preceding December 31st, or (iii) such lesser number of shares of Common Stock as determined by the Administrator (as defined in the 2018 ESPP). Accordingly, on January 1, 2023, the number of shares of Common Stock reserved and available for issuance under the 2018 ESPP increased by 818,824 shares.

The above described additional shares reserved and made available for issuance under the 2018 Plan and 2018 ESPP are of the same class as other securities relating to the 2018 Plan and 2018 ESPP for which the Company's registration statements on Form S-8 filed by the Company with the Securities and Exchange Commission (the "SEC") on April 29, 2019 (File No. 333-231104), January 29, 2020 (File No. 333-236145), January 5, 2021 (File No. 333-251903) and January 14, 2022 (File No. 333-262168) (the "Prior Registration Statements") are effective. Accordingly, the contents of the Prior Registration Statements relating to the 2018 Plan and 2018 ESPP, including periodic reports that the Company filed after the Prior Registration Statements to maintain current information about the Company, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

On December 30, 2022, the Registrant's board of directors adopted the Phunware, Inc. 2022 Inducement Plan pursuant to which the Registrant reserved 1,470,588 shares of Common Stock to be used exclusively for a grant of equity-based awards to an individual who was not previously an employee or director of the Registrant, as an inducement material to the individual's entry into employment with the Registrant within the meaning of Rule 5635(c)(4) of the Marketplace Rules of the Nasdaq Stock Market. The Inducement Plan provides for the grant of equity-based awards in the form of non-statutory stock options, stock appreciation rights, restricted stock awards and restricted stock unit awards. The Inducement Plan was adopted by the Registrant's board of directors without stockholder approval pursuant to Rule 5635(c)(4) of the Marketplace Rules of the Nasdaq Stock Market.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in this Item 1 will be sent or given to the participant(s) as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC") and the instructions to Form S-8, such documents are not being filed with the SEC either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The documents containing the information specified in this Item 2 will be sent or given to participant(s) as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the SEC and the instructions to Form S-8, such documents are not being filed with the SEC either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents have been previously filed by the Company with the SEC and are incorporated herein by reference into this Registration Statement and shall be deemed a part hereof:

- Our Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on April 7, 2022;
- Our Quarterly Reports on Form 10-K for the quarters ended March 31, 2022, June 30, 2022 and September 30, 2022 filed with the SEC on May 16, 2022, August 15, 2022 and November 10, 2022, respectively;
- Our Current Reports on Form 8-K (and amendments thereto as applicable) as filed with the SEC on February 4, 2022, March 18, 2022, March 23, 2022, May 12, 2022, June 10, 2022, July 8, 2022, July 20, 2022, July 27, 2022, August 11, 2022, September 30, 2022, October 14, 2022, October 21, 2022, November 4, 2022, November 10, 2022, November 14, 2022, November 21, 2022, December 16, 2022 and January 6, 2023;
- Our Definitive Proxy Statement on Schedule 14A filed with the SEC on August 31, 2022, as amended on October 14, 2022 and November 4, 2022; and
- The description of our Common Stock contained in our Registration Statement on Form 8-A filed with the SEC on August 18, 2016 pursuant to Section 12(b) of Exchange Act, which description has been updated most recently in the Registrant's prospectus filed with the SEC on November 14, 2018 pursuant to Rule 424(b) under the Securities Act, relating to the Registration Statement on Form S-4, as amended, inclusive of any amendments or reports filed for the purpose of updating such description, including Exhibit 4.15 to our Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on April 7, 2022.

Additionally, all reports and other documents subsequently filed by the Company with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered herein have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents, excluding any information furnished under Item 2.02 or Item 7.01 of any Current Report on Form 8-K (and corresponding information furnished under Item 9.01 or included as an exhibit thereto). Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or replaces such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

As permitted by Section 102 of the Delaware General Corporation Law, we have adopted provisions in our certificate of incorporation and amended and restated bylaws that limit or eliminate the personal liability of our directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material

information reasonably available to them. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to us or our stockholders; (ii) any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; (iii) any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or (iv) any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. Our certificate of incorporation also authorizes us to indemnify our officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws provide that (i) we may indemnify our directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; (ii) we may advance expenses to our directors, officers and employees in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and (iii) the rights provided in our amended and restated bylaws are not exclusive.

Our certificate of incorporation and our amended and restated bylaws provide for the indemnification provisions described above and elsewhere herein. We have entered into separate indemnification agreements with our directors and officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our directors and officers against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. In addition, we have purchased a policy of directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment in some circumstances. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of directors and officers for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits to this Registration Statement are listed in the "*Exhibit Index*" attached hereto and is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if,

in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in Exhibit 107 to the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i), (ii) and (iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

Exhibit No.	Description
4.1	<u>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).</u>
4.2	<u>Amended and Restated Bylaws 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 November 4, 2022).</u>
4.3	<u>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).</u>
4.4	<u>Specimen common stock certificate of the Registrant (Incorporated by reference to Exhibit 4.3 of the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on November 6, 2018).</u>
5.1*	<u>Opinion of Winstead PC.</u>
10.1	<u>Form of Stock Option Agreement under the 2018 Equity Incentive Plan (Incorporated by reference to Exhibit 10.1 of the Registrant's Form S-8 (File No. 333-231104), filed with the SEC on April 29, 2019).</u>
10.2	<u>Form of Restricted Stock Unit Award Agreement under the 2018 Equity Incentive Plan (Incorporated by reference to Exhibit 10.2 of the Registrant's Form S-8 (File No. 333-231104), filed with the SEC on April 29, 2019).</u>
10.3	<u>Form of Subscription Agreement under the 2018 Employee Stock Purchase Plan (Incorporated by reference to Exhibit 10.3 of the Registrant's Form S-8 (File No. 333-231104), filed with the SEC on April 29, 2019).</u>
10.4*	<u>Form of Restricted Stock Unit Award Agreement under the 2022 Inducement Plan</u>
23.1*	<u>Consent of Marcum LLP.</u>
23.2*	<u>Consent of Winstead PC (included in Exhibit 5.1).</u>
24.1*	<u>Power of Attorney (included on the signature page to this Registration Statement).</u>
99.1	<u>Phunware, Inc. 2018 Equity Incentive Plan (Amended and Restated as of November 11, 2022) (Incorporated by reference to Annex A to the Registrant's Schedule 14A (File No. 001-37862) filed with the SEC on August 31, 2022).</u>
99.2	<u>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).</u>
99.3	<u>Phunware, Inc. 2022 Inducement Plan (Incorporated by reference to Exhibit 10.1 of the Registrants Form 8-K (File No. 001-37862) filed with the SEC on January 6, 2023).</u>
107*	<u>Filing Fee Table.</u>

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, State of Texas, on January 6, 2023.

PHUNWARE, INC.

By: /s/ Russell Buyse
Russell Buyse
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Russell Buyse 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 Registration Statement (including post-effective amendments), 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 Act of 1933, this Registration Statement has been signed by the following persons in the capacities set forth opposite their names and on January 6, 2023.

<u>Name</u>	<u>Title</u>
<u>/s/ Russell Buyse</u> Russell Buyse	Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Matt Aune</u> Matt Aune	Chief Financial Officer (Principal Accounting and Financial Officer)
<u>/s/ Stephen Chen</u> Stephen Chen	Director
<u>/s/ Ryan Costello</u> Ryan Costello	Director
<u>/s/ Eric Manlunas</u> Eric Manlunas	Director
<u>/s/ Kathy Tan Mayor</u> Kathy Tan Mayor	Director
<u>/s/ Rahul Mewawalla</u> Rahul Mewawalla	Director

January 6, 2023

Phunware Inc.
7800 Shoal Creek Boulevard
Suite 230-S
Austin, Texas 78757

Ladies and Gentlemen:

We have acted as counsel to Phunware Inc., a Delaware corporation (the "Company"), in connection with the filing with the Securities and Exchange Commission (the "SEC") of a registration statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of up to 9,555,242 shares (the "Shares") of the Company's common stock, par value \$0.0001 per share ("Common Stock"), to be issued by the Company pursuant to the Phunware, Inc. 2018 Equity Incentive Plan, as amended, the Phunware, Inc. 2018 Employee Stock Purchase Plan and the Phunware, Inc. 2022 Inducement Plan (collectively, the "Plans").

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement, (ii) the Plans, (iii) the Certificate of Incorporation (the "Certificate of Incorporation") of the Company, as currently in effect; (iv) the Amended and Restated Bylaws (the "Bylaws") of the Company, as currently in effect, and (v) such other records, certificates and documents as we have deemed appropriate or necessary for the purposes of this opinion. We have also examined originals or copies of such corporate records of the Company and have made such examinations of law and other investigations as we have deemed relevant.

In our examination, we have assumed and have not verified (i) the legal capacity of all natural persons; (ii) the genuineness of all signatures; (iii) the authenticity of all documents, certificates and instruments submitted to us as originals; (iv) the conformity with the originals of all documents supplied to us as copies; (v) the accuracy and completeness of all corporate records and documents made available to us by the Company; and (vi) that the foregoing documents, in the form submitted to us for our review, have not been altered or amended in any respect material to our opinions stated herein. We have relied as to factual matters upon certificates from officers of the Company and certificates and other documents from public officials and government agencies and departments and we have assumed the accuracy and authenticity of such certificates and documents. We have also assumed that, at or prior to the time of the issuance and delivery of any Shares, that there will not have occurred any change in law, change in the Company's Certificate of Incorporation, or further action by the Company's board of directors, in each case affecting the validity of the issuance of the Shares.

With respect to our opinions as to the Shares, we have also assumed that (i) the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective and will comply with all applicable laws; (ii) all Shares will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the Plans; and (iii) with respect to Shares offered, there will be sufficient shares of Common Stock authorized under the Company's Certificate of Incorporation and not otherwise reserved for issuance.

Based on the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares have been duly authorized and, when issued in accordance with the terms of and for legal consideration in excess of par value in the circumstances contemplated by the Plans (and the agreements and awards duly adopted thereunder and in accordance therewith), assuming, in each case, that the individual issuances, grants or awards under the Plans are duly authorized by all necessary corporate action of the Company, will be validly issued, fully paid and non-assessable.

Our opinions herein are expressed solely as to the Delaware General Corporation Law (including, to the extent applicable, Delaware statutory and constitutional provisions and reported judicial decisions interpreting these laws). We express no opinion as to the laws of any other jurisdiction. The opinion expressed herein is given as of this date, and we do not undertake to supplement this opinion with respect to any events or changes occurring subsequent to the date of this letter. The opinion expressed in this letter is provided as a legal opinion only and not as any guarantee or warranty of the matters discussed herein, and such opinion is strictly limited to the matters stated herein, and no other opinion may be implied therefrom.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are “experts” within the meaning of Section 11 of the Securities Act or within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

WINSTEAD PC

By: /s/ Jeffrey M. McPhaul
Jeffrey M. McPhaul
Authorized Signatory

**PHUNWARE, INC.
2022 INDUCEMENT PLAN**

NOTICE OF GRANT OF RESTRICTED STOCK UNITS

The capitalized terms used but not otherwise defined herein shall have the same meanings as in the Phunware, Inc. 2022 Inducement Plan (the “Plan”).

Name ("Participant"):
Address:

The undersigned Participant has been granted the right to receive an award of Restricted Stock Units (“RSUs”) of Phunware, Inc. (the “Corporation”), subject to the terms and conditions of this Notice of Restricted Stock Unit Award (the “Notice”), the Plan and the attached Restricted Stock Unit Award Agreement (hereinafter “Award Agreement”).

Date of Grant:
Vesting Commencement Date:
Number of Restricted Stock Units:

Vesting Schedule:

Subject to any applicable acceleration provisions contained in the Plan or set forth below, the RSUs will vest in accordance with the following vesting schedule, subject to Participant continuing to be an employee of the Corporation (a “Service Provider”) on such dates:

By accepting (whether in writing, electronically or otherwise) the RSUs, Participant acknowledges and agrees that this award of RSUs is granted under and governed by the terms and conditions of this Notice, the Plan and the Award Agreement, all of which are made a part of this document. Participant has reviewed this Notice, the Plan and this Award Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Notice and fully understands all provisions of this Notice, the Plan and Award Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee on any questions relating to this Notice, the Plan and Award Agreement.

[Signature Page Follows]

PARTICIPANT
Signature

Print Name

Address:

PHUNWARE, INC.
By

Print Name
Title

PHUNWARE, INC.
2022 INDUCEMENT PLAN

RESTRICTED STOCK UNIT AWARD AGREEMENT

The capitalized terms used but not otherwise defined herein shall have the same meanings as in the Phunware, Inc. 2022 Inducement Plan (the “Plan”) or the Notice of Grant of Restricted Stock Units (the “Notice”) to which it is attached, as applicable.

You (“Participant”) have been granted Restricted Stock Units (“RSUs”) of Phunware, Inc. (the “Corporation”) subject to the terms, restrictions and conditions of the Notice, this Restricted Stock Unit Award Agreement (the “Award Agreement”) and the Plan, which are incorporated herein by reference.

1. Grant of Restricted Stock Units. The Corporation hereby grants to the Participant named the Notice an award of Restricted Stock Units (“RSUs”), subject to all of the subject to the terms, restrictions and conditions of the Notice, this Award Agreement and the applicable provisions of the Plan.

2. Corporation’s Obligation to Pay. Each RSU represents the right to receive a Share on the date it vests, subject to Section 4. Unless and until the RSUs will have vested in the manner set forth in Section 3 or 4, Participant will have no right to payment of any such RSUs. Prior to actual payment of any vested RSUs, such RSU’s will represent an unsecured obligation of the Corporation, payable (if at all) only from the general assets of the Corporation.

3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the RSUs awarded by this Award Agreement will vest in accordance with the vesting schedule set forth in the Notice, subject to Participant continuing to be a Service Provider through each applicable vesting date.

4. Payment after Vesting.

(a) General Rule. Subject to Section 6, any RSUs that vest will be paid to Participant (or in the event of Participant’s death, to his or her properly designated beneficiary or estate) in whole Shares. Subject to the provisions of Section 4(b), such vested RSUs shall be paid in whole Shares as soon as practicable after vesting, but in each such case within sixty (60) days following the vesting date. Notwithstanding the foregoing, if the date on which vested RSUs are otherwise required to be paid pursuant to this Award Agreement the Participant is then subject to trading restriction, including a blackout period under the Corporation’s Insider Trading Policy, such vested RSUs will be paid to Participant as soon as practicable after such restriction has expired. In no event will Participant be permitted, directly or indirectly, to specify the taxable year of payment of any RSUs payable under this Award Agreement.

(b) Acceleration.

(i) Discretionary Acceleration. The Committee, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested RSUs at any time, subject to the terms of the Plan. If so accelerated, such Restricted Stock Units will be considered as having vested as of the date specified by the Committee. If Participant is a U.S. taxpayer, the payment of Shares vesting pursuant to this Section 4(b) shall in all cases be paid at a time or in a manner that is exempt from, or complies with, Section 409A. The prior sentence may be superseded in a future agreement or amendment to this Award Agreement only by direct and specific reference to such sentence.

(ii) Notwithstanding anything in the Notice, the Plan or this Award Agreement or any other agreement (whether entered into before, on or after the Date of Grant), if the vesting of the balance, or some lesser portion of the balance, of the RSUs is accelerated in connection with Participant’s termination as a Service Provider (provided that such termination is a “separation from

service” within the meaning of Section 409A, as determined by the Corporation), other than due to Participant’s death, and if (x) Participant is a U.S. taxpayer and a “specified employee” within the meaning of Section 409A at the time of such termination as a Service Provider and (y) the payment of such accelerated RSUs will result in the imposition of additional tax under Section 409A if paid to Participant on or within the six (6) month period following Participant’s termination as a Service Provider, then the payment of such accelerated RSUs will not be made until the date six (6) months and one (1) day following the date of Participant’s termination as a Service Provider, unless Participant dies following his or her termination as a Service Provider, in which case, the RSUs will be paid in Shares to Participant’s estate as soon as practicable following his or her death.

(c) Section 409A. It is the intent of this Award Agreement that it and all payments and benefits to U.S. taxpayers hereunder be exempt from, or comply with, the requirements of Section 409A so that none of the RSUs provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. Each payment payable under this Award Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). However, in no event will the Corporation reimburse Participant, or be otherwise responsible for, any taxes or costs that may be imposed on Participant as a result of Section 409A. For purposes of this Award Agreement, “Section 409A” means Section 409A of the Code, and any final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

5. Forfeiture Upon Termination as a Service Provider. Notwithstanding any contrary provision of this Award Agreement, if Participant ceases to be a Service Provider for any or no reason, the then-unvested RSUs awarded by this Award Agreement will thereupon be forfeited at no cost to the Corporation and Participant will have no further rights thereunder.

6. Death of Participant. Any distribution or delivery to be made to Participant under this Award Agreement will, if Participant is then deceased, be made to Participant’s designated beneficiary, or if no beneficiary survives Participant, the administrator or executor of Participant’s estate. Any such transferee must furnish the Corporation with (a) written notice of his or her status as transferee, and (b) evidence satisfactory to the Corporation to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. Tax Consequences. Participant has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Award Agreement. With respect to such matters, Participant relies solely on such advisors and not on any statements or representations of the Corporation or any of its agents, written or oral. Participant understands that Participant (and not the Corporation) shall be responsible for Participant’s own tax liability that may arise as a result of this investment or the transactions contemplated by this Award Agreement.

8. Tax Obligations

(a) Responsibility for Taxes. Participant acknowledges that, regardless of any action taken by the Corporation or, if different, Participant’s employer (the “Employer”) or Parent or Subsidiary to which Participant is providing services (together, the Corporation, Employer and/or the Parent or Subsidiary to which the Participant is providing services, the “Service Recipient”), the ultimate liability for any tax and/or social insurance liability obligations and requirements in connection with the RSUs, including, without limitation, (a) all federal, state, and local taxes (including the Participant’s Federal Insurance Contributions Act (FICA) obligation) that are required to be withheld by the Corporation or the Service Recipient or other payment of tax-related items related to Participant’s participation and legally applicable to Participant, (b) the Participant’s and, to the extent required by the Corporation (or Service Recipient), the Corporation’s (or Service Recipient’s) fringe benefit tax liability, if any, associated with the grant, vesting, or settlement of the RSUs or sale of Shares, and (c) any other Corporation (or Service Recipient) taxes the responsibility for which the Participant has, or has agreed to bear, with respect to the RSUs (or settlement thereof or issuance of Shares thereunder) (collectively, the “Tax Obligations”), is and remains Participant’s responsibility and may exceed the amount actually withheld by the Corporation or the Service Recipient. Participant further acknowledges that the Corporation and/or the Service Recipient

(i) make no representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the RSUs, including, but not limited to, the grant, vesting or settlement of the RSUs, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends or other distributions, and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate Participant's liability for Tax Obligations or achieve any particular tax result. Further, if Participant is subject to Tax Obligations in more than one jurisdiction between the Date of Grant and the date of any relevant taxable or tax withholding event, as applicable, Participant acknowledges that the Corporation and/or the Service Recipient (or former employer, as applicable) may be required to withhold or account for Tax Obligations in more than one jurisdiction. If Participant fails to make satisfactory arrangements for the payment of any required Tax Obligations hereunder at the time of the applicable taxable event, Participant acknowledges and agrees that the Corporation may refuse to issue or deliver the Shares.

(b) Tax Withholding. When Shares are issued as payment for vested RSUs, Participant generally will recognize immediate U.S. taxable income if Participant is a U.S. taxpayer. If Participant is a non-U.S. taxpayer, Participant will be subject to applicable taxes in his or her jurisdiction. Pursuant to such procedures as the Committee may specify from time to time, the Corporation and/or Service Recipient shall withhold the amount required to be withheld for the payment of Tax Obligations or other greater amount up to the maximum statutory rate under applicable laws, as applicable to the Participant, if such other greater amount would not result in adverse financial accounting treatment, as determined by the Corporation. The Committee, in its sole discretion and pursuant to such procedures as it may specify from time to time, may permit Participant to satisfy such Tax Obligations, in whole or in part (without limitation), if permissible by applicable local law, by (a) paying cash, (b) electing to have the Corporation withhold otherwise deliverable Shares having a market value equal to the amount of such Tax Obligations, (c) withholding the amount of such Tax Obligations from Participant's wages or other cash compensation paid to Participant by the Corporation and/or the Service Recipient, (d) delivering to the Corporation already vested and owned Shares having a market value equal to such Tax Obligations, or (e) selling a sufficient number of such Shares otherwise deliverable to Participant through such means as the Corporation may determine in its sole discretion (whether through a broker or otherwise) equal to the amount of the Tax Obligations. To the extent determined appropriate by the Corporation in its discretion, it will have the right (but not the obligation) to satisfy any Tax Obligations by reducing the number of Shares otherwise deliverable to Participant and, until determined otherwise by the Corporation, this will be the method by which such Tax Obligations are satisfied. Further, if Participant is subject to tax in more than one jurisdiction between the Date of Grant and a date of any relevant taxable or tax withholding event, as applicable, Participant acknowledges and agrees that the Corporation and/or the Service Recipient (and/or former employer, as applicable) may be required to withhold or account for tax in more than one jurisdiction. If Participant fails to make satisfactory arrangements for the payment of such Tax Obligations hereunder at the time any applicable RSUs otherwise are scheduled to vest pursuant to Sections 3 or 4, Participant will permanently forfeit such RSUs and any right to receive Shares thereunder and the RSUs will be returned to the Corporation at no cost to the Corporation. Participant acknowledges and agrees that the Corporation may refuse to deliver the Shares if such Tax Obligations are not delivered at the time they are due.

9. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Corporation in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book entry form) will have been issued, recorded on the records of the Corporation or its transfer agents or registrars, and delivered to Participant (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Corporation with respect to voting such Shares and receipt of dividends and distributions on such Shares.

10. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE RSUS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER, WHICH UNLESS PROVIDED OTHERWISE UNDER APPLICABLE LAW IS AT THE WILL OF THE CORPORATION (OR THE SERVICE RECIPIENT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS RSU AWARD OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AWARD AGREEMENT, THE

TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE CORPORATION (OR THE SERVICE RECIPIENT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER, SUBJECT TO APPLICABLE LAW, WHICH TERMINATION, UNLESS PROVIDED OTHERWISE UNDER APPLICABLE LAW, MAY BE AT ANY TIME, WITH OR WITHOUT CAUSE.

11. Grant is Not Transferable. Except to the limited extent provided in Section 6, this grant and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this grant, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this grant and the rights and privileges conferred hereby immediately will become null and void.

12. Nature of Grant. In accepting the grant, Participant acknowledges, understands and agrees that:

(a) the grant of the RSUs is voluntary and occasional and does not create any contractual or other right to receive future grants of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;

(b) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Corporation;

(c) Participant is voluntarily participating in the Plan;

(d) the RSUs and the Shares subject to the RSUs are not intended to replace any pension rights or compensation;

(e) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not part of normal or expected compensation for purposes of calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-term service awards, pension or retirement or welfare benefits or similar payments;

(f) the future value of the underlying Shares is unknown, indeterminable, and cannot be predicted with certainty;

(g) for purposes of the RSUs, Participant's status as a Service Provider will be considered terminated as of the date Participant is no longer actively providing services to the Corporation or any Parent or Subsidiary as an employee (regardless of the reason for such termination and whether or not later to be found invalid or in breach of employment laws in the jurisdiction where Participant is a Service Provider or the terms of Participant's employment or service agreement, if any), and unless otherwise expressly provided in this Award Agreement (including by reference in the Notice to other arrangements or contracts) or determined by the Committee, Participant's right to vest in the RSUs under the Plan, if any, will terminate as of such date and will not be extended by any notice period (e.g., Participant's period of service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where Participant is a Service Provider or the terms of Participant's employment agreement, if any, unless Participant is providing bona fide services as an employee during such time); the Committee shall have the exclusive discretion to determine when Participant is no longer actively providing services for purposes of the RSUs grant (including whether Participant may still be considered to be providing services while on a leave of absence and consistent with local law); and

(h) unless otherwise provided in the Plan or by the Corporation in its discretion, the RSUs and the benefits evidenced by this Award Agreement do not create any entitlement to have the

RSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the Shares.

13. **No Advice Regarding Grant.** The Corporation is not providing any tax, legal or financial advice, nor is the Corporation making any recommendations regarding Participant's participation in the Plan, or Participant's acquisition or sale of the underlying Shares. Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

14. **Data Privacy.** *Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Award Agreement and any other RSU grant materials by and among, as applicable, the Employer or other Service Recipient, the Corporation and any Parent or Subsidiary for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.*

Participant understands that the Corporation and the Service Recipient may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, any Shares or directorships held in the Corporation, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor ("Data"), for the exclusive purpose of implementing, administering and managing the Award Agreement.

Participant understands that Data will be transferred to a stock plan service provider as may be selected by the Corporation in the future, which is assisting the Corporation with the implementation, administration and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country of operation (e.g., the United States) may have different data privacy laws and protections than Participant's country. Participant understands that if he or she resides outside the United States, he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the Corporation, any stock plan service provider selected by the Corporation and any other possible recipients which may assist the Corporation (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan. Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides outside the United States, he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing the consents herein on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her status as a Service Provider and career with the Service Recipient will not be adversely affected; the only adverse consequence of refusing or withdrawing Participant's consent is that the Corporation would not be able to grant Participant RSUs or other equity awards or administer or maintain such awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

15. **Address for Notices.** Any notice to be given to the Corporation under the terms of this Award Agreement will be addressed to the Corporation at Phunware, Inc., 1002 West Avenue, Austin, Texas, 78701, or at such other address as the Corporation may hereafter designate in writing.

16. **Electronic Delivery and Acceptance.** The Corporation may, in its sole discretion, decide to deliver any documents related to the RSUs awarded under the Plan or future RSUs that may be awarded under the Plan by electronic means or request Participant's consent to participate by electronic means. Participant hereby consents to receive such documents by electronic delivery and agrees to

participate in the Plan through any on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation.

17. No Waiver. Either party's failure to enforce any provision or provisions of this Award Agreement shall not in any way be construed as a waiver of any such provision or provisions, nor prevent that party from thereafter enforcing each and every other provision of this Award Agreement. The rights granted both parties herein are cumulative and shall not constitute a waiver of either party's right to assert all other legal remedies available to it under the circumstances.

18. Successors and Assigns. The Corporation may assign any of its rights under this Award Agreement to single or multiple assignees, and this Award Agreement shall inure to the benefit of the successors and assigns of the Corporation. Subject to the restrictions on transfer herein set forth, this Award Agreement shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns. The rights and obligations of Participant under this Award Agreement may only be assigned with the prior written consent of the Corporation.

19. Additional Conditions to Issuance of Stock. If at any time the Corporation will determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or under the rulings or regulations of the United States Securities and Exchange Commission or any other governmental regulatory body or the clearance, consent or approval of the United States Securities and Exchange Commission or any other governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his or her estate) hereunder, such issuance will not occur unless and until such listing, registration, qualification, rule compliance, clearance, consent or approval will have been completed, effected or obtained free of any conditions not acceptable to the Corporation. Subject to the terms of this Award Agreement and the Plan, the Corporation shall not be required to issue any certificate or certificates for Shares hereunder prior to the lapse of such reasonable period of time following the date of vesting of the RSUs as the Committee may establish from time to time for reasons of administrative convenience.

20. Interpretation. The Committee will have the power to interpret the Plan and this Award Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any RSUs have vested). All actions taken and all interpretations and determinations made by the Committee in good faith will be final and binding upon Participant, the Corporation and all other interested persons. Neither the Committee nor any person acting on behalf of the Committee will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Award Agreement.

21. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement.

22. Modifications to the Award Agreement. This Award Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Corporation. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Corporation reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this award of RSUs.

23. Governing Law and Venue. This Award Agreement will be governed by the laws of Texas, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under the RSUs or this Award Agreement, the parties hereby submit to and consent to the jurisdiction of the State of Texas, and agree that such litigation will be conducted in the courts of Travis County, Texas, or the federal courts for the United States for the Western District of Texas, and no other courts, where this Award Agreement is made and/or to be performed.

24. Agreement Severable. In the event that any provision in this Award Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Award Agreement.

25. Amendment, Suspension or Termination of the Plan. By accepting this Award Agreement, Participant expressly warrants that he or she has received RSUs under the Plan, and has read and understood the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Corporation at any time.

26. Entire Agreement. The Plan is incorporated herein by reference. The Plan, the Notice and this Award Agreement (including the appendices and exhibits referenced herein) constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Corporation and Participant with respect to the subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Corporation and Participant.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Phunware, Inc. (the "Company") on Form S-8 of our report dated April 7, 2022, with respect to our audits of the consolidated financial statements of Phunware, Inc. as of December 31, 2021 and 2020 and for each of the two years in the period ended December 31, 2021 appearing in the Annual Report on Form 10-K of Phunware, Inc. for the year ended December 31, 2021.

/s/ Marcum LLP

Marcum LLP
Houston, TX
January 6, 2023

Calculation of Filing Fee Tables

FORM S-8
(Form Type)

PHUNWARE, INC.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾⁽³⁾	Proposed Maximum Offering Price ⁽²⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	2018 Plan Common Stock, par value \$0.0001 per share	Rule 457(c) and 457(h)	7,265,830	\$0.771	\$5,601,954.93	\$0.0001102	\$617.34
Equity	2018 ESPP Common Stock, par value \$0.0001 per share	Rule 457(c) and 457(h)	818,824	\$0.771	\$631,313.30	\$0.0001102	\$69.57
Equity	2022 Inducement Plan Common Stock, par value \$0.0001 per share	Rule 457(c) and 457(h)	1,470,588	\$0.771	\$1,133,823.35	\$0.0001102	\$124.95
Total Offering Amounts					\$7,367,092		\$811.86
Total Fee Offsets							\$—
Net Fee Due							\$811.86

- ⁽¹⁾ Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's Common Stock that become issuable under the Registrant's 2018 Plan, the Registrant's 2018 ESPP or the 2022 Inducement Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.
- ⁽²⁾ Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and Rule 457(h)(1) promulgated under the Securities Act based on the average of the high \$0.791 and low \$0.751 sales prices of the Registrant's Common Stock as reported on the Nasdaq Capital Market on December 30, 2022, which date is within five business day prior to the date of filing of this Registration Statement.
- ⁽³⁾ Represents (i) 5,157,666 shares of the Registrant's Common Stock reserved for future issuance under the 2018 Plan by reason of the automatic increase provision of the 2018 Plan, (ii) 2,108,164 shares of the Registrant's Common Stock reserved for future issuance under the 2018 Plan approved by the Registrant's stockholders at its 2022 Annual Meeting held on November 11, 2022, (iii) 818,824 shares of the Registrant's Common Stock reserved for future issuance under the 2018 ESPP by reason of the automatic increase provision of the 2018 ESPP and (iv) 1,470,588 shares of the Registrant's Common Stock reserved for future issuance under the 2022 Inducement Plan.