

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

FORM 10-Q

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

For the quarterly period ended September 30, 2023

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

For the transition period from _____ to _____

Commission file number: 001-37862

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

30-1205798

(I.R.S. Employer
Identification Number)

1002 West Avenue, Austin, Texas

(Address of principal executive offices)

78701

(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

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

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

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

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

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

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

As of November 9, 2023, 135,439,755 shares of common stock, par value \$0.0001 per share, were outstanding.

TABLE OF CONTENTS

	<u>PAGE</u>
PART I	1
FINANCIAL INFORMATION	
Item 1. Financial Statements	1
Condensed Consolidated Balance Sheets as of September 30, 2023 (unaudited) and December 31, 2022	2
Condensed Consolidated Statements of Operations and Comprehensive Loss for the three and nine months ended September 30, 2023 and 2022 (unaudited)	3
Condensed Consolidated Statements of Changes in Stockholders' Equity for the three and nine months ended September 30, 2023 and 2022 (unaudited)	4
Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2023 and 2022 (unaudited)	6
Notes to the Unaudited Condensed Consolidated Financial Statements	8
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	27
Item 3. Quantitative and Qualitative Disclosures About Market Risk	42
Item 4. Controls and Procedures	43
PART II	44
OTHER INFORMATION	
Item 1. Legal Proceedings	44
Item 1A. Risk Factors	44
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	46
Item 3. Defaults Upon Senior Securities	46
Item 4. Mine Safety Disclosures	46
Item 5. Other Information	46
Item 6. Exhibits	47
Signatures	48

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

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

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

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

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

	September 30, 2023	December 31, 2022
	<i>(Unaudited)</i>	
Assets		
Current assets:		
Cash	\$ 2,857	\$ 1,955
Accounts receivable, net of allowance for doubtful accounts of \$68 and \$198 at September 30, 2023 and December 31, 2022, respectively	1,053	958
Inventory	899	2,780
Digital assets	75	10,137
Prepaid expenses and other current assets	599	1,033
Total current assets	5,483	16,863
Property and equipment, net	165	221
Goodwill	16,731	31,113
Intangible assets, net	2,023	2,524
Right-of-use asset	3,041	3,712
Other assets	367	402
Total assets	\$ 27,810	\$ 54,835
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 7,969	\$ 7,699
Accrued expenses	946	2,895
Lease liability	1,008	954
Deferred revenue	1,516	2,904
PhunCoin deposits	1,202	1,202
Current maturities of long-term debt, net	5,563	9,667
Warrant liability	—	256
Total current liabilities	18,204	25,577
Deferred revenue	743	1,274
Lease liability	2,308	3,103
Total liabilities	21,255	29,954
Commitments and contingencies (Note 8)		
Stockholders' equity		
Common stock, \$0.0001 par value; 1,000,000,000 shares authorized; 129,062,144 shares issued and 128,555,644 shares outstanding as of September 30, 2023 and 103,153,337 shares issued and outstanding as of December 31, 2022, respectively	13	10
Treasury stock at cost; 506,500 and 0 shares at September 30, 2023 and December 31, 2022, respectively	(502)	—
Additional paid-in capital	287,498	275,562
Accumulated other comprehensive loss	(463)	(472)
Accumulated deficit	(279,991)	(250,219)
Total stockholders' equity	6,555	24,881
Total liabilities and stockholders' equity	\$ 27,810	\$ 54,835

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenues	\$ 2,792	\$ 4,758	\$ 11,026	\$ 17,021
Cost of revenues	2,597	3,963	10,014	12,935
Gross profit	195	795	1,012	4,086
Operating expenses:				
Sales and marketing	1,027	1,819	3,627	5,232
General and administrative	3,478	5,189	12,956	14,745
Research and development	1,042	1,665	4,026	4,544
Impairment of goodwill	13,188	—	14,391	—
Total operating expenses	18,735	8,673	35,000	24,521
Operating loss	(18,540)	(7,878)	(33,988)	(20,435)
Other income (expense):				
Interest expense	(264)	(991)	(1,354)	(1,645)
Loss on extinguishment of debt	(237)	—	(237)	—
Impairment of digital assets	—	—	(50)	(21,511)
Gain on sale of digital assets	—	1	5,310	195
Fair value adjustment of warrant liability	—	797	256	3,267
Other income, net	62	53	291	123
Total other income (expense), net	(439)	(140)	4,216	(19,571)
Loss before taxes	(18,979)	(8,018)	(29,772)	(40,006)
Income tax expense	—	—	—	—
Net loss	(18,979)	(8,018)	(29,772)	(40,006)
Other comprehensive income (loss):				
Cumulative translation adjustment	(37)	(84)	9	(201)
Comprehensive loss	\$ (19,016)	\$ (8,102)	\$ (29,763)	\$ (40,207)
Loss per share, basic and diluted	\$ (0.16)	\$ (0.08)	\$ (0.27)	\$ (0.41)
Weighted-average common shares used to compute loss per share, basic and diluted	119,989	98,822	109,430	97,803

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

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

	<u>Common Stock</u>		<u>Treasury stock</u>		<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balance - June 30, 2023	107,565	\$ 11	(507)	\$ (502)	\$ 279,837	\$ (261,012)	\$ (426)	\$ 17,908
Release of restricted stock	557	—	—	—	—	—	—	—
Sales of common stock, net of issuance cost	17,392	2	—	—	5,999	—	—	6,001
Common Stock issued upon conversion of 2022 Promissory Note	3,399	—	—	—	800	—	—	800
Issuance of common stock in lieu of consulting fees	149	—	—	—	33	—	—	33
Stock-based compensation expense	—	—	—	—	829	—	—	829
Cumulative translation adjustment	—	—	—	—	—	—	(37)	(37)
Treasury stock repurchase	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	(18,979)	—	(18,979)
Balance - September 30, 2023	<u>129,062</u>	<u>\$ 13</u>	<u>(507)</u>	<u>\$ (502)</u>	<u>\$ 287,498</u>	<u>\$ (279,991)</u>	<u>\$ (463)</u>	<u>\$ 6,555</u>
Balance - December 31, 2022	103,153	\$ 10	—	\$ —	\$ 275,562	\$ (250,219)	\$ (472)	\$ 24,881
Exercise of stock options	95	—	—	—	58	—	—	58
Release of restricted stock	2,693	1	—	—	—	—	—	1
Issuance of restricted stock for earned bonus and consulting fees	522	—	—	—	379	—	—	379
Issuance of common stock under the 2018 employee stock purchase plan	93	—	—	—	47	—	—	47
Sales of common stock, net of issuance costs	19,107	2	—	—	6,994	—	—	6,996
Common stock issued upon conversion of 2022 Promissory Note	3,399	—	—	—	800	—	—	800
Stock-based compensation expense	—	—	—	—	3,658	—	—	3,658
Cumulative translation adjustment	—	—	—	—	—	—	9	9
Treasury stock repurchase	—	—	(507)	(502)	—	—	—	(502)
Net loss	—	—	—	—	—	(29,772)	—	(29,772)
Balance - September 30, 2023	<u>129,062</u>	<u>\$ 13</u>	<u>(507)</u>	<u>\$ (502)</u>	<u>\$ 287,498</u>	<u>\$ (279,991)</u>	<u>\$ (463)</u>	<u>\$ 6,555</u>

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance - June 30, 2022	98,137	\$ 10	\$ 267,465	\$ (231,313)	\$ (469)	\$ 35,693
Release of restricted stock	527	—	—	—	—	—
Issuance of common stock in connection with acquisition of Lyte Technology, Inc.	464	—	689	—	—	689
Sales of common stock, net of issuance costs	2,193	—	3,654	—	—	3,654
Stock-based compensation expense	—	—	849	—	—	849
Cumulative translation adjustment	—	—	—	—	(84)	(84)
Net loss	—	—	—	(8,018)	—	(8,018)
Balance - September 30, 2022	<u>101,321</u>	<u>\$ 10</u>	<u>\$ 272,657</u>	<u>\$ (239,331)</u>	<u>\$ (553)</u>	<u>\$ 32,783</u>
Balance - December 31, 2021	96,752	\$ 10	\$ 264,944	\$ (199,325)	\$ (352)	\$ 65,277
Exercise of stock options, net of vesting of restricted shares	23	—	16	—	—	16
Release of restricted stock	1,409	—	—	—	—	—
Issuance of common stock under the 2018 employee stock purchase plan	96	—	116	—	—	116
Issuance of common stock in connection with acquisition of Lyte Technology, Inc.	848	—	1,814	—	—	1,814
Sales of common stock, net of issuance costs	2,193	—	3,654	—	—	3,654
Stock-based compensation expense	—	—	2,113	—	—	2,113
Cumulative translation adjustment	—	—	—	—	(201)	(201)
Net loss	—	—	—	(40,006)	—	(40,006)
Balance - September 30, 2022	<u>101,321</u>	<u>\$ 10</u>	<u>\$ 272,657</u>	<u>\$ (239,331)</u>	<u>\$ (553)</u>	<u>\$ 32,783</u>

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

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

	Nine Months Ended September 30,	
	2023	2022
Operating activities		
Net loss	\$ (29,772)	\$ (40,006)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of debt discount and deferred financing costs	832	690
Loss on extinguishment of debt	237	—
Gain on change in fair value of warrant liability	(256)	(3,267)
Gain on sale of digital assets	(5,310)	(195)
Impairment of digital assets	50	21,511
Impairment of goodwill	14,391	—
Stock-based compensation	3,662	2,169
Other adjustments	1,945	1,185
Changes in operating assets and liabilities:		
Accounts receivable	(122)	(723)
Inventory	1,470	(731)
Prepaid expenses and other assets	583	(254)
Accounts payable	269	925
Accrued expenses	(921)	(1,118)
Lease liability payments	(1,008)	(594)
Deferred revenue	(1,919)	(2,464)
Net cash used in operating activities	<u>(15,869)</u>	<u>(22,872)</u>
Investing activities		
Proceeds received from sale of digital assets	15,390	—
Purchase of digital assets	—	(923)
Acquisition payment	—	(1,125)
Capital expenditures	(7)	(238)
Net cash provided by (used in) investing activities	<u>15,383</u>	<u>(2,286)</u>
Financing activities		
Proceeds from borrowings, net of issuance costs	—	11,795
Payments on borrowings	(5,056)	(4,698)
Proceeds from sales of common stock, net of issuance costs	6,879	3,655
Proceeds from exercise of options to purchase common stock	58	16
Payment for stock repurchase	(502)	—
Net cash provided in financing activities	<u>1,379</u>	<u>10,768</u>
Effect of exchange rate on cash	9	(209)
Net increase (decrease) in cash	902	(14,599)
Cash at the beginning of the period	1,955	23,137
Cash at the end of the period	<u>\$ 2,857</u>	<u>\$ 8,538</u>

Supplemental disclosure of cash flow information:

Interest paid	\$	1,140	\$	613
Income taxes paid	\$	—	\$	—
Supplemental disclosures of non-cash investing and financing activities:				
Issuance of common stock for 2022 Promissory Note	\$	800	\$	—
Right-of-use assets obtained in exchange for operating lease obligations	\$	—	\$	3,053
Non-cash exchange of digital assets	\$	557	\$	911
Issuance of common stock in connection with acquisition of Lyte Technology, Inc.	\$	—	\$	1,814
Issuance of common stock under the 2018 Employee Stock Purchase Plan previously accrued	\$	47	\$	116
Issuance of common stock for payment of bonuses previously accrued	\$	379	\$	—

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

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

1. The Company and Basis of Presentation

The Company

Phunware, Inc. and its subsidiaries (the "Company", "we", "us", or "our") offers a fully integrated software platform that equips companies with the products, solutions and services necessary to engage, manage and monetize their anytime, anywhere users worldwide. Our location-based software-as-a-service platform provides the entire mobile lifecycle of applications and media in one login through one procurement relationship. Our technology is available in Software Development Kit ("SDK") form for organizations developing their own application, via customized development services and prepackaged solutions. Through our integrated mobile advertising platform of publishers and advertisers, we provide in-app application transactions for mobile audience building, user acquisition, application discovery, audience engagement and audience monetization. During 2021, we began to sell PhunToken to consumers, developers and brands. PhunToken is an innovative digital asset utilized within our token ecosystem to help drive engagement by unlocking features and capabilities of our platform. PhunToken is designed to reward consumers for their activity, such as watching branded videos, completing surveys and visiting points of interest. In October 2021, we acquired Lyte Technology, Inc. ("Lyte"), a provider of high-performance computer systems to individual consumers. On November 1, 2023, we discontinued the operations of Lyte. See Note 12 for further discussion. Founded in 2009, we are a Delaware corporation headquartered in Austin, Texas.

Basis of Presentation

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

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

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

Going Concern

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

We have a history of net losses since our inception. For the nine months ended September 30, 2023, we incurred a net loss of \$9,772, used \$15,869 in cash for operations and have a working capital deficiency of \$12,721. The foregoing conditions raise substantial doubt about our ability to meet our financial obligations as they become due.

In performing the next step of our going concern assessment, we are required to evaluate whether our plans to mitigate the conditions above alleviate the substantial doubt. Our assessment included the preparation of a detailed cash forecast that included projected cash inflows and outflows. We continue to focus on growing our revenues, and accordingly, we expect operating expenditures to exceed future revenue for the foreseeable future. We have implemented a plan to decrease our cash burn by reducing headcount and other operating expenditures. We have also raised additional funds in our at-the-market equity offering and entered into an amendment to our 2022 Promissory Note, which allows the holder to convert outstanding amounts due into shares of our common stock. In addition, in August 2023, we entered into a stock purchase agreement, which subject to limitations contained within the agreement, allows us to sell shares of our common stock to the investor. Our future plans may include additional reductions to operating expenses, additional sales of our common stock in our at-the-market offering and pursuant to a stock purchase agreement with a certain investor, and issuing additional shares of common stock, preferred stock, warrants or units pursuant to an effective shelf registration statement.

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

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

Nasdaq listing

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

On October 10, 2023, we submitted a request to Nasdaq for an additional 180-day extension to regain compliance with the Bid Price Requirement. On October 12, 2023, the Company received a letter from Nasdaq advising that the Company had been granted a 180-day extension to April 8, 2024, to regain compliance with the Bid Price Requirement, in accordance with Nasdaq Listing Rule 5810(c)(3)(A). To regain compliance, the bid price of the Company’s common stock must close at \$1.00 per share or more for a minimum of ten consecutive business days.

We intend to monitor the closing bid price of our common stock and may, if appropriate, take all measures necessary to regain compliance with the Bid Price Requirement within the compliance period provided by Nasdaq, including effecting a reverse stock split.

If we fail to regain compliance with the Bid Price Requirement prior to the conclusion of the allotted compliance period, Nasdaq will provide the Company with written notification that its securities are subject to delisting from the Nasdaq Capital Market. At that time, we may appeal the delisting determination to a hearings panel. There can be no assurance that we will be able to regain compliance with the Bid Price Requirement or maintain compliance with other Nasdaq continued listing requirements.

2. Summary of Significant Accounting Policies

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

Recently Adopted Accounting Pronouncements

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

Recent Accounting Pronouncements Not Yet Adopted

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815 – 40)* ("ASU 2020-06"). ASU 2020-06 simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. ASU 2020-06 is effective for smaller reporting companies for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. We plan to implement ASU 2020-06 on January 1, 2024.

Use of Estimates

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

3. Supplemental Information

Risks and Uncertainties

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

Concentrations of Credit Risk

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

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

There is currently no clearing house for our digital assets, including our bitcoin holdings, nor is there a central or major depository for the custody of our digital assets. There is a risk that some or all of our digital asset holdings could be lost or stolen. There can be no assurance that the custodians will maintain adequate insurance or that such coverage will cover losses.

with respect to our digital asset holdings. Further, transactions denominated in digital assets are irrevocable. Stolen or incorrectly transferred digital assets may be irretrievable. As a result, any incorrectly executed transactions could adversely affect our financial condition. The aggregate cost basis (prior to impairment) of our digital asset holdings was \$107 and \$37,737 at September 30, 2023 and December 31, 2022, respectively.

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

	September 30, 2023	December 31, 2022
Customer A	21 %	— %
Customer B	15 %	7 %
Customer C	14 %	3 %
Customer D	11 %	1 %
Customer E	— %	23 %

Inventory

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

	September 30, 2023	December 31, 2022
Raw materials	\$ 1,498	\$ 2,968
Finished goods	74	50
Other	6	30
Inventory reserve	(679)	(268)
Total inventory	<u>\$ 899</u>	<u>\$ 2,780</u>

Goodwill Impairment

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

Our business is classified into two reporting units: Phunware and Lyte. We performed quantitative assessment on both our reporting units as of September 30, 2023, using a discounted cash flow model. Based on the analysis performed, we concluded that the carrying amount of both our reporting units exceeded their respective fair values resulting in non-cash impairment charges of \$9,043 and \$4,145, for our Phunware and Lyte reporting units, respectively for the three months ended September 30, 2023.

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

to risk profiles, size, geography, and diversity of products. We applied an overall probability-weighting to the income and market approaches to determine the concluded fair value of the reporting unit. We believe the current assumptions and estimates utilized in the income and market approaches are both reasonable and appropriate.

Loss per Common Share

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

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

	September 30,	
	2023	2022
Warrants	3,443,844	5,636,801
Options	880,510	934,729
Restricted stock units	7,446,264	3,353,776
Total	<u>11,770,618</u>	<u>9,925,306</u>

Fair Value Measurements

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

- Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2: Quoted prices in markets that are not active or inputs which are observable, either directly or indirectly, for substantially the full 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 market activity).

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

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

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

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

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

	<u>September 30, 2023</u>	<u>December 31, 2022</u>
Strike price per share	N/A	\$ 1.42
Closing price per share	N/A	\$ 0.77
Term (years)	N/A	0.53
Volatility	N/A	102 %
Risk-free rate	N/A	4.70 %
Dividend Yield	—	—

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

4. Revenue

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

Disaggregation of Revenue

The following table sets forth our net revenues by category:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Platform revenue	\$ 1,253	\$ 1,259	\$ 3,893	\$ 5,379
Hardware revenue	1,539	3,499	7,133	11,642
Net revenues	\$ 2,792	\$ 4,758	\$ 11,026	\$ 17,021

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 over 99% of our net revenues from within the United States for the three and nine months ended September 30, 2023. During the three and nine months ended September 30, 2022, we derived 100% and 97% of our net revenues from the United States, respectively.

Deferred Revenue

Our deferred revenue balance consisted of the following:

	September 30, 2023	December 31, 2022
Current deferred revenue		
Platform revenue	\$ 1,437	\$ 1,531
Hardware revenue	79	1,373
Total current deferred revenue	\$ 1,516	\$ 2,904
Non-current deferred revenue		
Platform revenue	\$ 743	\$ 1,274
Total non-current deferred revenue	\$ 743	\$ 1,274
Total deferred revenue	\$ 2,259	\$ 4,178

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 nine months ended September 30, 2023, we recognized revenue of \$3,167 that was included in our deferred revenue balance as of December 31, 2022.

Remaining Performance Obligations

Remaining performance obligations were \$4,788 as of September 30, 2023, of which we expect to recognize approximately 37% as revenue over the next 12 months and the remainder thereafter.

PhunToken

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

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

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

5. Digital Assets

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

We determine the fair value of our digital assets on a nonrecurring basis in accordance with ASC 820 *Fair Value Measurement*, based on quoted prices on the active exchange(s) that we have determined is the principal market for bitcoin, ethereum and other digital asset holdings (Level 1 inputs). We perform an analysis each quarter to identify whether events or changes in circumstances, principally decreases in the quoted prices on active exchanges, indicate that it is more likely than not that our digital assets are impaired. In determining if an impairment has occurred, we consider the lowest intraday market price quoted on an active exchange since acquiring the respective digital asset. If the then current carrying value of a digital asset exceeds the fair value, an impairment loss has occurred with respect to those digital assets in the amount equal to the difference between their carrying values and the fair value. The fair value of our digital asset holdings at September 30, 2023 is \$78.

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

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

Asset	Gross Carrying Amount	Accumulated Digital Asset Impairment	Digital Asset Carrying Value
Bitcoin	\$ 20	\$ (3)	\$ 17
Ether	80	(28)	52
Other	7	(1)	6
Total	\$ 107	\$ (32)	\$ 75

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

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

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

	Bitcoin	Ethereum	Other	Total
Net balance as of December 31, 2022	\$ 9,460	\$ 350	\$ 327	\$ 10,137
Received from customers, net of expenses	4	(1)	65	68
Exchanges of digital assets	—	557	(557)	—
Disposal proceeds	(14,154)	(1,236)	—	(15,390)
Gain on sale of digital assets	4,707	382	221	5,310
Impairment expense	—	—	(50)	(50)
Net balance as of September 30, 2023	<u>\$ 17</u>	<u>\$ 52</u>	<u>\$ 6</u>	<u>\$ 75</u>

6. Debt

2022 Promissory Note

On July 6, 2022, we entered into a note purchase agreement and completed the sale of an unsecured promissory note (the "2022 Promissory Note") with an original principal amount of \$12,809 in a private placement. The 2022 Promissory Note was sold with an original issue discount of \$92 and we paid at closing issuance costs totaling \$522. After deducting all transaction fees paid by us at closing, net cash proceeds to the Company at closing were \$11,795. No interest was to accrue on the 2022 Promissory Note. Beginning on November 1, 2022, our monthly amortization payment was approximately \$1,566, until the original maturity date of July 1, 2023. We had the right to defer any monthly payment by one month up to twelve times so long as certain conditions, as defined in the 2022 Promissory Note, are satisfied. In the event we exercise the deferral right for any given month: (i) the outstanding balance will automatically increase by 1.85%; (ii) we will not be obligated to make the monthly payment for such month; and (iii) the maturity date will be extended for one month. We may prepay any or all outstanding balance of the 2022 Promissory Note earlier than it is due by paying the noteholder 110% of the portion of the outstanding balance we elect to prepay. The prepayment premium also applies to the monthly amortization payments.

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

On August 14, 2023, we entered into an amendment to the 2022 Promissory Note with the noteholder. The amendment extends the maturity date to May 31, 2024 and provides that effective August 1, 2023, we are required to make monthly amortization payments of at least \$800 commencing on August 31, 2023 until the 2022 Promissory Note is paid-in-full. Furthermore, the amendment removed the required payment of \$1,769 that was due on August 1, 2023. We also granted the holder certain limited conversion rights, subject to advance payment and volume conditions. Conversions into shares of our common stock made pursuant to the limited conversion rights will be calculated on a conversion price equal to 90% of the lower of (i) the closing trading price of our common stock on the trading day immediately preceding the date for such conversion or (ii) the average closing trading price of our common stock for the five trading days immediately preceding the date for such conversion. If the holder elects to convert pursuant to the limited conversion option, such conversions will reduce the current month's monthly amortization payment. Any conversions in any given month in excess of the \$800 monthly payment will be applied to reduce the following month's required monthly amortization payment. In connection with the amendment, we agreed to pay an extension fee equal to approximately \$708, which is 10% of the outstanding principal balance of the 2022 Promissory Note. The amendment also provides that the outstanding balance shall accrue interest at a rate of 8% beginning on August 1, 2023, and payment deferrals are no longer permitted under the 2022 Promissory Note. We evaluated the amendment in accordance with ASC 470 - *Debt*, and we concluded that the modification was an extinguishment of the original debt. Accordingly, we recorded a loss on extinguishment of debt of \$37 for the three and nine months ended September 30, 2023. In accounting for the amendment, we reviewed other applicable guidance and determined the amendment met the criteria to be accounted for as share-settled debt pursuant to ASC 480-10-25-14(a) as the settlement amount is based on a fixed monetary amount settled in a variable number of shares.

The 2022 Promissory Note had a principal balance of \$5,563 and \$9,962 and debt discount of \$0 and \$295 at September 30, 2023 and December 31, 2022, respectively.

Other Debt Obligations

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

Interest Expense

Interest expense amounted to \$264 and \$991 for the three months ended September 30, 2023 and 2022, respectively. Interest expense was \$1,354 and \$1,645 for the nine months ended September 30, 2023 and 2022, respectively.

7. Leases

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

We recognize lease expense on a straight-line basis over the lease term with variable lease expense recognized in the period in which the costs are incurred. The components of lease expense are included in general and administrative expense in our condensed consolidated statement of operations and comprehensive loss. Lease expense for the three months ended September 30, 2023 and 2022 was \$305 and \$338, respectively. Lease expense for the nine months ended September 30, 2023 and 2022 was \$954 and \$778, respectively. The weighted-average remaining lease term for operating leases as of September 30, 2023 was 3.4 years.

Future minimum lease obligations are set forth below:

Future minimum lease obligations years ending December 31,	Lease Obligations
2023 (Remainder)	\$ 288
2024	1,305
2025	929
2026	744
2027	508
Thereafter	—
	\$ 3,774
Less: Portion representing interest	(458)
	\$ 3,316

8. Commitments and Contingencies

Litigation

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

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

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

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

9. Stockholders' Equity

Common Stock

Total common stock authorized to be issued as of September 30, 2023 was 1,000,000,000 shares, with a par value of \$0.0001 per share. As of September 30, 2023 and December 31, 2022, there were 128,555,644 and 103,153,337 shares of our common stock outstanding, respectively.

On January 31, 2022, we entered into an At Market Issuance Sales Agreement with H.C. Wainwright & Co., LLC ("Wainwright"), pursuant to which we may offer and sell, from time to time, shares of our common stock, par value \$0.0001 per share, for aggregate gross proceeds of up to \$100,000, through or to Wainwright, as agent or principal. We are not obligated to sell shares of our common stock under the sales agreement with Wainwright. Sales of shares of our common stock sold under the sales agreement are made pursuant to an effective shelf registration statement on Form S-3 in the amount of \$200,000 filed with the SEC on February 1, 2022. During the nine months ended September 30, 2023, we sold 17,394,716 shares of our common stock for aggregate net cash proceeds of \$7,003. Transaction costs were \$209. As of September 30, 2023, \$88.5 million of shares of our common stock remains issuable pursuant to the sales agreement with Wainwright.

On August 22, 2023, we entered into a common stock purchase agreement with Lincoln Park Capital Fund, LLC ("Lincoln Park"), which provides that, upon the terms and subject to the conditions and limitations set forth therein, we have the right, but not the obligation, to sell to Lincoln Park up to \$30 million in value of shares of our common stock from time to time over the 24-month term of the purchase agreement. On any business day selected by us, we may direct Lincoln Park to purchase up to 250,000 shares of our common stock subject to adjustment as set forth below, on such business day (or the purchase date), which we refer to as a "Regular Purchase," provided, however, that (i) a Regular Purchase may be increased to up to 350,000 shares if the closing sale price of our common stock on the Nasdaq is not below \$0.20 on the applicable purchase date; (ii) a Regular Purchase may be increased to up to 450,000 shares if the closing sale price of our common stock on Nasdaq is not below \$0.30 on the applicable purchase date; (iii) a Regular Purchase may be increased to up to 550,000 shares if the closing sale price of our common stock on Nasdaq is not below \$0.50 on the applicable purchase date; and (iv) a Regular Purchase may be increased to up to 650,000 shares if the closing sale price of our common stock on Nasdaq is not below \$0.75 on the applicable purchase date. Lincoln Park's committed obligation under any single Regular Purchase, subject to certain exceptions, cannot exceed \$1,000. We may direct Lincoln Park to purchase shares in Regular Purchases as often as every business day, so long as the closing sale price of our common stock on such business day is not less than the floor price of \$0.10 per share. Concurrently with entering into the purchase agreement, we also entered into a registration rights agreement with Lincoln Park pursuant to which the Company agreed to register the sale of the shares of the Company's common stock that have been and may be issued to Lincoln Park under the purchase agreement pursuant to the Company's existing shelf registration statement on Form S-3. During the nine months ended September 30, 2023, we sold 1,712,503 shares of our common stock, including certain commitment shares issued to Lincoln Park in connection with the transaction, for aggregate gross cash proceeds of \$88. Transaction costs were \$97. As of September 30, 2023, \$29.9 million in value of shares of our common stock remains issuable pursuant to the purchase agreement with Lincoln Park.

Stock Repurchase Plan

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

Warrants

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

Warrant Type	September 30, 2023		December 31, 2022	
	Cash Exercise Price per share	Number of warrant shares	Cash Exercise Price per share	Number of warrant shares
2020 Convertible Note warrant	\$ 1.42	—	\$ 1.42	2,811,315
Common stock warrants (Series F)	\$ 9.22	—	\$ 9.22	377,402
Public warrants (PHUNW)	\$ 11.50	1,761,291	\$ 11.50	1,761,291
Private placement warrants	\$ 11.50	1,658,381	\$ 11.50	1,658,381
Unit purchase option warrants	\$ 11.50	24,172	\$ 11.50	24,172
Total		3,443,844		6,632,561

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

2020 Convertible Note Warrant

In connection with the issuance of the 2020 Convertible Notes, in 2020, we issued a warrant exercisable for three (3) years for the purchase, initially, of up to an aggregate of 2,160,000 shares of the Company's common stock at an initial exercise price of \$1.00 per share. The number of shares and exercise price are each subject to adjustment provided under the warrant. As a result of our underwritten public offering in February 2021, the exercise price of each share decreased to \$2.25 per share, and the number of shares for which the warrant is exercisable increased to 3,840,000 shares. Furthermore, in October 2021, we issued shares to the seller of Lyte as purchase consideration at a price of \$4.4246 per share, and as a result, the exercise price of the warrant adjusted accordingly and the number of shares exercisable thereunder increased to 2,811,315. The holder also partially exercised the warrant in 2021. The warrant expired July 15, 2023.

10. Stock-Based Compensation

Stock-Based Compensation

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

Stock-based compensation	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Cost of revenues	\$ 80	\$ 59	\$ 444	\$ 154
Sales and marketing	24	35	156	80
General and administrative	699	760	2,818	1,827
Research and development	35	45	244	108
Total stock-based compensation	\$ 838	\$ 899	\$ 3,662	\$ 2,169

As of September 30, 2023, there was approximately \$295, \$958, \$2,830, \$124 and \$0 of total unrecognized compensation cost related to the 2023 Inducement Plan, the 2022 Inducement Plan, the 2018 Equity Incentive Plan (the "2018 Plan"), the 2018 Employee Stock Purchase Plan (the "2018 ESPP") and the 2009 Equity Incentive Plan (the "2009 Plan"), respectively. These unrecognized compensation costs are expected to be recognized over an estimated weighted-average period of approximately 2.7 years, 2.2 years, 2.4 years, 1.7 years and 0.0 years for the 2023 Inducement Plan, 2022 Inducement Plan, 2018 Plan, the 2018 ESPP and 2009 Plan, respectively.

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

2023 Inducement Plan

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

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

2022 Inducement Plan

Our board of directors adopted the Phunware, Inc. 2022 Inducement Plan (the "2022 Inducement Plan") in January 2023. As permitted by Nasdaq Stock Market rules, our stockholders were not required to approve the 2022 Inducement Plan. The plan provides of up to 1,470,588 shares of our common stock under awards granted to newly hired employees. An "award" is any right to receive common stock of the Company consisting of nonstatutory stock options, stock appreciation rights, restricted stock awards or restricted stock units.

In January 2023, we made an inducement grant to a newly hired officer of the Company of 1,470,588 restricted stock units under the 2022 Inducement Plan with a grant date fair value of \$0.87 per share. One-third, or 490,196, of the restricted stock units was scheduled to vest on December 28, 2023 and the remainder in equal installments over eight quarterly periods beginning on March 31, 2024 with the final vesting date occurring on December 28, 2025. On October 25, 2023, we entered into a separation agreement with the executive, pursuant to which the vesting of this grant was modified such that 500,000 restricted stock units vested on October 25, 2023 and 500,000 restricted stock units will vest on November 30, 2023. The balance, 470,588 unvested restricted stock units, will terminate.

2018 Equity Incentive Plan

Shares of common stock reserved for issuance under the 2018 Plan also include any shares of common stock subject to stock options, restricted stock units or similar awards granted under the 2009 Plan, that, on or after the adoption of the 2018 Plan, expire or otherwise terminate without having been exercised in full and shares of common stock issued pursuant to awards granted under the 2009 Plan that are forfeited to or repurchased by us. As of September 30, 2023, the maximum number of shares of common stock that may be added to the 2018 Plan pursuant to the foregoing is 755,510. Not including the maximum number of shares from the 2009 Plan that may be added to the 2018 Plan, the 2018 Plan had 3,870,016 and 4,382,662 shares of common stock reserved for future issuances as of September 30, 2023 and December 31, 2022, respectively.

Restricted Stock Units

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

	Shares	Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2022	2,957,995	\$ 1.75
Granted	6,211,386	0.53
Released	(3,215,131)	1.19
Forfeited	(578,574)	1.43
Outstanding as of September 30, 2023	<u>5,375,676</u>	<u>\$ 0.62</u>

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

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

During the third quarter of 2023, we granted 3,533,000 restricted stock unit awards to team members with an average grant date fair value of \$0.28 per share. The vesting of these awards occurs at three equal installments on August 1, 2023, August 1, 2024 and August 1, 2025. We also granted 61,682 restricted stock units to a consultant. Those restricted stock units vested in full at August 31, 2023.

Stock Options

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

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

2018 Employee Stock Purchase Plan

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

2009 Equity Incentive Plan

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

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2022	874,279	\$ 0.80	4.2	\$ 130
Granted	—	—		
Exercised	(94,748)	0.61		
Forfeited	(24,021)	1.31		
Outstanding as of September 30, 2023	<u>755,510</u>	\$ 0.81	4.0	\$ —
Exercisable as of September 30, 2023	<u>755,510</u>	\$ 0.81	4.0	\$ —

For the three months ended September 30, 2023, the aggregate intrinsic value of options exercised was \$6 and the total fair value of options vested was not significant.

11. Segment and Geographic Information

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

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

	Three Months Ended September 30, 2023			Three Months Ended September 30, 2022		
	Phunware	Lyte	Consolidated	Phunware	Lyte	Consolidated
Net revenues	\$ 1,253	\$ 1,539	\$ 2,792	\$ 1,259	\$ 3,499	\$ 4,758
Loss before taxes	\$ (14,217)	\$ (4,762)	\$ (18,979)	\$ (6,858)	\$ (1,160)	\$ (8,018)

	Nine Months Ended September 30, 2023			Nine Months Ended September 30, 2022		
	Phunware	Lyte	Consolidated	Phunware	Lyte	Consolidated
Net revenues	\$ 3,893	\$ 7,133	\$ 11,026	\$ 5,379	\$ 11,642	\$ 17,021
Loss before taxes	\$ (22,231)	\$ (7,541)	\$ (29,772)	\$ (37,925)	\$ (2,081)	\$ (40,006)

	September 30, 2023			December 31, 2022		
	Phunware	Lyte	Consolidated	Phunware	Lyte	Consolidated
Goodwill	\$ 16,731	\$ —	\$ 16,731	\$ 25,765	\$ 5,348	\$ 31,113
Total assets	\$ 18,534	\$ 9,276	\$ 27,810	\$ 42,349	\$ 12,486	\$ 54,835

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

12. Subsequent Events

From October 1, 2023 through November 9, 2023, we sold an additional 1,040,613 shares of our common stock pursuant to the terms of our At Market Issuance Sales Agreement with Wainwright for aggregate net cash proceeds of \$181. Transaction costs were not significant.

From October 1, 2023 through November 9, 2023, we sold an additional 1,254,882 shares of our common stock, including certain commitment shares issued to Lincoln Park in connection with the transaction, for aggregate net cash proceeds of \$215.

From October 1, 2023 through November 9, 2023, vested restricted stock units covering 850,116 shares of our common stock were released to team members and service providers that related to grants previously awarded to those individuals. This figure is inclusive of the 500,000 shares issued to our former chief executive officer as more fully described in Note 10 above.

From October 1, 2023 through November 9, 2023, we issued 3,738,500 shares of our common stock pursuant to conversion under our amended 2022 Promissory Note, which represented \$600 in related principle and interest payments thereunder.

On October 4, 2023, we entered into a lease termination agreement with the landlord of our office space in San Diego, California, in which the landlord and us agreed to terminate our lease effective October 31, 2023. We agreed to forfeit our security deposit of approximately \$14 and pay an early termination fee in the amount of approximately \$68 on October 31, 2023. The lease was originally scheduled to conclude on June 30, 2025.

On November 1, 2023, we committed to a plan to discontinue and wind down, either by sale or closing, operations of Lyte. We expect to complete this process by the end of 2023. As of result, the Company estimates that it will incur cash costs

related to the wind down of between \$0.2 million and \$0.4 million. We currently expect these costs to be paid during the fourth quarter of 2023 and primarily funded from proceeds from sale of Lyte's assets. In addition, the Company currently expects to incur pre-tax, non-cash losses that could approximate up to \$3.0 million during the fourth quarter of 2023. In connection therewith, on November 9, 2023, we entered into a lease termination agreement with Jonsson ATX Warehouse, LLC, the landlord of our Lyte warehouse facility, in which the landlord and us agreed to terminate the lease for our Lyte facility effective November 30, 2023. We agreed to forfeit our security deposit of approximately \$77 and we paid on November 9, 2023 a termination fee of approximately \$120. The lease was originally scheduled to conclude on July 31, 2027.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

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

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

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

Key Events and Recent Developments

The Board of Directors has fixed December 20, 2023 as the date for our 2023 Annual Meeting of Stockholders. The 2023 Annual Meeting of Stockholders is delayed by more than 30 days after the anniversary of the 2022 Annual Meeting of Stockholders.

On October 25, 2023, we entered into a separation agreement with Russell Buyse, our Chief Executive Officer, in which Mr. Buyse’s employment terminated with the Company effective immediately. On the same date, our Board of Directors appointed Mr. Michael Snavelly, our Chief Revenue Officer, as Chief Executive Officer. Mr. Buyse and the Company entered into a consulting agreement that concluded on November 10, 2023.

On November 1, 2023, we announced the suspension of our Lyte Technology operations. The suspension is expected to relieve strain on the Company’s cash burn, while realigning emphasis on our software solutions, while exploring additional monetization of our intellectual property, as well as, our goal to complete our blockchain ecosystem. We estimate to incur cash charges related to the shutdown of between \$0.2 million to \$0.4 million, a substantial portion of which will be allocated to our efforts to negotiate a buyout of the real estate facilities utilized for the Lyte segment. We may also incur non-cash charges related to impairment of intangibles and inventory.

Overview

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

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

We intend to continue investing for long-term growth. We have invested and expect to continue investing in the expansion of our ability to market, sell and provide our current and future products and services to customers globally. We also

expect to continue investing in the development and improvement of new and existing products and services to address customers' needs. We currently do not expect to be profitable in the near future.

Key Business Metrics

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

Backlog and Deferred Revenue. Backlog represents future amounts to be invoiced under our current agreements. At any point in the contract term, there can be amounts that we have not yet been contractually able to invoice. Until such time as these amounts are invoiced, they are not recorded in revenue, deferred revenue, accounts receivable or elsewhere in our condensed consolidated financial statements, and are considered by us to be backlog. We expect backlog to fluctuate up or down from period to period for several reasons, including the timing and duration of customer contracts, varying billing cycles and the timing and duration of customer renewals. We reasonably expect approximately 53% of our backlog as of September 30, 2023 will be invoiced during the subsequent 12-month period, primarily due to the fact that our contracts are typically one to three years in length.

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

The following table sets forth our backlog and deferred revenue:

	<u>September 30, 2023</u>	<u>December 31, 2022</u>
<i>(in thousands)</i>		
Backlog	\$ 2,529	\$ 3,824
Deferred revenue	2,259	4,178
Total backlog and deferred revenue	<u>\$ 4,788</u>	<u>\$ 8,002</u>

Non-GAAP Financial Measures

Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA

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

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

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

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

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

<i>(in thousands, except percentages)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Adjusted gross profit ⁽¹⁾	\$ 275	\$ 854	1,456	4,240
Adjusted gross margin ⁽¹⁾	9.8 %	17.9 %	13.2 %	24.9 %
Adjusted EBITDA ⁽²⁾	\$ (4,264)	\$ (6,741)	\$ (15,080)	\$ (17,590)

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

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

Reconciliation of Non-GAAP Financial Measures

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

<i>(in thousands, except percentages)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Gross profit	\$ 195	\$ 795	\$ 1,012	\$ 4,086
Add back: Stock-based compensation	80	59	444	154
Adjusted gross profit	\$ 275	\$ 854	\$ 1,456	\$ 4,240
Adjusted gross margin	9.8 %	17.9 %	13.2 %	24.9 %

<i>(in thousands)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net loss	\$ (18,979)	\$ (8,018)	\$ (29,772)	\$ (40,006)
Add back: Depreciation and amortization	188	185	564	553
Add back: Interest expense	264	991	1,354	1,645
EBITDA	(18,527)	(6,842)	(27,854)	(37,808)
Add Back: Stock-based compensation	838	899	3,662	2,169
Add Back: Loss on extinguishment of debt	237	—	237	—
Add Back: Impairment of digital currencies	—	—	50	21,511
Add Back: Impairment of goodwill	13,188	—	14,391	—
Less: Fair value adjustment for warrant liabilities	—	(797)	(256)	(3,267)
Less: Gain on sale of digital assets	—	(1)	(5,310)	(195)
Adjusted EBITDA	\$ (4,264)	\$ (6,741)	\$ (15,080)	\$ (17,590)

Components of Results of Operations

Revenue and Gross Profit

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

Platform Revenue and Gross Profit

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

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

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

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

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

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

Hardware Revenue and Gross Profit

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

Hardware gross profit is equal to hardware revenue less the costs associated with the assembly of computers. Hardware gross profit is impacted by the costs that we pay for parts incorporated into a Lyte computer system, as well as labor costs of our employees directly attributable to building computer systems and shipping. Demand may exceed available supply at times, which may hamper our ability to deliver computer systems in a timely manner and may increase the costs at which we can obtain inventory needed for computer builds. Customizable solutions we offer our customers may also vary from time to time. As a result, computer hardware revenue and gross profit may fluctuate from period to period. Effective November 1, 2023, we suspended our Lyte operations.

Gross Margin

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

Operating Expenses

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

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

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

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

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

Interest Expense

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

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

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

Results of Operations
Net Revenues

<i>(in thousands, except percentages)</i>	Three Months Ended September 30,		Change	
	2023	2022	Amount	%
Net Revenues				
Platform revenue	\$ 1,253	\$ 1,259	\$ (6)	(0.5)%
Hardware revenue	1,539	3,499	(1,960)	(56.0)%
Net revenues	<u>\$ 2,792</u>	<u>\$ 4,758</u>	<u>\$ (1,966)</u>	<u>(41.3)%</u>
Platform revenue as percentage of total revenue	44.9 %	26.5 %		
Hardware revenue as percentage of total revenue	55.1 %	73.5 %		

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Change	
	2023	2022	Amount	%
Net Revenues				
Platform revenue	\$ 3,893	\$ 5,379	\$ (1,486)	(27.6)%
Hardware revenue	7,133	11,642	(4,509)	(38.7)%
Net revenues	<u>\$ 11,026</u>	<u>\$ 17,021</u>	<u>\$ (5,995)</u>	<u>(35.2)%</u>
Platform revenue as percentage of total revenue	35.3 %	31.6 %		
Hardware revenue as percentage of total revenue	64.7 %	68.4 %		

Net revenues decreased \$2.0 million, or 41.3%, for the three months ended September 30, 2023 compared to the corresponding period in 2022 as a result of lower orders and resulting shipments for Lyte computers.

Net revenues decreased \$6.0 million, or (35.2)%, for the nine months ended September 30, 2023 compared to the corresponding period in 2022.

Platform revenue decreased \$1.5 million, or (27.6)%, for the nine months ended September 30, 2023 compared to the corresponding period in 2022, primarily due to PhunToken sales of \$1.5 million in 2022. We did not sell any PhunToken during the nine months ended September 30, 2023.

Hardware revenue decreased by \$4.5 million, or (38.7)%, for the nine months ended September 30, 2023 compared to the corresponding period in 2022, as a result of lower order backlog as of December 31, 2022, as compared to December 31, 2021 and lower sales of Lyte computers in 2023, as compared to the prior year.

Cost of Revenues, Gross Profit and Gross Margin

<i>(in thousands, except percentages)</i>	Three Months Ended September 30,		Change	
	2023	2022	Amount	%
Cost of Revenues				
Platform revenue	\$ 622	\$ 674	\$ (52)	(7.7)%
Hardware revenue	1,975	3,289	(1,314)	(40.0)%
Total cost of revenues	<u>\$ 2,597</u>	<u>\$ 3,963</u>	<u>\$ (1,366)</u>	<u>(34.5)%</u>
Gross Profit				
Platform revenue	\$ 631	\$ 585	\$ 46	7.9 %
Hardware revenue	(436)	210	(646)	(307.6)%
Total gross profit	<u>\$ 195</u>	<u>\$ 795</u>	<u>\$ (600)</u>	<u>(75.5)%</u>
Gross Margin				
Platform revenue	50.4 %	46.5 %		
Hardware revenue	(28.3)%	6.0 %		
Total gross margin	7.0 %	16.7 %		

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,		Change	
	2023	2022	Amount	%
Cost of Revenues				
Platform revenue	\$ 2,652	\$ 2,313	\$ 339	14.7 %
Hardware revenue	7,362	10,622	(3,260)	(30.7)%
Total cost of revenues	<u>\$ 10,014</u>	<u>\$ 12,935</u>	<u>\$ (2,921)</u>	<u>(22.6)%</u>
Gross Profit				
Platform revenue	1,241	\$ 3,066	\$ (1,825)	(59.5)%
Hardware revenue	(229)	\$ 1,020	\$ (1,249)	(122.5)%
Total gross profit	<u>\$ 1,012</u>	<u>\$ 4,086</u>	<u>\$ (3,074)</u>	<u>(75.2)%</u>
Gross Margin				
Platform revenue	31.9 %	57.0 %		
Hardware revenue	(3.2)%	8.8 %		
Total gross margin	9.2 %	24.0 %		

Total gross profit decreased \$0.6 million, or 75.5%, three months ended September 30, 2023 compared to the corresponding period in 2022, as a result of the revenue items described above, as well as \$0.5 million charge recorded for obsolete Lyte inventory component.

Total gross profit decreased \$3.1 million, or 75.2%, for the nine months ended September 30, 2023 compared to the corresponding period of 2022, as a result of the revenue items and Lyte inventory charge described above. Further decreases in gross profit are attributable to a \$0.4 million increase in stock-based compensation expense as well as \$0.8 million charge recorded for obsolete Lyte inventory component.

Operating Expenses

	Three Months Ended September 30,		Change	
	2023	2022	Amount	%
<i>(in thousands, except percentages)</i>				
Operating expenses				
Sales and marketing	\$ 1,027	\$ 1,819	\$ (792)	(43.5)%
General and administrative	3,478	5,189	(1,711)	(33.0)%
Research and development	1,042	1,665	(623)	(37.4)%
Impairment of goodwill	13,188	—	13,188	100.0 %
Total operating expenses	\$ 18,735	\$ 8,673	\$ 10,062	116.0 %

	Nine Months Ended September 30,		Change	
	2023	2022	Amount	%
<i>(in thousands, except percentages)</i>				
Operating expenses				
Sales and marketing	\$ 3,627	\$ 5,232	\$ (1,605)	(30.7)%
General and administrative	12,956	14,745	(1,789)	(12.1)%
Research and development	4,026	4,544	(518)	(11.4)%
Impairment of goodwill	14,391	—	14,391	100.0 %
Total operating expenses	\$ 35,000	\$ 24,521	\$ 10,479	42.7 %

Sales and Marketing

Sales and marketing expense decreased \$0.8 million, or (43.5)%, for the three months ended September 30, 2023 compared to the corresponding period of 2022, primarily due to a decrease in marketing related expenditures for Lyte.

Sales and marketing expense decreased \$1.6 million, or (30.7)%, for the nine months ended September 30, 2023 compared to the corresponding period of 2022, primarily due to a decrease in marketing related expenditures for Lyte and PhunToken.

General and Administrative

General and administrative expense decreased \$1.7 million, or 33.0%, for the three months ended September 30, 2023 compared to the corresponding period of 2022, due to a \$1.1 million decrease in legal fees and \$0.4 decrease in compensation related expenses, mainly related to a decrease in headcount.

General and administrative expense decreased \$1.8 million, or (12.1)%, for the nine months ended September 30, 2023 compared to the corresponding period of 2022, due to a \$0.9 million decrease in compensation related expenses, mainly related to decrease in bonus accrual, and \$1.8 million decrease in professional fees for legal expenses and consultants. These decreases were mostly offset by a \$1.0 million increase in stock-based compensation expense and \$0.3 million in facility related expenses.

Research and Development

Research and development expense decreased \$0.6 million, or (37.4)%, for the three months ended September 30, 2023 compared to the corresponding period of 2022, as a result of a \$0.5 million decrease in compensation expenses, mainly related decrease in employee headcount.

Research and development expense increased \$0.5 million, or (11.4)%, for the nine months ended September 30, 2023 compared to the corresponding period of 2022, as a result of \$0.4 million in compensation expenses, mainly related to decrease in bonus accrual and employee headcount.

Impairment of Goodwill

We recorded an impairment of goodwill related to our Phunware and Lyte operating segments for the three and nine months ended September 30, 2023. Refer to Note 3 "Supplemental Information" of the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for further discussion on our goodwill impairment.

Other expense

<i>(in thousands, except percentages)</i>	Three Months Ended September 30,	
	2023	2022
Other income (expense)		
Interest expense	\$ (264)	\$ (991)
Loss on extinguishment of debt	(237)	—
Gain on sale of digital assets	—	1
Fair value adjustment of warrant liability	—	797
Other income	62	53
Total other income (expense)	\$ (439)	\$ (140)

<i>(in thousands, except percentages)</i>	Nine Months Ended September 30,	
	2023	2022
Other income (expense)		
Interest expense	\$ (1,354)	\$ (1,645)
Loss on extinguishment of debt	(237)	—
Impairment of digital assets	(50)	(21,511)
Gain on sale of digital assets	5,310	195
Fair value adjustment of warrant liability	256	3,267
Other income	291	123
Total other income (expense)	\$ 4,216	\$ (19,571)

During the three and nine months ended September 30, 2023, we recorded other income of \$(0.4) million and \$4.2 million, respectively, primarily as a result of expenses related to our debt offerings and realized gains on the sales of our bitcoin holdings, respectively.

During the three months ended September 30, 2022, we recorded other expenses of \$0.1 million, primarily as a result of interest expense on our outstanding debt, which was mostly offset by a gain in the fair value adjustment of our warrant liability. During the nine months ended September 30, 2022, we recorded other expense of \$19.6 million, primarily as a result of impairment charges related to our digital asset holdings, which was partially offset by warrant fair value adjustments.

Refer to Note 5, "Digital Assets" and Note 6, "Debt," of the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for further discussion regarding our digital asset holdings and debt, respectively.

Liquidity and Capital Resources

As of September 30, 2023, we held total cash of \$2.9 million, all of which was held in the United States. We have a history of operating losses and negative operating cash flows. As we continue to focus on growing our revenues, we expect these trends to continue into the foreseeable future.

On February 1, 2022, we filed a Form S-3, which was subsequently declared effective by the SEC on February 9, 2022, pursuant to which we may issue up to \$200 million in common stock, preferred stock, warrants and units. Contained therein, was a prospectus supplement pursuant to which we may sell up to \$100 million of our common stock in an "at the market offering" pursuant to an At Market Issuance Sales Agreement we entered into with H.C. Wainwright & Co., LLC on January 31, 2022. As of September 30, 2023, 20,018,176 shares of our common stock have been sold for aggregate gross cash proceeds of \$11.5 million.

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

In July 2023, we implemented a plan to decrease our cash burn by reducing employee headcount and other operating expenditures.

On August 22, 2023, we entered into a common stock purchase agreement with Lincoln Park Capital Fund, LLC ("Lincoln Park"), which provides that, upon the terms and subject to the conditions and limitations set forth therein, we have the right, but not the obligation, to sell to Lincoln Park up to \$30 million in value of shares of our common stock from time to time over the 24-month term of the purchase agreement. On any business day selected by us, we may direct Lincoln Park to purchase up to 250,000 shares of our common stock subject to adjustment as set forth below, on such business day (or the purchase date), which we refer to as a "Regular Purchase," provided, however, that (i) a Regular Purchase may be increased to up to 350,000 shares if the closing sale price of our common stock on the Nasdaq is not below \$0.20 on the applicable purchase date; (ii) a Regular Purchase may be increased to up to 450,000 shares if the closing sale price of our common stock on Nasdaq is not below \$0.30 on the applicable purchase date; (iii) a Regular Purchase may be increased to up to 550,000 shares if the closing sale price of our common stock on Nasdaq is not below \$0.50 on the applicable purchase date; and (iv) a Regular Purchase may be increased to up to 650,000 shares if the closing sale price of our common stock on Nasdaq is not below \$0.75 on the applicable purchase date. Lincoln Park's committed obligation under any single Regular Purchase, subject to certain exceptions, cannot exceed \$1,000. We may direct Lincoln Park to purchase shares in Regular Purchases as often as every business day, so long as the closing sale price of our common stock on such business day is not less than the floor price of \$0.10 per share. Concurrently with entering into the purchase agreement, we also entered into a registration rights agreement with Lincoln Park pursuant to which the Company agreed to register the sale of the shares of the Company's common stock that have been and may be issued to Lincoln Park under the purchase agreement pursuant to the Company's existing shelf registration statement on Form S-3. During the nine months ended September 30, 2023, we sold 1,712,503 shares of our common stock, including certain commitment shares issued to Lincoln Park in connection with the transaction, for aggregate net cash proceeds of \$88. Transaction costs were \$97. As of September 30, 2023, \$29.9 million in value of shares of our common stock remains issuable pursuant to the purchase agreement with Lincoln Park.

Subsequent to September 30, 2023, we also raised approximately \$0.2 million in our at-the-market equity offering under our At Market Issuance Sales Agreement we entered into with H.C. Wainwright & Co., LLC. Our future plans may include additional reductions to operating expenses, additional sales of our common stock in our at-the-market offering, and issuing additional shares of common stock, preferred stock, warrants or units pursuant to an effective shelf registration statement. Plans to generate cash sufficient to meet our capital requirements may include selling shares of our common stock in our at-the-market equity offering, and as of the date of this Report, shares of our common stock with a maximum aggregate offering price of up to \$88.4 million may be sold pursuant to the sales agreement. We may also issue shares of our common stock, preferred stock, warrants and units in other offerings pursuant to our effective registration statement.

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

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

In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us, or at all. Furthermore, we are currently not in compliance with the Bid Price Requirement of the Nasdaq. Although the Company is attempting to regain compliance, there can be no assurance that we will regain compliance with the Bid Price Requirement or maintain compliance with other Nasdaq continued listing requirements. This may also affect our ability to raise additional funds and the liquidity of our common stock. If we are unable to raise additional capital when desired and/or on acceptable terms, our business, operating results and financial condition could be adversely affected.

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

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

	Nine Months Ended September 30,	
	2023	2022
<i>(in thousands, except percentages)</i>		
Consolidated cash flows		
Net cash used in operating activities	\$ (15,869)	\$ (22,872)
Net cash provided by (used in) investing activities	\$ 15,383	\$ (2,286)
Net cash provided in financing activities	\$ 1,379	\$ 10,768

Operating Activities

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

We utilized \$15.9 million of cash from operating activities during the nine months ended September 30, 2023, resulting in a net loss of \$29.8 million. The net loss included a gain on the sale of digital assets of \$5.3 million and non-cash charges of \$20.9 million, primarily consisting of stock-based compensation and impairment of goodwill. In addition, certain changes in our operating assets and liabilities resulted in a cash decrease of \$1.6 million, primarily relating to a decrease in deferred revenue and inventory.

We utilized \$22.9 million of cash from operating activities during the nine months ended September 30, 2022, primarily as a result of a net loss of \$40.0 million. The net loss included non-cash charges of \$22.1 million, primarily consisting of impairment of digital assets, (\$3.2) million gain on fair value adjustment of our outstanding warrant and \$2.2 million of

stock-based compensation. In addition, certain changes in our operating assets and liabilities resulted in significant cash (decreases) as follows: a decrease in deferred revenue of (\$2.5) million as a result of revenue recognized from existing customer contracts and timing of invoices to customers, (\$0.7) million increase in accounts receivable due to the timing of customer invoices and related payments to us, (\$0.6) million increase in inventory for computer hardware components as we prepare for the holiday season, (\$0.6) million for lease liability payments and \$(0.2) million decrease in accounts payable and accrued expenses.

Investing Activities

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

Financing Activities

Our financing activities during the nine months ended September 30, 2023 consisted of \$6.9 million in proceeds from the sale of our common stock. We also had payments on our 2022 Promissory Note of \$5.1 million and \$0.5 million for repurchases of shares of our common stock. Refer to the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the Company's financing activities.

Our financing activities during the nine months ended September 30, 2022 consisted of proceeds from equity financings and debt borrowings offset by payments on debt. We acquired \$10.8 million of cash from financing activities resulting primarily from \$11.8 million in proceeds from our 2022 Promissory Note and \$3.7 million in proceeds from the sales of our common stock. We had payments on debt of \$4.7 million, of which all were payments on the 2021 Promissory Note. Refer to the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the Company's financing activities.

Contractual Obligations

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

Off-Balance Sheet Arrangements

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

Indemnification Agreements

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

Recent Accounting Pronouncements

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

Summary of Significant Accounting Policies

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of

contingent assets and liabilities at the date of the financial statements, as well as the reported revenues generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

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

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers (as defined below), or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

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

Changes in Internal Control over Financial Reporting

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

Limitations on Effectiveness of Controls

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

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

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

Item 1A. Risk Factors

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

Our future performance will depend on the successful transition of our Chief Executive Officer (CEO).

On October 25, 2023, we announced the transition of our Chief Executive Officer and further announced the appointment of Michael Snavely to serve as our Chief Executive Officer effective as of that date. If we are unable to execute a timely and orderly transition and successfully integrate our new Chief Executive Officer into our leadership team, revenue, operating results and our financial condition may be adversely impacted.

Our future performance also will continue to depend on the services and contributions of our other senior management and key employees to execute on our business plan and to identify and pursue new opportunities as well as service and product innovations. These changes, and any future changes, in our operations and management team could be disruptive to our operations. Further, if our new Chief Executive Officer formulates different or changed views, the future strategy and plans of our business may differ materially from those of the past.

If we fail to comply with the minimum closing bid requirements of Nasdaq by April 8, 2024, or other requirements for continued listing on the Nasdaq, including stockholder equity and market value requirements, the Nasdaq may delist our common stock, which would have an adverse impact on the trading volume, liquidity and market price of our common stock and would trigger a default under our 2022 Promissory Note.

Our common stock is currently listed on the Nasdaq Capital Market. On April 13, 2023, we were notified by the Nasdaq Stock Market LLC (the "Nasdaq") that the closing bid price for our common stock had been below \$1.00 for the last 30 consecutive business days and that the Company therefore is not in compliance with the minimum bid price requirement for continued inclusion on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Requirement"). Under the Nasdaq Listing Rules, the Company was granted a period of 180 calendar days from the date of the notice, or October 10, 2023, to regain compliance with the Bid Price Requirement. On October 10, 2023, pursuant to Nasdaq Listing Rules, we submitted a request to Nasdaq for an additional 180-day extension to regain compliance with the Bid Price Requirement and notice of our intention to cure the deficiency, including by effecting a reverse stock split, if necessary. On October 12, 2023, Nasdaq advised us that we were provided an additional 180 calendar day compliance period, or until April 8, 2024, to regain compliance with the Bid Price Requirement.

To regain compliance, the closing bid price of the Company's common stock must be at least \$1.00 for a minimum of ten consecutive business days. We intend to monitor the closing bid price of our common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Requirement. To regain compliance with Nasdaq listing standards we may have to implement a reverse stock split, subject to approval of our board of directors and stockholders. However, there can be no assurance that we will be able to regain compliance with the Bid Price Requirement or will otherwise be in compliance with other Nasdaq Listing Rules.

If we are unable to regain compliance with the Bid Price Requirement by April 8, 2024, or if we fail to meet any other continued listing requirements, including stockholders equity and market value requirements, it could negatively impact us as it would likely reduce the liquidity and market price of our common stock; reduce the number of investors willing to hold or acquire our common stock; and negatively impact our ability to access equity markets and obtain financing. If our common stock were to be removed from listing on the Nasdaq (and our common stock is not listed on other specified stock exchanges),

it would trigger a default under our 2022 Promissory Note, as amended, and the outstanding balance would be immediately due and payable in cash at the Mandatory Default Amount, as defined in the 2022 Promissory Note.

If we implement a reverse stock split, the liquidity of our common stock may be adversely effected.

The Company intends to request stockholder approval at its next annual meeting of stockholders for an amendment to our certificate of incorporation to effect a reverse stock split, if necessary, of our issued and outstanding shares of common stock to regain compliance with the Bid Price Requirement. However, there can be no assurance that the post-reverse stock split market price of our common stock will increase in proportion to the reduction in the number of shares of our common stock outstanding immediately before the reverse stock split. The liquidity of the shares of our common stock may be affected adversely by any reverse stock split given the reduced number of shares of our common stock that will be outstanding following the reverse stock split. In addition, the reverse stock split may increase the number of stockholders who own odd lots (less than 100 shares) of our common stock, creating the potential for such stockholders to experience an increase in the cost of selling their shares and greater difficulty effecting such sales.

Following any reverse stock split, the resulting market price of our common stock may not attract new investors and may not satisfy the investing requirements of those investors. Although we believe that a higher market price of our common stock may help generate greater or broader investor interest, there can be no assurance that the reverse stock split will result in a share price that will attract new investors, including institutional investors. In addition, there can be no assurance that the market price of our common stock will satisfy the investing requirements of those investors. As a result, the trading liquidity of our common stock may not necessarily improve.

We may incur additional costs with respect to our wind down of Lyte. These costs may be in the form of cash and non-cash charges, each of which may be material and have an adverse affect on our liquidity and financial statements.

On November 1, 2023, we committed to a plan to discontinue and wind down, either by sale or closing, operations of our PC manufacturing assembly business, Lyte. We expect to complete this process by the end of 2023. As of result, the Company currently estimates that it will incur cash costs related to the wind down of Lyte of between \$0.2 million and \$0.4 million, and we currently expect these costs to be paid during the fourth quarter of 2023 and primarily funded from proceeds from sale of Lyte's assets. In addition, we currently expect to incur pre-tax, non-cash losses that could approximate up to \$3.0 million during the fourth quarter of 2023.

The Company may incur additional costs or charges related to the actions described above. Although the Company cannot currently predict the amount or timing of these other charges, at this time, these additional costs or charges could be material to our liquidity and financial statements.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

The information set forth under the subheading "*Key Events and Recent Developments*" included in Part I, Item 2, of this Quarterly Report on Form 10-Q is incorporated herein by reference.

Item 6. Exhibits

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

EXHIBIT INDEX

Exhibit No.	Description
3.1	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).
3.2	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).
10.1	Purchase Agreement, dated August 22, 2023 by and between Phunware, Inc. and Lincoln Park Capital, LLC (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on August 23, 2023).
10.2	Registration Rights Agreement, dated August 22, 2023 by and between Phunware, Inc. and Lincoln Park Capital, LLC (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on August 23, 2023).
10.3+	Confidential Separation, Consulting and General Release Agreement by and between Phunware, Inc. and Russell Buyse dated October 25, 2023 (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on October 26, 2023).
10.4+	Confidential Employment Agreement by and between Phunware, Inc. and Mike Snavelly dated October 25, 2023 Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on October 26, 2023).
10.5*	Lease Termination Agreement by and between Phunware, Inc. and Jonsson ATX Warehouse, LLC dated November 9, 2023.
31.1*	Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a)*
31.2*	Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a)*
32.1**	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350*
101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema*
101.CAL	XBRL Taxonomy Calculation Linkbase*
101.LAB	XBRL Taxonomy Label Linkbase*
101.PRE	XBRL Definition Linkbase Document*
101.DEF	XBRL Definition Linkbase Document*
104	Cover Page Interactive Data File*

* Filed herewith

** Furnished herewith

+ Indicates a management contract or compensatory plan or arrangement

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

November 9, 2023

Phunware, Inc.

By: /s/ Michael Snavely
Name: Michael Snavely
Title: Chief Executive Officer
(Principal Executive Officer)

November 9, 2023

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

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT (this "**Agreement**") is entered into effective as of the 9th day of November, 2023 (the "**Effective Date**"), by and between **JONSSON ATX WAREHOUSE, LLC**, a Texas limited liability company ("**Landlord**"), and **PHUNWARE, INC.**, a Delaware corporation ("**Tenant**").

WITNESSETH:

A. Landlord and Tenant heretofore entered into that certain Lease Agreement dated effective as of March 18, 2022 (the "**Lease**"), whereby Landlord leased unto Tenant, and Tenant leased from Landlord, on and subject to the terms and conditions set forth in the Lease, those certain premises (the "**Premises**") comprised of approximately 21,830 square feet of space known as Suite A, in the building located at 1990 Steam Way, Round Rock, Texas (the "**Building**"), as more particularly described in the Lease, reference to which is hereby made for all purposes.

B. The parties now desire to terminate the Lease effective as of the Cancellation Date (as defined below), which is prior to the scheduled expiration date for the Lease Term, and have agreed to enter into this Agreement in order to evidence the same.

NOW, THEREFORE, for and in consideration of the foregoing, for the cash sum of Ten and No/100 Dollars (\$10.00) this day paid in hand from Tenant to Landlord, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Recitals; Defined Terms. The above and foregoing recitals are hereby declared by the parties to be true and correct, and they are incorporated herein by this reference. Unless otherwise defined herein, any capitalized terms used but not defined in this Agreement shall have the same meanings ascribed to them in the Lease.

2. Lease Cancellation. Provided that the Termination Condition (defined below) is satisfied on or prior to the Effective Date, effective as of the date which is the earlier of November 30, 2023 or the occurrence of any of the events described in Paragraph 23(b) of the Lease (the "**Cancellation Date**"), the Lease is hereby cancelled and terminated and the Lease Term thereby demised brought to an end with the same force and effect as if the Lease Term was, in and by the provisions thereof, fixed to expire on the Cancellation Date and not on the scheduled expiration date originally provided for in the Lease. Accordingly, Landlord and Tenant acknowledge and agree that, effective as of the Cancellation Date (but subject to Paragraph 3 below), Tenant shall be and is hereby relieved and discharged of and from all of its obligations to pay Base Rent and Tenant's Proportionate Share of Operating Expenses and to pay and perform all of its other obligations and liabilities under the Lease which, but for this Agreement, would have accrued under and pursuant to the Lease from and after (but not before) the Cancellation Date, it being expressly understood and agreed, for the avoidance of doubt, that Tenant shall continue to be liable for the payment to Landlord of all Base Rent and Tenant's Proportionate Share of Operating Expenses (which Landlord acknowledges have been paid by Tenant through November 30, 2023) and all other amounts due or to become due and owing under the Lease and accruing up to and including (but not beyond) the Cancellation Date in accordance with the terms and provisions of the Lease and this Agreement.

3. Condition to Effectiveness. The effectiveness of the cancellation and termination of the Lease, as provided for in Paragraph 2 above, is entirely conditioned upon Landlord's receipt from Tenant in cash of an amount equal to One Hundred Nineteen Thousand Five Hundred Thirty-Nine and 88/100 Dollars (\$119,539.88), in good funds, no later than the

Effective Date (the "**Termination Condition**"). Notwithstanding the foregoing, in the event the Termination Condition has not occurred by the Effective Date, then, and in such event, Landlord shall have the right and option to terminate this Agreement by giving written notice thereof to Tenant, which notice of termination, if given, shall be effective as of the date which is three (3) business days following the giving thereof, but which notice of termination shall be inoperative and of no force or effect if, within said 3-business-day period, the Termination Condition is satisfied. Landlord agrees to provide written acknowledgment to Tenant, if requested by Tenant, of the date on which Landlord has determined that the Termination Condition has been timely satisfied. Upon any effective termination of this Agreement in accordance with the preceding sentence, this Agreement shall be of no further force or effect, and the Lease shall continue as fully and to the same extent as if this Agreement were never entered into.

4 . Security Deposit. Landlord and Tenant, by their execution hereof, hereby acknowledge that Tenant heretofore deposited with Landlord the cash sum of \$77,460.12 (the "**Security Deposit**"), which, in accordance with the terms of the Lease, Landlord continues to hold. Notwithstanding anything to the contrary in the Lease, as additional consideration for the agreements made by Landlord herein, Tenant hereby surrenders all of its right, title and interest in and to the Security Deposit to Landlord, effective on the Effective Date; and, accordingly, Landlord shall have the right to retain the entirety of the Security Deposit, effective on the Effective Date, without any obligation on the part of Landlord to provide an accounting to Tenant for any deductions therefrom made by Landlord.

5. Surrendering Possession of Premises. Tenant hereby covenants and agrees that it shall vacate the Premises and tender such space to Landlord no later than the Cancellation Date in the condition prescribed by the Lease, including, without limitation, in accordance with Paragraph 21 thereof and the Move Out Conditions Addendum attached thereto. All items of furniture, equipment or other personal property of Tenant, if any, which are not, in fact, removed from the Premises on or prior to the Cancellation Date shall be deemed to have been abandoned by Tenant, whereupon Landlord may retain any such abandoned items for its own purposes or dispose of any such abandoned items in such manner as Landlord, in its sole and absolute discretion, may determine to be desirable or appropriate, all without liability or reimbursement to Tenant or any other party claiming or purporting to claim an interest therein. For clarity and avoidance of doubt, nothing herein shall be deemed, construed or interpreted as modifying, amending or waiving any of Landlord's rights and remedies under the Lease in connection with Tenant's failure to surrender the Premises and remove its property from the Premises in accordance with the terms and provisions of the Lease, including, without limitation, those set forth in Paragraph 21 of the Lease, all of which are hereby expressly reserved by Landlord. Notwithstanding the foregoing, Landlord agrees to determine, and to provide written acknowledgment to Tenant, if requested by Tenant, of the date on which Landlord has determined, that Tenant has surrendered the Premises in accordance with the terms and provisions of the Lease and this Agreement.

6 . Mutual Release. Landlord and (subject to Tenant's timely satisfaction of each of the terms and conditions of, and the timely performance by Tenant of its duties and obligations under, this Agreement) Tenant, and each of their respective predecessors, successors and assigns, their subsidiaries, parent and affiliated entities, and each of their respective employees, agents, representatives, directors, officers, shareholders and partners, as applicable and as the case may be, are each hereby absolutely, irrevocably, unconditionally, fully and forever RELEASED and FOREVER DISCHARGED of and from their respective duties and obligations to observe and perform the several covenants, conditions and agreements in, under and pursuant to the Lease on their respective parts to be observed and performed, and from any and all claims, actions, causes of action, suits, debts, accounts, covenants, agreements, promises, damages, awards, warranties (express or implied), liabilities, obligations, liens, judgments, losses, obligations, executions, claims, demands, fees, costs and expenses of every kind, nature and character whatsoever, in law

or in equity, whether known or unknown, suspected or unsuspected, fixed or contingent, and sounding in contract or in tort (each, a "**Claim**" and collectively, the "**Claims**"), which either party ever had, now has or which they hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, in any way existing or arising from, under, arising out of, attributable to, or resulting from the Lease, the Premises or the Building; provided, however, in no event shall the foregoing provisions release or discharge (or be deemed in any manner to have released and discharged): (a) Tenant from any Claims, of any kind, nature or character, known or unknown, accruing to or for the benefit of Landlord subsequent to the Effective Date and prior to such time as Tenant actually surrenders possession of the Premises to Landlord in accordance with Paragraph 5 above and arising out of (i) the acts or omissions on the part of Tenant, its employees, agents or contractors, in connection with the use or occupancy of the Premises or the Building, or (ii) Tenant's breach of any obligation, covenant or agreement to be observed or performed by Tenant under the Lease or pursuant to this Agreement, including, without limitation, Tenant's failure to surrender the Premises in accordance with the terms and provisions of the Lease and this Agreement; (b) either party from any Claims, of any kind, nature or character, known or unknown, accruing to or for the benefit of Landlord or Tenant, and arising in connection with the other party's breach of its representations and warranties made hereunder or in the Lease, regardless of when the same accrues (whether before or after the Effective Date or Cancellation Date); or (c) Tenant from its obligations to indemnify Landlord for matters set forth in the Lease and in this Agreement, regardless of when such obligation accrues (whether before or after the Effective Date or Cancellation Date), all of which expressly survive termination of the Lease. Notwithstanding the immediately preceding sentence, Tenant hereby agrees to defend, indemnify and hold Landlord harmless under Section 18 of the Lease from and against any and all Claims incurred or suffered by Landlord due to Tenant's failure to timely surrender the Premises to Landlord on or before the Cancellation Date as required pursuant to Paragraph 5 above.

7. Representations Relating to Lease and Premises. Tenant hereby represents and warrants to Landlord that the following statements are true and correct as of the Effective Date and will be true and correct on the Cancellation Date:

- (a) Tenant owns and holds the entire interest of Tenant under the Lease;
- (b) There currently exist no subleases by Tenant of the Premises or any part thereof, and Tenant shall not hereafter enter into any sublease with respect to the Premises, or any portion thereof;
- (c) Tenant has not heretofore assigned or encumbered its interest under the Lease or any part thereof, and Tenant shall not hereafter assign or encumber its interest under the Lease or any part thereof;
- (d) No contracts for the furnishing of any labor or materials with respect to improvements or alterations to, in or about the Premises have been entered into by Tenant or are outstanding that have not been performed, paid for and fully satisfied, and Tenant shall not hereafter enter into any such contracts; and
- (e) Tenant (i) has not caused or consented to, nor does Tenant have any knowledge that there has occurred, any release or disposal in, on, within or from the Premises of any material referred to as "Hazardous Substance," or any term of similar meaning in the Lease, under applicable state or federal law, or otherwise, and (ii) has removed (or, on or before the Cancellation Date, will remove or cause to be removed) any such materials from the Premises in accordance with applicable law.

Landlord hereby represents and warrants to Tenant as of the Effective Date and the Cancellation Date that Landlord has not heretofore sold, assigned or transferred its interest under the Lease or any part thereof, except for any assignment or transfer made in connection with Landlord's financing secured by the Premises.

8 . Confidentiality. The parties agree to keep all of the terms of this Agreement, and all negotiations concerning it, confidential. However, either party may disclose the terms of this Agreement to its agents, lenders, accountants, attorneys, consultants and prospective lenders and proposed transferees, provided that such agents, lenders, accountants, attorneys, consultants and prospective lenders and proposed transferees have a reasonable bona fide need to know and be made aware of such terms, and provided that neither Landlord nor Tenant shall make disclosure of any of the terms of this Agreement to any such person or party unless such person or party is made subject to an obligation to keep and maintain the confidentiality of this Agreement. This confidentiality obligation shall not be applicable to disclosure of the existence or terms of this Agreement or any other information which is required to be disclosed by a party hereto to third parties for such party to be or remain in compliance with applicable securities or other laws or regulations, provided that, prior to making disclosure of the terms of this Agreement, or any of them, to any third party to the extent required by applicable laws or regulations, the party making such disclosure shall give reasonable advance notice of the requirement for such disclosure, describing with reasonable particularity the timeframe within which existence and such disclosure is to be made, to the other party.

9. Party Representations. Each party hereby represents and warrants to the other party that such party has taken all requisite corporate action necessary in order to both execute and deliver this Agreement and perform its obligations hereunder, that such party has authority to execute and deliver this Agreement without the joinder or consent of any other person or party, such that this Agreement constitutes the legally binding obligation of such party, enforceable against such party in accordance with its terms.

10. Attorneys' Fees. In the event either party to this Agreement should bring suit against the other party to enforce any obligations provided for herein, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, associated legal expenses and costs of court in connection with such suit.

11 . Further Assurances. Landlord and Tenant agree that they will, without further consideration, execute and deliver such other instruments or documents, and take such other actions, as may be reasonably requested by one or the other of the parties hereto in order to consummate more effectively the purpose, intent and subject matter of this Agreement.

12. Brokers. Tenant represents and warrants to Landlord that it has not dealt with any real estate broker, agent or finder in connection with this Agreement who or which will be expected to be compensated for their services in connection with this Agreement. Tenant agrees to defend, indemnify and hold harmless Landlord from and against all liabilities, claims and damages arising from any claim by any broker, agent or finder claiming to have dealt with Tenant in connection with this Agreement.

13. Governing Law; Venue; Waiver of Jury Trial. This Agreement shall be governed by, and construed and enforced under and in accordance with, Texas law. **Exclusive venue for the resolution of any and all disputes under or with respect to this Agreement shall be in the state district court sitting in Travis County, Texas, and each party hereby waives the right to sue or be sued elsewhere. To the extent permitted by applicable law, each party hereby irrevocably and unconditionally waives all right to trial by jury in any action, suit, proceeding or counterclaim that relates to or arises out of this Agreement or any of the terms and provisions hereof.**

14. Notices. Any notice to be provided from one party to the other hereunder shall be given in the same manner, and shall be deemed given when specified, as provided for in the Lease; provided, however, Landlord and Tenant hereby agree that, as of the Effective Date, the notice address for Tenant for purposes of the Lease and this Agreement shall be as follows:

Phunware, Inc.
1002 West Avenue
Austin, Texas 78701
Attention: Chief Financial Officer

15. Time of Essence. Time is of the essence with respect to this Agreement and the performance by the parties of their respective duties and obligations hereunder.

16. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, Landlord and Tenant, and their respective heirs, legal representatives, successors and permitted assigns.

17. Entire Agreement. The terms and provisions set forth in this Agreement constitute the entire agreement and understanding between Landlord and Tenant with respect to the specific subject matter addressed herein, and are hereby deemed to supersede all prior agreements and understandings, if any, between the parties concerning the specific subject matter hereof. No subsequent modification or amendment of the terms and provisions of this Agreement shall be effective unless in writing and signed by Landlord and Tenant.

18. Construction. Descriptive headings used in this Agreement are for convenience only, and are not intended to control or affect the meaning or construction of any provision of this Agreement. Where required for proper interpretation, words used herein in the singular tense shall include the plural, and vice versa; the masculine gender shall include the neuter and the feminine, and vice versa. If any provision of this Agreement is inapplicable or is invalid or unenforceable in contravention of any law, the remaining provisions of this Agreement shall not be affected or impaired by such inapplicability, invalidity or unenforceability, and, in the event of any provision which is invalid or unenforceable, there shall be substituted, in lieu of such invalid or unenforceable provision, a provision which as closely as possible conforms to the invalid or unenforceable provision and which is valid and enforceable. As used in this Agreement, the words "hereof," "herein," "hereunder" and words of similar import shall mean and refer to this entire Agreement, and not to any particular paragraph or subparagraph, unless the context clearly indicates otherwise. This Agreement shall be construed without presumption of any rule requiring construction to be made against the party causing same to be drafted.

19. Counterparts. To facilitate execution, this Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of the parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto hereby covenant and agree that, for purposes of facilitating the execution of this Agreement: (a) the signature pages taken from separate individually executed counterparts of this Agreement may be combined and/or collated to form multiple fully executed counterparts; and (b) a facsimile delivery (i.e., the transmission by any party of his, her or its signature on an original or any copy of this Agreement via telecopy or fax machine or in electronic photostatic format over the internet), or the affixation by a party of its signature hereon through the use of a recognized, reliably secure electronic signature application with an authentication feature (such as *DocuSign*), shall be deemed to be the delivery by such party of his, her or its original signature hereon. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts, taken together or collectively, as the case may be, shall constitute one and the same agreement.

[Signature Page Follows]

[Signature Page to Lease Termination Agreement]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease Termination Agreement to be effective, upon and subject to its terms, as of the Effective Date first above written.

LANDLORD:

JONSSON ATX WAREHOUSE, LLC,
a Texas limited liability company

By: /s/ Robert Jonsson
Robert Jonsson, Manager

TENANT:

PHUNWARE, INC.,
a Delaware corporation

By: /s/ Troy Reisner
Name: _____
Title: _____

CERTIFICATION

I, Michael Snavely, certify that:

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

Date: November 9, 2023

/s/ Michael Snavely

Michael Snavely
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Troy Reisner, certify that:

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

Date: November 9, 2023

/s/ Troy Reisner

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

CERTIFICATION

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

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

Date: November 9, 2023

Phunware, Inc.

By: /s/ Michael Snavelly

Name: Michael Snavelly
Title: Chief Executive Officer
(Principal Executive Officer)

By: /s/ Troy Reisner

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

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