

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 28, 2020**

AKERNA CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-39096

(Commission File Number)

83-2242651

(IRS Employer
Identification No.)

1630 Welton Street, Floor 4, Denver, Colorado

(Address of principal executive offices)

80202

(Zip Code)

Registrant's telephone number, including area code: **(888) 932-6537**

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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	KERN	NASDAQ Capital Market
Warrants to purchase one share of Common Stock	KERNW	NASDAQ Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On October 28, 2020, Akerna Corp. (the “Company”) entered into subscription agreements with certain investors (the “Investors”) relating to the sale and issuance by the Company of up to 5,000,000 shares (the “Shares”) of common stock of the Company, par value \$0.0001, at a price of \$2.40 per share (the “Offering”). The Shares may be transferred immediately upon issuance.

In addition, on October 28, 2020, the Company entered into a placement agency agreement (the “Placement Agency Agreement”) with A.G.P./Alliance Global Partners (the “Placement Agent”), pursuant to which the Placement Agent agreed to act as the Company’s agent for the sale of the Shares to the public in the Offering on a best efforts basis. The Company agreed to pay the Placement Agent a cash fee equal to 7% of the gross proceeds from the Offering and to reimburse the Placement Agent for up to \$60,000 of its reasonable out-of-pocket expenses. The Company estimates that the total expenses of the Offering, excluding the placement agent fees, will be approximately \$300,000.

The Company expects the Offering to close on or about October 30, 2020, subject to the satisfaction of customary closing conditions including the approval of the Nasdaq Capital Markets. The Placement Agency Agreement contains customary representations, warranties and covenants of the Company and provides that the Company will indemnify the Placement Agent against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the “Securities Act”), or to reimburse the Placement Agent for payments that the Placement Agent may be required to make because of such liabilities.

The Company’s directors and executive officers have entered into lock-up agreements. Under these agreements, these individuals have agreed, subject to specified exceptions, not to sell or transfer any shares of common stock or securities convertible into, or exchangeable or exercisable for, our shares of common stock during a period ending 90 days after the date of this prospectus, without first obtaining the written consent of A.G.P. Specifically, these individuals have agreed, in part, not to:

- offer, pledge, sell, contract to sell, grant, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock, whether now owned or hereafter acquired or with respect to which such person has or later acquires the power of disposition, whether any such transaction is to be settled by delivery of our securities, in cash, or otherwise;
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of our securities, whether any such transaction is to be settled by delivery of our shares of common stock, in cash or otherwise;
- make any demand for or exercise any right with respect to the registration of any of our securities; or
- publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement relating to any of our securities.

Notwithstanding these limitations, these shares of common stock may be transferred under limited circumstances, including, without limitation, by gift, will or intestate succession. The form of lock-up agreement is included as Exhibit B to the Placement Agency Agreement.

In addition, the Company has agreed that, for a period of ninety (90) days from the date of the placement agency agreement, it will not, without the prior written consent of the Placement Agent (which consent may be withheld at the Placement Agent’s sole discretion), directly or indirectly, sell (including, without limitation, any short sale), offer, contract or grant any option to sell, pledge, transfer or establish an open “put equivalent position” within the meaning of Rule 16a-1(h) under the Securities Exchange Act of 1934, as amended, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement under the Securities Act (except for (a) a registration statement on Form S-8 relating to the Company’s employee benefit plans and (b) post-effective amendments to the Company’s existing registration statements as may be necessary to update the prospectus contained therein pursuant to Rule 10(a)(3) under the Securities Act and the Securities Act Regulations and maintain their effectiveness under the Securities Act) in respect of, any shares of common stock, options, rights or warrants to acquire shares of common stock or securities exchangeable or exercisable for or convertible into shares of common stock (other than as contemplated by the Placement Agency Agreement with respect to the Shares) or publicly announce the intention to do any of the foregoing, other than (i) the issuance of restricted common stock, restricted stock units or options to acquire common stock pursuant to the Company’s employee benefit plans, qualified stock option plans or other equity incentive plans as such plans are in existence on the date hereof, (ii) issuances of common stock upon the exercise or settlement of options or warrants or the conversion of convertible securities, in each case, as disclosed as outstanding and (iii) issuances of securities in connection with the acquisition of, or investment in, technologies, solutions or other businesses, provided that the aggregate number of shares of common stock that the Company may issue or agree to issue pursuant to (iii) shall not exceed 5.0% of the total number of shares of common stock issued and outstanding immediately following the completion of the transaction contemplated by this Agreement, and provided, further, that all such recipients of shares of common stock shall execute and deliver, on or prior to such issuance, a lock-up agreement.

The Company conducted the Offering pursuant to a Registration Statement on Form S-1 (File No. 333-232694) (including the additional registration statement filed with respect thereto pursuant to Rule 462(b)), which was declared effective by the Securities and Exchange Commission on October 27, 2020.

The foregoing descriptions of the Placement Agency Agreement and the Subscription Agreements are a summary description of the material terms thereof and is qualified in its entirety by reference to the full text of the Placement Agency Agreement and the Subscription Agreements, which are incorporated by reference hereto and filed as Exhibits 1.1 and 4.1, respectively, to the this Current Report on Form 8-K.

Item 8.01 Other Events.

On October 28, 2020, the Company issued a press release announcing the pricing of the Offering. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

EXHIBIT	DESCRIPTION
1.1	Placement Agent Agreement by and between the Company and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 1.1 to the Company's Registration Statement on Form S-1/A filed with the Commission on October 28, 2020)
4.1	Form of Subscription Agreement (incorporated by reference to Exhibit 4.9 to the Company's Registration Statement on Form S-1/A filed with the Commission on October 28, 2020)
99.1	Press Release

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, hereunto duly authorized.

Dated: October 28, 2020

AKERNA CORP.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

EXHIBIT INDEX

EXHIBIT	DESCRIPTION
10.1	<u>Placement Agent Agreement by and between the Company and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 1.1 to the Company's Registration Statement on Form S-1/A filed with the Commission on October 28, 2020).</u>
10.2	<u>Form of Subscription Agreement (incorporated by reference to Exhibit 4.9 to the Company's Registration Statement on Form S-1/A filed with the Commission on October 28, 2020).</u>
99.1	<u>Press Release</u>

Akerna Prices \$12 Million Public Offering of 5,000,000 Shares of Common Stock

Denver, October 28, 2020 – Akerna Corp. (Nasdaq: KERN), (“Akerna” or the “Company”), a leading compliance technology provider and developer of the cannabis industry’s first seed-to-sale enterprise resource planning (ERP) software technology (MJ Platform®), today announced it has priced a public offering of 5 million shares of its common stock at a public offering price of \$2.40 per share. The Company expects that the gross proceeds of the offering of the shares will be approximately \$12 million.

A.G.P./Alliance Global Partners acted as the sole placement agent for the offering.

After the placement agent’s fees and estimated offering expenses payable by the Company, the Company expects to receive net proceeds from the sale of the shares of approximately \$11 million. Akerna intends to use the net proceeds from the offering to fund its growth initiatives, including product development, sales and marketing, strategic acquisitions, working capital and general corporate purposes.

The offering is expected to close on or about October 30, 2020, subject to customary closing conditions. The offering is subject to market and other conditions, and there can be no assurance as to whether or when the offering may be completed, or as to the actual size or terms of the offering.

The shares are being offered by Akerna pursuant to a registration statement on Form S-1 (File No. 333-249380) previously filed with the Securities and Exchange Commission (the “SEC”) on October 8, 2020 and declared effective by the SEC on October 27, 2020. A final prospectus relating to the offering will be filed with the SEC and will be available on the SEC’s website at <http://www.sec.gov>. Copies of the preliminary prospectus relating to and describing the terms of the offering will be filed with the SEC and will be available on the SEC’s website at www.sec.gov or by contacting A.G.P./Alliance Global Partners, 590 Madison Avenue, 28th Floor, New York, NY 10022, or via telephone at 212-624-2006 or email: prospectus@allianceg.com.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any of the securities described herein, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

About Akerna

Akerna (Nasdaq: KERN) is an enterprise software company focused on compliantly serving the cannabis, hemp, and CBD industry. Based in Denver, Colorado, the Company’s mission is to create the world’s most transparent and accountable supply chain by building a cannabis technology ecosystem connecting data points across the global cannabis supply chain from seed to sale to self. First launched in 2010, Akerna has tracked more than \$20 billion in cannabis sales to date and is the first cannabis software company listed on Nasdaq.

Using connected data and information to propel the cannabis industry forward, Akerna empowers businesses, governments, patients, and consumers to make smart decisions. The Company’s cornerstone technology, MJ Platform, the world’s leading infrastructure as a service platform powers retailers, manufacturers, brands, distributors, and cultivators. Akerna also offers a complete suite of professional consulting services and data analytics for businesses as well as solo sciences, MJ Freeway, Leaf Data Systems, Trellis, and Ample Organics.

Safe Harbor / Forward-Looking Statements

Certain statements made in this release are “forward-looking statements” within the meaning of the “safe harbor” provisions of the United States Private Securities Litigation Reform Act of 1995. When used in this press release, the words “estimates,” “projected,” “expects,” “anticipates,” “forecasts,” “plans,” “intends,” “believes,” “seeks,” “may,” “will,” “should,” “future,” “propose” and variations of these words or similar expressions (or the negative versions of such words or expressions) are intended to identify forward-looking statements. Such forward-looking statements include but are not limited to statements regarding the potential size and closing of the offering and the use of proceeds from the offering. These forward-looking statements are not guarantees of future performance, conditions or results, and involve a number of significant known and unknown risks, uncertainties, assumptions, and other important factors, many of which are outside Akerna’s control, that could cause actual results or outcomes to differ materially from those discussed in the forward-looking statements. Important factors, among others that may affect actual results or outcomes, include (i) Akerna’s ability to maintain relationships with customers and suppliers and retain its management and key employees, (ii) changes in applicable laws or regulations, (iii) changes in the market place due to the coronavirus pandemic or other market factors, (iv) and other risks and uncertainties disclosed from time to time in Akerna’s filings with the U.S. Securities and Exchange Commission, including those under “Risk Factors” therein. You are cautioned not to place undue reliance on forward-looking statements. All information herein speaks only as of the date hereof, in the case of information about Akerna, or the date of such information, in the case of information from persons other than Akerna. Akerna undertakes no duty to update or revise the information contained herein. Forecasts and estimates regarding Akerna’s industry and end markets are based on sources believed to be reliable; however, there can be no assurance these forecasts and estimates will prove accurate in whole or in part.