

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, 2022

OR

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 001-39096

AKERNA CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

83-2242651

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

1550 Larimer Street, #246 Denver, Colorado

(Address of principal executive offices)

80202

(Zip Code)

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

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, \$0.0001 par value per share	KERN	Nasdaq Stock Market LLC (Nasdaq Capital Market)
Warrants to purchase one share of common stock	KERNW	Nasdaq Stock Market LLC (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, 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 checked="" type="checkbox"/>

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

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

As of November 10, 2022, there were 4,429,847 shares of the registrant's common stock, par value \$0.0001 per share, outstanding.

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AKERNA CORP.
Condensed Consolidated Balance Sheets
(unaudited)

	September 30, 2022	December 31, 2021
Assets		
Current assets		
Cash	\$ 2,490,662	\$ 13,934,265
Restricted cash	7,008,261	508,261
Accounts receivable, net	1,371,133	1,403,774
Prepaid expenses and other current assets	2,330,032	2,383,764
Total current assets	<u>13,200,088</u>	<u>18,230,064</u>
Fixed assets, net		
Investment, net	124,760	153,151
Capitalized software, net	226,101	226,101
Intangible assets, net	6,009,163	7,311,676
Goodwill	17,005,584	21,609,794
Other noncurrent assets	9,025,589	46,942,681
	—	9,700
Total assets	<u><u>\$ 45,591,285</u></u>	<u><u>\$ 94,483,167</u></u>
Liabilities and Equity		
Current liabilities		
Accounts payable, accrued expenses and other accrued liabilities	\$ 4,630,681	\$ 6,063,520
Contingent consideration payable	3,300,000	6,300,000
Current portion of deferred revenue	2,151,235	3,543,819
Current portion of long-term debt	9,900,000	13,200,000
Derivative liability	9,025	63,178
Total current liabilities	<u>19,990,941</u>	<u>29,170,517</u>
Long-term portion of deferred revenue	499,206	582,676
Long-term debt, less current portion	4,575,000	4,105,000
Deferred income tax liabilities	431,453	675,291
Total liabilities	<u><u>25,496,600</u></u>	<u><u>34,533,484</u></u>
Commitments and contingencies (Note 9)	—	—
Equity		
Preferred stock, par value \$0.0001; 5,000,000 shares authorized, 1 share special voting preferred stock issued and outstanding at September 30, 2022 and December 31, 2021	—	—
Special voting preferred stock, par value \$0.0001; 1 share authorized, issued and outstanding as of September 30, 2022 and December 31, 2021, with \$1 preference in liquidation; exchangeable shares, no par value, 291,192 and 309,286 shares issued and outstanding as of September 30, 2022 and December 31, 2021 respectively	2,227,619	2,366,038
Common stock, par value \$0.0001; 150,000,000 shares authorized, 4,023,294 and 1,550,094 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	402	155
Additional paid-in capital	159,841,800	146,030,203
Accumulated other comprehensive income	356,028	61,523
Accumulated deficit	<u>(142,331,164)</u>	<u>(88,508,236)</u>
Total equity	<u>20,094,685</u>	<u>59,949,683</u>
Total liabilities and equity	<u><u>\$ 45,591,285</u></u>	<u><u>\$ 94,483,167</u></u>

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

AKERNA CORP.
Condensed Consolidated Statements of Operations
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue				
Software	\$ 5,326,830	\$ 4,557,960	\$ 17,756,272	\$ 12,809,841
Consulting	76,500	551,402	618,809	1,135,033
Other revenue	9,472	26,140	74,443	111,540
Total revenue	<u>5,412,802</u>	<u>5,135,502</u>	<u>18,449,524</u>	<u>14,056,414</u>
Cost of revenue	<u>2,051,862</u>	<u>1,971,382</u>	<u>6,091,511</u>	<u>5,339,929</u>
Gross profit	<u>3,360,940</u>	<u>3,164,120</u>	<u>12,358,013</u>	<u>8,716,485</u>
Operating expenses				
Product development	1,374,133	1,566,478	5,240,922	4,517,836
Sales and marketing	1,882,980	2,002,461	8,304,411	5,564,519
General and administrative	1,823,076	2,077,474	6,812,617	8,306,417
Depreciation and amortization	2,118,739	1,238,420	6,094,963	3,605,435
Impairment of long-lived assets	—	—	39,600,587	—
Change in fair value of contingent consideration	(3,000,000)	—	(3,000,000)	—
Total operating expenses	<u>4,198,928</u>	<u>6,884,833</u>	<u>63,053,500</u>	<u>21,994,207</u>
Loss from operations	<u>(837,988)</u>	<u>(3,720,713)</u>	<u>(50,695,487)</u>	<u>(13,277,722)</u>
Other (expense) income				
Interest (expense) income, net	(396,022)	(238,283)	(609,746)	(1,175,789)
Change in fair value of convertible notes	(1,113,000)	(23,227)	(2,840,000)	(2,030,904)
Change in fair value of derivative liability	2,256	194,046	54,153	151,175
Gain on forgiveness of PPP Loan	—	2,234,730	—	2,234,730
Other expense (income), net	—	—	—	243
Total other (expense) income	<u>(1,506,766)</u>	<u>2,167,266</u>	<u>(3,395,593)</u>	<u>(820,545)</u>
Net loss before income taxes and equity in losses of investee	(2,344,754)	(1,553,447)	(54,091,080)	(14,098,267)
Income tax (expense) benefit	40,666	—	268,152	(10,570)
Equity in losses of investee	—	—	—	(7,564)
Net loss	<u>\$ (2,304,088)</u>	<u>\$ (1,553,447)</u>	<u>\$ (53,822,928)</u>	<u>\$ (14,116,401)</u>
Basic and diluted weighted average common shares outstanding	<u>3,883,847</u>	<u>1,322,122</u>	<u>2,421,262</u>	<u>1,215,626</u>
Basic and diluted net loss per common share	<u>\$ (0.59)</u>	<u>\$ (1.17)</u>	<u>\$ (22.23)</u>	<u>\$ (11.61)</u>

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

AKERNA CORP.
Condensed Consolidated Statements of Comprehensive Loss
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net loss	\$ (2,304,088)	\$ (1,553,447)	\$ (53,822,928)	\$ (14,116,401)
Other comprehensive (loss) income				
Foreign currency translation	27,676	63,905	4,505	65,858
Unrealized (loss) gain on convertible notes	26,000	(3,000)	290,000	(19,000)
Comprehensive loss	<u>\$ (2,250,412)</u>	<u>\$ (1,492,542)</u>	<u>\$ (53,528,423)</u>	<u>\$ (14,069,543)</u>

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

AKERNA CORP.
Condensed Consolidated Statements of Changes in Equity
For the Three and Nine Months Ended September 30, 2022
(unaudited)

	Special Voting Preferred Stock		Common		Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Equity
	Share	Amount	Shares	Amount				
Balance – July 1, 2022	291,192	\$ 2,227,619	1,841,336	\$ 184	\$ 150,441,933	\$ 302,352	\$(140,027,076)	\$ 12,945,012
Common shares and warrants issued in connection with unit offering	—	—	2,173,913	217	9,178,744	—	—	9,178,961
Stock-based compensation	—	—	—	—	196,124	—	—	196,124
Restricted stock vesting	—	—	8,045	1	24,999	—	—	25,000
Foreign currency translation adjustments	—	—	—	—	—	27,676	—	27,676
Unrealized gain on convertible notes	—	—	—	—	—	26,000	—	26,000
Net loss	—	—	—	—	—	—	(2,304,088)	(2,304,088)
Balance – September 30, 2022	<u>291,192</u>	<u>\$ 2,227,619</u>	<u>4,023,294</u>	<u>\$ 402</u>	<u>\$ 159,841,800</u>	<u>\$ 356,028</u>	<u>\$(142,331,164)</u>	<u>\$ 20,094,685</u>
Balance – January 1, 2022	309,286	\$ 2,366,038	1,550,094	\$ 155	\$ 146,030,203	\$ 61,523	\$ (88,508,236)	\$ 59,949,683
Conversion of exchangeable shares to common stock	(18,094)	(138,419)	904	—	138,419	—	—	—
Settlement of convertible notes	—	—	207,427	21	3,925,479	—	—	3,925,500
Shares withheld for withholding taxes	—	—	(558)	—	(13,167)	—	—	(13,167)
Shares returned in connection with 365 Cannabis acquisition	—	—	(13,988)	(1)	(939,999)	—	—	(940,000)
Common shares and warrants issued in connection with unit offering	—	—	2,173,913	217	9,178,744	—	—	9,178,961
Stock-based compensation	—	—	—	—	661,423	—	—	661,423
Shares issued in connection with the ATM offering program	—	—	90,809	9	761,169	—	—	761,178
Settlement of liabilities with shares	—	—	1,463	—	49,530	—	—	49,530
Restricted stock vesting	—	—	13,230	1	49,999	—	—	50,000
Foreign currency translation adjustments	—	—	—	—	—	4,505	—	4,505
Unrealized gain on convertible notes	—	—	—	—	—	290,000	—	290,000
Net loss	—	—	—	—	—	—	(53,822,928)	(53,822,928)
Balance – September 30, 2022	<u>291,192</u>	<u>\$ 2,227,619</u>	<u>4,023,294</u>	<u>\$ 402</u>	<u>\$ 159,841,800</u>	<u>\$ 356,028</u>	<u>\$(142,331,164)</u>	<u>\$ 20,094,685</u>

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

AKERNA CORP.
Condensed Consolidated Statements of Changes in Equity
For the Three and Nine Months Ended September 30, 2021
(unaudited)

	Special Voting Preferred Stock		Common		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Equity
	Share	Amount	Shares	Amount				
Balance – July 1, 2021	1,039,373	\$ 7,951,203	1,266,621	\$ 127	\$ 123,859,055	\$ (105,544)	\$ (69,742,478)	\$ 61,962,363
Conversion of exchangeable shares to common stock	(653,426)	(4,998,708)	32,671	3	4,998,705	—	—	—
Settlement of convertible notes	—	—	23,532	2	1,413,940	—	—	1,413,942
Shares withheld for withholding taxes	—	—	(1,571)	—	(103,707)	—	—	(103,707)
Shares issued in connection with asset purchase	—	—	4,167	—	300,000	—	—	300,000
Stock-based compensation	—	—	—	—	510,132	—	—	510,132
Shares issued in connection with the ATM offering program	—	—	27,819	3	1,828,116	—	—	1,828,119
Restricted stock vesting	—	—	5,156	1	(1)	—	—	—
Foreign currency translation adjustments	—	—	—	—	—	63,905	—	63,905
Unrealized loss on convertible notes	—	—	—	—	—	(3,000)	—	(3,000)
Net loss	—	—	—	—	—	—	(1,553,447)	(1,553,447)
Balance – September 30, 2021	385,947	\$ 2,952,495	1,358,395	\$ 136	\$ 132,806,240	\$ (44,639)	\$ (71,295,925)	\$ 64,418,307
Balance – January 1, 2021	2,667,349	\$ 20,405,219	995,062	\$ 100	\$ 94,088,323	\$ (91,497)	\$ (57,179,524)	\$ 57,222,621
Conversion of exchangeable shares to common stock	(2,281,402)	(17,452,724)	114,070	11	17,452,713	—	—	—
Settlement of convertible notes	—	—	154,706	15	11,610,572	—	—	11,610,587
Shares withheld for withholding taxes	—	—	(4,018)	—	(437,554)	—	—	(437,554)
Shares issued in connection with Viridian acquisition	—	—	50,000	5	6,001,995	—	—	6,002,000
Shares issued in connection with asset purchase	—	—	4,167	—	300,000	—	—	300,000
Stock-based compensation	—	—	—	—	1,584,755	—	—	1,584,755
Shares issued in connection with the ATM offering program	—	—	27,819	3	1,828,113	—	—	1,828,116
Settlement of liabilities with shares	—	—	5,085	1	377,324	—	—	377,325
Restricted stock vesting	—	—	11,571	1	(1)	—	—	—
Forfeitures of restricted shares	—	—	(67)	—	—	—	—	—
Foreign currency translation adjustments	—	—	—	—	—	65,858	—	65,858
Unrealized loss on convertible notes	—	—	—	—	—	(19,000)	—	(19,000)
Net loss	—	—	—	—	—	—	(14,116,401)	(14,116,401)
Balance – September 30, 2021	385,947	\$ 2,952,495	1,358,395	\$ 136	\$ 132,806,240	\$ (44,639)	\$ (71,295,925)	\$ 64,418,307

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

AKERNA CORP.
Condensed Consolidated Statements of Cash Flows
(unaudited)

	For the Nine Months Ended September 30,	
	2022	2021
Cash flows from operating activities		
Net loss	\$ (53,822,928)	\$ (14,116,401)
Adjustment to reconcile net loss to net cash used in operating activities:		
Equity in losses of investee	—	7,564
Change in fair value of contingent consideration	(3,000,000)	—
Bad debt expense	271,474	254,029
Stock-based compensation expense	697,377	1,584,751
Loss on write off of fixed assets	—	1,045,179
Gain on forgiveness of PPP loan	—	(2,234,730)
Impairment of long-lived assets	39,600,587	—
Amortization of deferred contract cost	275,949	356,528
Non-cash interest expense	183,723	1,161,393
Depreciation and amortization	6,094,963	3,605,435
Foreign currency loss	4,718	21,496
Change in fair value of convertible notes	2,840,000	2,030,904
Change in fair value of derivative liability	(54,153)	(151,175)
Changes in operating assets and liabilities:		
Accounts receivable, net	(313,176)	462,482
Prepaid expenses and other current and noncurrent assets	(215,228)	66,246
Accounts payable, accrued expenses and other accrued liabilities	(1,356,709)	1,756,671
Deferred income tax liabilities	(243,838)	—
Deferred revenue	(1,413,665)	(927,916)
Net cash used in operating activities	<u>(10,450,906)</u>	<u>(5,077,544)</u>
Cash flows from investing activities		
Developed software additions	(3,324,029)	(3,354,453)
Fixed asset additions	(27,383)	(11,535)
Cash returned from business combination working capital settlement (Note 3)	400,000	—
Net cash used in investing activities	<u>(2,951,412)</u>	<u>(3,365,988)</u>
Cash flows from financing activities		
Value of shares withheld related to tax withholdings	(13,167)	(437,554)
Proceeds from unit and pre-funded unit offering, net	9,178,960	—
Proceeds from exercise of pre-funded warrants	1	—
Principal payments of convertible notes	(1,432,273)	(1,164,706)
Proceeds from the ATM offering program, net	761,178	1,828,116
Net cash provided by financing activities	<u>8,494,699</u>	<u>225,856</u>
Effect of exchange rate changes on cash and restricted cash	<u>(35,984)</u>	<u>(5,915)</u>
Net change in cash and restricted cash	(4,943,603)	(8,223,591)
Cash and restricted cash - beginning of period	14,442,526	18,340,640
Cash and restricted cash - end of period	<u>\$ 9,498,923</u>	<u>\$ 10,117,049</u>
Cash paid for interest	<u>\$ 234,227</u>	<u>\$ 105,882</u>
Cash paid for income taxes, net of refunds received	<u>\$ 12,200</u>	<u>\$ 10,570</u>
Supplemental disclosures of non-cash investing and financing activities:		
Settlement of convertible notes in common stock	\$ 3,925,500	\$ 10,448,932
Conversion of exchangeable shares to common stock	138,419	17,452,497
Settlement of other liabilities in common stock	49,530	377,315
Stock-based compensation capitalized as software development	14,046	—
Vesting of restricted stock units	50,000	—
Capitalized software included in accrued expenses	32,473	—
Shares returned in connection with 365 Cannabis acquisition (Note 3)	940,000	—
365 Cannabis working capital reduction to accrued expenses (Note 3)	160,000	—

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

AKERNA CORP.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

Note 1 - Description of Business

Description of Business

Akerna Corp., herein referred to as we, us, our, the Company or Akerna, through our wholly-owned subsidiaries MJ Freeway, LLC, or MJF, Trellis Solutions, Inc., or Trellis, Ample Organics, Inc. or Ample, solo sciences, inc., or Solo, Viridian Sciences Inc., or Viridian, and The NAV People, Inc. d.b.a. 365 Cannabis, or 365 Cannabis, provides enterprise software solutions that enable regulatory compliance and inventory management. Our proprietary, broad and growing suite of solutions are adaptable for industries in which interfacing with government regulatory agencies for compliance purposes is required, or where the tracking of organic materials from seed or plant to end products is desired. We develop products intended to assist states in monitoring licensed businesses' compliance with state regulations and to help state-licensed businesses operate in compliance with such law. We provide our commercial software platform, MJ Platform®, Trellis®, Ample, Viridian and 365 Cannabis to state-licensed businesses, and our regulatory software platform, Leaf Data Systems®, to state government regulatory agencies. Through Solo, we provide an innovative, next-generation solution for state and national governments to securely track product and waste throughout the supply chain with solo*TAG™. The integration of MJ Platform® and solo*CODE™ results in technology for consumers and brands that brings a consumer-facing mark designed to highlight the authenticity and signify transparency.

Our Viridian and 365 Cannabis offerings are considered enterprise offerings while all other solutions are considered non-enterprise offerings that meet the needs of our small and medium-sized business, or SMB, customers.

We consult with clients on a wide range of areas to help them successfully maintain compliance with state laws and regulations. We provide project-focused consulting services to clients who are initiating or expanding their cannabis business operations or are interested in data consulting engagements with respect to the legal cannabis industry. Our advisory engagements include service offerings focused on compliance requirement assessments, readiness and best practices, compliance monitoring systems, application processes, inspection readiness, and business plan and compliance reviews. We typically provide our consulting services to clients in emerging markets that are seeking consultation on newly introduced licensing regimes and assistance with the regulatory compliant build-out of operations.

Going Concern and Management's Liquidity Plans

In accordance with the Financial Accounting Standards Board's ("FASB") standard on going concern, Accounting Standard Update ("ASU") No. 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* ("ASU 2014-15"), we assess going concern uncertainty in our consolidated financial statements to determine if we have sufficient cash, cash equivalents and working capital on hand, including marketable equity securities, and any available borrowings on loans, to operate for a period of at least one year from the date the consolidated financial statements are issued, which is defined to as the "look-forward period" in ASU 2014-15. As part of this assessment, based on conditions that are known and reasonably knowable to us, we will consider various scenarios, forecasts, projections, estimates and will make certain key assumptions, including the timing and nature of projected cash expenditures or programs, and our ability to delay or curtail expenditures or programs, if necessary, among other factors. Based on this assessment, as necessary or applicable, we make certain assumptions regarding implementing curtailments or delays in the nature and timing of programs and expenditures to the extent we deem probable that such implementations can be achieved and we have the proper authority to execute them within the look-forward period in accordance with ASU 2014-15.

The accompanying condensed consolidated financial statements have been prepared on the basis that we will continue as a going concern, which contemplates realization of assets and the satisfaction of liabilities in the normal course of business. However, since our inception we have experienced recurring losses from operations, used cash from operating activities, and relied on capital raising transactions to continue ongoing operations. During the nine months ended September 30, 2022 and September 30, 2021, we incurred losses from operations of \$11.1 million, excluding impairments, and \$13.3 million, respectively, and used cash in operating activities of \$10.5 million and \$5.1 million, respectively. As of September 30, 2022, we had a working capital deficit of \$6.8 million with \$2.5 million in cash available to fund future operations. Furthermore, on May 24, 2022, we received a notice (the "Notice") from The Nasdaq Stock Market LLC indicating that the bid price of the Company's common stock, par value \$0.0001 per share ("Common Stock"), is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on the Nasdaq Capital Market (the "Nasdaq Market"). The Notice has no immediate effect on the continued listing status of our Common Stock on the Nasdaq Market, and, therefore, our listing remains fully effective. We are provided a compliance period of 180 calendar days from the date of the Notice, or until November 21, 2022, to regain compliance with the minimum closing bid requirement. On November 8, 2022, we completed a reverse stock split of 20-for-1 (the "Reverse Stock Split") to address our bid price compliance and believe that we will regain compliance with the bid price requirement by November 21, 2022. Collectively, these factors raise substantial doubt regarding the ability of the Company to continue as a going concern.

Management's plan for the Company to continue as a going concern includes several initiatives and actions including those impacting continuing costs, primarily labor and technology, including hosting and applications, working capital, our short and intermediate term financing and the liquidity of our Common Stock. Certain of these initiatives and actions began during the second quarter of 2022 while others were initiated thereafter and through the second week of November 2022.

The most significant components of our plan include the following: (i) realizing annualized cost savings associated with the corporate restructuring initiative (the "Restructuring") that we announced in May 2022 which resulted in a reduction in workforce and related operating costs (see Note 4), (ii) entering into an amendment and waiver agreement to the securities purchase agreement (the "SPA") associated with our 2021 Senior Convertible Notes (the "Senior Convertible Notes") on June 30, 2022 (the "Convertible Notes Amendment") which, among other factors, provides for the deferral of the required amortization payments due and payable from July 1, 2022 through January 1, 2023 (see Note 6), (iii) securing a waiver from the holders of the Senior Convertible Notes on September 27, 2022 to maintain a reserve of authorized shares equivalent to 200 percent of the total number shares required to satisfy the obligations under the Senior Convertible Notes (the "Required Reserve Amount"), effectively continuing a similar waiver provided by the holders on June 30, 2022, for a period retroactive to August 30, 2022 through November 30, 2022, (iv) deployment for working capital needs of the net proceeds of approximately \$2.0 million received from our offering of Common Stock and warrants (the "2022 Unit Offering") in a transaction that closed on July 5, 2022 (see Note 10), net of underwriting discounts and commissions and other offering expenses and after depositing \$7.0 million of the proceeds into certain restricted cash accounts in accordance with the Convertible Notes Amendment, (v) opportunistic utilization of our "at the market" offering program (the "ATM Program") for short-term liquidity needs (see Note 10), (vi) addressing the potential liquidity of our Common Stock and increasing the viability of our ATM Program in connection with the minimum listing requirements for the Nasdaq Market through the Reverse Stock Split that was approved by our shareholders on November 7, 2022 and effectuated at 12:01 a.m Eastern Standard Time on November 8, 2022 (see Note 10), (vii) conservatively managing our working capital through disciplined cost-containment efforts and strategic management of our accounts receivable and accounts payable cycles, (viii) considering strategic partnerships and evaluating potential strategic transactions, as opportunities become available and (ix) continuing to seek to expand our customer base and realize synergies as we continue to integrate our recent acquisitions with a focus on our core business units.

We anticipate that the initiatives and actions associated with our plan described above will provide us with sufficient liquidity in order to operate our business in the normal course for the remainder of 2022 due primarily to the fact that the debt service obligations associated with the Senior Convertible Notes have been deferred to the first half of 2023 and have effectively been substantially pre-funded with the amounts deposited into restricted accounts as required by the Convertible Notes Amendment. In the remainder of 2022, we plan to continue to rigorously explore potential financing alternatives and other strategic options. In addition to and to the extent practical in the future, based on market conditions, we will consider incremental offerings through the ATM Program. From September 30, 2022 through November 10, 2022, we have utilized \$0.9 million of the total \$3.5 million authorized by the ATM Program. The earn-out payment associated with a 2021 acquisition, which is intended to be made in shares of Common Stock, is scheduled to be settled by the end of December 2022 (see Note 3). If the seller elects for the settlement to be made in cash, it becomes subject to a reduction of 25 percent and could be deferred into the first quarter of 2023.

If we are unable to secure other potential financing alternatives or fail to execute any other strategic options to raise sufficient additional funds through the first half of 2023, including through the ATM Program, we will have to develop and implement more aggressive plans to address our liquidity needs and our ability to satisfy the scheduled maturity of our obligations under the Senior Convertible Notes. Such plans could include extending payables, further reductions of expenditures (including the termination of additional employees) and reducing or eliminating investments in and the funding of certain of our business units and initiatives, or otherwise substantially scale back our business plan until sufficient additional capital is raised through other equity or debt offerings. Such offerings may include the issuance of shares of Common Stock, warrants to purchase Common Stock, preferred stock, convertible debt or other instruments that may dilute the interests of our current shareholders. Accordingly, we may be subject to additional risks, including retention of key employees and limitations on the extension of credit by our vendors and other service providers. If we are required to raise additional capital as discussed above and if we cannot timely raise additional funds, we may be unable to meet the financial covenants of the Senior Convertible Notes, which could result in an event of default under those instruments which could adversely impact the Company. See the risks detailed in our Form 10-K under "Item 1A. Risk Factors – Risks Relating to our Convertible Debt".

Our ability to continue as a going concern is dependent upon our ability to successfully execute the plans described above and attain profitable operations. Despite the comprehensive scope of our plans, the inherent risks associated with their successful execution are not sufficient to fully overcome substantial doubt about our ability to continue as a going concern for one year from the date of issuance of the consolidated financial statements. Accordingly, if we are unable to raise sufficient capital we may have to reduce operations which could significantly and adversely affect our results of operations. If we fail to meet the financial covenants of the Senior Convertible Notes and cannot obtain a waiver from such provisions or otherwise come to an agreement with the holders of our debt, such holders may declare a default on the debt which could subject our assets to seizure and sale, negatively impacting our business.

The accompanying consolidated financial statements do not include any adjustments relating to the recoverability and classification of assets and liabilities that might be necessary if the Company is unable to continue as a going concern.

Note 2 - Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and with the instructions to the Quarterly Report on Form 10-Q and Article 8 of Regulation S-X for interim financial information. Accordingly, these financial statements do not include all of the information normally required by GAAP or Securities and Exchange Commission rules and regulations for complete financial statements. In management's opinion, these condensed consolidated financial statements include all adjustments, consisting of normal recurring items, considered necessary for the fair presentation of the results of operations for the interim periods presented. The operating results for the three and nine months ended September 30, 2022 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2022.

The condensed consolidated balance sheet as of December 31, 2021, has been derived from our audited financial statements at that date but does not include all disclosures and financial information required by GAAP for complete financial statements. The information included in this quarterly report on Form 10-Q should be read in conjunction with our consolidated financial statements and notes thereto for the period ended December 31, 2021, which were included in our report on Form 10-K filed on March 31, 2022.

Principles of Consolidation

Our accompanying consolidated financial statements include the accounts of Akerna and our wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of our consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts included in the consolidated financial statements and accompanying notes thereto. Our most significant estimates and assumptions are related to the valuation of acquisition-related assets and liabilities, capitalization of internal costs associated with software development, fair value measurements, impairment assessments, loss contingencies, valuation allowance associated with deferred tax assets, stock based compensation expense, and useful lives of long-lived intangible assets. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Accordingly, actual results could differ from those estimates.

Accounts Receivable, Net

We maintain an allowance for doubtful accounts equal to the estimated uncollectible amounts based on our historical collection experience and review of the current status of trade accounts receivable. Receivables are written-off and charged against the recorded allowance when we have exhausted collection efforts without success. The allowance for doubtful accounts was \$0.9 million and \$0.3 million as of September 30, 2022 and December 31, 2021, respectively.

Concentrations of Credit Risk

We grant credit in the normal course of business to customers in the United States and Canada. We periodically perform credit analysis and monitor the financial condition of our customers to reduce credit risk.

During the nine months ended September 30, 2022 and 2021, two government clients accounted for 12% and 11% of total revenues, respectively. As of September 30, 2022, two government clients accounted for 46% of net accounts receivable and as of December 31, 2021 two government clients accounted for 36% of net accounts receivable.

Warrants

We evaluate warrants that we may issue from time to time under a two-step process provided in GAAP. The first step is intended to distinguish liabilities from equity. Warrants that could require cash settlement are generally classified as liabilities. For warrants that are considered outside of the scope of liability classification, a second step evaluates warrants as either a derivative subject to derivative accounting and disclosures or as equity instruments based upon the specific terms of the underlying warrant agreement and certain other factors associated with the our capital structure. Warrants that are indexed to the Company's Common Stock while the Company meets certain other conditions with respect to its capital structure, including the ability to satisfy the warrant settlement obligations with a sufficient number of registered shares, do not qualify as derivatives and are classified as components of equity.

Segment Reporting

We operate our business as one operating segment. Operating segments are defined as components of an enterprise about which separate financial information is evaluated regularly by the chief operating decision maker ("CODM"), our Chief Executive Officer, in deciding how to allocate resources and assess performance. Our CODM allocates resources and assesses performance based upon discrete financial information at the consolidated level.

In the following table, we disclose the combined gross balance of our fixed assets, capitalized software, and intangible assets by geographical location (in thousands):

	As of September 30, 2022	As of December 31, 2021
Long-lived assets:		
United States	\$ 28,234	\$ 32,356
Canada	6,102	5,229
Total	<u>\$ 34,336</u>	<u>\$ 37,585</u>

Adoption of Recent Accounting Pronouncements

The FASB issued ASU No. 2016-02, *Leases* ("ASU 2016-02") which, together with related amendments to GAAP, represents ASC Topic 842, *Leases* ("ASC 842"). ASC 842 superseded all prior GAAP with respect to leases. ASC 842 established a right-of-use model which requires a lessee to record a right-of-use asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases are to be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of operations. We adopted ASC 842 effective January 1, 2022 and due to the immaterial impact of applying this standard to our limited assets subject to operating leases, there was no material impact to our balance sheets and statements of operations.

The FASB issued ASU No. 2020-01, *Clarifying the Interaction between Topic 321, Topic 323, and Topic 815* ("ASU 2020-01") which provides guidance clarifying interactions between various standards governing investments in equity securities. The guidance addresses accounting for the transition into and out of the equity method and measurement of certain purchased options and forward contracts to acquire investments. We adopted ASU 2020-01 effective January 1, 2022 and there was no material impact to our balance sheets and statements of operations.

The FASB issued ASU No. 2021-04, *Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options* ("ASU 2021-04") which provides clarification and reduces diversity in practice with respect to an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options (such as warrants) that remain equity classified after modification or exchange. We adopted ASU 2021-04 effective January 1, 2022 and there was no material impact to our balance sheets and statements of operations.

Recent Accounting Pronouncements Pending Adoption

The FASB issued ASU No. 2016-13, *Measurement of Credit Losses on Financial Instruments* (“ASU 2016-13”) which introduced a new model for recognizing credit losses on financial instruments based on estimated current expected credit losses, or CECL. ASU 2016-13 requires an entity to estimate CECL on trade receivables at inception, based on historical information, current conditions, and reasonable and supportable forecasts. ASU 2016-13, and subsequent amendments, is effective for us beginning on January 1, 2023. We are currently evaluating the impact of the adoption of ASU 2016-13 on our consolidated financial statements.

The FASB issued ASU No. 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* (“ASU 2020-06”), which simplified the accounting for convertible instruments. ASU 2020-06 eliminated certain models that require separate accounting for embedded conversion features, in certain cases. Additionally, among other changes, ASU 2020-06 eliminates certain of the conditions for equity classification for contracts in an entity's own equity. ASU 2020-06 also requires entities to use the if-converted method for all convertible instruments in the diluted earnings per share calculation and include the effects of shares settlement for instruments that may be settled in cash or shares, except for certain liability-classified share-based payment awards. ASU 2020-06 is required to be adopted by us beginning on January 1, 2023 and must be applied using either a modified or full retrospective approach. We are currently evaluating the impact ASU 2020-06 will have on our consolidated financial statements.

The FASB issued ASU No. 2021-08, *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* (“ASU 2021-08”), which amends the accounting related to contract assets and liabilities acquired in business combinations. Under current GAAP, an entity generally recognizes assets and liabilities acquired in a business combination, including contract assets and contract liabilities arising from revenue contracts with customers, at fair value on the acquisition date. ASU 2021-08 requires that entities recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with ASC Topic 606, *Revenue from Contracts with Customers*. ASU 2021-08 is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, and should be applied prospectively to business combinations occurring on or after the effective date of the amendment. We are currently evaluating the impact this guidance will have on our consolidated financial statements.

Subsequent Events

Management has evaluated all of our activities through the issuance date of our condensed consolidated financial statements and has concluded that, with the exception of (i) the issuance of preferred stock in an offering that closed on October 4, 2022 and their subsequent redemption on November 9, 2022, (ii) the approval by our shareholders of the Reverse Stock Split on November 7, 2022 and its effectuation on November 8, 2022, (iii) the offering of 402,345 shares of Common Stock through our ATM Program and (iv) the repricing of certain conversion and exercise prices resulting from the preferred share issuance, as disclosed in Notes 6 and 10, no other subsequent events have occurred that would require recognition in our condensed consolidated financial statements or disclosure in the notes thereto.

The effectuation of the Reverse Stock Split has been applied retrospectively to all periods presented throughout these financial statements. Accordingly, all disclosures of shares of Common Stock, restricted stock awards and restricted stock units herein and any corresponding reference to market, conversion and exercise prices have been adjusted. The following table summarizes the relevant disclosures prior to and after the Reverse Stock Split:

	<u>Prior to Reverse Split</u>	<u>After Reverse Split</u>
Common stock outstanding as of:		
September 30, 2022	80,465,890	4,023,294
July 1, 2022	36,826,733	1,841,336
December 31, 2021	31,001,884	1,550,094
September 30, 2021	27,167,917	1,358,395
July 1, 2021	25,332,439	1,266,621
December 31, 2020	19,901,248	995,062
Common stock, par value \$0.0001 as of:		
September 30, 2022	\$ 8,047	\$ 402
July 1, 2022	\$ 3,680	\$ 184
December 31, 2021	\$ 3,100	\$ 155
September 30, 2021	\$ 2,717	\$ 136
July 1, 2021	\$ 2,533	\$ 127
December 31, 2020	\$ 1,990	\$ 100
Additional paid-in capital as of:		
September 30, 2022	\$ 159,834,155	\$ 159,841,800
July 1, 2022	\$ 150,438,437	\$ 150,441,933
December 31, 2021	\$ 146,027,258	\$ 146,030,203
September 30, 2021	\$ 132,803,659	\$ 132,806,240
July 1, 2021	\$ 123,856,649	\$ 123,859,055
December 31, 2020	\$ 94,086,433	\$ 94,088,323
Weighted average common stock outstanding:		
Three months ended September 30, 2022	77,676,935	3,883,847
Three months ended September 30, 2021	26,442,446	1,322,122
Nine months ended September 30, 2022	48,425,236	2,421,262
Nine months ended September 30, 2021	24,312,510	1,215,626

	<u>Prior to Split</u>	<u>After Reverse Split</u>
Loss per share:		
Three months ended September 30, 2022	\$ (0.03)	\$ (0.59)
Three months ended September 30, 2021	\$ (0.06)	\$ (1.17)
Nine months ended September 30, 2022	\$ (1.11)	\$ (22.23)
Nine months ended September 30, 2021	\$ (0.58)	\$ (11.61)
Selected exercise and conversion prices:		
2022 Common warrant	\$ 0.2300	\$ 4.6000
2022 Underwriter warrant	\$ 0.2300	\$ 4.6000
2022 Pre-funded warrant	\$ 0.0001	\$ 0.0020
2019 Public and Private warrants	\$ 11.5000	\$ 230.0000
Senior Convertible Notes conversion price	\$ 0.3105	\$ 6.2100
Outstanding common stock equivalents (assuming exercise and vesting, as applicable, of the underlying instruments):		
2019 Public warrants	5,813,804	290,690
2019 Private warrants	225,635	11,282
2022 Common warrants	43,478,261	2,173,913
2022 Underwriter warrants	2,173,913	108,696
Unvested restricted stock units	291,983	14,599
Unvested restricted stock awards	6,679	334

Note 3 – Significant Transactions

Restructuring

In May 2022, we implemented the Restructuring as approved by our board of directors. The Restructuring resulted in a reduction of the Company's workforce by 59 employees, or approximately 33 percent of the Company. We incurred costs of approximately \$0.6 million in severance benefits, including employee insurance, associated payroll taxes and legal costs in connection with the Restructuring. Of the total amount incurred, \$0.3 million was included in Sales and marketing costs, \$0.3 million was recorded in Product development and less than \$0.1 million was included in Cost of revenue and General and administrative expenses, respectively. All amounts directly attributable to the severed employees were settled in cash through the period ended September 30, 2022. Accordingly, we have no material obligations remaining associated with the Restructuring. In addition to the reduction in force, the Company's executive leadership team agreed to a temporary 25 percent reduction in salary, subject to certain conditions.

2021 Acquisitions

Viridian Sciences

On April 1, 2021, we completed the acquisition of Viridian, a cannabis business management software provider that is built on SAP Business One. We acquired Viridian in exchange for 50,000 shares of our Common Stock valued at \$6.0 million. In addition to the stock consideration, the agreement provides for contingent consideration of up to \$1.0 million, payable in additional common stock, if Viridian meets certain revenue criteria. We finalized our purchase price accounting during the three months ended March 31, 2022 and there were no changes to the previously disclosed purchase price accounting.

365 Cannabis

On October 1, 2021, we acquired all the issued and outstanding shares of 365 Cannabis. Under the terms of the stock purchase agreement (the “Stock Purchase Agreement”), the aggregate consideration for the 365 Cannabis shares consisted of an initial purchase price of (1) \$5.0 million in cash, (2) \$12.0 million in stock, which was settled by issuing 180,000 shares of our Common Stock, and (3) contingent value rights to be issued pursuant to a rights indenture entitling the holders thereof to receive, subject to certain adjustments as set forth in the Stock Purchase Agreement, an aggregate of up to \$8.0 million in stock, in the event that 365 Cannabis achieves certain revenue targets as specified in the Stock Purchase Agreement. These rights are accounted for as contingent consideration and were initially measured at a fair value of \$6.3 million. Upon the completion of the assessment period associated with the revenue targets, the fair value of the contingent consideration was reduced to \$3.3 million as of September 30, 2022 with a corresponding adjustment reflected in our loss from operations for the periods ended September 30, 2022.

We reached a working capital settlement agreement during the first quarter of 2022 in the amount of \$1.5 million. As a result of this post-close adjustment, the 365 Cannabis purchase price was reduced by \$1.5 million. This was recorded as follows: (1) a receivable of \$0.4 million was recorded in other current assets on our condensed consolidated balance sheet as of March 31, 2022 and was received in the second quarter of 2022, (2) a reduction of \$0.2 million was made to the working capital accrual that was recorded as of December 31, 2021, and (3) 13,988 shares of Common Stock valued at \$0.9 million that were held in escrow were released back to Akerna to address the remainder of the working capital adjustment.

On May 23, 2022, we and the sellers of 365 Cannabis entered into an amendment (the “Amendment”) to the Stock Purchase Agreement in order to provide the sellers an election to have the potential earn-out payment, recognized as contingent consideration in the table below, paid in cash or Common Stock or in any combination thereof. Under the Amendment, if a seller elects to have any portion of the earn-out payment paid in cash such amount payable will be reduced by 25%.

The fair value of the consideration transferred as of the date of acquisition is reflected in the table below (in thousands):

Shares issued	\$ 11,060
Cash	4,982
Contingent consideration (1)	6,300
Total fair value of consideration transferred	<u>\$ 22,342</u>

(1) The fair value of the acquisition date contingent consideration was reduced to \$ 6.3 million during the three months ended September 30, 2022.

The presentation below reflects our final purchase price allocation, summarizing the fair values of assets acquired and liabilities assumed as of the date of acquisition (in thousands):

Cash	\$ 527
Accounts receivable	486
Prepaid expenses and other current asset	261
Fixed assets	93
Non-compete agreement	80
Acquired technology	1,040
Customer relationships	13,810
Acquired trade name	270
Goodwill	12,489
Accounts payable and accrued expenses	(2,588)
Deferred tax liabilities	(826)
Deferred revenue	(3,300)
Net assets acquired	<u>\$ 22,342</u>

The excess of purchase consideration over the fair value of assets acquired and liabilities assumed was recorded as goodwill, which is primarily attributed to the assembled workforce and expanded market opportunities, for which there is no basis for U.S. income tax purposes.

Pro Forma Financial Information

The following unaudited pro forma consolidated operating results give effect to the Viridian and 365 Cannabis acquisitions, as if they had been completed as of January 1, 2021 (in thousands):

	Nine Months Ended September 30, 2021
Revenue	\$ 22,218,616
Net loss	\$ (15,472,157)

	Three Months Ended September 30, 2021
Revenue	\$ 7,520,320
Net loss	\$ (1,982,553)

The pro forma financial information for the period presented above has been calculated after adjusting the results of Viridian and 365 Cannabis to reflect the business combination accounting effects resulting from this acquisition, including the amortization expense from acquired intangible assets as though the acquisition occurred as of the beginning of the periods indicated above as well as direct acquisition costs. The pro forma financial information is for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place at the beginning of the years indicated above.

Note 4 – Revenue and Contracts with Customers

We recognize revenue when a customer obtains the benefit of promised services, in an amount that reflects the consideration we expect to be entitled to receive in exchange for those services. In determining the amount of revenue to be recognized, we perform the following steps: (i) identification of the contract with a customer; (ii) identification of the promised services in the contract and determination of whether the promised services are performance obligations, including whether they are distinct in the context of the contract; (iii) determination of the transaction price; (iv) allocation of the transaction price to the performance obligations based on estimated selling prices; and (v) recognition of revenue when (or as) we satisfy each performance obligation.

Software Revenue. Our software revenue is generated from subscriptions and services related to the use of our commercial software platforms, MJ Platform®, Ample, Trellis, Viridian, 365 Cannabis, and our government regulatory platform, Leaf Data Systems, and the sale of business intelligence, data analytics and other software related services. For our SMB customers, software contracts are generally annual contracts paid monthly in advance of service and typically cancellable upon 30 days' notice after the end of the contract period. Leaf Data Systems contracts are generally multi-year contracts payable annually or quarterly in advance of service. Commercial software and Leaf Data Systems contracts generally may only be terminated early for breach of contract as defined in the respective agreements. Our enterprise contracts are typically multi-year contracts paid monthly in advance of services and are generally cancellable with at least one month's notice before the end of the contract period. Amounts that have been invoiced are initially recorded as deferred revenue or contract liabilities. Subscription revenue is recognized on a straight-line basis over the service term of the arrangement beginning on the date that our solution is made available to the customer and ending at the expiration of the subscription term. We typically invoice customers at the beginning of the term, in multi-year, annual, quarterly, or monthly installments. When a collection of fees occurs in advance of service delivery, revenue recognition is deferred until such services commence. Revenue for implementation fees is recognized ratably over the expected term of the contract, including expected renewals.

We include service level commitments to customers warranting certain levels of uptime reliability and performance and permitting those customers to receive credits if those levels are not met. In addition, customer contracts often include: specific obligations that require us to maintain the availability of the customer's data through the service and that customer content is secured against unauthorized access or loss, and indemnity provisions whereby we indemnify customers from third-party claims asserted against them that result from our failure to maintain the availability of their content or securing the same from unauthorized access or loss. To date, we have not incurred any material costs as a result of such commitments. Any such credits or payments made to customers under these arrangements are recorded as a reduction of revenue.

Consulting Revenue. Consulting services revenue is generated by providing solutions for operators in the pre-application of licensures and pre-operational phases of development and consists of contracts with fixed terms and fee structures based upon the volume and activity or fixed-price contracts for consulting and strategic services. These services include application and business plan preparation as they seek licenses to be granted. Consulting projects completed during the pre-application phase generally solidify us as the software vendor of choice for subsequent operational phases once the operator is granted the license. As a result, our consulting revenue is driven as new emerging states pass legislation, and as our client-operators gain licenses. When these services are not combined with subscription revenues as a single unit of account, these revenues are recognized as services are rendered and accepted by the customer.

Other Revenue. Our other revenue is derived primarily from point-of-sale hardware and other non-recurring revenue. We recognize revenue as these products are delivered and title has transferred.

Cost of Revenue. Cost of revenue consists primarily of costs related to providing subscription and other services to our customers, including employee compensation and related expenses for data center operations, customer support and professional services personnel, payments to outside technology service providers, security services, and other tools.

Deferred Revenue. Deferred revenue consists of payments received in advance of revenue recognition from subscription, implementation and consulting services. The deferred revenue balance is influenced by several factors, including seasonality, the compounding effects of renewals, contract duration, and invoice frequency. Deferred revenue that will be recognized during the succeeding twelve-month period is recorded as deferred revenue, which is presented as a current liability while amounts that will be recognized in periods greater than twelve months in the future are recognized as a noncurrent liability on the accompanying consolidated balance sheets.

Disaggregation of Revenue

We derive the majority of our revenue from subscription fees paid for access to and usage of our "software as a service," or SaaS, solutions for a specified period of time, typically one to three years. In addition to subscription fees, contracts with customers may include implementation fees for launch assistance and training. Fixed subscription and implementation fees are billed in advance of the subscription term and are due in accordance with contract terms, which generally provide for payment within 30 days. Our contractual arrangements include performance, termination and cancellation provisions, but do not provide for refunds. Customers do not have the contractual right to take possession of our software at any time.

Sales taxes collected from customers and remitted to government authorities are excluded from revenue.

The following tables summarize our revenue disaggregation of enterprise offerings and non-enterprise offerings for the following periods (in thousands):

	Nine Months Ended September 30,	
	2022	2021
Enterprise	\$ 8,478	\$ 2,366
Non-enterprise	9,972	11,690
	<u>\$ 18,450</u>	<u>\$ 14,056</u>
	Nine Months Ended September 30,	
	2022	2021
United States	\$ 12,814	\$ 10,272
Canada	5,636	3,784
	<u>\$ 18,450</u>	<u>\$ 14,056</u>

Contracts with Multiple Performance Obligations

Customers may elect to purchase a subscription to multiple modules, multiple modules with multiple service levels, or, for certain of the Company's solutions. We evaluate such contracts to determine whether the services to be provided are distinct and accordingly should be accounted for as separate performance obligations. If we determine that a contract has multiple performance obligations, the transaction price, which is the total price of the contract, is allocated to each performance obligation based on a relative standalone selling price method. We estimate standalone selling price based on observable prices in past transactions for which the product offering subject to the performance obligation has been sold separately. As the performance obligations are satisfied, revenue is recognized as discussed above in the product descriptions.

Transaction Price Allocated to Future Performance Obligation

GAAP provides certain practical expedients that limit the required disclosure of the aggregate amount of transaction price that is allocated to performance obligations that have not yet been satisfied. As many of the contracts the Company has entered into with customers are for a twelve-month subscription term, a significant portion of performance obligations that have not yet been satisfied as of September 30, 2022 are part of a contract that has an original expected duration of one year or less. For contracts with an original expected duration of greater than one year, for which the practical expedient does not apply, the aggregate transaction price allocated to the unsatisfied performance obligations was \$23.0 million as of September 30, 2022, of which \$12.2 million is expected to be recognized as revenue over the next twelve months.

Deferred Revenue

Deferred revenue represents the unearned portion of subscription and implementation fees. Deferred revenue is recorded when cash payments are received in advance of performance. Deferred amounts are generally recognized within one to three years. Deferred revenue is included in the accompanying consolidated balance sheets under current liabilities, net of any long-term portion that is included in noncurrent liabilities.

The following table summarizes deferred revenue activity for the nine months ended September 30, 2022 (in thousands):

	As of December 31, 2021	Net additions	Revenue recognized	As of September 30, 2022
Deferred revenue	\$ 4,126	11,793	(13,269)	\$ 2,650

Of the \$18.4 million of revenue recognized in the nine months ended September 30, 2022, \$3.8 million was included in deferred revenue at December 31, 2021.

Costs to Obtain Contracts

We capitalize sales commissions that are directly related to obtaining customer contracts and that would not have been incurred if the contract had not been obtained. These costs are included in the accompanying consolidated balance sheets and are classified as a component of Prepaid expenses and other current assets. Deferred contract costs are amortized to sales and marketing expense over the expected period of benefit, which we have determined to be one to three years based on the estimated customer relationship period.

The following table summarizes deferred contract cost activity for the nine months ended September 30, 2022 (in thousands):

	As of December 31, 2021	Additions	Amortized costs	As of September 30, 2022
Deferred contract costs	\$ 261	289	(276)	\$ 274

Note 5 - Goodwill and Intangible Assets, net

Impairments

Based on our qualitative assessment of goodwill, we determined it was necessary to perform a quantitative valuation of goodwill as of March 31, 2022 and June 30, 2022. Unchanged from the year ended December 31, 2021, we determined there were two reporting units: the enterprise reporting unit which is comprised of the enterprise software offerings and the non-enterprise reporting unit which is comprised of the non-enterprise software offerings. The valuation of our goodwill was determined with the assistance of an independent valuation firm using the income approach (discounted cash flows method) and the market approach (guideline public company method). Our significant assumptions in these analyses include, but are not limited to, future cash flow projections, the weighted average cost of capital, the discount rate, the implied control premium, the terminal growth rate, and the tax rate. Our 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 the Company's estimates. If our ongoing estimates of future cash flows are not met, we may have to record additional impairment charges in future periods. We also use the Guideline Public Company Method, a form of the market approach (utilizing Level 3 unobservable inputs), which is derived from metrics of publicly traded companies or historically completed transactions of comparable businesses. The selection of comparable businesses is based on the markets in which the reporting units operate giving consideration to risk profiles, size, geography, and diversity of products and services. As such, we believe the current assumptions and estimates utilized are both reasonable and appropriate.

Enterprise Reporting Unit

During the six months ended June 30, 2022, due primarily to a continued decline in market valuation from December 31, 2021, we recorded an impairment expense of \$12.9 million to goodwill for our enterprise reporting unit. To perform our analysis, we applied 60% weighting to the market approach and 50% weighting to the income approach. We did not record any impairments during the three months ended September 30, 2022 as well as the three and nine months ended September 30, 2021.

Non-Enterprise Reporting Unit

During the six months ended June 30, 2022, due primarily due to a continued decline in market valuation from December 31, 2021, we recorded impairment expenses of \$23.5 million including impairments of \$12.3 million and \$11.2 million for each of the three months ended March 31, 2022 and June 30, 2022, respectively, related to our non-enterprise reporting unit. To perform our analysis, we applied a 25% weighting to the income approach and a 75% weighting to the market approach. We did not record any impairments during the three months ended September 30, 2022 as well as the three and nine months ended September 30, 2021.

Finite-lived Intangible Assets, Net

We performed a two step impairment test for the asset groups that had indicators of impairment during the three months ended June 30, 2022 and as a result of these analyses, we recorded impairments of \$3.2 million attributable to certain intangible assets and capitalized software associated with one specific business line within the Non-Enterprise Reporting Unit. We did not record any impairments during the three months ended September 30, 2022 as well as the three and nine months ended September 30, 2021.

Note 6 – Long Term Debt

Long-term debt was comprised of the following as of the dates presented:

	September 30, 2022	December 31, 2021
Fair value of debt	14,475,000	17,305,000
Less: Current portion	(9,900,000)	(13,200,000)
Noncurrent portion	<u>\$ 4,575,000</u>	<u>\$ 4,105,000</u>

Senior Convertible Notes

On October 5, 2021, we entered into the SPA resulting in the issuance of the Senior Convertible Notes to two institutional investors in a private placement transaction. The Senior Convertible Notes were issued for an aggregate principal amount of \$20.0 million for \$18.0 million reflecting an original issue discount of 10 percent or \$2.0 million. The net proceeds from the issuance of the Senior Convertible Notes were used to payoff and retire convertible notes that were issued in 2020 (the “2020 Notes”) and fund our growth initiatives through acquisitions and continued investment in our technology infrastructure. The Senior Convertible Notes rank senior to all of our other and future indebtedness. The Senior Convertible Notes mature on October 4, 2024 and can be repaid in shares of Common Stock or cash. The Senior Convertible Notes are convertible into shares of Common Stock of Akerna at a conversion price of \$4.75 per share effective October 4, 2022 which represents an adjustment, as required by the SPA, from \$6.21 per share as a result of the offering of convertible preferred stock on that date (see Note 10). The Senior Convertible Notes are to be repaid in monthly installments, which was deferred to January 1, 2023 in connection with the Convertible Notes Amendment (see below).

In connection with the SPA and the Senior Convertible Notes, we and certain of our subsidiaries entered into an amended Security and Pledge Agreement (the “Security Agreement”) with the lead investor, in its capacity as collateral agent (in such capacity, the “Collateral Agent”) for all holders of the Senior Convertible Notes. The Security Agreement creates a first priority security interest in all of the personal property of the Company and certain of its subsidiaries of every kind and description, tangible or intangible, whether currently owned and existing or created or acquired in the future (the “Collateral”).

Upon the occurrence of an “Event of Default” under the Security Agreement, the Collateral Agent will have certain rights under the Security Agreement including taking control of the Collateral and, in certain circumstances, selling the Collateral to cover obligations owed to the holders of the Senior Convertible Notes pursuant to its terms. An “Event of Default” under the Security Agreement means (i) any defined event of default under any one or more of the transaction documents (including the Senior Convertible Notes), in each instance, after giving effect to any notice, grace, or cure periods provided for in the applicable document, (ii) the failure by us to pay any amounts when due under the Senior Convertible Notes or any other transaction document, or (iii) the breach of any representation, warranty or covenant by the Company under the Security Agreement.

In connection with the occurrence of an event of default, the holders of the Senior Convertible Notes will be entitled to convert all or any portion of the Senior Convertible Notes at an alternate conversion price equal to the lower of (i) the conversion price then in effect, or (ii) 80% of the lower of (x) the volume-weighted average price (“VWAP”) of the Common Stock as of the trading day immediately preceding the applicable date of determination, or (y) the quotient of (A) the sum of the VWAP of Common Stock for each of the two trading days with the lowest VWAP of the Common Stock during the ten consecutive trading day period ending and including the trading day immediately prior to the applicable date of determination, divided by (B) two, but not less than \$10.80 per share.

On June 30, 2022, we and the holders Senior Convertible Notes entered into the Convertible Notes Amendment and added covenants such that (a) we are subject to a daily cash test of having an available cash balance of at least \$7.0 million, which amount shall be reduced by \$1.0 million on each of the dates at which the aggregate principal due upon the Senior Convertible Notes is equal to or less than \$14.0 million and \$11.0 million, subject in all cases to a minimum of \$5.0 million, and (b) we established and maintain bank accounts for each holder for an aggregate amount of \$7.0 million with such amount to be released from the accounts only upon the written consent of such holder, provided that \$1.0 million will automatically release from the accounts upon the occurrence of each of the dates at which the aggregate principal due upon the Senior Convertible Notes is equal to or less than \$14.0 million and \$11.0 million, subject to certain conditions. Further the holders of the Senior Convertible Notes waived provisions such that (i) no amortization payments are due and payable for any payments previously required to be made from July 1, 2022 through January 1, 2023, (ii) the holders of the Senior Convertible Notes will not accelerate any previously deferred installment amounts until January 1, 2023 and (iii) the terms of the SPA which would provide for reset of the conversion price of the Senior Convertible Notes as a result of the issuance of securities under the 2022 Unit Offering (see Note 10) and instead agree to a reset of the conversion price equal to a per share price of 135% of the 2022 Unit Offering price, or \$6.21 per unit, which was subsequently reduced to \$4.75 per share on October 4, 2022 as described above.

On September 27, 2022, the holders of the Senior Convertible Notes granted a waiver of the Required Reserve Amount under the Senior Convertible Notes and SPA for a period retroactive from August 30, 2022 until November 30, 2022 conditioned on the Company pursuing the Reverse Stock Split by no later than November 30, 2022, to cure the deficiency.

2020 Notes

We issued 2020 Notes with a principal amount of \$17.0 million at a purchase price of \$15.0 million on June 9, 2020. The 2020 Notes were paid in full on October 5, 2021 and were replaced by the Senior Convertible Notes.

Method of Accounting and Activity During the Periods

Upon the dates that they were issued, we made irrevocable elections to apply the fair value option to account for each of the Senior Convertible Notes and the 2020 Notes. Disclosures, including the assumptions used to determine the fair values of these debt instruments, are provided in Note 11.

During the nine months ended September 30, 2022, we made \$5.4 million in principal payments on the Senior Convertible Notes, of which \$1.4 million was settled in cash and the remaining \$3.9 million was settled in Common Stock. During the nine months ended September 30, 2022, the fair value of the Senior Convertible Notes increased by \$2.5 million. Of the adjustment, a decrease of \$0.3 million resulted from instrument-specific credit risk and was recognized as other comprehensive income and accumulated in equity and an increase of \$2.8 million was recognized in our consolidated statement of operations as a change in fair value of convertible notes. As of September 30, 2022, the fair value of the Senior Convertible Notes on our consolidated balance sheet was \$14.5 million. During the nine months ended September 30, 2021, we made \$11.6 million in principal payments on the 2020 Notes, of which \$1.2 million was settled in cash and the remaining \$10.4 million was settled in Common Stock. During the nine months ended September 30, 2021, the fair value of the 2020 Notes increased by \$2.0 million. Of the adjustment, an increase of less than \$0.1 million resulted from instrument-specific credit risk and was recognized as other comprehensive income and accumulated in equity and an increase of \$2.0 million was recognized in our consolidated statement of operations as a change in fair value of convertible notes.

Note 7 - Income Taxes

Our effective tax rate was 0.50% and 0.07% for the nine months ended September 30, 2022 and 2021, respectively. Differences between the statutory rate and our effective tax rate resulted from changes in valuation allowance and permanent differences for tax purposes in the treatment of certain nondeductible expenses. Our effective tax rate is impacted by indefinite-lived deferred tax liabilities, resulting primarily from the acquisition of 365 Cannabis, which cannot be considered as a source of future taxable income available to utilize recorded deferred tax assets based on the Company's scheduling and the 80% limit on the utilization of net operating loss carry forwards under current US tax law. Uncertain tax positions related to penalties of less than \$0.1 million have been reversed for the three months ended September 30, 2022 as a result of the Internal Revenue Service's dismissal of the potential penalties. We paid a total of less than \$0.1 million for income taxes, net of refunds received, in certain state and national jurisdictions during each of the nine months ended September 30, 2022 and 2021, respectively.

Note 8 - Supplemental Balance Sheet Disclosures

Prepaid expenses and other current assets consisted of the following:

	<u>As of</u> <u>September 30,</u> <u>2022</u>	<u>As of</u> <u>December 31,</u> <u>2021</u>
Software and technology	\$ 399,824	\$ 687,740
Professional services, dues and subscriptions	297,106	546,126
Insurance	215,762	264,097
Deferred contract costs	273,521	260,899
Unbilled receivables	841,453	506,984
Other	302,366	117,918
Total prepaid expenses and other current assets	<u>\$ 2,330,032</u>	<u>\$ 2,383,764</u>

Accounts payable, accrued expenses, and other accrued liabilities consisted of the following:

	<u>As of</u> <u>September 30,</u> <u>2022</u>	<u>As of</u> <u>December 31,</u> <u>2021</u>
Accounts payable	\$ 1,270,695	\$ 1,943,457
Professional fees	234,750	319,590
Sales taxes	515,789	360,361
Compensation	517,359	1,123,467
Contractors	556,766	1,288,730
Settlements and legal	1,084,294	681,045
Other	451,028	346,870
Total accounts payable, accrued expenses, and other accrued liabilities	<u>\$ 4,630,681</u>	<u>\$ 6,063,520</u>

Note 9 - Commitments and Contingencies***Litigation***

On December 4, 2020, TechMagic USA LLC (“TechMagic”) filed suit against our wholly-owned subsidiary, Solo, in the Massachusetts Superior Court, Department Business Litigation, seeking recovery for certain unpaid invoices pursuant to a Master Services Agreement dated February 5, 2018 (the “Master Services Agreement”) by and between TechMagic and Solo. The suit sought recovery for continued fees under the Master Services Agreement through the end of January 2021. Akerna provided a notice of termination of the Master Services Agreement on November 23, 2020 and the parties disputed the effective date of the termination. Solo disputed the validity of the invoices, in whole or in part. Mr. Ashesh Shah, formerly the president of Solo and currently the holder of less than 5% of our issued and outstanding shares of Common Stock is, to our knowledge, the founder and one of the principal managers of TechMagic. On May 21, 2021, Solo filed suit against two of Solo’s former directors, Mr. Shah and Palle Pedersen. Solo sought recovery for Mr. Shah’s intentional interference with contractual relations, and the defendant’s breaches of various fiduciary duties owed to Solo. Defendant Shah engaged in improper communications with Solo’s customers with the intent that those customers cease their contractual relations with Solo. The defendants also entered into an improper contract with a contractual counter party with whom the defendants had a conflict of interest. The defendants filed a motion to dismiss, which the court found unpersuasive and denied. In July 2022, we entered into an agreement with TechMagic and the defendants to dismiss all litigation and claims described above. In connection with the settlement agreement, we reversed our previously accrued loss contingency of \$0.5 million during the quarter ended June 30, 2022.

On April 2, 2021, TreCom Systems Group, Inc. (“TreCom”) filed suit against Akerna and our wholly-owned subsidiary, MJ Freeway, LLC, in federal District Court for the Eastern District of Pennsylvania, seeking recovery of up to approximately \$2.0 million for services allegedly provided pursuant to a Subcontractor Agreement between MJ Freeway and TreCom. MJ Freeway provided a notice of termination of the operative Subcontractor Agreement on August 4, 2020. MJ Freeway disputes the validity of TreCom’s invoices and the enforceability of the alleged agreement that TreCom submitted to the court. Akerna filed counterclaims against TreCom for breach of contract, a declaratory judgment, commercial disparagement, and defamation. TreCom failed to return Akerna’s intellectual property and issued numerous disparaging statements to one of Akerna’s clients. TreCom subsequently filed a motion to dismiss these counterclaims, which was denied by the court. Akerna intends to vigorously defend against TreCom’s claims, and pursue its own claims. As of December 31, 2021 and September 30, 2022, we recognized a loss contingency of \$0.2 million.

From time to time, we may be involved in litigation relating to claims arising out of our operations in the normal course of business. We will accrue a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. The accrual for a litigation loss contingency might include, for example, estimates of potential damages, outside legal fees and other directly related costs expected to be incurred. As of September 30, 2022, and through the date these consolidated financial statements were issued, there were no other legal proceedings requiring recognition or disclosure in the consolidated financial statements.

Operating Leases

During the first half of 2022, we began negotiations to terminate the 365 Cannabis office lease in Las Vegas, Nevada. We recorded an obligation and lease termination expense of \$0.5 million which is management’s best estimate of the costs to exit our existing lease. The lease termination expense is included within the General and Administrative expense line item on the condensed consolidated statement of operations.

Note 10 – Equity

Convertible Redeemable Preferred Stock

On October 4, 2022, we completed an offering of 400,000 shares of the Company’s Series A Convertible Redeemable Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”), and 100,000 shares of the Company’s Series B Convertible Redeemable Preferred Stock, par value \$0.0001 per share (the “Series B Preferred Stock”, and together with the Series A Preferred Stock, the “Convertible Redeemable Preferred Stock”), at an offering price of \$9.50 per share, representing a 5% original issue discount to the stated value of \$10.00 per share, for gross proceeds of approximately \$4.75 million in the aggregate, before the deduction of the fees and offering expenses of our financial advisor. The aggregate net proceeds (after deducting the fees and expenses of our financial advisor) together with the additional amount to provide for the 105% redemption premium on the Convertible Redeemable Preferred Stock was deposited in an account with an escrow agent. The shares of the Convertible Redeemable Preferred Stock are convertible, at a conversion price of \$0.25 per share (subject in certain circumstances to adjustments), into shares of our Common Stock, at the option of the holders and, in certain circumstances, by the Company.

On November 7, 2022, we held a special meeting of stockholders to consider an amendment (the “Amendment”) to our Amended and Restated Certificate of Incorporation (the “Charter”), to effect a reverse stock split of the outstanding shares of Common Stock by a ratio of 20 for 1 as determined by our Board of Directors. The holders of the Convertible Redeemable Preferred Stock agreed to not transfer, offer, sell, contract to sell, hypothecate, pledge or otherwise dispose of the shares of the Convertible Redeemable Preferred Stock until the Reverse Stock Split, voted the shares of the Series A Preferred Stock purchased in the offering in favor of the Amendment and voted the shares of the Series B Preferred Stock purchased in the offering in a manner that “mirrored” the proportions on which the shares of Common Stock (excluding any shares of Common Stock that did not vote), the Company’s special voting share (excluding any proportion of the special voting share that did not vote) and Series A Preferred Stock voted on the Reverse Stock Split. The Reverse Stock Split required the approval of the majority of the issued and outstanding shares entitled to vote on the matter. Because the Series B Preferred Stock was automatically and without further action of the holder voted in a manner that “mirrored” the proportions on which the shares of Common Stock (excluding any shares of Common Stock that were not voted), the Company’s special voting share (excluding any proportion of the special voting share that was not voted) and Series A Preferred Stock voted on the Reverse Stock Split, abstentions by common stockholders did not have any effect on the votes cast by the holders of the Series B Preferred Stock. The Amendment was approved on November 7, 2022 and the Reverse Stock Split was effectuated at 12:01 a.m. Eastern Standard Time on November 8, 2022 (see Note 2 for the effects of the retroactive application of the effects for all of the periods presented herein).

The holders of all of the Convertible Redeemable Preferred Stock redeemed their shares for cash at 105% of the stated value, or \$10.50 per share, of such shares on November 9, 2022. Accordingly, we directed the escrow agent to pay \$5.25 million on November 10, 2022 to the holders from the escrow account established upon the date of the Convertible Redeemable Preferred Stock offering.

Special Voting Preferred Stock and Exchangeable Shares

In connection with a prior transaction in which we acquired Ample in exchange for 3,294,580 million shares of exchangeable shares (the "Exchangeable Shares"), we issued of a single share of our special voting preferred stock (the "Special Voting Preferred Stock"), for the purpose of ensuring that each Exchangeable Share is substantially the economic and voting equivalent of a share of Akerna Common Stock and that each Exchangeable Share is exchangeable on a 20-for-one basis for a share of Akerna Common Stock, subject to certain limitations and adjustments, including adjustment to reflect the Reverse Stock Split. Each holder of Exchangeable Shares effectively has the ability to cast votes along with holders of Akerna Common Stock. The Exchangeable Shares do not have a par value. The Special Voting Preferred stock has a par value of \$0.0001 per share and a preference in liquidation of \$1.00. The Special Voting Preferred Stock entitles the holder to an aggregate number of votes equal to the number of the Exchangeable Shares issued and outstanding from time to time and which we do not own. The holder of the Special Voting Preferred Stock and the holders of shares of Akerna Common Stock will both vote together as a single class on all matters submitted to a vote of our shareholders. At such time as the Special Voting Preferred Stock has no votes attached to it, the share shall be automatically cancelled.

During the nine months ended September 30, 2022, several Ample shareholders exchanged a total of 18,094 Exchangeable Shares with a value of \$138,419 for 904 shares of Akerna Common Stock. The exchange was accounted for as an equity transaction and we did not recognize a gain or loss on this transaction. As of September 30, 2022, there were a total of 291,192 exchangeable shares remaining as issued and outstanding which could be exchanged for 14,560 shares of Akerna Common Stock.

ATM Program

In 2021, we entered into an Equity Distribution Agreement with Oppenheimer & Co. Inc. ("Oppenheimer") and A.G.P./Alliance Global Partners ("AGP") pursuant to which we could offer and sell from time to time, up to \$25 million of shares of our Common Stock through an "at the market" equity offering program (the "2021 ATM Program"). From its inception through September 23, 2022, a total of 118,629 shares of Common Stock with an aggregate gross purchase price of \$2.7 million, including 90,809 shares with an aggregate gross purchase price of \$0.8 million sold during 2022, were sold under the 2021 ATM Program. On September 23, 2022, we, Oppenheimer and AGP mutually agreed to terminate the 2021 ATM Program.

On September 28, 2022, we entered into a new agreement with AGP pursuant to which we may offer and sell up to \$20.0 million of shares of our Common Stock (the "2022 ATM Program") from time to time through AGP as the sales agent for which they will receive a commission of 3.0% of the gross proceeds. The 2022 ATM Program is currently limited to \$3.5 million due to certain restrictions imposed by the registration statement underlying the offering (the "Baby Shelf Limitation"). Under the Baby Shelf Limitation, we may not offer Common Stock under the registration statement with a value of more than one-third of the aggregate market value of our Common Stock held by non-affiliates in any twelve-month period, so long as the aggregate market value of our Common Stock held by non-affiliates is less than \$75.0 million. Net proceeds from the sale of Common Stock under the 2022 ATM Program will be used for general corporate purposes including working capital, marketing, product development and capital expenditures. Through November 10, 2022, we sold a total of 402,345 shares of Common Stock with an aggregate gross purchase price of \$0.9 million under the 2022 ATM Program.

2022 Unit Offering

On July 5, 2022, we completed the 2022 Unit Offering which was comprised of an aggregate of (i) 29,382,861 units consisting of 1,469,143 shares of Common Stock together with Common Stock warrants (the "Common Warrants") to purchase up to 1,469,143 shares of Common Stock (together, the "Units") and (ii) 14,095,400 pre-funded units, consisting of 14,095,400 pre-funded warrants ("Pre-funded Warrants") to purchase 704,770 shares of Common Stock, together with Common Warrants to purchase up to 704,770 shares of Common Stock (together, the "Pre-funded Units"). The Units were sold at a public offering price of \$0.23 per unit and the Pre-funded Units were sold at a public offering price of \$0.2299 per pre-funded unit. The Pre-Funded Warrants were exercised immediately thereafter at their nominal exercise price of \$0.002 per share. The Common Warrants accompanying each of the Units and Pre-funded Units were issued separately and are immediately tradeable separately upon issuance. The Common Warrants have an exercise price of \$4.60 per share subject to certain adjustments, are immediately exercisable and will expire five years from the date of issuance. In connection with the Convertible Redeemable Preferred Stock offering, the exercise price of the Common Warrants was reduced to \$3.518 per share effective October 5, 2022.

We granted the Underwriter a 45-day option from the effective date of the 2022 Unit Offering to purchase from us (i) additional shares of Common Stock and/or (ii) Common Warrants and/or (iii) Pre-Funded Warrants, in any combination thereof solely to cover over-allotments (the “Over-allotment Option”); however, the Over-allotment Option expired unexercised on August 14, 2022. In addition, we issued to the Underwriter warrants to purchase additional shares of Common Stock (the “Underwriter Warrants”). Upon the expiration of the Over-allotment Option, the Underwriter Warrants provided for the purchase of up to 108,696 shares of Common Stock. The Underwriter Warrants are exercisable at any time and from time to time, in whole or in part, commencing from six months after June 29, 2022 (the “Effective Date”) and ending five years from the Effective Date, at a price per share equal to \$4.60, subject to certain adjustments. In connection with the Convertible Redeemable Preferred Stock offering, the exercise price of the Underwriter Warrants was reduced to \$3.518 per share effective October 5, 2022. The Underwriter Warrants may be transferred by the Underwriter without restriction during the same period.

The Unit Offering closed on July 5, 2022 and we received net proceeds of approximately \$9.2 million after deducting underwriting discounts and commissions and related expenses including legal and other professional fees. In connection with the Convertible Notes Amendment, a total of \$7.0 million of the proceeds were deposited into certain restricted cash accounts. We used the remaining net proceeds from the 2022 Unit Offering for general corporate purposes, including working capital, marketing, product development and capital expenditures. As of September 30, 2022, a total of 45,652,174 warrants exercisable for 2,282,609 shares of Common Stock remain outstanding from the 2022 Unit Offering including 43,478,261 Common Warrants exercisable for 2,173,913 shares of Common Stock and 2,173,913 Underwriter Warrants exercisable for 108,696 shares of Common Stock. In accordance with our policy, we assessed the warrants issued in connection with the 2022 Unit Offering and determined that there are no instances outside of the Company’s control that could require cash settlement. In addition, we determined that the warrants issued in connection with the 2022 Unit Offering do not meet the definition of a derivative as they are indexed to the Company’s Common Stock and they satisfy all of the additional qualifications to be classified within equity. Accordingly, the net proceeds of \$9.2 million were recorded as: (i) an increase to Common Stock of \$217 representing the issuance of 1,469,143 shares of Common Stock attributable to the Units and the issuance of 704,770 shares of Common Stock from the exercise of the Pre-funded Warrants, both at their par value of \$0.0001 per share and (ii) an increase to Additional Paid-In Capital of \$9.2 million for the amounts received over par value less the underwriting discounts and commissions and related expenses including legal and other professional fees.

2019 Warrants

In connection with MTEch Acquisition Corp.’s (“MTEch”) initial public offering, MTEch sold 287,500 units at a purchase price of \$200.00 per unit, inclusive of 37,500 units sold to the underwriters on February 8, 2018, upon the underwriters’ election to fully exercise their over-allotment option. Each unit consisted of one share of MTEch’s common stock and one warrant of MTEch (“MTEch Public Warrant”). Each MTEch Public Warrant entitled the holder to purchase one share of MTEch’s common stock at an exercise price of \$230.00. Concurrently with MTEch’s initial public offering, MTEch sold 12,187 units at a purchase price of \$200.00 per unit on a private offering basis. Each unit consisted of one share of MTEch’s common stock and one warrant of MTEch (“MTEch Private Warrant”). Each MTEch Private Warrant entitled the holder to purchase one share of MTEch’s common stock at an exercise price of \$230.00.

Upon completion of the mergers between MTEch and MJF on June 17, 2019, as contemplated by the Merger Agreement dated October 10, 2018, as amended (“Mergers”), the MTEch Public Warrants and the MTEch Private Warrants were converted, respectively, at an exchange ratio of one-for-one to a warrant to purchase one share of Akerna’s Common Stock with identical terms and conditions as the MTEch Public Warrants (“Public Warrant”) and the MTEch Private Warrants (“Private Warrant”, collectively with the Public Warrants, “Warrants”). In connection with the completion of the Mergers, we also issued 9,468 common stock purchase warrants upon the cashless exercise of a unit purchase option, which warrants have identical terms to the Public Warrants and are included in references to Public Warrants and Warrants herein.

Outstanding Warrants

The following table summarizes our warrants outstanding as of the dates presented:

	<u>Exercise Price</u>	<u>Expiration Date</u>	<u>Balance as of December 31, 2021</u>	<u>Issued</u>	<u>Exercised</u>	<u>Expired</u>	<u>Balance as of September 30, 2022</u>
2019 Public Warrants (1)	\$ 230.00	6/19/2024	5,813,800	—	—	—	5,813,800
2022 Unit Offering							
Pre-funded Warrants (2)	\$ 0.002	6/29/2027	—	14,095,400	(14,095,400)	—	-
Common Warrants (3)	\$ 4.60	6/29/2027	—	43,478,261	—	—	43,478,261
Underwriter Warrants (3)	\$ 4.60	6/29/2027	—	2,173,913	—	—	2,173,913
			<u>5,813,800</u>	<u>59,747,574</u>	<u>(14,095,400)</u>	<u>—</u>	<u>51,465,974</u>

(1) The 2019 Public Warrants are exercisable for 290,690 shares of Common Stock at \$230.00 per share or a ratio of 20 warrants for one share of Common Stock.

(2) A total of 14,095,400 Pre-funded Warrants were issued and exercised in exchange for 704,770 shares of Common Stock.

(3) The Common Warrants and Underwriter Warrants are exercisable for a combined amount of 2,282,609 shares of Common Stock at \$4.60 per share or a ratio of 20 warrants for one share of Common Stock.

Note 11 - Fair Value

Fair Value Option Election – Convertible Notes

We elected to account for both the Senior Convertible Notes and the 2020 Notes by applying the fair value option. Under the fair value option, the financial liability is initially measured at its issue-date estimated fair value and subsequently remeasured at its estimated fair value on a recurring basis at each reporting period date. The change in estimated fair value resulting from changes in instrument-specific credit risk is recorded in other comprehensive income as a component of equity. The remaining estimated fair value adjustment is presented as a single line item within Other (expense) income in our condensed consolidated statements of operations under the caption, Change in fair value of convertible notes.

For the Senior Convertible Notes and the 2020 Notes, which are measured at fair value categorized within Level 3 of the fair value hierarchy, the following represents a reconciliation of the fair values for the three and six months ended September 30, 2022 and September 30, 2021:

	Three Months Ended September 30,	
	2022	2021
Fair value balance at beginning of period	\$ 13,388,000	\$ 6,152,000
Payments of principal	—	(2,344,226)
Change in fair value reported in the statements of operations	1,113,000	23,227
Change in fair value reported in other comprehensive loss	(26,000)	3,000
Fair value balance at end of period	<u>\$ 14,475,000</u>	<u>\$ 3,834,001</u>

	Nine Months Ended September 30,	
	2022	2021
Fair value balance at beginning of period	\$ 17,305,000	\$ 13,398,000
Payments of principal	(5,380,000)	(11,613,903)
Change in fair value reported in the statements of operations	2,840,000	2,030,904
Change in fair value reported in other comprehensive loss	(290,000)	19,000
Fair value balance at end of period	<u>\$ 14,475,000</u>	<u>\$ 3,834,001</u>

The estimated fair values of the Senior Convertible Notes and 2020 Notes were computed using Monte Carlo simulations, which incorporates significant inputs that are not observable in the market, and thus represents a Level 3 measurement as defined by GAAP. The unobservable inputs utilized for measuring the fair value of the Senior Convertible Notes and 2020 Notes reflect our assumptions about the assumptions that market participants would use in valuing the Senior Convertible Notes and 2020 Notes as of their issuance dates and subsequent reporting periods. The Convertible Notes Amendment qualified as a troubled debt restructuring (“TDR”); however, there was no impact on the consolidated balance sheet or in the statement of operations as a result of the TDR as the Senior Convertible Notes are recorded at their fair value.

We estimated the fair value by using the following key inputs to the Monte Carlo Simulation Models:

Fair Value Assumptions - Convertible Notes	September 30, 2022	December 31, 2021
Face value principal payable	\$ 14,660,000	\$ 20,000,000
Original conversion price (1)	\$ 6.2100	\$ 81.00
Value of Common Stock	\$ 1.80	\$ 35.00
Expected term (years)	2.0	2.8
Volatility	92%	75%
Market yield	45.3%	37.1%
Risk free rate	4.2%	1%
Issue date	October 5, 2021	October 5, 2021
Maturity date	October 5, 2024	October 5, 2024

(1) In accordance with the Convertible Notes Amendment, the conversion price was lowered to \$ 6.21 per share from \$81.00 per share through October 4, 2022 (see Note 10).

Fair Value Measurement – Private Warrants

For the Private Warrants classified as derivative liabilities, which are measured at fair value categorized within Level 3 of the fair value hierarchy, the following represents a reconciliation of the fair values for the three months ended September 30, 2022 and September 30, 2021:

	Three Months Ended September 30,	
	2022	2021
Fair value balance at beginning of period	\$ 11,282	\$ 354,247
Change in fair value reported in the statements of operations	(2,257)	(194,046)
Fair value balance at end of period	<u>\$ 9,025</u>	<u>\$ 160,201</u>

	Nine Months Ended September 30,	
	2022	2021
Fair value balance at beginning of period	\$ 63,178	\$ 311,376
Change in fair value reported in the statements of operations	(54,153)	(151,175)
Fair value balance at end of period	<u>\$ 9,025</u>	<u>\$ 160,201</u>

We utilized a binomial lattice model, which incorporates significant inputs, specifically the expected volatility, that are not observable in the market, and thus represents a Level 3 measurement as defined in GAAP. The unobservable inputs utilized for measuring the fair value of the Private Warrants reflect our estimates regarding the assumptions that market participants would use in valuing the Warrants as of the end of the reporting periods.

We record the fair value of the Private Warrants on the consolidated balance sheets under the caption “Derivative liability” and recognize changes to the liability against earnings or loss each reporting period. Upon exercise of the Private Warrants, holders will receive a delivery of Akerna shares on a net or gross share basis per the terms of the Private Warrants and any exercise will reclassify the Private Warrants, at the time of exercise, to shareholder’s equity to reflect the equity transaction. There are no periodic settlements prior to the holder exercising the Private Warrants. There were no transfers in or out of Level 3 from other levels for the fair value hierarchy.

We estimated the fair value by using the following key inputs:

Fair Value Assumptions - Private Warrants	September 30, 2022	December 31, 2021
Number of Private Warrants	225,635	225,635
Original conversion price	\$ 230.00	\$ 230.00
Value of Common Stock	\$ 1.80	\$ 35.00
Expected term (years)	1.71	2.46
Volatility	87.6%	85.8%
Risk free rate	4.1%	0.8%

Fair Value Measurement – 2022 Unit Offering Common and Underwriter Warrants

The fair value of the Common Warrants and Underwriter Warrants issued in connection with the 2022 Unit Offering represent a measurement within Level 3 of the fair value hierarchy and were estimated based on the following key inputs as of the date of the 2022 Unit Offering:

Fair Value Assumptions - 2022 Common and Underwriter Warrants	July 5, 2022
Exercise price	\$ 4.60
Expected term (years)	5.0
Volatility	136.9%

We utilized a Black-Scholes-Merton option pricing model, which incorporates significant inputs, specifically the expected volatility, that are not observable in the market, and thus represents a Level 3 measurement as defined in GAAP. The unobservable inputs utilized for measuring the fair value of the Common and Underwriter Warrants reflect our estimates regarding the assumptions that market participants would have used in valuing the Warrants as of the date of the 2022 Unit Offering or July 5, 2022. The fair value of the Common Warrants and Underwriter Warrants was recorded in equity as a component of the net proceeds received from the 2022 Unit Offering (see Note 10).

Note 12 - Earning per Share

During the three and nine months ended September 30, 2022 and 2021, we used the two-class method to compute net loss per share because we issued securities other than common stock that are economically equivalent to a common share in that the class of stock has the right to participate in dividends should a dividend be declared payable to holders of Akerna Common Stock. These participating securities were the Exchangeable Shares issued by our wholly owned subsidiary in exchange for our acquired ownership interest in Ample. The two-class method requires earnings for the period to be allocated between the Common Stock and participating securities based on their respective rights to receive distributed and undistributed earnings. Under the two-class method, for periods with net income, basic net income per common share is computed by dividing the net income attributable to common stockholders by the weighted average number of shares of Common Stock outstanding during the period. Net income attributable to common stockholders is computed by subtracting from net income the portion of current period earnings that the participating securities would have been entitled to receive pursuant to their dividend rights had all of the period's earnings been distributed. No such adjustment to earnings is made during periods with a net loss, as the holders of the Exchangeable Shares have no obligation to fund losses.

Diluted net loss per common share is calculated under the two-class method by giving effect to all potentially dilutive common stock equivalents, including warrants, restricted stock, restricted stock units, and shares of common stock issuable upon conversion of our Senior Convertible Notes for periods in 2022 and 2020 Notes for periods in 2021. We analyzed the potential dilutive effect of any outstanding convertible securities under the "if-converted" method, in which it is assumed that the outstanding Exchangeable Shares and, in 2022, the Senior Convertible Notes, in 2021, the 2020 Notes, are converted to shares of Common Stock at the beginning of the period or date of issuance, if later. We report the more dilutive of the approaches (two-class or if-converted) as the diluted net loss per share during the period. The dilutive effect of unvested restricted stock and restricted stock units is reflected in diluted loss per share by application of the treasury stock method and is excluded when the effect would be anti-dilutive.

The weighted-average number of shares outstanding used in the computation of diluted earnings per share does not include the effect of potential outstanding common shares that would have been anti-dilutive for the period.

The table below details potentially outstanding shares on a fully diluted basis that were not included in the calculation of diluted earnings per share:

	As of September 30,	
	2022	2021
Shares issuable upon exchange of Exchangeable Shares	14,560	19,297
Shares of common stock issuable upon conversion of convertible notes (1)	—	63,921
Warrants		
2019 Public Warrants	290,690	290,690
2022 Unit Offering - Common Warrants	2,173,913	—
2022 Unit Offering - Underwriter Warrants	108,696	—
Unvested restricted stock units	14,599	42,993
Unvested restricted stock awards	334	1,620
Total	2,602,792	418,521

(1) Amounts for shares of common stock issuable upon conversion of convertible notes were excluded for the 2022 period due to the waiver of the Required Reserve Amount (see Note 6).

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

The following discussion and analysis should be read in conjunction with our unaudited condensed consolidated financial statements for the three and nine months ended September 30, 2022, and the related notes thereto, which have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP").

Akerna Corp., herein referred to as "we", "us", "our," the "Company" or "Akerna", through our wholly-owned subsidiaries MJ Freeway, LLC, Trellis Solutions, Inc., Ample Organics, Inc., solo sciences, inc., Viridian Sciences Inc., and The NAV People, Inc. d.b.a. 365 Cannabis.

Forward-Looking Statements

This Quarterly Report on Form 10-Q including all exhibits hereto contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, including statements regarding future events or our future results of operations, financial condition, business, strategies, financial needs, and the plans and objectives of management. In some cases, forward-looking statements can be identified because they contain words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," "likely," "plan," "potential," "predict," "project," "seek," "should," "target," "will," "would," or similar expressions and the negatives of those terms. Forward-looking statements are based on information available to our management as of the date of this Quarterly Report and our management's good faith belief as of such date with respect to future events and are subject to a number of risks, uncertainties, and assumptions that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements, in particular the substantial risks and uncertainties related to the ongoing COVID-19 pandemic. Important factors that could cause such differences include, but are not limited to:

- our ability to continue as a going concern and manage our cash flow;
- our ability to manage our history of losses;
- our ability to sustain our revenue growth rate, to achieve or maintain profitability, and to effectively manage our anticipated growth;
- our dependence on the commercial success of our clients, the continued growth of the cannabis industry and the regulatory environment in which the cannabis industry operates
- our ability to attract new clients on a cost-effective basis and the extent to which existing clients renew and upgrade their subscriptions;
- the timing of our introduction of new solutions or updates to existing solutions;
- our ability to successfully diversify our solutions by developing or introducing new solutions or acquiring and integrating additional businesses, products, services, or content;
- our ability to respond to changes within the cannabis industry, including legal and regulatory changes;
- the effects of adverse changes in, or the enforcement of, federal laws regarding our clients' cannabis operations or our receipt of proceeds from such operations;
- our ability to manage unique risks and uncertainties related to government contracts;
- our ability to manage and protect our information technology systems;
- our ability to maintain and expand our strategic relationships with third parties;
- our ability to deliver our solutions to clients without disruption or delay;
- our exposure to liability from errors, delays, fraud, or system failures, which may not be covered by insurance;
- our ability to expand our international reach;
- our ability to retain or recruit officers, key employees, and directors;
- our ability to raise additional capital or obtain financing in the future;
- our ability to successfully integrate acquired businesses with Akerna's business within anticipated timelines and at their expected costs;
- our ability to complete planned acquisitions on time or at all due to failure to obtain stockholder approval or governmental or regulatory clearances, or the failure to satisfy other conditions to completion, or the failure of completion for any other reason;
- our response to adverse developments in the general market, business, economic, labor, regulatory, and political conditions, including worldwide demand for cannabis and the spot price and long-term contract price of cannabis;
- our response to competitive risks;
- our ability to protect our intellectual property;
- the market reaction to negative publicity regarding cannabis;
- our ability to manage the requirements of being a public company;
- our ability to implement effective disclosure controls and procedures and internal control over financial reporting;
- our ability to service our convertible debt and meet ongoing covenants under our convertible notes;
- our accounting treatment of certain of our private warrants;
- our ability to effectively manage any disruptions to our business and/or any negative impact to our financial performance caused by the economic and social effects of the COVID-19 pandemic and measures taken in response; and
- other factors discussed in other sections of this Quarterly Report on Form 10-Q, including the sections of this report titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and under Part II, Item 1A. "Risk Factors" and in our Annual Report on Form 10-K as filed with the Securities and Exchange Commission, or the SEC, on March 31, 2022, under Part I, Item 1A, "Risk Factors."

Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, believed, estimated, or expected. We caution readers not to place undue reliance on any such forward-looking statements, which speak only as of the date made. We disclaim any obligation to revise subsequently any forward-looking statements to reflect events or circumstances after the date of such statements or to reflect the occurrence of anticipated or unanticipated events. We qualify all the forward-looking statements contained in this Quarterly Report by the foregoing cautionary statements.

Business Overview

Akerna is a leading provider of software solutions within the cannabis industry. Cannabis businesses face significant complexity due to the stringent regulations and restrictions that shift based on regional, state, and national governing bodies. As the first to market more than ten years ago, Akerna's family of software platforms help to enable regulatory compliance and inventory management across the entire supply chain. When the legal cannabis market started to grow, we identified a need for organic material tracking and regulatory compliance software as a service (SaaS) solution customized specifically for the unique needs of the industry. By providing an integrated ecosystem of applications and services that help our clients enable compliance, regulation, consumer safety and taxation, Akerna is building the technology backbone of the cannabis industry. While designed specifically for the unique needs of the cannabis market, our solutions are adaptable for other industries requiring government regulatory oversight, or where the tracking of organic materials from seed or plant to end products is desired.

Executing upon our expansion strategy, we acquire complementary software brands that service the cannabis industry to grow the scope of Akerna's cannabis ecosystem. Since 2019, we have integrated nine new brands into the Akerna product and service offering. Our first acquisition, Solo Sciences ("Solo"), was initiated in the fall of 2019, with the full acquisition completed in July 2020. We added Trellis Solutions ("Trellis") to our portfolio on April 10, 2020 and finalized the acquisition of Ample Organics ("Ample") and Last Call Analytics ("Last Call") on July 7, 2020. On April 1, 2021 we completed our acquisition of Viridian Sciences Inc. ("Viridian"), a cannabis business management software system built on SAP Business One, followed by the acquisition of The NAV People, Inc. d.b.a 365 Cannabis ("365" Cannabis"), a cannabis business management software system built on Microsoft Business Central, on October 1, 2021. Through our growing family of companies, Akerna provides highly versatile platforms that equip our clients with a central data management system for tracking regulated products. Our solutions also provide clients with integrated security, transparency, and scalability capabilities, all while helping maintaining compliance with their governing regulations.

On the commercial side, our products help state-licensed businesses operate in compliance with applicable regional laws. Our integrated ecosystem provides integrations with third-party vendors and add-ons that enhance the capabilities of our commercial software platforms. On the regulatory side, we provide track and trace solutions that allow state governments to monitor compliance of licensed cannabis businesses. To date, our software has helped monitor the compliance of more than \$30 billion in legal cannabis. While our software facilitates the success of legal cannabis businesses, we do not handle any cannabis-related material, do not process cannabis sales transactions within the United States ("U.S."), and our revenue is generated from a fixed-fee based subscription and professional services model and is not related to the type or amount of sales made by our clients.

We drive revenue growth through the development of our product line, our acquisitions and from continued expansion of our software and consulting offerings within the cannabis, hemp, and cannabidiol ("CBD") industry. Businesses across the regulated cannabis industry use our solutions. The brand recognition of our existing products, our ability to provide services in all areas of the seed-to-sale life cycle, and our wealth of relevant experience attracts cultivation, manufacturing, and dispensary clients who are seeking comprehensive business optimization solutions. Our software solutions are designed to be scalable, and while mid-market and smaller customers have historically been our primary target segment, we are focused on extending our customer reach to address the needs of the emerging enterprise level operator. We believe these larger multi-state/multi-vertical operations represent significant long-term future growth opportunities as the cannabis industry continues to consolidate at a rapid rate. The sophistication of our platform accommodates the complexities of both multi-vertical and multi-state business needs, making us critical partners and allowing us to cultivate long-term, successful relationships with our clients.

Our platforms provide licensed businesses with a true enterprise solution for managing their inventory and compliance and allow government regulators to engage in accurate and real-time compliance monitoring. Key capabilities of our technology infrastructure include:

Seed-to-Sale Tracking allows the tracking of products from cultivation, through harvest and processing and manufacturing, to the monitoring of the final sale to the patient or consumer. Our traceability technology captures every step in an individual plant's life, providing visibility into the supply chain from any measurement of finished product dispensed to a patient or customer, back to the plant it came from, and all activity, transportation, and transactions that happen in between. While we do not provide payment processing, and never take, own, or handle any product or cash transaction, our platform records all sales as part of state and jurisdictional compliance Track-and-Trace processes. The data gathered throughout all of these processes is captured, and provides the insights and information needed to run an efficient and streamlined cannabis business. Seed-to-Sale software operates in a complementary relationship with state-mandated Track-and-Trace systems, replicating the reporting functionality and eliminating the need for operators to duplicate their compliance data into two disparate systems. Track-and-Trace systems are designed solely for government regulators to maintain compliance and do not have the sophistication or functionality to provide cannabis business owners with the insights and tools for effective business management. Our seed-to-sale platforms integrate with the state Track-and-Trace compliance system, reporting in the mandated data along the supply chain while also providing business owners with the capabilities to make informed business decisions based on the fully overview of their operations.

Track-and-Trace is the compliance reporting system used by regulatory bodies in most states. In order to adhere to their state-specific compliance regulations, cannabis operators are required to enter specific data points along the supply chain into the state-mandated track-and-trace system. By doing so, regulators can track the movement of cannabis inventory through the full supply chain, even when it moves between facilities or operators. The aggregated view that Track-and-Trace software seeks to ensure that the end product being sold has been grown, harvested, processed, transferred and sold compliantly, and provides assurance of safety to consumers.

Single System Integration allows state-licensed clients to manage inventory, customer records, and staff in one tracking system. MJ Platform and Leaf Data Systems platforms can be fully integrated with one another to create a streamlined Seed-to-Sale/Track-and-Trace solution. Additionally, our platforms can also be integrated with systems of numerous third-party suppliers. We have certified integrations with world class accounting solutions, including Sage, SAP, Microsoft and Netsuite.

Anti-Counterfeiting Technology. Solo sciences provides next-generation anti-counterfeiting technology fused with a direct communication system between brands and consumers. The solo sciences mission is to build confidence and establish trust among consumers, while enabling retailers and distributors to close the loop with creators and producers.

Cannabis Market Insights are curated using the anonymized data aggregated through our Seed-to-Sale platform for key industry intelligence. With over \$30 billion in cannabis sales tracked over the past twelve years, we have cultivated a substantial legal cannabis dataset across 30+ states and multiple countries. This data provides a detailed overview of key industry trends, giving us the ability to provide banks, investors, researchers, cannabis businesses, and non-cannabis businesses with cannabis market intelligence and comparison data.

Enterprise Resource Planning (ERP) software is a business process management software that manages and integrates a company's financials, manufacturing, inventory, supply chain, operations, commerce, and reporting activities. ERP systems improve an operator's efficiency and effectiveness by eliminating disparate systems, consolidating business critical information in a single location, reducing double entry data, and streamlining operations. ERP software solutions built for cannabis operators combine traditional accounting, manufacturing, inventory, and supply chain management with cannabis-specific track and trace and compliance functionality.

Using our years of experience, proprietary databases, and resources to identify trends and predict changes in the cannabis industry we evolve our products and better assist our clients in operating in compliance with the applicable laws of their jurisdictions and capitalizing on commercial opportunities within the applicable regulatory framework, with accuracy, efficiency, and geographic specificity. We have worked with clients and governments across the globe to create customized solutions that fit their specific regulatory and commercially compliant needs. While the majority of our clients are in the U.S. and Canada, our solutions allow cannabis businesses to operate efficiently in this fast-changing industry and comply with state, local, and federal (in countries such as Canada, Italy, Macedonia, and Colombia). Akerna and our family of companies is well-positioned to provide compliance solutions for the expanding national and international legal cannabis market.

Key Developments

The following general business developments had or may have a significant impact on our results of operations, financial position and cash flows.

Preferred Stock Offering and Reverse Stock Split

On October 4, 2022, we completed an offering of 400,000 shares of the Company's Series A Convertible Redeemable Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock"), and 100,000 shares of the Company's Series B Convertible Redeemable Preferred Stock, par value \$0.0001 per share (the "Series B Preferred Stock", and together with the Series A Preferred Stock, the "Convertible Redeemable Preferred Stock"), at an offering price of \$9.50 per share, representing a 5% original issue discount to the stated value of \$10.00 per share, for gross proceeds of approximately \$4.75 million in the aggregate, before the deduction of the fees and offering expenses of our financial advisor. The aggregate net proceeds (after deducting fees and offering expenses of our financial advisor) together with the additional amount to provide for the 105% redemption premium on the Convertible Redeemable Preferred Stock was deposited in an account with an escrow agent. The shares of the Convertible Redeemable Preferred Stock are convertible, at a conversion price of \$0.25 per share (subject in certain circumstances to adjustments), into shares of our common stock, par value \$0.0001 per share ("Common Stock"), at the option of the holders and, in certain circumstances, by the Company.

On November 7, 2022, we held a special meeting of stockholders to consider an amendment (the "Amendment") to our Amended and Restated Certificate of Incorporation (the "Charter"), to effect a reverse stock split of the outstanding shares of Common Stock by a ratio of 20 for 1 (the "Reverse Stock Split") as determined by our Board of Directors. The Amendment was approved and the Reverse Stock Split was effectuated at 12:01 a.m. Eastern Standard Time on November 8, 2022 (see Note 2 for the effects of the retroactive application of the effects for all of the periods presented herein).

ATM Offering Program

On September 28, 2022, we entered into a new agreement with A.G.P./Alliance Global Partners ("AGP") pursuant to which we may offer and sell up to \$20.0 million of shares of our Common Stock (the "2022 ATM Program") from time to time through AGP as the sales agent for which they will receive a commission of 3.0% of the gross proceeds. The 2022 ATM Program is currently limited to \$3.5 million due to certain restrictions imposed by the registration statement underlying the offering (the "Baby Shelf Limitation"). Under the Baby Shelf Limitation, we may not offer Common Stock under the registration statement with a value of more than one-third of the aggregate market value of our Common Stock held by non-affiliates in any twelve-month period, so long as the aggregate market value of our Common Stock held by non-affiliates is less than \$75.0 million. Net proceeds from the sale of Common Stock under the 2022 ATM Program will be used for general corporate purposes including working capital, marketing, product development, capital expenditures and merger and acquisition activities. Through November 10, 2022, we sold a total of 402,345 shares of Common Stock with an aggregate gross purchase price of \$0.9 million under the 2022 ATM Program.

Convertible Notes Amendment

On June 30, 2022, we and the holders that are parties to the securities purchase agreement (the "SPA") associated with our 2021 Senior Convertible Notes (the "Senior Convertible Notes") entered into an amendment and waiver agreement (the "Convertible Notes Amendment") that added covenants such that (a) we are subject to a daily cash test of having an available cash balance of at least \$7.0 million, which amount shall be reduced by \$1.0 million on each of the dates at which the aggregate principal due upon the Senior Convertible Notes is equal to or less than \$14.0 million and \$11.0 million, subject in all cases to a minimum of \$5.0 million, and (b) we established and maintain bank accounts for each holder for an aggregate amount of \$7.0 million with such amount to be released from the accounts only upon the written consent of such holder, provided that \$1.0 million will automatically release from the accounts upon the occurrence of each of the dates at which the aggregate principal due upon the Senior Convertible Notes is equal to or less than \$14.0 million and \$11.0 million, subject to certain conditions. Further the holders of the Senior Convertible Notes waived provisions such that (i) no amortization payments are due and payable for any payments previously required to be made from July 1, 2022 through January 1, 2023, (ii) the holders of the Senior Convertible Notes will not accelerate any previously deferred installment amounts until January 1, 2023 and (iii) the terms of the SPA which would provide for reset of the conversion price of the Senior Convertible Notes as a result of the issuance of securities under our offering of Common Stock and warrants (the "2022 Unit Offering") and instead agree to a reset of the conversion price equal to a per share price of 135% of the 2022 Unit Offering price, or \$6.21 per unit, which was subsequently reduced to \$4.75 per share on October 4, 2022 in connection with the offering of the Convertible Preferred Stock.

On July 5, 2022, we completed the 2022 Unit Offering which was comprised of an aggregate of (i) 29,382,861 units consisting of 1,469,143 shares of Common Stock together with Common Stock warrants (the "Common Warrants") to purchase up to 1,469,143 shares of Common Stock (together, the "Units") and (ii) 14,095,400 pre-funded units, consisting of 14,095,400 pre-funded warrants ("Pre-funded Warrants") to purchase 704,770 shares of Common Stock together with Common Warrants to purchase up to 704,770 shares of Common Stock (together, the "Pre-funded Units"). The Units were sold at a public offering price of \$0.23 per unit and the Pre-funded Units were sold at a public offering price of \$0.2299 per pre-funded unit. The Pre-Funded Warrants were exercised immediately thereafter at their nominal exercise price of \$0.002 per share. The Common Warrants accompanying each of the Units and Pre-funded Units were issued separately and are immediately tradeable separately upon issuance. The Common Warrants have an exercise price of \$4.60 per share subject to certain adjustments, are immediately exercisable and will expire five years from the date of issuance. In connection with the Convertible Redeemable Preferred Stock offering, the exercise price of the Common Warrants was reduced to \$3.518 per share effective October 5, 2022.

We granted the Underwriter a 45-day option from the effective date of the 2022 Unit Offering to purchase from us (i) additional shares of Common Stock and/or (ii) Common Warrants and/or (iii) Pre-Funded Warrants, in any combination thereof solely to cover over-allotments (the "Over-allotment Option"); however, the Over-allotment Option expired unexercised on August 14, 2022. In addition, we issued to the Underwriter warrants to purchase additional shares of Common Stock (the "Underwriter Warrants"). Upon the expiration of the Over-allotment Option, the Underwriter Warrants provided for the purchase of up to 108,696 shares of Common Stock. The Underwriter Warrants are exercisable at any time and from time to time, in whole or in part, commencing from six months after June 29, 2022 (the "Effective Date") and ending five years from the Effective Date, at a price per share equal to \$4.60, subject to certain adjustments, which was the public offering price per unit. In connection with the Convertible Redeemable Preferred Stock offering, the exercise price of the Underwriter Warrants was reduced to \$3.518 per share effective October 5, 2022. The Underwriter Warrants may be transferred by the Underwriter without restriction during the same period.

The Unit Offering closed on July 5, 2022 and we received net proceeds of approximately \$9.2 million after deducting underwriting discounts and commissions and related expenses including legal and other professional fees. In connection with the Convertible Notes Amendment, a total of \$7.0 million of the proceeds were deposited into certain restricted cash accounts. We used the remaining net proceeds from the 2022 Unit Offering for general corporate purposes, including working capital, marketing, product development and capital expenditures. As of September 30, 2022, a total of 45,652,174 warrants exercisable for 2,282,609 shares of Common Stock remain outstanding from the 2022 Unit Offering including 43,478,261 Common Warrants exercisable for 2,173,913 shares of Common Stock and 2,173,913 Underwriter Warrants exercisable for 108,696 shares of Common Stock.

Restructuring

In May 2022, we implemented a corporate restructuring initiative (the "Restructuring") as approved by our board of directors. The Restructuring resulted in a reduction of the Company's workforce by 59 employees, or approximately 33 percent of the Company. We incurred costs of approximately \$0.6 million in severance benefits, including employee insurance, associated payroll taxes and legal costs in connection with the Restructuring. Of the total amount incurred, \$0.3 million was included in Sales and marketing costs, \$0.3 million was recorded in Product development and less than \$0.1 million was included in Cost of revenue and General and administrative expenses, respectively. All amounts directly attributable to the severed employees were settled in cash through the period ended September 30, 2022. Accordingly, we have no material obligations remaining associated with the Restructuring. In addition to the reduction in force, the Company's executive leadership team agreed to a temporary 25 percent reduction in salary, subject to certain conditions.

Financial Results of Operations

Revenue

We generate revenue from two primary sources: (1) software and (2) consulting services. Revenue from software comprised approximately 96% and 91% of our revenue for the nine months ended September 30, 2022 and 2021, respectively. Revenue from consulting services comprised approximately 3% and 8% of our revenue for nine months ended September 30, 2022 and 2021, respectively.

Software. Our software is solutioned for our key markets, small and medium-sized business (“SMB”) and enterprise customers. Our SMB customers become a natural funnel for our larger, more robust enterprise offerings built on SAP and Microsoft. In either market, software revenue is generated from subscriptions and services related to the use of our commercial software platforms, MJ Platform, Ample, Trellis, Viridian, and 365 Cannabis, our government regulatory platform, Leaf Data Systems, and the sale of business intelligence, data analytics and other software related services. Software contracts are generally quarterly, annual, or three-year long contracts paid monthly, quarterly, or annually in advance of service and cancellable upon 30 or 90 days’ notice, although we do have many multi-year commercial software contracts. Leaf Data Systems contracts are generally multi-year contracts payable annually or quarterly in advance of service. Commercial software and Leaf Data Systems contracts generally may only be terminated early for breach of contract as defined in the respective agreements. Amounts that have been invoiced are initially recorded as deferred revenue or contract liabilities. Subscription revenue is recognized on a straight-line basis over the service term of the arrangement beginning on the date that our solution is made available to the customer and ending at the expiration of the subscription term.

Consulting. Consulting services revenue is generated by providing solutions for operators in the pre-application of licensures and pre-operational phases of development. These services include application and business plan preparation as they seek licenses to be granted. Consulting projects completed during the pre-application phase generally solidify us as the software vendor of choice for subsequent operational phases once the operator is granted the license. As a result, our consulting revenue is driven as new emerging states pass legislation, and as our client-operators gain licenses. Accordingly, we expect our consulting services to grow over time as more states emerge with legalization reforms.

Other Revenue. Our other revenue is derived primarily from point-of-sale hardware and other non-recurring revenue.

Cost of Revenue and Operating Expenses

Cost of Revenue

Our cost of revenue is derived from direct costs associated with operating our commercial and government regulatory software platforms and providing consulting services. The cost of revenue for our commercial and government regulatory platforms relates primarily to hosting and infrastructure costs and subcontractor expenses incurred in connection with certain government contracts. Consulting cost of revenue relates primarily to our employees’ and consultants’ salaries and other related compensation expenses. We record the cost of revenue using the direct cost method. This method requires the allocation of direct costs including support services and materials to the cost of revenue.

Product Development Expenses

Our product development expenses include salaries and benefits, nearshore contractor expenses, technology expenses, and other overhead related to the ongoing maintenance of our commercial and government regulatory software platforms and planning for new software development. Product development costs, other than software development expenses qualifying for capitalization, are expensed as incurred. Capitalized software development costs consist primarily of employee-related costs. We devote substantial resources to enhancing and maintaining our technology infrastructure, developing new and enhancing existing solutions, conducting quality assurance testing, and improving our core technology.

Sales and Marketing Expenses

Sales and marketing expense is primarily salaries and related expenses, including commissions, for our sales, marketing, and client service staff. We also categorize payments to partners and marketing programs as sales and marketing expenses. Marketing programs consist of advertising, events, such as trade shows, corporate communications, brand building, and product marketing activities. We plan to continue to invest in marketing and sales by expanding our domestic and international selling and marketing activities, building brand awareness, attracting new clients, and sponsoring additional marketing events. The timing of these marketing events will affect our marketing costs in a particular quarter.

We defer the portion of sales commissions that is considered a cost of obtaining a new contract with a customer in accordance with the revenue recognition standard and amortize these deferred costs over the period of benefit, currently one year. We expense the remaining sales commissions as incurred. The rates at which sales commissions are earned varies depending on a variety of factors, including the nature of the sale (new, renewal, or add-on service offering), the type of service or solution sold, and the sales channel.

General and Administrative Expenses

Our general and administrative expenses include salaries and benefits and other costs of departments serving administrative functions, such as executives, finance and accounting, human resources, public relations and investor relations. In addition, general and administrative expense includes non-personnel costs, such as professional fees and other supporting corporate expenses not allocated to cost of revenue, product and development or sales and marketing.

Other (Expense) Income, Net

Other (expense) income, net consists of interest income on cash and cash equivalents, interest expense on our debt, quarterly remeasurement of the fair value of our convertible notes and derivative liability, foreign currency gains and losses, and other non-operating gains and losses.

Critical Accounting Policies and Estimates

Our critical accounting policies are disclosed in our Annual Report on Form 10-K for the year ended December 31, 2021. Since the date of the Annual Report, there have been no material changes to our critical accounting policies.

Results of Operations for the Nine Months Ended September 30, 2021 Compared to Nine Months Ended September 30, 2022

The following table highlights our operating revenues and expenses for the nine months ended September 30, 2022 as compared to the nine months ended September 30, 2021:

	Nine Months Ended September 30		Change	
	2022	2021	Period over Period	
Revenues:				
Software	\$ 17,756,272	\$ 12,809,841	\$ 4,946,431	39%
Consulting	618,809	1,135,033	(516,224)	(45)%
Other	74,443	111,540	(37,097)	(33)%
Total revenue	18,449,524	14,056,414	4,393,110	31%
Cost of revenues				
	6,091,511	5,339,929	751,582	14%
Gross profit	12,358,013	8,716,485	3,641,528	42%
<i>Gross profit margin</i>	67%	62%		
Operating expenses:				
Product development:	5,240,922	4,517,836	723,086	16%
Sales and marketing	8,304,411	5,564,519	2,739,892	49%
General and administrative	6,812,617	8,306,417	(1,493,800)	(18)%
Depreciation and amortization	6,094,963	3,605,435	2,489,528	69%
Impairment of long-lived assets	39,600,587	—	39,600,587	nm
Change in fair value of contingent consideration	(3,000,000)	—	(3,000,000)	nm
Total operating expenses	63,053,500	21,994,207	41,059,293	nm
Loss from operations	\$ (50,695,487)	\$ (13,277,722)	\$ (37,417,765)	nm

nm – percentage change not meaningful

Revenue

Software Revenue

Total software revenue increased to \$17.8 million for the nine months ended September 30, 2022 from \$12.8 million for the nine months ended September 30, 2021, for an increase of \$4.9 million, or 39%. Software revenue related to our enterprise offerings, Viridian and 365 Cannabis, for the nine months ended September 30, 2022 were \$8.4 million, compared to \$1.9 for the nine months ended September 30, 2021 and software revenue related to our non-enterprise offerings, which include MJ Platform, Ample, Trellis, Solo, and Leaf Data Systems, declined to \$8.7 million for the nine months ended September 30, 2022 compared to \$9.7 million for the nine months ended September 30, 2021. There was also a decrease in partnership and data revenue which was \$0.6 million for the nine months ended September 30, 2022 compared to \$1.2 million during the same period in the prior year. Software revenue accounted for 96% and 91% of total revenue for the nine months ended September 30, 2022 and 2021, respectively. As indicated above, the increase in software revenue during the nine months ended September 30, 2022 as compared to the nine months ended September 30, 2021 was attributable to revenue generated from our enterprise offerings sourced primarily from 365 Cannabis which was acquired during the fourth quarter of 2021. Also contributing to the increase was \$0.4 million of non-recurring contract termination fees attributable to two customers.

Consulting Revenue

Consulting revenue includes revenue generated from consulting services delivered to prospective and current cannabis, hemp and CBD businesses and business operators. Our consulting revenue was \$0.6 million for the nine months ended September 30, 2022 compared to \$1.1 million for the nine months ended September 30, 2021, a decrease of \$0.5 million, or 45%. Consulting revenue was 3% and 8% of total revenue for the nine months ended September 30, 2022 and 2021, respectively. Due to the nature of consulting revenue, our dependence on emerging market activity and the ongoing pandemic as a driver of demand, the percentage of consulting revenue over total revenue has varied from period to period depending on whether state legislation has expanded to allow new market entrants or growth of existing market participant operations.

Other Revenue

Other revenue includes retail/resale revenue, which is generated from point-of-sale hardware, and other non-recurring revenues. Other revenue was less than \$0.1 million and \$0.1 million for the nine months ended September 30, 2022 and 2021, respectively.

Cost of Revenue

Our cost of revenue was \$6.1 million for the nine months ended September 30, 2022, compared to \$5.3 million for the nine months ended September 30, 2021, an increase of \$0.8 million, or 14%. Total cost of revenue increased primarily as a result of an increase in software application and hosting expenses of \$0.4 million and fees for Microsoft licenses in the amount of \$1.2 million related to our acquisitions of Viridian and 365 Cannabis. These increases were partially offset by the reversal of a litigation contingency of approximately \$0.5 million (see Note 7 – Commitments and Contingencies to the consolidated financial statements for further discussion of the reversal of the litigation reserves) and lower platform license fees of \$0.3 million.

Gross Profit

Gross profit was \$12.4 million for the nine months ended September 30, 2022, compared to \$8.7 million for the nine months ended September 30, 2021, an increase of \$3.6 million or 42%. The gross profit margin increased to 67% for the nine months ended September 30, 2022 from 62% for the nine months ended September 30, 2021.

Operating Expenses

Product Development

Product development expense was \$5.2 million for the nine months ended September 30, 2022, compared to \$4.5 million for the nine months ended September 30, 2021, an increase of \$0.7 million, or 16%. Product development expense increased due primarily to the Viridian and 365 Cannabis acquisitions, which resulted in a \$0.8 million increase in salary-related and contractor expenses for the nine months ended September 30, 2022 compared to the same period in the prior year as well as higher software and application costs and severance benefit costs associated with the Restructuring partially offset by lower recruiting and share-based compensation costs.

Sales and Marketing

Sales and marketing expense was \$8.3 million for the nine months ended September 30, 2022, compared to \$5.6 million for the nine months ended September 30, 2021, an increase of \$2.7 million, or 49%. The increase in sales and marketing expense is primarily related to the acquisitions of Viridian and 365 Cannabis which resulted in an increase of \$2.7 million in salary-related and contractor expenses for the nine months ended September 30, 2022 compared to the nine months ended September 30, 2021. In addition, the 2022 period included higher software application costs of \$0.1 million and approximately \$0.3 million of severance benefits associated with the Restructuring. These increases in the 2022 period were partially offset by lower recruiting and share-based compensation costs of \$0.4 million.

General and Administrative

General and administrative expense was \$6.8 million for the nine months ended September 30, 2022, compared to \$8.3 million for the nine months ended September 30, 2021, a decrease of \$1.5 million, or 18%. The period in 2022 and 2021 include charges associated with office lease terminations and, in the case of 2021, the associated write-off of certain leasehold improvements. During the 2022 period, we terminated our Las Vegas office space which resulted in a restructuring charge of \$0.5 million while the 2021 period reflected charges of \$2.4 million associated with the exit from our former Toronto office. We also experienced lower acquisition-related costs of \$0.3 million during the 2022 period as there was no significant in activity during 2022 as compared to 2021 which included the Viridian and 365 Cannabis acquisitions. Finally, we experienced lower stock-based compensation costs and lower occupancy costs in the 2022 period due primarily to the office closures and the reduction in employee headcount. These decreases were partially offset by higher bad debt expenses and board of director compensation costs of \$0.1 million as well as \$0.4 million of incremental professional fees and proxy-related expenses associated with the meetings to consider the Reverse Stock Split as well as for the nine months ended September 30, 2022 compared to the same period in the prior year.

Depreciation and Amortization

Depreciation and amortization expense increased to \$6.1 million for the nine months ended September 30, 2022 from \$3.6 million for the nine months ended September 30, 2021, an increase of \$2.5 million, or 69%. The increase in amortization expense is primarily attributable to the acquired intangible assets from our Viridian and 365 Cannabis acquisitions in the amount of \$1.0 million, which both occurred after September 30, 2021, as well as an increase in capitalized software in the amount of \$1.5 million.

Impairment of Long-lived Assets

Due to a continued decline in market conditions from December 31, 2021, we recorded impairment charges of \$36.4 million including \$23.5 million attributable to goodwill associated with the non-enterprise reporting unit and \$12.9 million associated with the goodwill of the enterprise reporting unit during the first half of 2022, compared to no impairment charge for the nine months ended September 30, 2021. In addition, we recorded impairments of \$3.2 million attributable to certain intangible assets and capitalized software associated with one specific business line within the non-enterprise reporting unit during the nine months ended September 30, 2022 (see Note 5 – Goodwill and Intangible Assets, Net to the consolidated financial statements for further discussion on the impairments recorded).

Change in Fair Value of Contingent Consideration

In connection with our acquisition of 365 Cannabis in October 2021, we provided for contingent consideration to be paid in cash or Common Stock or any combination thereof in the event certain revenue targets, as specified in the underlying stock purchase agreement, were achieved within a defined assessment period subsequent to the date of acquisition. The contingent consideration was initially measured at a fair value of \$6.3 million. Upon the completion of the assessment period associated with the revenue targets, the fair value of the contingent consideration was reduced to \$3.3 million as of September 30, 2022.

Results of Operations for the Three Months Ended September 30, 2022 Compared to Three Months Ended September 30, 2021

The following table highlights our operating revenues and expenses for the three months ended September 30, 2022 as compared to the three months ended September 30, 2021:

	<u>Three Months Ended September 30</u>		<u>Change</u>	
	<u>2022</u>	<u>2021</u>	<u>Period over Period</u>	
Revenues:				
Software	\$ 5,326,830	\$ 4,557,960	\$ 768,870	17%
Consulting	76,500	551,402	(474,902)	(86)%
Other	9,472	26,140	(16,668)	(64)%
Total revenue	5,412,802	5,135,502	277,300	5%
Cost of revenues				
	2,051,862	1,971,382	80,480	4%
Gross profit	3,360,940	3,164,120	196,820	6%
<i>Gross profit margin</i>	62%	62%		
Operating expenses:				
Product development:	1,374,133	1,566,478	(192,345)	(12)%
Sales and marketing	1,882,980	2,002,461	(119,481)	(6)%
General and administrative	1,823,076	2,077,474	(254,398)	(12)%
Depreciation and amortization	2,118,739	1,238,420	880,319	71%
Impairment of long-lived assets	—	—	—	nm
Change in fair value of contingent consideration	(3,000,000)	—	(3,000,000)	nm
Total operating expenses	4,198,928	6,884,833	(2,685,905)	nm
Loss from operations	\$ (837,988)	\$ (3,720,713)	\$ 2,882,725	nm

nm – percentage change not meaningful

Revenue

Software Revenue

Total software revenue increased to \$5.3 million for the three months ended September 30, 2022 from \$4.6 million for the three months ended September 30, 2021, for an increase of \$0.8 million, or 17%. Software revenue related to our enterprise offerings, Viridian and 365 Cannabis, for the three months ended September 30, 2022 were \$2.6 million, compared to \$0.9 for the three months ended September 30, 2021 and software revenue related to our non-enterprise offerings, which include MJ Platform, Ample, Trellis, Solo, and Leaf Data Systems, were \$2.5 million for the three months ended September 30, 2022 compared to \$3.1 million for the three months ended September 30, 2021. There was also a decrease in partnership and data revenue which was \$0.2 million for the three months ended September 30, 2022 compared to \$0.6 million during the same period in the prior year. Software revenue accounted for 98% and 89% of total revenue for the three months ended September 30, 2022 and 2021, respectively. As indicated above, the increase in software revenue during the three months ended September 30, 2022 as compared to the three months ended September 30, 2021 was attributable to revenue generated from our enterprise offerings.

Consulting Revenue

Consulting revenue includes revenue generated from consulting services delivered to prospective and current cannabis, hemp and CBD businesses and business operators. Our consulting revenue was \$0.1 million for the three months ended September 30, 2022 compared to \$0.6 million for the three months ended September 30, 2021, a decrease of \$0.5 million, or 86%. Consulting revenue was 1% and 11% of total revenue for the three months ended September 30, 2022 and 2021, respectively. Due to the nature of consulting revenue, our dependence on emerging market activity and the ongoing pandemic as a driver of demand, the percentage of consulting revenue over total revenue has varied from period to period depending on whether state legislation has expanded to allow new market entrants or growth of existing market participant operations.

Other Revenue

Other revenue includes retail/resale revenue, which is generated from point-of-sale hardware, and other non-recurring revenues. Other revenue was less than \$0.1 million for each of the three months ended September 30, 2022 and 2021, respectively.

Cost of Revenue

Our cost of revenue was \$2.1 million for the three months ended September 30, 2022, compared to \$2.0 million for the three months ended September 30, 2021, an increase of \$0.1 million, or 4%. The total cost of revenue increased primarily as a result of an increase in Microsoft licenses in the amount of \$0.4 million related to our acquisitions of Viridian and 365 Cannabis partially offset by lower SAP platform license and hosting service costs of approximately \$0.3 million.

Gross Profit

Gross profit was \$3.4 million for the three months ended September 30, 2022, compared to \$3.2 million for the three months ended September 30, 2021, an increase of \$0.2 million or 6%. The gross profit margin was flat at 62% for each of the three months ended September 30, 2022.

Operating Expenses

Product Development

Product development expense was \$1.4 million for the three months ended September 30, 2022, compared to \$1.6 million for the three months ended September 30, 2021, a decrease of \$0.2 million, or 12%. Product development expense decreased primarily due to the effects of the headcount reductions from the Restructuring which lowered overall salary and benefits costs as well as stock-based compensation costs and lower recruiting expenses.

Sales and Marketing

Sales and marketing expense was \$1.9 million for the three months ended September 30, 2022, compared to \$2.0 million for the three months ended September 30, 2021, a decrease of \$0.1 million, or 6%. The decrease is due primarily to the effects of the headcount reductions from the Restructuring which lowered the overall salary and benefits costs run rate and also reduced stock-based compensation costs. In addition, we incurred lower trade show and promotional expenses in the 2022 period. These decreases were partially offset by an increase on contractor and consulting costs.

General and Administrative

General and administrative expense was \$1.8 million for the three months ended September 30, 2022, compared to \$2.1 million for the three months ended September 30, 2021, a decrease of \$0.3 million, or 12%. The decrease was due primarily to lower financing and acquisition-related costs as well as lower stock-based compensation and franchise tax costs in the 2022 period partially offset by higher bad debt expenses and board of director compensation costs as well as proxy-related expenses associated with the meetings to consider the Reverse Stock Split when compared to the 2021 period.

Depreciation and Amortization

Depreciation and amortization expense increased to \$2.1 million for the three months ended September 30, 2022 from \$1.2 million for the three months ended September 30, 2021, an increase of \$0.9 million, or 71%. The increase in amortization expense is primarily attributable to the acquired intangible assets from our Viridian and 365 Cannabis acquisitions in the amount of \$0.2 million, which both occurred after September 30, 2021, as well as an increase in capitalized software in the amount of \$0.7 million.

Impairment of Long-lived Assets

There were no impairment charges recognized in the three months ended September 30, 2022 and 2021.

Change in Fair Value of Contingent Consideration

In connection with our acquisition of 365 Cannabis in October 2021, we provided for contingent consideration to be paid in cash or Common Stock or any combination thereof in the event certain revenue targets, as specified in the underlying stock purchase agreement, were achieved within a defined assessment period subsequent to the date of acquisition. The contingent consideration was initially measured at a fair value of \$6.3 million. Upon the completion of the assessment period associated with the revenue targets, the fair value of the contingent consideration was reduced to \$3.3 million as of September 30, 2022.

Non-GAAP Financial Measures

In addition to our results determined in accordance with GAAP, we believe the following non-GAAP measures are useful in evaluating our operating performance. We use the following non-GAAP financial information to evaluate our ongoing operations and for internal planning and forecasting purposes. We believe that non-GAAP financial information, when taken collectively, may be helpful to investors because it provides consistency and comparability with past financial performance. However, non-GAAP financial information is presented for supplemental informational purposes only, has limitations as an analytical tool, and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP.

Investors are cautioned that there are material limitations associated with the use of non-GAAP financial measures as an analytical tool. Other companies, including companies in our industry, may calculate similarly titled non-GAAP measures differently or may use other measures to evaluate their performance, all of which could reduce the usefulness of our non-GAAP financial measures as tools for comparison. We attempt to compensate for these limitations by providing specific information regarding the GAAP items excluded from these non-GAAP financial measures.

Investors are encouraged to review the related GAAP financial measures and the reconciliation of these non-GAAP financial measures to their most directly comparable GAAP financial measures and not rely on any single financial measure to evaluate our business.

EBITDA and Adjusted EBITDA

We believe that EBITDA and Adjusted EBITDA, when considered with the financial statements determined in accordance with GAAP, are helpful to investors in understanding our performance and allows for comparison of our performance and credit strength to our peers. EBITDA and Adjusted EBITDA should not be considered alternatives to net loss as determined in accordance with GAAP as indicators of our performance or liquidity.

We define EBITDA as net loss before interest income and expense, changes in fair value of convertible notes, changes in fair value of derivative liabilities, provision for income taxes, and depreciation and amortization. We calculate Adjusted EBITDA as EBITDA further adjusted to exclude the effects of the following items for the reasons set forth below:

- impairment of long-lived assets, as this is a non-cash, non-recurring item, which effects the comparability of results of operations and liquidity;
- stock-based compensation expense, because this represents a non-cash charge and our mix of cash and share-based compensation may differ from other companies, which effects the comparability of results of operations and liquidity;
- cost incurred in connection with business combinations and mergers that are required to be expensed as incurred in accordance with GAAP, because business combination and merger related costs are specific to the complexity and size of the underlying transactions as well as the frequency of our acquisition activity these costs are not reflective of our ongoing operations;
- costs incurred in connection with non-recurring financing, including fees incurred as a direct result of electing the fair value option to account for our debt instruments;
- restructuring charges, which includes severance costs to terminate employees in functions that have been eliminated, costs to terminate a lease and the related write-off of leasehold improvements and furniture, as we believe these costs are not representative of operating performance;
- gain on forgiveness of PPP loan, as this is a one-time forgiveness of debt that is not recurring across all periods and we believe inclusion of the gain is not representative of operating performance;
- equity in losses of investees because our share of the operations of investees is not representative of our own operating performance and may not be monetized for a number of years;
- changes in the fair value of contingent consideration because these adjustments are not recurring across all periods and we believe these costs are not representative of operating performance; and
- other non-operating expenses which includes items such as a one-time gain on debt extinguishment and one-time loss on disposal of fixed assets which effects the comparability of results of operations and liquidity.

The reconciliation of net loss to EBITDA and Adjusted EBITDA is as follows:

	Nine Months Ended September 30,	
	2022	2021
Net loss	\$ (53,822,928)	\$ (14,116,401)
Adjustments:		
Interest expense (income)	609,746	1,175,789
Change in fair value of convertible notes	2,840,000	2,030,904
Change in fair value of derivative liability	(54,153)	(151,175)
Income tax expense (benefit)	(268,152)	10,570
Depreciation and amortization	6,094,963	3,605,435
EBITDA	\$ (44,600,524)	\$ (7,444,878)
Impairment of long-lived assets	39,600,587	—
Stock-based compensation expense	648,439	1,502,339
Business combination and merger related costs (income)	5,425	290,357
Non-recurring financing fees	424,675	410,362
Restructuring charges	1,127,038	2,453,776
Change in fair value of contingent consideration	(3,000,000)	—
Gain on forgiveness of PPP Loan	—	(2,234,730)
Equity in losses of investee	—	7,564
Adjusted EBITDA	\$ (5,794,360)	\$ (5,015,210)

	Three Months Ended September 30,	
	2022	2021
Net loss	\$ (2,304,088)	\$ (1,553,447)
Adjustments:		
Interest expense (income)	396,022	238,283
Change in fair value of convertible notes	1,113,000	23,227
Change in fair value of derivative liability	(2,256)	(194,046)
Income tax expense (benefit)	(40,666)	—
Depreciation and amortization	2,118,739	1,238,420
EBITDA	\$ 1,280,751	\$ (247,563)
Impairment of long-lived assets	—	—
Stock-based compensation expense	203,384	477,625
Business combination and merger related costs (income)	—	182,631
Non-recurring financing fees	71,192	280,768
Restructuring charges	59,094	—
Change in fair value of contingent consideration	(3,000,000)	—
Gain on forgiveness of PPP Loan	—	(2,234,730)
Equity in losses of investee	—	—
Adjusted EBITDA	\$ (1,385,579)	\$ (1,541,269)

Going Concern and Management's Liquidity Plans

In accordance with the Financial Accounting Standards Board's ("FASB") standard on going concern, Accounting Standard Update ("ASU") No. 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* ("ASU 2014-15"), we assess going concern uncertainty in our consolidated financial statements to determine if we have sufficient cash, cash equivalents and working capital on hand, including marketable equity securities, and any available borrowings on loans, to operate for a period of at least one year from the date the consolidated financial statements are issued, which is defined to as the "look-forward period" in ASU 2014-15. As part of this assessment, based on conditions that are known and reasonably knowable to us, we will consider various scenarios, forecasts, projections, estimates and will make certain key assumptions, including the timing and nature of projected cash expenditures or programs, and our ability to delay or curtail expenditures or programs, if necessary, among other factors. Based on this assessment, as necessary or applicable, we make certain assumptions regarding implementing curtailments or delays in the nature and timing of programs and expenditures to the extent we deem probable that such implementations can be achieved and we have the proper authority to execute them within the look-forward period in accordance with ASU 2014-15. The accompanying consolidated financial statements do not include any adjustments relating to the recoverability and classification of assets and liabilities that might be necessary if the Company is unable to continue as a going concern.

The accompanying condensed consolidated financial statements have been prepared on the basis that we will continue as a going concern, which contemplates realization of assets and the satisfaction of liabilities in the normal course of business. However, since our inception we have experienced recurring losses from operations, used cash from operating activities, and relied on capital raising transactions to continue ongoing operations. During the nine months ended September 30, 2022 and September 30, 2021, we incurred losses from operations of \$11.1 million, excluding impairments, and \$13.3 million, respectively, and used cash in operating activities of \$10.5 million and \$5.1 million, respectively. As of September 30, 2022, we had a working capital deficit of \$6.8 million with \$2.5 million in cash available to fund future operations. Furthermore, on May 24, 2022, we received a notice (the "Notice") from The Nasdaq Stock Market LLC indicating that the bid price of the Company's Common Stock is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on the Nasdaq Capital Market (the "Nasdaq Market"). The Notice has no immediate effect on the continued listing status of our Common Stock on the Nasdaq Market, and, therefore, our listing remains fully effective. We are provided a compliance period of 180 calendar days from the date of the Notice, or until November 21, 2022, to regain compliance with the minimum closing bid requirement. On November 8, 2022, we effectuated the Reverse Stock Split to address the bid price deficiency and we believe that we will be in compliance with the bid price requirement by November 21, 2022. Collectively, these factors raise substantial doubt regarding the ability of the Company to continue as a going concern.

Management's plan for the Company to continue as a going concern includes several initiatives and actions including those impacting continuing costs, primarily labor and technology, including hosting and applications, working capital, our short and intermediate term financing and the liquidity of our Common Stock. Certain of these initiatives and actions began during the second quarter of 2022 while others were initiated thereafter and through the second week of November 2022.

The most significant components of our plan include the following: (i) realizing annualized cost savings associated with the Restructuring that we announced in May 2022 which resulted in a reduction in workforce and related operating costs, (ii) entering into the Convertible Notes Amendment on June 30, 2022 which, among other factors, provides for the deferral of the required amortization payments due and payable from July 1, 2022 through January 1, 2023 (see Note 6) (iii) securing a waiver from the holders of the Senior Convertible Notes to maintain a reserve of authorized shares equivalent to 200 percent of the total number shares required to satisfy the obligations under the Senior Convertible Notes (the "Required Reserve Amount"), effectively continuing a similar waiver provided by the holders on June 30, 2022, for a period retroactive to August 30, 2022 through November 30, 2022, (iv) deployment for working capital needs of the net proceeds of approximately \$2.0 million received from the 2022 Unit Offering, net of underwriting discounts and commissions and other offering expenses and after depositing \$7.0 million of the proceeds into certain restricted cash accounts in accordance with the Convertible Notes Amendment, (v) opportunistic utilization of the 2022 ATM Program for short-term liquidity needs, (vi) addressing the potential liquidity of our Common Stock and increasing the viability of our 2022 ATM Program in connection with the minimum listing requirements for the Nasdaq Market through the Reverse Stock Split that was approved by our shareholders on November 7, 2022 and effectuated at 12:01 a.m. Eastern Standard Time on November 8, 2022 (see Note 10), (vii) conservatively managing our working capital through disciplined cost-containment efforts and strategic management of our accounts receivable and accounts payable cycles, (viii) considering strategic partnerships and evaluating potential strategic transactions, as opportunities become available and (ix) continuing to seek to expand our customer base and realize synergies as we continue to integrate our recent acquisitions with a focus on our core business units

We anticipate that the initiatives and actions associated with our plan described above will provide us with sufficient liquidity in order to operate our business in the normal course for the remainder of 2022 due primarily to the fact that the debt service obligations associated with the Senior Convertible Notes have been deferred to the first half of 2023 and have effectively been substantially pre-funded with the amounts deposited into restricted accounts as required by the Convertible Notes Amendment. In the remainder of 2022, we plan to continue to rigorously explore potential financing alternatives and other strategic options. In addition to and to the extent practical in the future, based on market conditions, we will consider incremental offerings through the ATM Program. From September 30, 2022 through November 10, 2022, we have utilized \$0.9 million of the total \$3.5 million authorized by the 2022 ATM Program. The earn-out payment associated with a 2021 acquisition, which is intended to be made in shares of Common Stock, is scheduled to be settled by the end of December 2022 (see Note 3). If the seller elects for the settlement to be made in cash, it becomes subject to a reduction of 25 percent and could be deferred into the first quarter of 2023.

If we are unable to secure other potential financing alternatives or fail to execute any other strategic options to raise sufficient additional funds through the first half of 2023, including through the 2022 ATM Program, we will have to develop and implement more aggressive plans to address our liquidity needs and our ability to satisfy the scheduled maturity of our obligations under the Senior Convertible Notes. Such plans could include extending payables, further reductions of expenditures (including the termination of additional employees) and reducing or eliminating investments in and the funding of certain of our business units and initiatives, or otherwise substantially scale back our business plan until sufficient additional capital is raised through other equity or debt offerings. Such offerings may include the issuance of shares of Common Stock, warrants to purchase Common Stock, preferred stock, convertible debt or other instruments that may dilute the interests of our current shareholders. Accordingly, we may be subject to additional risks, including retention of key employees and limitations on the extension of credit by our vendors and other service providers. If we are required to raise additional capital as discussed above and if we cannot timely raise additional funds, we may be unable to meet the financial covenants of the Senior Convertible Notes, which could result in an event of default under those instruments which could adversely impact the Company. See the risks detailed in our Form 10-K under “Item 1A. Risk Factors – Risks Relating to our Convertible Debt”.

Our ability to continue as a going concern is dependent upon our ability to successfully execute the plans described above and attain profitable operations. Despite the comprehensive scope of our plans, the inherent risks associated with their successful execution are not sufficient to fully overcome substantial doubt about our ability to continue as a going concern for one year from the date of issuance of the consolidated financial statements. Accordingly, if we are unable to raise sufficient capital we may have to reduce operations which could significantly and adversely affect our results of operations. If we fail to meet the financial covenants of the Senior Convertible Notes and cannot obtain a waiver from such provisions or otherwise come to an agreement with the holders of our debt, such holders may declare a default on the debt which could subject our assets to seizure and sale, negatively impacting our business.

Cash Flows

Our cash and restricted cash balance was \$9.5 million as of September 30, 2022. Cash flow information is as follows:

	Nine Months Ended September 30,	
	2022	2021
Cash (used in) provided by:		
Operating activities	\$ (10,450,906)	\$ (5,077,544)
Investing activities	(2,951,412)	(3,365,988)
Financing activities	8,494,699	225,856
Effect of change in exchange rates on cash and restricted cash	(35,984)	(5,915)
Net decrease in cash and restricted cash	\$ (4,943,603)	\$ (8,223,591)

Operating Activities

Our largest source of operating cash is cash collections from our customers for subscriptions to our products. Our primary uses of cash in operating activities are for employee-related expenditures, marketing expenses and third-party hosting costs. Net cash used in operating activities is impacted by our net loss adjusted for certain non-cash items, including depreciation and amortization expenses, impairments of long-lived assets, change in fair value of convertible notes, derivative liabilities and contingent consideration obligations, stock-based compensation, deferred income taxes, as well as the effect of changes in operating assets and liabilities.

Net cash used in operating activities increased to \$10.5 million during the nine months ended September 30, 2022 due primarily to the use of cash during the 2022 period associated with the businesses that were acquired in 2021 particularly 365 Cannabis which became operational during the fourth quarter of 2021.

Investing Activities

Our primary investing activities have consisted of capitalization of internal-use software necessary to deliver significant new features and functionality in our platform which provides value to our customers. As our business grows, we expect our capital expenditures to continue to increase. Other investing activities include cash outflows related to purchases of property and equipment, and from time-to-time, the cash paid for asset and business acquisitions.

Net cash used in investing activities totaled \$3.0 million during the nine months ended September 30, 2022, as a result of cash outflows for the development of our software products partially offset by a return of working capital from the 365 Cannabis acquisition. Net cash used by investing activities during the nine months ended September 30, 2021, was \$3.4 million which was also related to our software development.

Financing Activities

Our financing activities consist primarily of proceeds from issuance of our common stock, including those through the 2022 Unit Offering and our ATM Program, issuances and repayments attributable to the Senior Convertible Notes and the value of shares withheld from the vesting of certain stock-based compensation awards.

During the nine months ended September 30, 2022, we received net proceeds of \$9.2 million from the 2022 Unit Offering and \$0.8 million from the issuance of 90,809 shares of Common Stock through the ATM Program, which were partially offset by principal payments of \$1.4 million on the Senior Convertible Notes. Net cash provided by financing activities during the nine months ended September 30, 2021 included \$1.8 million from the issuance of 27,819 shares of Common Stock through the ATM Program partially offset by principal payments of \$1.2 million on the 2020 Notes. During the nine months ended September 30, 2022 and 2021, the value of shares withheld for income taxes from the vesting of stock-based compensation awards was less than \$0.1 million and \$0.4 million, respectively.

Contractual Obligations

For information concerning our contingent consideration, convertible debt, and operating lease obligations, see Notes 3, 6 and 9, respectively, to our condensed consolidated financial statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Rule 13a-15(e) or Rule 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the “Exchange Act”)) that are designed to ensure that information required to be disclosed in our reports filed pursuant to the Exchange Act is processed, recorded, summarized, and reported within the time periods specified in the Security and Exchange Commission’s rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

We have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act) as of September 30, 2022 with the participation, and under the supervision, of our management, including our Chief Executive Officer and Chief Financial Officer. Based upon this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2022, our disclosure controls and procedures were ineffective in ensuring that: (i) information required to be disclosed by us in reports that we file or submit to the SEC under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in applicable rules and forms and (ii) material information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for accurate and timely decisions regarding required disclosure.

Material Weakness

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis. Pursuant to our management’s review of disclosure controls and procedures and internal control over financial reporting, management determined that the following material weakness in our internal control over financial reporting and prevented management from determining that our disclosure controls and procedures and internal control over financial reporting were effective as of the end of the period covered by this report:

- The Company’s internal control over financial reporting pertaining to certain key process areas of financial reporting were not properly designed and/or operating effectively.

Remediation Efforts

We are in the process of executing our remediation plans to address the material weakness described above. As of September 30, 2022, we have:

- Hired additional experienced resources with the appropriate skills to fill key accounting functions.
- Engaged an outside firm to assist in the overall evaluation and documentation of the design and operating effectiveness of our internal controls over financial reporting and have remediated past deficiencies in the design of our internal control framework for certain key process areas including revenue, capitalized software, business combinations, intangibles, goodwill, stock-based compensation, general financial reporting, and information technology.
- Developed a long-term plan to both (i) complete the remediation of the design of our internal control over financial reporting for our remaining process areas, and (ii) begin the remediation of the deficiencies in operating effectiveness of our internal controls over financial reporting across all process areas.

We believe these actions and the improvements we expect to achieve, when fully implemented, will strengthen our internal control over financial reporting and remediate the material weaknesses. However, the material weaknesses will not be considered fully remediated until the applicable controls operate for a sufficient period of time for management to test the results for operating effectiveness. While no assurance can be provided, the Company believes it will make further progress in remediating these material weaknesses during 2022.

Notwithstanding the material weakness, management has concluded that the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q present fairly, in all material respects, our financial position, results of operations, and cash flows in conformity with GAAP.

Changes in Internal Control over Financial Reporting

During the most recently completed fiscal quarter, there have been no changes in our internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

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

PART II - Other Information

Item 1. Legal Proceedings.

From time to time, we may be subject to legal proceedings arising in the ordinary course of business. Regardless of the outcome of any existing or future litigation, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

The information required with respect to this item can be found under “Commitments and Contingencies” in Note 9 to our condensed consolidated financial statements included elsewhere in this Form 10-Q and is incorporated by reference into this Item 1.

Item 1A. Risk Factors.

Except for the additional risk factors set forth below, there have been no material changes to our Risk Factors as disclosed in our Annual Report on Form 10-K for the year ended December 31, 2021, as filed with the SEC on March 31, 2022 and our Quarterly Report on Form 10-Q for the quarter ended June 30, 2022, as filed with the SEC on August 12, 2022.

Risks Related to Our Common Stock

Warrants are exercisable for our common stock, which could increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders.

Currently, there are warrants to purchase 290,690 shares of our common stock at \$230.00 per share and warrants to purchase 2,282,609 shares of our common stock at \$4.60 per share. To the extent such warrants are exercised, additional shares of common stock will be issued, which will result in dilution to the then-existing holders of common stock and increase the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market could adversely affect the market price of our common stock.

If our common stock is delisted from Nasdaq, the liquidity and price of our common stock could decrease and our ability to obtain financing could be impaired.

On May 24, 2022, we received a notification letter from The Nasdaq Stock Market stating that we are not in compliance with the Minimum Bid Price Requirement, which requires our listed securities to maintain a minimum bid price of \$1.00 per share. The notification stated that we have a compliance period of 180 calendar days, or until November 21, 2022, to regain compliance with the Minimum Bid Price Requirement. If at any time during this 180-day compliance period the closing bid price of our common stock is at least \$1.00 per share for a minimum of ten consecutive business days, then the Nasdaq Stock Market will provide us with written confirmation of compliance and the matter will be closed.

If compliance cannot be demonstrated by November 21, 2022, we may be eligible for additional time. To qualify, we will be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards on the Nasdaq Capital Market (except the bid price requirement). In addition, we would be required to provide written notice of our intention to cure the minimum bid price deficiency during this second 180-day compliance period by effecting a reverse stock split, if necessary. If we are not granted an additional 180-day compliance period, then Nasdaq will provide written notification that our securities will be subject to delisting. At that time, we may appeal the determination to delist our securities to a Nasdaq hearings panel.

On November 8, 2022, we effectuated the Reverse Stock Split to address the bid price deficiency and we believe that we will regain compliance with the Minimum Bid Price Requirement on November 21, 2022. There can be no assurance that we will regain compliance with the Minimum Bid Price Requirement or otherwise maintain compliance with the other listing requirements.

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

Except as previously reported in our Current Report on Form 8-K, we did not undertake any unregistered sales of our equity securities during the quarter ended September 30, 2022.

During the quarter ended September 30, 2022, the Company did not repurchase any of its Common Shares.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits

1.1	<u>Underwriting Agreement dated June 30, 2022 with A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 1.1 to our Form S-1/A filed with the Commission on July 1, 2022).</u>
3.1	<u>Amended and Restated Articles of Incorporation for Akerna Corp.</u>
3.2	<u>Amended and Restated Bylaws of Akerna Corp.</u>
3.3	<u>Certificate of Designation of Preference, Rights and Limitations of Series A Convertible Redeemable Preferred Stock (incorporated by reference to Exhibit 3.1 to Akerna's Current Report on Form 8-K filed with the Commission on October 3, 2022).</u>
3.4	<u>Certificate of Designation of Preference, Rights and Limitations of Series B Convertible Redeemable Preferred Stock (incorporated by reference to Exhibit 3.1 to Akerna's Current Report on Form 8-K filed with the Commission on October 3, 2022).</u>
3.5	<u>Certificate of Designation of the Special Voting Share (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed by Akerna on July 8, 2020).</u>
4.1	<u>Waiver dated September 27, 2022 by and between Akerna Corp. and the Holders in accordance with the Securities Purchase Agreement dated October 5, 2021.</u>
10.1	<u>Common Stock Sales Agreement dated September 28, 2022 by and between Akerna Corp. and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 10.1 to Akerna Corp.'s Current Report on Form 8-K as filed with the Commission on September 28, 2022).</u>
10.2	<u>Offer Letter from Akerna Corp. to Scott Sozio dated August 18, 2022.</u>
10.3	<u>Employment Offer Letter from Akerna Corp. to L. Dean Ditto dated August 18, 2022.</u>
31.1	<u>Section 302 Certification of Principal Executive Officer.</u>
31.2	<u>Section 302 Certification of Principal Financial Officer.</u>
32.1	<u>Section 906 Certification of Principal Executive Officer</u>
32.2	<u>Section 906 Certification of Principal Financial Officer.</u>
101	XBRL (Extensible Business Reporting Language). The following materials from Akerna Corp's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2022, tagged in XBRL: (i) condensed consolidated balance sheets; (ii) condensed consolidated statements of operations; (iii) condensed consolidated statements of comprehensive income; (iv) condensed consolidated statements of cash flows; and (v) notes to condensed consolidated financial statements.

SIGNATURES

In accordance with the requirements of Securities Exchange Act of 1934, the registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

By: /s/ Jessica Billingsley

Jessica Billingsley,
Chief Executive Officer and Director
(Principal Executive Officer)

November 14, 2022

By: /s/ L. Dean Ditto

L. Dean Ditto,
Chief Financial Officer
(Principal Financial and Accounting Officer)

November 14, 2022

AMENDED AND RESTATED
BYLAWS OF
Akerna Corp.
(a Delaware corporation)
ARTICLE I
Offices

SECTION 1. Registered Office. The registered office of Akerna Corp. (the "Corporation") shall be fixed in the Corporation's certificate of incorporation, as the same may be amended and/or restated from time to time (as so amended and/or restated, the "Certificate of Incorporation").

SECTION 2. Other Offices. The Corporation's Board of Directors (the "Board of Directors") may at any time establish other offices at any place or places where the Corporation is qualified to do business or as the business of the Corporation may require.

ARTICLE II

Meetings of Stockholders

SECTION 1. Annual Meetings. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such place, date and time, within or without the State of Delaware, as the Board of Directors shall determine.

SECTION 2. Special Meetings. Special meetings of stockholders for the transaction of such business as may properly come before the meeting may be held only upon call by the Board of Directors, the Chief Executive Officer or the record holders of a majority of the outstanding shares of common stock.

SECTION 3. Notice of Meetings. Written notice of all meetings of the stockholders, stating the place (if any), date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the place within the city or other municipality or community at which the list of stockholders may be examined, shall be mailed or delivered to each stockholder not less than ten (10) nor more than sixty (60) days prior to the meeting. Notice of any special meeting shall state in general terms the purpose or purposes for which the meeting is to be held. Notice of any special meeting of stockholders shall only be sent to stockholders by the Corporation, and shall be caused to be sent by the Board of Directors upon the Board of Directors being informed by counsel that the stockholders seeking such meeting have complied with the provisions of Sections 9 and 10 of this Article II.

SECTION 4. Postponement and Cancellation of Meeting. Any previously scheduled annual or special meeting of the stockholders may be postponed, and any previously scheduled annual or special meeting of the stockholders called by the Board of Directors may be canceled, by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

SECTION 5. Stockholder Lists. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 6. Quorum. Except as otherwise provided by law or the Certificate of Incorporation, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of one-third of the issued and outstanding shares of the capital stock of the Corporation entitled to vote at the meeting, present in person or by proxy. If there be no such quorum, the holders of a majority of such shares so present or represented may adjourn the meeting from time to time, without further notice, until a quorum shall have been obtained. When a quorum is once present it is not broken by the subsequent withdrawal of any stockholder.

SECTION 7. Organization. Meetings of stockholders shall be presided over by the Chairman, if any, or if none or in the Chairman's absence the Vice Chairman, if any, or if none or in the Vice Chairman's absence the President, if any, or if none or in the President's absence a Vice President. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the presiding officer of the meeting shall appoint any person present to act as secretary of the meeting. The Board of Directors may adopt before a meeting such rules for the conduct of the meeting, including an agenda and limitations on the number of speakers and the time which any speaker may address the meeting, as the Board of Directors determines to be necessary or appropriate for the orderly and efficient conduct of the meeting. Subject to any rules for the conduct of the meeting adopted by the Board of Directors, the person presiding at the meeting may also adopt, before or at the meeting, rules for the conduct of the meeting.

SECTION 8. Voting; Proxies; Required Votes.

- (a) General. At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Certificate of Incorporation provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws.
- (b) Director Elections. At all elections of directors the voting may but need not be conducted by written ballot. A nominee for director shall be elected to the Board of Directors if the votes cast for such nominee's election exceed the votes cast (which includes votes withheld) against such nominee's election; provided, however, that directors shall be elected by a plurality of the votes to be cast at any meeting of stockholders for which the election of directors is "contested" by one or more stockholders. For purposes of this Section 8(b), an election of directors is "contested" if (i) the Secretary of the Corporation receives a notice that a stockholder has nominated a person for election to the Board of Directors in compliance with the advance notice requirements for stockholder nominees for director set forth in Article II, Section 10 of these Bylaws and (ii) such nomination has not been withdrawn by such stockholder on or prior to the day next preceding the date the Corporation first furnishes its notice of meeting for such meeting to the stockholders. The election of directors at such meeting of stockholders shall for all purposes remain "contested" under this Section 8(b) (and the plurality voting rule shall continue to apply) even if the stockholder nominating such director candidate withdraws the nomination of such candidate on any date after the Corporation first furnishes its notice of meeting to stockholders but before the date the meeting is held.
- (c) All Other Matters. Except as otherwise provided by law, the Certificate of Incorporation or these bylaws, in all matters other than the election of directors, affirmative vote of a majority of the votes cast by holders of voting stock present in person or represented by proxy at the meeting and entitled to vote such matter shall be the act of the stockholders. Where a separate vote by a class or classes, present in person or represented by proxy, shall constitute a quorum entitled to vote on that matter, the affirmative vote of the majority of the votes cast by holders of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class, unless otherwise provided by law, in the Certificate of Incorporation or these bylaws. In determining the number of votes cast for or against a proposal or nominee, shares abstaining from voting on a matter will not be treated as a vote cast. A non-vote by a broker will be counted for purposes of determining a quorum but not for purposes of determining the number of votes cast on a matter determined to be non-routine under applicable law, rules and regulations.

SECTION 9. Advance Notification of Business to be Transacted at Meetings of Stockholders. To be properly brought before the annual or any special meeting of the stockholders, any business to be transacted at an annual or special meeting of stockholders must be either (a) specified in the notice of meeting (or any supplement or amendment thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (c) otherwise properly brought before the meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 9 and on the record date for the determination of stockholders entitled to notice of and to vote at the meeting and (ii) who complies with the advance notice procedures set forth in this Section 9. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting, the foregoing clause (c) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of stockholders. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Section 10, and this Section 9 shall not be applicable to nominations.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely for an annual meeting of stockholders, a stockholder's written notice must be delivered to the Secretary of the Corporation or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the date of the immediately preceding year's annual meeting of stockholders; provided, however, that if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than sixty (60) days after the anniversary of the preceding year's annual meeting, to be timely, notice by the stockholder must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting is first given or made (which for this purpose shall include any and all filings of the Corporation made on the EDGAR system of the U.S. Securities and Exchange Commission ("SEC") or any similar public database maintained by the SEC), whichever first occurs. To be timely for a special meeting of stockholders, such notice must be delivered to the Secretary of the Corporation or mailed and received at the principal executive offices of the Corporation not less than thirty (30) days after the prior meeting of stockholders and no later than one hundred and eighty (180) days before the first anniversary date of the immediately preceding year's annual meeting of stockholders.

To be in proper written form, a stockholder's notice to the Secretary of the Corporation must set forth as to each matter such stockholder proposes to bring before a meeting: (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting; (ii) the name and record address of such stockholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made; (iii) the class or series and number of shares of capital stock of the Corporation that are, directly or indirectly, owned beneficially or of record by such stockholder; (iv) any derivative positions held or beneficially held, directly or indirectly, by such stockholder; (v) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder; or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such stockholder with respect to any share of stock of the Corporation; (vi) a description of all agreement, arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business; (vii) any proxy, contract, agreement, arrangement, understanding or relationship pursuant to which such stockholder has or shares a right to vote any shares of any security of the Corporation; (viii) any direct or indirect interest of such stockholder in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement); (ix) any pending or threatened litigation in which such stockholder is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation; (x) any material transaction occurring during the prior twelve months between such stockholder, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand; (xi) a representation that such stockholder intends to appear in person or by proxy at the meeting to bring such business before the meeting; and (xii) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies or consents by such stockholder in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act, and the rules and regulations promulgated thereunder.

This Section 9 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. Notwithstanding the foregoing provisions of this section, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations thereunder with respect to the matters set forth in this Section 9. Nothing in this Section 9 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at the annual or any special meeting of the stockholders except business brought before the meeting in accordance with the procedures set forth in this Section 9; provided, however, that, once business has been properly brought before the meeting in accordance with such procedures, nothing in this Section 9 shall be deemed to preclude discussion by any stockholder of any such business. The officer of the Corporation presiding at the meeting shall, if the facts warrant, determine and declare to the meeting that the business was not properly brought before the meeting in accordance with the provisions of this Section 9, and if such officer shall so determine, such officer shall so declare to the meeting that any such business not properly brought before the meeting shall not be transacted.

SECTION 10. Advance Notification of Nominations for Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the rights, if any, of the holders of shares of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. All nominations of persons for election to the Board of Directors shall be made at any annual meeting of the stockholders, or at any special meeting of the stockholders called for the purpose of electing directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 10 and on the record date for the determination of stockholders entitled to notice of and to vote at such meeting and (ii) who complies with the advance notice procedures set forth in this Section 10. The foregoing clause (b) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting.

In addition to any other applicable requirements, for a director nomination to be properly made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely for an annual meeting of stockholders, a stockholder's written notice to the Secretary of the Corporation must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the date of the immediately preceding year's annual meeting of stockholders; provided, however, that if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than sixty (60) days after the anniversary of the preceding year's annual meeting, to be timely, notice by the stockholder must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting is first given or made (which for this purpose shall include any and all filings of the Corporation made on the EDGAR system of the SEC or any similar public database maintained by the SEC), whichever first occurs. To be timely for a special meeting of the stockholders called for the purpose of electing directors, a stockholder's written notice to the Secretary of the Corporation must be delivered to or mailed and received at the principal executive offices of the Corporation not later than thirty (30) days after the prior meeting of stockholders and no later than one hundred and eighty (180) days before the first anniversary date of the immediately preceding year's annual meeting of stockholders.

To be in proper written form, a stockholder's notice to the Secretary of the Corporation must set forth:

- (a) as to each person whom the stockholder proposes to nominate for election as a director: (i) the name, age, business address and residence address of the person; (ii) the principal occupation or employment of the person; (iii) the class or series and number of shares of capital stock of the corporation that are, directly or indirectly, owned beneficially or of record by the person, if any; (iv) any derivative positions held or beneficially held, directly or indirectly, by such stockholder; (v) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the stockholder, or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such stockholder with respect to any share of stock of the Corporation; (vi) a statement whether such person, if elected, intends to tender, promptly following such person's election or reelection, an irrevocable resignation effective upon such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and upon acceptance of such resignation by the Board of Directors, in accordance with the Corporation's Corporate Governance Guidelines; (vii) any direct or indirect voting commitments or other arrangements of such person with respect to their actions as a director; and (viii) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings of the proposing stockholder required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder; and
- (b) as to the stockholder giving the notice: (i) the name and record address of such stockholder proposing such nomination and the beneficial owner, if any, on whose behalf the nomination is made; (ii) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such stockholder; (iii) a description of all direct and indirect compensation and other material monetary agreements, arrangements or understandings during the past three years, and any other material relationships, between such stockholder and each proposed nominee, including, without limitation, all information that would be required to be disclosed pursuant to the Regulations of the Securities and Exchange Commission if such stockholder were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant; (iv) any derivative positions held or beneficially held, directly or indirectly, by such stockholder; (v) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such stockholder with respect to any share of stock of the Corporation; (vi) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice; and (vii) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings of the proposing stockholder required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named or referred to as a nominee and to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information (which may include attending meetings to discuss the furnished information) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

Notwithstanding the foregoing provisions of this section, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 10.

Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 10. The officer of the Corporation presiding at the meeting shall, if the facts warrant, determine and declare to the meeting that the nomination was not made in accordance with the provisions of this Section 10, and if such officer shall also determine, such officer shall so declare to the meeting that any such defective nomination shall be disregarded.

SECTION 11. Inspectors. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may appoint one or more inspectors.

ARTICLE III

Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors.

SECTION 2. Qualification; Number; Term; Remuneration.

- (a) Each director shall be at least eighteen (18) years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The number of directors constituting the entire Board shall be as set in the Certificate of Incorporation.
- (b) Directors who are elected at an annual meeting of stockholders, and directors who are elected or appointed in the interim to fill vacancies and newly created directorships, shall hold office until the annual meeting of stockholders of the year in which such director's term expires and until their successors are elected and qualified or until their earlier resignation or removal. No decrease in the number of directors shall shorten the term of any incumbent director.
- (c) Directors may be reimbursed or paid in advance their expenses, if any of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 3. Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board then in office shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 4. Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 5. Annual Meeting. Following the annual meeting of stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may be held without notice immediately after the annual meeting of stockholders at the same place at which such stockholders' meeting is held.

SECTION 6. Regular Meeting. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 7. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, President or by a majority of the directors then in office.

SECTION 8. Notice of Meetings. A notice of the place, date and time and the purpose or purposes of each meeting of the Board of Directors shall be given to each director by mailing the same at least two days before the special meeting, or by telephoning or emailing the same or by delivering the same personally not later than the day before the day of the meeting.

SECTION 9. Organization. At all meetings of the Board of Directors, the Chairman, if any, or if none or in the Chairman's absence or inability to act, the President, or in the President's absence or inability to act any Vice President who is a member of the Board of Directors, or in such Vice President's absence or inability to act as chairman chosen by the directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary of the meeting.

SECTION 10. Participating in Meeting by Conference Telephone. Members of the Board of Directors, or any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other at the same time and such participation shall constitute presence in person at such meeting.

SECTION 11. Resignation. Any director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the letter of resignation.

SECTION 12. Removal.

- (a) Notwithstanding any other provisions of the Certificate of Incorporation or these Bylaws (and notwithstanding the fact that some lesser percentage may be specified by law, the Certificate of Incorporation or the Bylaws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed from office only for cause and only by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose, the notice for which states that the purpose or one of the purposes of the meeting is the removal of such director and which sets forth the cause for such director's removal. For purposes of this Section 12, "cause" shall mean, with respect to any director, (i) the willful failure by such director to perform, or the gross negligence of such director in performing, the duties of a director, (ii) the engaging by such director in willful or serious misconduct that is injurious to the Corporation or (iii) the conviction of such director of, or the entering by such director of a plea of *nolo contendere* to, a crime that constitutes a felony.
- (b) Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of the Corporation's preferred stock shall have the right, voting separately as a class, to elect one or more directors of the Corporation, the provisions (a) and (b) of this Section 12 shall not apply with respect to the director or directors elected by such holders of preferred stock.

SECTION 13. Vacancies. Vacancies on the Board of Directors for any reason, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of directors or otherwise, shall be filled only by the Board of Directors (and not by the stockholders) by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director.

SECTION 14. Director Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

ARTICLE IV

Committees

SECTION 1. Appointment; Limitations. From time to time the Board of Directors by a resolution adopted by a majority of the entire Board may appoint any committee or committees for any purpose or purposes, to the extent lawful, which shall have powers as shall be determined and specified by the Board of Directors in the resolution of appointment. No Committee of the Board shall take any action to amend the Certificate of Incorporation or these Bylaws, adopt any agreement to merge or consolidate the Corporation, declare any dividend or recommend to the stockholders a sale, lease or exchange of all or substantially all of the assets and property of the Corporation, a dissolution of the Corporation or a revocation of a dissolution of the Corporation. No Committee of the Board shall take any action which is required in these Bylaws, in the Certificate of Incorporation or by statute to be taken by a vote of a specified proportion of the whole Board of Directors.

SECTION 2. Procedures, Quorum and Manner of Acting. Each committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a committee shall constitute a quorum

for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 3. Action by Written Consent. Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the committee.

SECTION 4. Term; Termination. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

ARTICLE V

Officers

SECTION 1. Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a President and a Secretary, and may include, by election or appointment, a Chief Executive Officer, one or more Vice Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors or the President. Any two or more offices may be held by the same person unless specifically prohibited therefrom by law.

SECTION 2. Term of Office and Remuneration. The term of office of all officers shall be one year or until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. Resignation; Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the entire Board of Directors, and any officer appointed by an executive officer or by a committee may be removed either with or without cause by the officer or committee who appointed him or her or by the Chairman or President.

SECTION 4. Chairman of the Board. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 5. President and Chief Executive Officer. The President shall be the chief executive officer of the Corporation, and shall have such duties as customarily pertain to that office. The President shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers; may appoint and remove assistant officers and other agents and employees, other than officers referred to in Section 1 of this Article V; may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments; and shall have such other powers and authority as from time to time may be assigned by the Board of Directors.

SECTION 6. Vice President. A Vice President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors or the President.

SECTION 7. Treasurer. The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the President.

SECTION 8. Secretary. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the President.

SECTION 9. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

ARTICLE VI

Indemnification and Advancement for Directors, Officers and Others

SECTION 1. Indemnification of Directors, Officer and Others. (a) Each person who is or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that such person is or was a director or officer of the Corporation or, while serving as such director or officer, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including, without limitation, service with respect to employee benefit plans (an "Other Entity"), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law (the "DGCL"), as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense liability and loss (including attorneys' fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection therewith if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation and with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful, and such indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of such person's heirs, executors and administrators; provided, however, that, except as otherwise provided herein, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors. The Corporation may enter into agreements with any such person for the purpose of providing for such indemnification.

SECTION 2. Reimbursement and Advancement of Expenses. The Corporation shall, from time to time, reimburse or advance to any current or former director or officer the funds necessary for payment of expenses (including attorney's fees and disbursements) actually and reasonably incurred by such person in investigating, responding to, defending or testifying in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, to which such person becomes or is threatened to be made a party by reason of the fact that such person is or was, or is alleged to have been, a director or officer of the Corporation, or is or was, or is alleged to have been, serving at the request of the Corporation as a director or officer or in any other fiduciary capacity of or for any Other Entity; and the Corporation shall pay such expenses in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking, if such undertaking is required by the DGCL, by or on behalf of such person to repay such amount if it shall ultimately be determined by final judicial decision that such person is not entitled to be indemnified by the Corporation against such expenses. Expenses may be advanced or reimbursed to persons who are and were not directors or officers of the Corporation in respect of their service to the Corporation or to any Other Entity at the request of the Corporation to the extent the Board of Directors at any time determines that such persons should be so entitled to advancement or reimbursement of such expenses, and the Corporation may enter into agreements with such persons for the purpose of providing such advances or reimbursement.

SECTION 3. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

SECTION 4. Preservation of Other Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article VI shall not be exclusive of, and the Corporation is authorized to honor or provide, any other right that any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, which other right may provide indemnification and advancement in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

SECTION 5. Survival.

- (a) The rights to indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Article VI shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of such person's heirs, executors and administrators.
- (b) The provisions of this Article VI shall be a contract between the Corporation, on the one hand, and each person who was a director and officer at any time while this Article VI is in effect and any other person indemnified hereunder, on the other hand, pursuant to which the Corporation and each such person intend to be legally bound. Any repeal or modification of the provisions of this Article VI shall not adversely affect any right or protection of any director, officer, employee or agent of the Corporation existing at the time of such repeal or modification, regardless of whether a claim arising out of such action, omission or state of facts is asserted before or after such repeal or amendment.

SECTION 6. Enforceability of Right to Indemnification. The rights to indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Article VI shall be enforceable by any person entitled to such indemnification or reimbursement or advancement of expenses in any court of competent jurisdiction. If a claim under Sections 1 and 2 of this Article VI is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. The burden of proving that such indemnification or reimbursement or advancement of expenses is not appropriate shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) to have made a determination prior to the commencement of such action that such indemnification or reimbursement or advancement of expenses is proper in the circumstances nor an actual determination by the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) that such person is not entitled to such indemnification or reimbursement or advancement of expenses shall constitute a defense to the action or create a presumption that such person is not so entitled. Such a person shall also be indemnified by the Corporation against any expenses reasonably incurred in connection with successfully establishing his or her right to such indemnification or reimbursement or advancement of expenses, in whole or in part.

ARTICLE VII

Books and Records

SECTION 1. Location. The books and records of the Corporation may be kept at such place or places within or without the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the

number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in the Bylaws and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation.

SECTION 3. Fixing Date for Determination of Stockholders of Record.

- (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.
- (b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE VIII

Certificates Representing Stock

SECTION 1. Certificates; Signatures; Rules and Regulations. There may be issued to each holder of fully paid shares of capital stock of the Corporation a certificate or certificates for such shares; however, the Corporation may issue uncertificated shares of its capital stock. Every holder of capital stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board of Directors, or the President or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation. The Board of Directors may appoint one or more transfer agents for the Corporation's capital stock and may make, or authorize such agent or agents to make, all such rules and regulations as are expedient governing the issue, transfer and registration of shares of the capital stock of the Corporation and any certificates representing such shares.

SECTION 2. Transfers of Stock. The capital stock of the Corporation shall be transferred only upon the books of the Corporation either (a) if such shares are certificated, by the surrender to the Corporation or its transfer agent of the old stock certificate therefor properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, or (b) if such shares are uncertificated, upon proper instructions from the holder thereof or such holder's attorney lawfully constituted in writing, in each case with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Prior to due presentment for registration of transfer of a security (whether certificated or uncertificated), the Corporation shall treat the registered owner of such security as the person exclusively entitled to vote, receive notifications and dividends, and otherwise to exercise all the rights and powers of such security.

SECTION 3. Fractional Shares. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided.

SECTION 4. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

ARTICLE IX

Dividends

Subject always to the provisions of law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

Ratification

Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

ARTICLE XI

Corporate Seal

The corporate seal shall have inscribed thereon the name of the Corporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal.

ARTICLE XII

Fiscal Year

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

ARTICLE XIII

Waiver of Notice

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

ARTICLE XIV

Bank Accounts, Drafts, Contracts, Etc.

SECTION 1. Bank Accounts and Drafts. In addition to such bank accounts as may be authorized by the Board of Directors, the primary financial officer or any person designated by said primary financial officer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as he may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said primary financial officer, or other person so designated by such primary financial officer.

SECTION 2. Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 3. Proxies; Powers of Attorney; Other Instruments. The Chairman, the President or any other person designated by either of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock by the Corporation. The Chairman, the President or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. Financial Reports. The Board of Directors may appoint the primary financial officer or other fiscal officer or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

ARTICLE XV

Amendments

The Board of Directors shall have the power to adopt, amend or repeal Bylaws by a majority vote. Bylaws adopted by the Board of Directors or the stockholders may be repealed or changed, and new Bylaws made, by the affirmative vote of 70% of the Company's common stock.

ARTICLE XVI

Miscellaneous

When used in these Bylaws and when permitted by applicable law, the terms "written" and "in writing" shall include any "electronic transmission," as defined in Section 232(c) of the DGCL, including without limitation any telegram, cablegram, facsimile transmission and communication by electronic mail, and "address" shall include the recipient's electronic address for such purposes.

WAIVER

This Waiver (this “**Waiver**”) is granted as of September 27, 2022, by and between Akerna Corp., a Delaware corporation (the “**Company**”), and the undersigned holder (the “**Holder**”), in accordance with that certain Securities Purchase Agreement between the Company and all of the investors listed on the Schedule of Buyers (the “**Buyers**”) dated October 5, 2021 (the “**SPA**”) with reference to the following facts:

A. On October 5, 2021, the Company and the Buyers entered into the SPA in relation to the issuance and sale by the Company and purchase by the Holders of that aggregate principal amount of senior secured convertible notes of the Company (as amended or waived from time to time prior to the date hereof, the “**Notes**”), set forth opposite such Buyer's name on the Schedule of Buyers (which aggregate principal amount of Notes for all Buyers was \$20,000,000). Capitalized terms not defined herein shall have the meaning as set forth in the Notes.

B. The issuance of the Notes occurred at a closing on October 5, 2021 (the “**Closing Date**”).

C. The Company desires that the Holder waive the share reserve requirements under Section 4(l) of the SPA and Section 11(a) of the Notes (the “**Reserve Requirements**”), in part, such that from August 30, 2022 through November 30, 2022 (or, if earlier, the date of the Reverse Split (as defined below), the Company shall not be required to satisfy the Reserve Requirements as long as the Company uses its best efforts to complete a reverse stock split of the Company's shares of common stock sufficient to meet the share reserve requirements under Section 4(l) of the SPA and Section 11(a) of the Notes (the “**Reverse Split**”) by no later than November 30, 2022 (collectively, the “**Reserve Waivers**”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this Waiver will become effective upon execution and delivery of this Waiver and substantially similar waivers (other than the identity of the Holder and any provisions with respect to legal fees reimbursement) (such other waivers, the “**Other Waivers**” and together with this Waiver, the “**Waivers**”) duly executed and delivered by each of the Buyers (the “**Effective Time**”), and the Holder hereby agrees as follows:

1. Waiver. Effective as of the Effective Time, the Holder hereby grants the Reserve Waivers. The Company acknowledges and agrees that the Reserve Waivers expire on the earlier to occur of (x) the date of the Reverse Split and (y) November 30, 2022 and, as of December 1, 2022, the Reserve Requirements shall no longer be subject to the Reserve Waivers and shall be in full force in effect.

2. Acknowledgments. The Company hereby confirms and agrees that (i) except with respect to the Reserve Waivers, the Notes and the other Transaction Documents shall continue to be, in full force and effect; (ii) the execution, delivery and effectiveness of this Waiver shall not operate as an amendment, modification or waiver of any right, power or remedy of the Holder or any other Buyers except to the extent expressly set forth herein.

3. Disclosure. On or before 8:30 a.m., New York City time, on September 30, 2022, the Company shall file a Current Report on Form 8-K describing any material non-public information the Company may have provided to the Holder in relation to this Waiver or otherwise in the form required by the 1934 Act and attaching this Waiver as exhibits to such filing (the "**8-K Filing**"). From and after the filing of the 8-K Filing with the SEC, the Holder shall not be in possession of any material, nonpublic information received from the Company, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents. In addition, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents on the one hand, and the Holder or any of its affiliates on the other hand, has terminated as of the date hereof and is of no further force or effect. The Company shall not, and shall cause each of its Subsidiaries and its and each of their respective officers, directors, affiliates, employees and agents, not to, provide any Holder with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of the Holder. To the extent that the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates employees or agents delivers any material, non-public information to any Holder without the Holder's consent, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents with respect to, or a duty to the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents not to trade on the basis of, such material, non-public information. The Company understands and confirms that the Holder will rely on the foregoing representations in effecting transactions in securities of the Company.

4. No Third Party Beneficiaries. This Waiver is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

5. Counterparts. This Waiver may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

6. No Strict Construction. The language used in this Waiver will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

7. Headings. The headings of this Waiver are for convenience of reference and shall not form part of, or affect the interpretation of, this Waiver.

8. Severability. If any provision of this Waiver is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Waiver so long as this Waiver as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

9. Fees and Expenses. Except for a non-accountable amount of \$5,000, which shall be paid by the Company to Kelley Drye & Warren LLP on behalf of the lead investor, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Waiver.

10. Amendments. No provision of this Waiver may be amended other than by an instrument in writing signed by the Company and the Holder.

11. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Waiver and the consummation of the transactions contemplated hereby.

12. Notice. Whenever notice is required to be given under this Waiver, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the SPA.

13. Successors and Assigns. This Waiver shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

14. Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Waiver shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Waiver and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WAIVER OR ANY TRANSACTION CONTEMPLATED HEREBY.**

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned and the Company have caused their respective signature page to this Waiver to be duly executed as of the date first written above.

COMPANY:

AKERNA CORP.

By: /s/ L.Dean Ditto
Name: Larry Dean Ditto Jr.
Title: Chief Financial Officer

IN WITNESS WHEREOF, the undersigned and the Company have caused their respective signature page to this Waiver to be duly executed as of the date first written above.

HOLDER:

HIGH TRAIL INVESTMENTS ON LLC

By: /s/ Eric Helenek

Name: Eric Helenek

Title: Authorized Signatory

IN WITNESS WHEREOF, the undersigned and the Company have caused their respective signature page to this Waiver to be duly executed as of the date first written above.

HOLDER:

**ALTO OPPORTUNITY MASTER FUND, SPC -
SEGREGATED MASTER PORTFOLIO B**

By: /s/ Waqas Khatri

Name: Waqas Khatri

Title: Director

Private and Confidential

August 18, 2022

Scott Sozio
Head of Corporate Development

Re: Offer Letter

Dear Mr. Sozio,

Akerna Corp. (“Akerna”) is pleased to offer you eligibility in the herein described incentive programs. You are eligible for these incentive programs through December 31, 2022. Any relevant event after this date will not trigger your eligibility for any herein described incentive. No part of this communication supersedes any of your previous agreements with Akerna or obligations you owe Akerna, but rather is narrowly tailored for the incentives contained herein.

Change in Control Bonus Incentive:

Subject to your continued employment with Company through the occurrence of the first Change in Control, as defined herein, Company shall pay you a lump sum equal to two times your salary at the time of the Change of Control event. This bonus will be paid in one installment, within 60 days of the change in control event, subject to the requirements below and less applicable payroll taxes and deductions. The terms of this bonus are contingent on your satisfactory performance of all assigned duties. In the event you resign from the Company or are terminated by the Company for cause before the bonus payment due date, you will not be entitled to receive this bonus. In the case of your death or long-term disability, this bonus Incentive will be paid to you or your estate within 30 days of the change in control event. In addition, if you have received the Deal Bonus described herein, the Change in Control bonus described in this provision shall be reduced by the amount of the Deal Bonus previously received and/or owing to you. For purposes of this provision, “Change of Control” of the Company is defined as: (i) the date any “person” or group (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes, subsequent to the date hereof, the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of Company representing 50% or more of the total voting power represented by Company’s then outstanding voting securities, other than pursuant to a sale by Company of its securities in a transaction or series of related transactions the primary purpose of which is to raise capital for the Company; (ii) the date of the consummation of a merger or consolidation of Company with any other corporation that has been approved by the stockholders of Company, other than a merger or consolidation that would result in the voting securities of Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of Company or such surviving entity outstanding immediately after such merger or consolidation; or (iii) the date of the consummation of the sale or disposition by Company of all or substantially all Company’s assets. However, no Change in Control shall be deemed to have occurred by reason of (a) any event that involves a transaction that you or a group of persons or entities with whom you act in concert acquires, directly or indirectly, more than 50% of the combined voting power of Company’s then-outstanding voting securities or the business or assets of Company; (b) any event that involves or arises out of a proceeding under Title 11 of the United States Code or the provisions of any future United States Bankruptcy law, an assignment for the benefit of creditors or an insolvency; or (c) a majority of the current members of the Board of Directors at the time of execution of this Agreement are no longer on the Board of Directors for any reason whatsoever. The terms of this Change in Control bonus shall be effective through December 31, 2022 and shall be considered triggered upon execution of a definitive transactional agreement before this date. The payment of this bonus shall be made only upon closing of the triggering transaction. Subject to the terms of this Agreement, any qualifying Change in Control after this date shall not trigger any payment and/or your right to this Change in Control incentive. Once properly triggered, no termination of employment event shall divest you from the payment of this bonus. Through December 31, 2022, Company agrees to not terminate Employee upon execution of a Letter of Intent in which the Company makes substantial efforts to close to a definitive transactional agreement.

Deal Bonus Incentive:

If you continue to be employed by Company until the closing of a sale transaction of the majority of either (i) MJ Freeway or (ii) 365 Cannabis, at a reasonable and acceptable sale transactional valuation amount as determined by and at the sole discretion of the Board of Directors you are eligible to receive a \$200,000 deal bonus incentive (“Deal Bonus”). The Deal Bonus shall be payable to you within sixty (60) days of the closing of the sale transaction and shall be subject to regular and customary legal withholdings. The terms of this Deal Bonus shall be effective through December 31, 2022 and shall be considered triggered upon execution of a definitive transactional agreement before this date. The payment of this bonus shall be made only upon closing of the triggering transaction. Subject to the terms of this Agreement, any qualifying closed sales transaction after this date shall not trigger any payment and/or your right to the Deal Bonus. Once properly triggered, no termination of employment event shall divest you from the payment of this bonus. Through December 31, 2022, Company agrees to not terminate Employee upon execution of a Letter of Intent in which the Company makes substantial efforts to close to a definitive transactional agreement.

Acknowledgement:

You acknowledge that this offer, as well as the Confidential Information provided to you pursuant to your employment with Akerna give rise to Akerna’s interest in restraining you from violating any restrictive covenants herein, and that said covenants are designed to enforce such consideration and that any limitations as to time, geographic scope and scope of activity to be restrained as defined herein are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of Akerna. This offer, and your acceptance of any incentive, serves as additional consideration for the restrictive covenants contained in the Employee Covenants Agreement you executed and nothing in this offer supersedes or nullifies anything in that agreement.

In accepting this offer, you also authorize the Company to share with the prospective buyer such personal employment data as would reasonably allow the buyer to evaluate your contribution to the business and future role.

Miscellaneous:

Assignment. Your rights and obligations under this offer are personal to you, and may not be assigned by you, in whole or in part. Akerna may freely assign its rights and obligations under this offer.

Counterparts. This offer may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which counterparts of this offer, when taken together shall constitute one and the same instrument.

No Third-Party Beneficiaries. Nothing in this offer, express or implied, is intended or will be construed to confer on any person, other than the parties to this offer, any right, remedy, or claim under or with respect to this offer.

Notices. All notices and other communications under this offer must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation), to the parties at the addresses or facsimile numbers as a party may designate from time-to-time. Any notice or other communication will be deemed given: (a) on the date of personal delivery; (b) at the expiration of the third day after the date of deposit in the United States mail; or (c) on the date of confirmation of delivery by facsimile or overnight delivery service.

Amendment. This offer may be amended only by an instrument in writing executed by the CEO of Akerna, and you, which writing must refer to this offer.

Further Assurances. Each party agrees: (a) to execute and deliver such other documents; and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this offer.

Waiver. Any provision or condition of this offer may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Governing Law. This offer will be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflict of law provisions.

Severability. If any provision of this offer is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this offer and Retention Package will not be in any way impaired.

Headings. Section headings in this offer are for convenience and reference only and shall not govern the interpretation of any of the provisions of this offer and Retention Package.

Entire Agreement. Unless otherwise provided for in this document, this offer and Retention Package (including the documents and agreements referred to in this offer and Retention Package) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this offer and Retention Package and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

Attorneys' Fees and Costs. If attorneys' fees or other costs are incurred to secure performance of any obligations hereunder, or to establish damages for the breach thereof or to obtain any other appropriate relief, whether by way of prosecution or defense, the prevailing party will be entitled to recover reasonable attorneys' fees and costs incurred in connection therewith.

Signatures Follow on Next Page

Sincerely,

/s/ Jessica Billingsley

Jessica Billingsley, Chairman and CEO of Akerna

Employee Signature: /s/ Scott Sozio

Date: August 18, 2022

Private and Confidential

August 18, 2022

Dean Ditto

Re: Employment Offer Letter

Dear Mr. Ditto,

You are hereby offered the position of Chief Financial Officer (“CFO”) for Akerna Corp. (“Akerna” or “the Company”) on an at-will basis. Please accept this communication as an offer letter and the basic terms of your employment relationship, subject to Akerna policies and procedures as well as any other documents you must execute before your employment. You will initially manage the Finance and Accounting Departments. You will report directly to Akerna’s Chief Executive Officer (“CEO”) Jessica Billingsley.

Although subject to change based on management decisions and the discretion of the CEO, your initial tasks will include, but are not limited to:

Planning:

- Formulate and assist in the formulation of Company’s future direction and support tactical initiatives
- Monitor and direct the implementation of strategic business plans
- Develop financial and tax strategies
- Manage, implement, and oversee the capital request and budget process
- Develop performance measurements that support Company’s strategic direction

Operations:

- Meaningfully and reasonably participate in key decisions as a member of Company’s executive team
- Maintain quality and professional relationships with all members of the management team and teams you supervise
- Manage the accounting, investor relations, legal, and tax functions of the company, as assigned
- Oversee Company’s transaction processing systems and contract management systems
- Identify and Implement operational best practices
- Oversee employee benefit plans, with particular emphasis on maximizing a cost-effective benefits package
- Supervise acquisition, due diligence, and negotiate acquisitions

Financial Information:

- Oversee the issuance of required financial information and reporting
- Personally review, amend, and approve all Form 8-K, 10-K, and 10-Q filings with the Securities and Exchange Commission
- Report financial results to the Board of Directors at the advice and consent of the CEO

Risk Management:

- Understand and mitigate key elements of Company’s risk profile
- Monitor all open legal issues involving Company, and legal issues affecting the industry
- Construct and monitor reliable control systems
- Maintain appropriate insurance coverage
- Ensure Company complies with all legal and regulatory requirements
- Ensure that record keeping meets the requirements of auditors and government agencies
- Report risk issues to the audit committee of the Board of Directors
- Maintain relations with external auditors and lead the investigation of their findings and recommendations

Funding:

- Monitor cash balances and cash forecasts
- Arrange for debt and equity financing
- Invest funds
- Invest pension funds

Third Parties:

- Participate in conference calls with the investment community
- Maintain banking relationships
- Represent Company with investment bankers and investors

You will also be responsible for compliance with all legal fiduciary duties and for compliance with Company policies and procedures. All Company policies and procedures are subject to change and you will be responsible for your compliance with all such policies and procedures, as amended.

Compensation:

Your initial compensation package includes an annual base salary of \$250,000, subject to all legal withholdings and deductions. You will also immediately vest with \$25,000 in Restricted Stock Units, which are subject to the terms of Consulting Agreement you previously executed.

Change in Control Bonus Incentive:

Subject to your continued employment with Company through the occurrence of the first closing of a sale transaction of the majority of either (i) MJ Freeway or (ii) 365 Cannabis, at a reasonable and acceptable sale transactional valuation amount as determined by and at the sole discretion of the Board of Directors or a Change in Control, as defined herein, Company shall pay you a lump sum of \$125,000. This bonus will be paid in one installment, within 60 days of the change in control event, subject to the requirements below and less applicable payroll taxes and deductions. The terms of this bonus are contingent on your satisfactory performance of all assigned duties. In the event you resign from the Company or are terminated by the Company for cause before the bonus payment due date, you will not be entitled to receive this bonus. In the case of your death or long-term disability, this bonus Incentive will be paid to you or your estate within 30 days of the change in control event. In addition, if you have received the Deal Bonus described herein, the Change in Control bonus described in this provision shall be reduced by the amount of the Deal Bonus previously received and/or owing to you. For purposes of this provision, "Change of Control" of the Company is defined as: (i) the date any "person" or group (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes, subsequent to the date hereof, the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of Company representing 50% or more of the total voting power represented by Company's then outstanding voting securities, other than pursuant to a sale by Company of its securities in a transaction or series of related transactions the primary purpose of which is to raise capital for the Company; (ii) the date of the consummation of a merger or consolidation of Company with any other corporation that has been approved by the stockholders of Company, other than a merger or consolidation that would result in the voting securities of Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of Company or such surviving entity outstanding immediately after such merger or consolidation; or (iii) the date of the consummation of the sale or disposition by Company of all or substantially all Company's assets. However, no Change in Control shall be deemed to have occurred by reason of (a) any event that involves a transaction that you or a group of persons or entities with whom you act in concert acquires, directly or indirectly, more than 50% of the combined voting power of Company's then-outstanding voting securities or the business or assets of Company; (b) any event that involves or arises out of a proceeding under Title 11 of the United States Code or the provisions of any future United States Bankruptcy law, an assignment for the benefit of creditors or an insolvency; or (c) a majority of the current members of the Board of Directors at the time of execution of this Agreement are no longer on the Board of Directors for any reason whatsoever. The terms of this bonus shall be effective through December 31, 2022. A Letter of Intent ("LOI") executed prior to December 31, 2022 in which the Company is also using its best efforts to arrive at a final transaction agreement will qualify as a triggering event for this bonus, as long as the LOI executed before the deadline is the operative and controlling LOI for the final transaction agreements. Any qualifying Change in Control after this date shall not trigger any payment and/or your right to this Change in Control incentive.

Long Term Incentive Plan (“LTIP”):

You will be eligible to participate in the Akerna LTIP when the next award takes place and upon successful finalization of the Akerna LTIP in 2023. All awards made pursuant to the Akerna LTIP are made at the sole discretion of the Board of Directors. Full details of the LTIP will be sent to you in due course and after finalization of the Akerna LTIP in 2023.

If the Buyer Offers You a Comparable Position Upon Closing:

If any buyer related to a Change in Control offers you a comparable position on comparable terms, you are expected to accept the offer and work in good faith to achieve a successful transition.

If the Buyer Does Not Offer You a Comparable Position Upon Closing:

If the buyer related to a Change in Control does not offer you a comparable position on comparable terms, you will receive Severance Benefits as follows:

Continuation of your Base Salary (at the rate in effect immediately prior to the date of transition) subject to all applicable taxes and withholdings, for four (4) months (the “Severance Period”), payable in accordance with the Company’s regular payroll practices and procedures for such period commencing on the first payroll date following the execution of a General Release and the expiration of any applicable revocation period; and

Subject to your eligibility for and timely election of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), with respect to the group medical insurance plan in which you and your eligible dependents participated immediately prior to the Termination Date (“COBRA Continuation Coverage”), the Company will make direct payments for you and your eligible dependents equal to the monthly amount of the employer and employee premiums for COBRA Continuation Coverage under the Company’s group medical plans that you participated in as of the Termination Date, until the earliest of (i) the completion of the Severance Period, (ii) you become eligible for medical benefits from a subsequent employer, or (iii) you otherwise becoming ineligible for COBRA; provided, that you will not be entitled to receive such Medical Payment Amounts if such payment is then impermissible under applicable law. For the avoidance of doubt, you shall be responsible for any monthly premium cost for the full costs for COBRA Continuation Coverage for any period during which you continue to receive COBRA Continuation Coverage following the periods set forth in (i) and (ii) above.

Acknowledgement:

You acknowledge that the compensation, including, but not limited to the offer, the specialized training, and the Confidential Information provided to you pursuant to your employment with Akerna give rise to Akerna’s interest in restraining you from violating any restrictive covenants by which you are bound, and that said covenants are designed to enforce such consideration and that any limitations as to time, geographic scope and scope of activity to be restrained as defined herein are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of Akerna. Nothing in this offer supersedes or nullifies any portion or provision in Akerna’s Employee Covenants Agreement and/or Akerna’s policies and procedures. The terms of this offer shall be read in cooperation and conjunction with any such policies and procedures.

In accepting this offer, you also authorize the Company to share with the prospective buyer such personal employment data as would reasonably allow the buyer to evaluate your contribution to the business and future role.

Miscellaneous:

Assignment. Your rights and obligations under this offer are personal to you, and may not be assigned by you, in whole or in part. Akerna may freely assign its rights and obligations under this offer.

Counterparts. This offer may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which counterparts of this offer, when taken together shall constitute one and the same instrument.

No Third-Party Beneficiaries. Nothing in this offer, express or implied, is intended or will be construed to confer on any person, other than the parties to this offer, any right, remedy, or claim under or with respect to this offer.

Notices. All notices and other communications under this offer must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation), to the parties at the addresses or facsimile numbers as a party may designate from time-to-time. Any notice or other communication will be deemed given: (a) on the date of personal delivery; (b) at the expiration of the third day after the date of deposit in the United States mail; or (c) on the date of confirmation of delivery by facsimile or overnight delivery service.

Amendment. This offer may be amended only by an instrument in writing executed by the CEO of Akerna, and you, which writing must refer to this offer.

Further Assurances. Each party agrees: (a) to execute and deliver such other documents; and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this offer.

Waiver. Any provision or condition of this offer may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Governing Law. This offer will be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflict of law provisions.

Severability. If any provision of this offer is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this offer will not be in any way impaired.

Headings. Section headings in this offer are for convenience and reference only and shall not govern the interpretation of any of the provisions of this offer.

Entire Agreement. Unless otherwise provided for in this document, this offer (including the documents and agreements referred to in this offer) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this offer and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

Attorneys' Fees and Costs. If attorneys' fees or other costs are incurred to secure performance of any obligations hereunder, or to establish damages for the breach thereof or to obtain any other appropriate relief, whether by way of prosecution or defense, the prevailing party will be entitled to recover reasonable attorneys' fees and costs incurred in connection therewith.

Sincerely,

/s/ Jessica Billingsley

Jessica Billingsley, Chairman and CEO of Akerna

Employee Signature: /s/ L. Dean Ditto

Date: August 18, 2022

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Jessica Billingsley, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Akerna Corp.
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 14, 2022

By: /s/ Jessica Billingsley
Jessica Billingsley,
Chief Executive Officer and Director
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, L. Dean Ditto, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Akerna Corp.
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 14, 2022

By: /s/ L. Dean Ditto

L. Dean Ditto,
Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 (18 U.S.C. SECTION 1350)**

In connection with the Quarterly Report of Akerna Corp. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Quarterly Report"), I, Jessica Billingsley, Chief Executive Officer, do hereby certify, to my knowledge:

- (1) The Quarterly Report fully complies with the requirements of Section 13(a), or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Date: November 14, 2022

By: /s/ Jessica Billingsley

Jessica Billingsley,
Chief Executive Officer and Director
(Principal Executive Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:10 AM 06/17/2019
FILED 11:10 AM 06/17/2019
SR 20195468576 - File Number 7085919

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
MTECH ACQUISITION HOLDINGS INC.

Pursuant to Section 245 of the
Delaware General Corporation Law

MTECH ACQUISITION HOLDINGS INC., a corporation existing under the laws of the State of Delaware (the "Corporation"), by its President, Scott Sozio, hereby certifies as follows:

1. The name of the Corporation is "MTech Acquisition Holdings Inc."
2. The Corporation's Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on October 3, 2018.
3. This Amended Restated Certificate of Incorporation restates, integrates and amends the Certificate of Incorporation of the Corporation.
4. This Amended and Restated Certificate of Incorporation was duly adopted by the directors and stockholders of the Corporation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended (the "DGCL").
5. The text of the Certificate of Incorporation of the Corporation is hereby amended and restated to read in full as follows:

FIRST: The name of the corporation is Akerna Corp. (hereinafter sometimes referred to as the "Corporation").

SECOND: The registered office of the Corporation is to be located at c/o Vcorp Services, LLC, 1013 Centre Road, Suite 403-B, Wilmington, Delaware 19805, New Castle County. The name of its registered agent at that address is Vcorp Services, LLC.

THIRD: The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the DGCL. In addition to the powers and privileges conferred upon the Corporation by law and those incidental thereto, the Corporation shall possess and may exercise all the powers and privileges that are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the Corporation.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 80,000,000, of which 75,000,000 shares shall be common stock of the par value \$0.0001 per share ("Common Stock") and 5,000,000 shares shall be preferred stock of the par value of \$0.0001 per share ("Preferred Stock").

A. Preferred Stock. The Board of Directors is expressly granted authority to issue shares of the Preferred Stock, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series (a "Preferred Stock Designation") and as may be permitted by the DGCL. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, without a separate vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

B. Common Stock. (1) Except as otherwise required by law or as otherwise provided in any Preferred Stock Designation, the holders of the Common Stock shall exclusively possess all voting power and each share of Common Stock shall have one vote.

(2) Subject to the prior rights of all classes or series of stock at the time outstanding having prior rights as to dividends or other distributions, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property, or stock as may be declared on the Common Stock by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in all such dividends and other distributions.

(3) Subject to the prior rights of creditors of the Corporation and the holders of all classes or series of stock at the time outstanding having prior rights as to distributions upon liquidation, dissolution or winding up of the Corporation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of shares of Common Stock shall be entitled to receive their ratable and proportionate share of the remaining assets of the Corporation.

(4) No holder of shares of Common Stock shall have cumulative voting rights.

(5) No holder of shares of Common Stock shall be entitled to preemptive or subscription rights pursuant to this Amended and Restated Certificate of Incorporation.

C. Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

FIFTH: A. Number of Directors. Upon the effectiveness of this Amended and Restated Certificate of Incorporation (the "Effective Time"), the total number of directors constituting the entire Board of Directors shall be seven (7). Thereafter, the total number of directors constituting the entire Board of Directors shall be such number as may be fixed from time to time exclusively by resolution adopted by the affirmative vote of at least a majority of the Board of Directors then in office.

B. Classification. Subject to the terms of any one or more series of Preferred Stock, and effective upon the Effective Time, the Board of Directors shall be divided into three classes: Class I, Class II and Class III. The number of directors in each class shall be as nearly equal as possible. The Board of Directors may assign members of the Board of Directors already in office to such classes as of the Effective Time. The directors in Class I shall be elected for a term expiring at the first Annual Meeting of Stockholders after the Effective Time, the directors in Class II shall be elected for a term expiring at the second Annual Meeting of Stockholders after the Effective Time, and the directors in Class III shall be elected for a term expiring at the third Annual Meeting of Stockholders after the Effective Time.

C. Term and Filling Vacancies. Commencing at the first Annual Meeting of Stockholders after the Effective Time and at each annual meeting thereafter, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding Annual Meeting of Stockholders after their election. Except as the DGCL may otherwise require, in the interim between Annual Meetings of Stockholders or Special Meetings of Stockholders called for the election of directors and/or the removal of one or more directors and the filling of any vacancy in that connection, newly created directorships and any vacancies in the Board of Directors, including unfilled vacancies resulting from the removal of directors for cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum (as defined in the Corporation's bylaws), or by the sole remaining director. All directors shall hold office until the expiration of their respective terms of office and until their successors shall have been elected and qualified. A director elected to fill a vacancy resulting from the death, resignation or removal of a director shall serve for the remainder of the full term of the director whose death, resignation or removal shall have created such vacancy and until his successor shall have been elected and qualified. If the number of directors is changed, any increase or decrease shall be apportioned among the classes in a manner as the Board of Directors shall determine so as to maintain the number of directors in each class as nearly equal as possible, but in no cases will an increase or decrease in the number of directors shorten the term of an incumbent.

D. Election. Election of directors need not be by written ballot unless the by-laws of the Corporation so provide.

E. Officers. Except as otherwise expressly delegated by resolution of the Board of Directors, the Board of Directors shall have the exclusive power and authority to appoint and remove officers of the Corporation.

SIXTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. Powers of the Board of Directors. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the statutes of Delaware, of this Amended and Restated Certificate of Incorporation, and to any by-laws from time to time made by the stockholders; provided, however, that no by-law so made shall invalidate any prior act of the directors which would have been valid if such by-law had not been made.

B. By-laws. The Board of Directors shall have the power, without the assent or vote of the stockholders, to make, alter, amend, change, add to or repeal the by-laws of the Corporation as provided in the by-laws of the Corporation.

C. Special Meetings. Subject to the terms of any one or more series or classes of Preferred Stock, Special Meetings of the Stockholders of the Corporation may be called as prescribed by the by-laws of the Corporation.

SEVENTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this paragraph A by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. The Corporation, to the full extent permitted by Section 145 of the DGCL, as amended from time to time, shall indemnify all persons whom it may indemnify pursuant thereto. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit or proceeding for which such officer or director may be entitled to indemnification hereunder shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized hereby.

EIGHTH: No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting.

NINTH: A. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or this Certificate of Incorporation or the Corporation's Bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware, or if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

B. If any action the subject matter of which is within the scope of Section A immediately above is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section A immediately above (an "FSC Enforcement Action") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

C. If any provision or provisions of this Article NINTH shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article NINTH (including, without limitation, each portion of any sentence of this Article NINTH containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article NINTH.

TENTH: The doctrine of corporate opportunity, or any other analogous doctrine, shall not apply with respect to the Corporation or any of its officers or directors in circumstances where the application of any such doctrine would conflict with any fiduciary duties or contractual obligations they may have as of the date of this Certificate of Incorporation or in the future. In addition to the foregoing, the doctrine of corporate opportunity shall not apply to any other corporate opportunity with respect to any of the directors or officers of the Corporation unless such corporate opportunity is offered to such person solely in his or her capacity as a director or officer of the Corporation and such opportunity is one the Corporation is legally and contractually permitted to undertake and would otherwise be reasonable for the Corporation to pursue.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Scott Sozio, its President, as of the 17th day of June 2019.

MTECH ACQUISITION HOLDINGS INC.

By: /s/ Scott Sozio

Name: Scott Sozio

Title: President

STATE OF DELAWARE
CERTIFICATE OF CHANGE OF REGISTERED AGENT
AND/OR REGISTERED OFFICE

The corporation organized and existing under the General Corporation Law of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is AKERNA CORP.

2. The Registered Office of the corporation in the State of Delaware is changed to 251 Little Falls Drive (street), in the City of Wilmington, DE
Country of New Castle Zip Code 19808. The name of the Registered Agent at such address upon whom process against this Corporation may be served is,
Corporation Service Company.

3. The foregoing change to the registered office/agent was adopted by a resolution of the Board of Directors of the corporation.

By: _____
Authorized Officer

Name: John Fowle, CFO
Print or Type

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:23 AM 05/04/2020
FILED 08:23 AM 05/04/2020
SR 20203384789 - File Number 7085919

CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS
OF
SPECIAL VOTING PREFERRED STOCK
OF
AKERNA CORP.

(Pursuant to Section 151 of the
General Corporation Law of the State of Delaware)

AKERNA CORP., a Delaware corporation (the "Company"), pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, does hereby make this Certificate of Designation under the corporate seal of the Company and does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors (the "Board") of the Company by its Amended and Restated Certificate of Incorporation (as such may be amended, modified or restated from time to time, the "Certificate of Incorporation"), the Board has duly adopted the following resolutions:

RESOLVED, that, pursuant to the provisions of Article Fourth of the Certificate of Incorporation (which authorizes 5,000,000 shares of preferred stock, par value of \$0.0001 per share (the "Preferred Stock")), and the authority vested in the Board, a series of Preferred Stock be, and it hereby is, created, and the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof are as set forth in the Certificate of Incorporation and this Certificate of Designation (as it may be amended from time to time, this "Certificate of Designation") as follows:

SPECIAL VOTING PREFERRED STOCK

1. Designation; Amount and Par Value. The series of Preferred Stock shall be designated as "Special Voting Preferred Stock" and the number of shares so designated shall be one (1). The sole outstanding share of Special Voting Preferred Stock shall have a par value of \$0.0001 per share.

2. Dividends. Subject to the provisions of Section 4 of this Certificate of Designation, the holder of record of the share of Special Voting Preferred Stock shall not be entitled to receive any dividends declared and paid by the Company.

3. Voting Rights.

(a) The holder of record of the share of Special Voting Preferred Stock, except as otherwise required under applicable law or as set forth in Section 3(b) below, shall not be entitled to vote on any matter required or permitted to be voted upon by the stockholders of the Company.

(b) With respect to all meetings of the stockholders of the Company at which the holders of the Company's common stock, par value \$0.0001 per share (the "Common Stock"), are entitled to vote (each, a "Stockholder Meeting"), the holder of the share of Special Voting Preferred Stock shall vote together with the holders of such Common Stock as a single class except as otherwise required under applicable law, and the holder of the share of Special Voting Preferred Stock shall be entitled to cast on such matter a number of votes equal to the number of Exchangeable Shares (the "Exchangeable Shares") of Akerna Canada Ample Exchange Inc. (f/k/a 2732805 Ontario Inc.), an Ontario corporation ("Purchaser"), outstanding as of the record date for determining stockholders entitled to vote at such Stockholder Meeting (i) that are not owned by the Company or its affiliates and (ii) as to which the holder of the share of Special Voting Preferred Stock has received voting instructions from the holders of such Exchangeable Shares in accordance with the Voting and Exchange Trust Agreement (the "Trust Agreement"), to be entered into among the Company, Purchaser, 2732804 Ontario Inc., an Ontario corporation ("Callco"), and the trustee thereunder (the "Trustee").

4. Liquidation. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holder of record of the Special Voting Preferred Stock shall (A) rank (i) senior to the holders of the Company's Common Stock and (ii) junior to all other classes or series of Preferred Stock of the Company (if any); and (B) be entitled to receive from the Company, prior to the holders of shares of Common Stock, an amount equal to \$1.00.

5. Other Provisions.

(a) The holder of record of the share of Special Voting Preferred Stock shall not have any rights hereunder to convert such share into, or exchange such share for, shares of any other series or class of capital stock of the Company.

(b) The Trustee shall exercise the voting rights attached to the share of Special Voting Preferred Stock pursuant to and in accordance with the Trust Agreement. The voting rights attached to the share of Special Voting Preferred Stock shall terminate pursuant to and in accordance with the Trust Agreement.

(c) At such time as the share of Special Voting Preferred Stock has no votes attached to it, the Special Voting Preferred Stock shall be automatically cancelled.

(d) This Certificate of Designation shall be effective upon filing.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations, Preferences and Rights of Special Voting Preferred Stock to be duly executed by its Chief Executive Officer this 26th day of June, 2020.

AKERNA CORP.

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

Signature Page to Certificate of Designation, Preferences and Rights of Special Voting Preferred Stock of Akerna Corp.

FIRST
CERTIFICATE OF AMENDMENT
TO
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AKERNA CORP.

Akerna Corp. (the "**Corporation**"), a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify:

FIRST: That at a meeting of the Board of Directors of the Corporation (the "**Board**") resolutions were duly adopted authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware amendments (the "**Amendment**") to the Corporation's amended and restated certificate of incorporation (the "**Certificate of Incorporation**") to increase the Corporation's authorized shares of common stock from 75,000,000 to 150,000,000.

SECOND:

1. The FOURTH Article of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

"FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 155,000,000, of which 150,000,000 shares shall be common stock of the par value \$0.0001 per share ("Common Stock") and 5,000,000 shares shall be preferred stock of the par value of \$0.0001 per share ("Preferred Stock").

A. Preferred Stock. The Board of Directors is expressly granted authority to issue shares of the Preferred Stock, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series (a "Preferred Stock Designation") and as may be permitted by the DGCL. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, without a separate vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

B. Common Stock. (1) Except as otherwise required by law or as otherwise provided in any Preferred Stock Designation, the holders of the Common Stock shall exclusively possess all voting power and each share of Common Stock shall have one vote.

(2) Subject to the prior rights of all classes or series of stock at the time outstanding having prior rights as to dividends or other distributions, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property, or stock as may be declared on the Common Stock by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in all such dividends and other distributions.

(3) Subject to the prior rights of creditors of the Corporation and the holders of all classes or series of stock at the time outstanding having prior rights as to distributions upon liquidation, dissolution or winding up of the Corporation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of shares of Common Stock shall be entitled to receive their ratable and proportionate share of the remaining assets of the Corporation.

- (4) No holder of shares of Common Stock shall have cumulative voting rights.

(5) No holder of shares of Common Stock shall be entitled to preemptive or subscription rights pursuant to this Amended and Restated Certificate of Incorporation.

C. Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.”

THIRD: That pursuant to a resolution of the Board, a meeting of the stockholders of the Corporation was duly called and held upon notice in accordance with Section 222 of the DGCL at which meeting the necessary number of shares as required by statute were voted in favor of the Amendment.

FOURTH: That the aforesaid Amendment was duly adopted in accordance with the applicable provisions of Section 242 of the DGCL.

FIFTH: The foregoing amendment shall be effective upon filing of this Certificate of Amendment.

SIXTH: Except as herein amended, the Corporation’s Certificate of Incorporation shall remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by a duly authorized officer on this May 27, 2022.

AKERNA CORP.

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

SECOND
CERTIFICATE OF AMENDMENT
TO
AMENDED AND RESTATED
CERTIFICATE OF
INCORPORATION OF
AKERNA CORP.

Akerna Corp. (the “**Corporation**”), a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby certify:

FIRST: That at a meeting of the Board of Directors of the Corporation (the “**Board**”) resolutions were duly adopted authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware an amendment (the “**Amendment**”) to the Corporation’s amended and restated certificate of incorporation (the “**Certificate of Incorporation**”) to add a paragraph to the Fourth Article of the Corporation’s Certificate of Incorporation as set forth below.

SECOND: The FOURTH Article of the Corporation’s Certificate of Incorporation is hereby amended to add the following paragraph following all current paragraphs:

“Upon the effectiveness of this Certificate of Amendment to the Certificate of Incorporation of the Corporation, every twenty shares of the Corporation’s issued and outstanding Common Stock, par value \$0.0001 per share, that are issued and outstanding immediately prior to November 8, 2022 shall, automatically and without any further action on the part of the Corporation or the holder thereof, be combined into one (1) validly issued, fully paid and non-assessable share of the Corporation’s Common Stock, par value \$0.0001 per share, subject to the treatment of fractional interests as described below. Notwithstanding the immediately preceding sentence, no fractional shares will be issued in connection with the reverse stock split. Stockholders of record who otherwise would be entitled to receive fractional shares, will be entitled to rounding up of their fractional share to the nearest whole share. No stockholders will receive cash in lieu of fractional shares. Each certificate that immediately prior to the Effective Time represented shares of Common Stock (“**Old Certificates**”) shall thereafter represent that number of shares of Common Stock into which the shares of Common Stock represented by the Old Certificate shall have been combined, subject to the adjustment for fractional shares as described above.”

THIRD: That pursuant to a resolution of the Board, a special meeting of the stockholders of the Corporation was duly called and held upon notice in accordance with Section 222 of the DGCL at which meeting the necessary number of shares as required by statute were voted in favor of the Amendment.

FOURTH: That the aforesaid Amendment was duly adopted in accordance with the applicable provisions of Section 242 of the DGCL.

FIFTH: The foregoing amendment shall be effective on November 8, 2022 at 12:01 am EST.

SIXTH: Except as herein amended, the Corporation’s Certificate of Incorporation shall remain in full force and effect.

[signature page follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by a duly authorized officer on this 7th day of November, 2022.

AKERNA CORP.

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

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 (18 U.S.C. SECTION 1350)**

In connection with the Quarterly Report of Akerna Corp. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Quarterly Report"), I, L. Dean Ditto, Chief Financial Officer, do hereby certify, to my knowledge:

- (1) The Quarterly Report fully complies with the requirements of Section 13(a), or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Date: November 14, 2022

By: /s/ L. Dean Ditto

L. Dean Ditto,
Chief Financial Officer
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.