

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 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: 001-38389

**Motus GI Holdings, Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

1301 East Broward Boulevard, 3rd Floor  
Ft. Lauderdale, FL

(Address of principal executive offices)

81-4042793

(I.R.S. Employer  
Identification Number)

33301

(Zip code)

(954) 541 8000

(Registrant's telephone number, including area code)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchanged on Which Registered
Common Stock, \$0.0001 par value per share	MOTS	The Nasdaq Capital Market

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 Exchange Act). Yes  No

As of November 11, 2022, 4,655,596 shares of the registrant's common stock, \$0.0001 par value, were issued and outstanding.

**Motus GI Holdings, Inc. and Subsidiaries**  
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PART I — FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements (Unaudited)

Motus GI Holdings, Inc. and Subsidiaries  
Condensed Consolidated Balance Sheets  
(in thousands, except share and per share amounts)

	September 30, 2022 <u>(unaudited)</u>	December 31, 2021(*)
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 13,294	\$ 22,563
Accounts receivable	161	109
Inventory	1,014	496
Prepaid expenses and other current assets	1,018	793
Total current assets	<u>15,487</u>	<u>23,961</u>
Fixed assets, net	1,395	1,428
Right-of-use assets	471	687
Other non-current assets	13	13
Total assets	<u>\$ 17,366</u>	<u>\$ 26,089</u>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 2,696	\$ 2,584
Operating lease liabilities - current	248	307
Other current liabilities	70	10
Current portion of long-term debt, net of unamortized debt discount of \$260 and \$271, respectively	2,453	431
Total current liabilities	<u>5,467</u>	<u>3,332</u>
Contingent royalty obligation	1,789	1,760
Operating lease liabilities - non-current	220	385
Convertible note, net of unamortized debt discount of \$123 and \$166, respectively	3,877	3,834
Long-term debt, net of unamortized debt discount of \$176 and \$317, respectively	5,251	7,121
Total liabilities	<u>16,604</u>	<u>16,432</u>
Commitments and contingent liabilities (Note 9)		
Shareholders' equity		
Common stock \$0.0001 par value; 115,000,000 shares authorized; 3,025,502 and 2,416,021 shares issued and outstanding as of September 30, 2022 and December 31, 2021, respectively	-	-
Additional paid-in capital	138,431	132,411
Accumulated deficit	(137,669)	(122,754)
Total shareholders' equity	<u>762</u>	<u>9,657</u>
Total liabilities and shareholders' equity	<u>\$ 17,366</u>	<u>\$ 26,089</u>

(\*) Derived from audited consolidated financial statements

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

**Motus GI Holdings, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Comprehensive Loss**  
(unaudited, in thousands, except share and per share amounts)

	Three Months Ended September 30,		Nine months Ended September 30,	
	2022	2021	2022	2021
Revenue	\$ 278	\$ 141	\$ 483	\$ 292
Operating expenses:				
Cost of revenue - sales	83	65	166	135
Cost of revenue - impairment of inventory	-	186	159	186
Research and development	1,573	1,187	4,261	4,040
Sales and marketing	1,349	725	3,554	2,196
General and administrative	1,978	2,315	6,167	7,104
Total costs and expenses	<u>4,983</u>	<u>4,478</u>	<u>14,307</u>	<u>13,661</u>
<b>Operating loss</b>	<b>(4,705)</b>	<b>(4,337)</b>	<b>(13,824)</b>	<b>(13,369)</b>
Gain (loss) on change in estimated fair value of contingent royalty obligation	34	(35)	(29)	(152)
Loss on extinguishment of debt	-	(237)	-	(237)
Finance expense, net	(310)	(216)	(1,001)	(450)
Other income	-	5	-	5
Foreign currency gain (loss)	17	(4)	(61)	(12)
Net loss	<u>(4,964)</u>	<u>(4,824)</u>	<u>(14,915)</u>	<u>(14,215)</u>
Deemed dividends from warrant issuance	-	-	-	(6,145)
Net loss attributable to common shareholders	<u>\$ (4,964)</u>	<u>\$ (4,824)</u>	<u>\$ (14,915)</u>	<u>\$ (20,360)</u>
Basic and diluted loss per common share:				
Net loss attributable to common shareholders	<u>\$ (1.69)</u>	<u>\$ (2.00)</u>	<u>\$ (5.40)</u>	<u>\$ (8.77)</u>
Weighted average number of common shares outstanding, basic and diluted	<u>2,937,530</u>	<u>2,412,059</u>	<u>2,763,164</u>	<u>2,320,982</u>

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

**Motus GI Holdings, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Changes in Shareholders' Equity**  
(unaudited, in thousands, except share and per share amounts)

	<b>Common Stock</b>		<b>Additional paid-in capital</b>	<b>Accumulated deficit</b>	<b>Total shareholders' equity</b>
	<b>Shares</b>	<b>Amount</b>			
Balance at January 1, 2022	2,416,021	\$ -	\$ 132,411	\$ (122,754)	\$ 9,657
Issuance of common shares pursuant to at-the-market registered offering, net of issuance costs of \$111	298,761	-	3,004	-	3,004
Issuance of common shares upon vesting of restricted stock units	13,721	-	-	-	-
Issuance of common stock for board of directors' compensation	24,458	-	235	-	235
Share-based compensation	-	-	521	-	521
Net loss	-	-	-	(4,811)	(4,811)
Balance at March 31, 2022	2,752,961	\$ -	\$ 136,171	\$ (127,565)	\$ 8,606
Issuance of common shares pursuant to at-the-market registered offering, net of issuance costs of \$5	8,124	-	45	-	45
Issuance of common shares upon vesting of restricted stock units	4,174	-	-	-	-
Share-based compensation	-	-	461	-	461
Net loss	-	-	-	(5,140)	(5,140)
Balance at June 30, 2022	2,765,259	\$ -	\$ 136,677	\$ (132,705)	\$ 3,972
Issuance of common shares pursuant to at-the-market registered offering, net of issuance costs of \$55	258,127	-	1,324	-	1,324
Issuance of common shares upon vesting of restricted stock units	4,162	-	-	-	-
Fractional shares settled in cash pursuant to reverse stock split	(2,046)	-	(11)	-	(11)
Share-based compensation	-	-	441	-	441
Net loss	-	-	-	(4,964)	(4,964)
Balance at September 30, 2022	3,025,502	\$ -	\$ 138,431	\$ (137,669)	\$ 762

  

	<b>Common Stock</b>		<b>Additional paid-in capital</b>	<b>Accumulated deficit</b>	<b>Total shareholders' equity</b>
	<b>Shares</b>	<b>Amount</b>			
Balance at January 1, 2021	1,613,591	\$ -	\$ 115,011	\$ (103,721)	\$ 11,290
Issuance of common shares upon vesting of restricted stock units	3,295	-	-	-	-
Issuance of common shares upon exercise of warrants, net of financing costs of \$366	713,362	-	11,593	-	11,593
Issuance of common stock for board of directors' compensation	8,677	-	272	-	272
Share based compensation	-	-	919	-	919
Net loss	-	-	-	(4,649)	(4,649)
Balance at March 31, 2021	2,338,925	\$ -	\$ 127,795	\$ (108,370)	\$ 19,425
Issuance of common shares, net of issuance costs of \$74	67,043	-	1,826	-	1,826
Issuance of common shares upon vesting of restricted stock units	2,654	-	-	-	-
Issuance of common stock for board of directors' compensation	910	-	19	-	19
Issuance of common stock to consultants	2,500	-	53	-	53
Share based compensation	-	-	1,010	-	1,010
Net loss	-	-	-	(4,742)	(4,742)
Balance at June 30, 2021	2,412,032	\$ -	\$ 130,703	\$ (113,112)	\$ 17,591
Issuance of warrants associated with convertible note and long-term debt	-	-	165	-	165
Share based compensation	-	-	848	-	848
Net loss	-	-	-	(4,824)	(4,824)
Balance at September 30, 2021	2,412,032	\$ -	\$ 131,716	\$ (117,936)	\$ 13,780

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

**Motus GI Holdings, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Cash Flows**  
(unaudited, in thousands)

	<b>For the Nine months Ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ (14,915)	\$ (14,215)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	381	318
Amortization of debt issuance costs	195	32
Loss on change in estimated fair value of contingent royalty obligation	29	152
Share based compensation	1,423	2,777
Issuance of common stock for board of directors' compensation	177	174
Issuance of common stock for consultants	-	53
Loss on extinguishment of debt	-	237
Impairment of inventory	159	186
Impairment of fixed assets	46	-
Amortization on operating lease right-of-use asset	253	152
Changes in operating assets and liabilities:		
Accounts receivable	(52)	(146)
Inventory	(843)	48
Prepaid expenses and other current assets	(167)	(97)
Accounts payable and accrued expenses	79	38
Operating lease liabilities - current and non-current	(255)	(163)
Other current liabilities	61	(51)
Net cash used in operating activities	(13,429)	(10,505)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of fixed assets	(215)	(425)
Net cash used in investing activities	(215)	(425)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from issuance of common shares	4,544	1,900
Fractional shares paid in cash pursuant to reverse stock split	(11)	-
Proceeds from exercise and purchase of warrants	-	11,959
Borrowings under convertible note and long-term debt	-	9,000
Repayment of term debt	-	(8,220)
Payment of debt issuance costs	-	(437)
Equity financing fees	(158)	(439)
Net cash provided by financing activities	4,375	13,763
<b>NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS</b>	(9,269)	2,833
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>	22,563	20,819
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	\$ 13,294	\$ 23,652
<b>SUPPLEMENTAL CASH FLOW INFORMATION:</b>		
<b>CASH PAID FOR:</b>		
Interest	\$ 779	\$ 443
<b>SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>		
Common stock issued to settle accrued expenses for board of directors' compensation	\$ -	\$ 56
Common stock issued for prepaid board of directors' compensation	\$ 58	\$ 61
Reclassification of inventory to fixed assets	\$ 163	\$ 56
Reclassification of prepaid expenses to fixed assets	\$ 4	\$ 75
Purchase of fixed assets in accounts payable and accrued expenses	\$ 12	\$ 22
Financing costs included in accounts payable and accrued expenses	\$ 13	\$ -
Warrants issued related to convertible note and long-term debt recorded as debt discount	\$ -	\$ 165
Accrued end of loan payment recorded as debt discount	\$ -	\$ 88
Operating lease liabilities arising from obtaining right-of-use assets	\$ 3	\$ 135

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

**Motus GI Holdings, Inc. and Subsidiaries**  
**Notes to the Interim Condensed Consolidated Financial Statements**  
**(unaudited, in thousands, except share and per share amounts)**

**Note 1 – Description of Business**

Motus GI Holdings, Inc. (the “Company”) was incorporated in Delaware, U.S.A. in September 2016. The Company and its subsidiaries, Motus GI Technologies, Ltd. and Motus GI, LLC, are collectively referred to as “Motus GI” or the “Company”.

The Company has developed the Pure-Vu System, a medical device that has been cleared by the U.S. Food and Drug Administration (the “FDA”) to help facilitate the cleansing of a poorly prepared gastrointestinal tract during colonoscopy and to help facilitate upper gastrointestinal (“GI”) endoscopy procedures. The Pure-Vu System has received a CE Mark in the EU for use in colonoscopy. The Pure-Vu System integrates with standard and slim colonoscopes, as well as gastroscopes, to improve visualization during colonoscopy and upper GI procedures while preserving established procedural workflow and techniques. Through irrigation and evacuation of debris, the Pure-Vu System is designed to provide better-quality exams. The Company received 510(k) clearance in February 2022 from the FDA for its Pure-Vu EVS System and recently commenced commercialization of this product.

**Note 2 – Basis of Presentation and Going Concern**

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the 2021 10-K filed with the SEC on March 29, 2022. The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial information, the instructions for Form 10-Q and the rules and regulations of the SEC. Accordingly, since they are interim statements, the accompanying condensed consolidated financial statements do not include all of the information and notes required by GAAP for annual financial statements, but reflect all adjustments consisting of normal, recurring adjustments, that are necessary for a fair presentation of the financial position, results of operations and cash flows for the interim periods presented. Interim results are not necessarily indicative of the results that may be expected for any future periods. The December 31, 2021 balance sheet information was derived from the audited financial statements as of that date.

To date, the Company has generated minimal revenues, experienced negative operating cash flows and has incurred substantial operating losses from its activities. Management expects the Company to continue to generate substantial operating losses and to continue to fund its operations primarily through utilization of its current financial resources, future product sales, and through the issuance of debt or equity. Rising inflation and financial market volatility may adversely impact the Company’s ability to enter into, modify, and negotiate favorable terms and conditions relative to equity and debt financing initiatives. The uncertain financial markets, potential disruptions in supply chains, and changing priorities could also affect the Company’s ability to enter into key agreements. COVID-19 and government measures taken in response have also had an impact, both direct and indirect, on businesses and commerce, as worker shortages have occurred; supply chains have been disrupted; facilities and production have been suspended; and demand for certain goods and services, such as certain medical services and supplies, have spiked, while demand for other goods and services have fallen. The future progression of the outbreak and its longer-term effects on the Company’s business and operations continue to evolve and are still uncertain. The Company and its third-party contract manufacturers, contract research organizations, and clinical sites may also face disruptions in procuring items that are essential to the Company’s research and development activities, including, for example, medical and laboratory supplies, in each case, that are sourced from abroad or for which there are shortages because of ongoing efforts related to the outbreak in certain parts of the world. These disruptions may negatively impact the Company’s sales, its results of operations, financial condition, and liquidity in 2022 and into 2023.

The Company has financed its operations primarily through sales of equity-related securities. In March 2021, we entered into an Equity Distribution Agreement (the “Equity Distribution Agreement”) with Oppenheimer & Co. Inc. (“Oppenheimer”), under which we may offer and sell from time to time common shares having an aggregate offering price of up to \$25.0 million. During the nine months ended September 30, 2022, we sold approximately 565 thousand shares of common stock, resulting in net cash proceeds of \$4.4 million, after deducting issuance costs of \$0.2 million. From October 1, 2022 to November 14, 2022, the Company issued and sold approximately 1.6 million shares of our common stock under this agreement, resulting in net cash proceeds of approximately \$5.5 million, after deducting issuance costs \$0.2 million.

Net cash used in operating activities for the nine months ended September 30, 2022 was \$13,429. For the nine months ended September 30, 2021, the Company incurred a net loss of \$14,915. As of September 30, 2022, the Company had cash and cash equivalents of \$13,294.

Such conditions raise substantial doubts about the Company's ability to continue as a going concern. These condensed consolidated financial statements do not include any adjustments relating to the recoverability and classification of assets, carrying amounts or the amount and classification of liabilities that may be required should the Company be unable to continue as a going concern.

### **Note 3 – Summary of Significant Accounting Policies**

#### **Significant Accounting Policies**

The significant accounting policies used in preparation of these condensed consolidated financial statements for the nine months ended September 30, 2022 are consistent with those discussed in Note 3 to the consolidated financial statements in the Company's 2021 Annual Report on Form 10-K. There have been no material changes to the Company's significant accounting policies during the nine months ended September 30, 2022.

#### **Reverse Stock Split**

On July 25, 2022, the Company effected a reverse stock split of its issued and outstanding common stock, par value \$0.0001 per share, at a ratio of 1-for-20. Shares of common stock underlying outstanding stock options and other equity instruments convertible into common stock were proportionately reduced and the respective exercise prices, if applicable, were proportionately increased in accordance with the terms of the agreements governing such securities.

Accordingly, all share and per share amounts for all periods presented in the accompanying condensed consolidated financial statements and notes thereto have been retroactively adjusted, where applicable, to reflect the reverse stock split.

#### **Basis of presentation and principles of consolidation**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with GAAP and include the accounts of the Company and its wholly owned subsidiaries, Motus Ltd., an Israel corporation, which has operations in Tirat Carmel, Israel, and Motus Inc., a Delaware corporation, which has operations in the U.S. All inter-company accounts and transactions have been eliminated in consolidation.

#### **Use of estimates**

The preparation of the unaudited condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### **Basic and diluted net loss per share**

Basic loss per share is computed by dividing the net loss by the weighted average number of common shares outstanding during the year. Diluted loss per share is computed by dividing the net loss by the weighted average number of common shares outstanding during the year, plus the number of common shares that would have been outstanding if all potentially dilutive ordinary shares had been issued, using the treasury stock method, in accordance with ASC 260-10 "Earnings per Share". Potentially dilutive common shares were excluded from the calculation of diluted loss per share for all periods presented due to their anti-dilutive effect due to losses in each period.

Net loss attributable to common stockholders consists of net income or loss, as adjusted for actual and deemed preferred stock dividends declared, amortized or accumulated. The Company recorded a deemed dividend for the issuance of warrants during the three and nine months ended September 30, 2021 of \$0 and \$6,145, respectively. The deemed dividend is added to the net loss in determining the net loss available to common stockholders.

## Income taxes

The Company provides for income taxes using the asset and liability approach. Deferred tax assets and liabilities are recorded based on the differences between the financial statement and tax bases of assets and liabilities and the tax rates in effect when these differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance if, based on the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized. As of September 30, 2022 and December 31, 2021, the Company had a full valuation allowance against its deferred tax assets.

For the three and nine months ended September 30, 2022 and 2021, the Company recorded zero income tax expense. No tax benefit has been recorded in relation to the pre-tax loss for the three and nine months ended September 30, 2022 and 2021, due to a full valuation allowance to offset any deferred tax asset related to net operating loss carry forwards attributable to the losses.

## New Accounting Pronouncements- Recently Adopted

In May 2021, the FASB issued ASU 2021-04, *Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation-Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modification or Exchanges of Freestanding Equity-Classified Written Call Options*, which clarifies and reduces diversity in an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options due to a lack of explicit guidance in the FASB Codification. ASU 2021-04 provides guidance on modifications or exchanges of freestanding equity-classified written call options that are not within the scope of another Topic. Entities should treat a modification of the terms or conditions, or an exchange of a freestanding equity-classified written call option that remains equity-classified after modification or exchange, as an exchange of the original instrument for a new instrument. ASU 2021-04 provides further guidance on measuring the effect of such modifications or exchanges, and also provides guidance on the recognition of such modifications or exchanges on the basis of the substance of the transaction, in the same manner as if cash had been paid as consideration. ASU 2021-04 is effective for all entities for fiscal years beginning after December 15, 2021. The Company adopted this ASU on January 1, 2022, prospectively to modifications that occurred after the date of initial application. The adoption of this ASU did not result in a material impact to the condensed consolidated financial statements and disclosures.

## Accounting Pronouncements- Not Yet Adopted

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. This guidance simplifies the accounting for convertible instruments primarily by eliminating the existing cash conversion and beneficial conversion models within Subtopic 470-20, which will result in fewer embedded conversion options being accounted for separately from the debt host. The guidance also amends and simplifies the calculation of earnings per share relating to convertible instruments. This guidance is effective for the Company for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted, using either a full or modified retrospective approach. The Company is currently evaluating the impact of the provisions of this guidance on our consolidated financial statements.

In September 2016, the FASB issued ASU 2016-13, "Financial Instruments – Credit Losses" to improve information on credit losses for financial assets and net investment in leases that are not accounted for at fair value through net income. ASU 2016-13 replaces the current incurred loss impairment methodology with a methodology that reflects expected credit losses. In April 2019 and May 2019, the FASB issued ASU No. 2019-04, "Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments" and ASU No. 2019-05, "Financial Instruments-Credit Losses (Topic 326): Targeted Transition Relief" which provided additional implementation guidance on the previously issued ASU. In November 2019, the FASB issued ASU 2019-10, "Financial Instruments - Credit Loss (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842)," which defers the effective date for the Company to fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company will continue to evaluate the effect of adopting ASU 2016-13 on the Company's financial statements and disclosures.

#### Note 4 –Fair Value Measurements

Liabilities measured and recorded at fair value on a recurring basis consisted of the following at September 30, 2022 and December 31, 2021:

	September 30, 2022			
	Level 1	Level 2	Level 3	Fair Value
<b>Liabilities</b>				
Contingent royalty obligation	\$ -	\$ -	\$ 1,789	\$ 1,789

  

	December 31, 2021			
	Level 1	Level 2	Level 3	Fair Value
<b>Liabilities</b>				
Contingent royalty obligation	\$ -	\$ -	\$ 1,760	\$ 1,760

Financial instruments with carrying values approximating fair value include cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued expenses, and certain other current liabilities, due to their short-term nature.

In estimating the fair value of the Company's contingent royalty obligation (see Note 9), the Company used the discounted cash flow method as of September 30, 2022 and December 31, 2021. Based on the fair value hierarchy, the Company classified contingent royalty obligation within Level 3 because valuation inputs are based on projected revenues discounted to a present value.

Changes in the fair value of recurring fair value measurements using significant unobservable inputs (Level 3), which solely consisted of a contingent royalty obligation, during the nine months ended September 30, 2022 was as follows:

	Fair Value Measurements of Contingent Royalty Obligation (Level 3)
Balance at December 31, 2021	\$ 1,760
Change in estimated fair value of contingent royalty obligation	29
Balance at September 30, 2022	\$ 1,789

The contingent royalty obligation is re-measured at each balance sheet date using several assumptions, including the following: 1) estimated sales growth, 2) length of product cycle, 3) patent life, 4) discount rate (23% and 21% as of September 30, 2022 and December 31, 2021, respectively), and 5) rate of royalty payment (3% as of September 30, 2022 and December 31, 2021).

In accordance with ASC-820-10-50-2(g), the Company performed a sensitivity analysis of the liability, which was classified as a Level 3 financial instrument. The Company recalculated the fair value of the liability by applying a +/- 2% change to the input variable in the discounted cash flow model; the discount rate. A 2% decrease in the discount rate would increase the liability by \$130 and a 2% increase in the discount rate would decrease the liability by \$119.

#### Note 5 – Inventory

Inventory is stated at lower of cost or net realizable value using the weighted average cost method and is evaluated at least annually for impairment. Write-downs for potentially obsolete or excess inventory are made based on management's analysis of inventory levels, historical obsolescence and future sales forecasts. For the three and nine months ended, September 30, 2022, an inventory impairment of \$0 and \$159, respectively, was recorded. There was \$186 in inventory impairment charges for the three and nine months ended, September 30, 2021.

Inventory at September 30, 2022 and December 31, 2021 consisted of the following:

	September 30, 2022	December 31, 2021
Raw materials	\$ 194	\$ 569
Work-in-process	120	-
Finished goods	745	292
Inventory reserve	(45)	(365)
Inventory, net	<u>\$ 1,014</u>	<u>\$ 496</u>

**Note 6 – Fixed assets, net**

Fixed assets, summarized by major category, consist of the following for the years ended:

	September 30, 2022	December 31, 2021
Office equipment	\$ 171	\$ 171
Computers and software	319	305
Machinery	1,035	807
Lab and medical equipment	1,439	1,342
Leasehold improvements	195	193
Total	<u>3,159</u>	<u>2,818</u>
Less: accumulated depreciation and amortization	<u>(1,764)</u>	<u>(1,390)</u>
Fixed assets, net	<u>\$ 1,395</u>	<u>\$ 1,428</u>

Depreciation and amortization expense for the three and nine months ended September 30, 2022 was \$128 and \$381, respectively. The Company incurred a loss on the impairment of fixed assets in the amount of \$10 and \$46 for the three and nine months ended September 30, 2022. Depreciation and amortization expense for the three and nine months ended September 30, 2021 was \$118 and \$318, respectively.

**Note 7 – Leases**

The Company leases an office in Fort Lauderdale, Florida under an operating lease. The term expires November 2024. The annual base rent is subject to annual increases of 2.75%. As described within Note 10, the Company shares this space with a related party pursuant to the Shared Space Agreement, as defined below.

The Company leases an office in Israel under an operating lease. The term expires on December 31, 2022. The annual base rent is subject to increases of 4%.

The Company leases vehicles under operating leases that expire at various dates through 2024.

Many of these leases provide for payment by the Company, as the lessee, of taxes, insurance premiums, costs of maintenance and other costs which are expenses as incurred. Certain operating leases include escalation clauses and some of which may include options to extend the leases for up to 3 years.

The components of lease cost and supplemental balance sheet information for the Company's lease portfolio were as follows:

	Three Months ended September 30,		Nine Months ended September 30,	
	2022	2021	2022	2021
<b>Lease Cost</b>				
Operating lease cost, net of related party license fee	\$ 16	\$ 36	\$ 78	\$ 100
Variable lease cost	30	30	90	90
<b>Total lease cost</b>	<u>\$ 46</u>	<u>\$ 66</u>	<u>\$ 168</u>	<u>\$ 190</u>

	As of September 30, 2022	As of December 31, 2021
<b>Assets</b>		
Operating lease, right-of-use-asset	\$ 471	\$ 687
<b>Liabilities</b>		
Current		
Operating lease liabilities	\$ 248	\$ 307
Non-current		
Operating lease liabilities, net of current portion	220	385
Total lease liabilities	\$ 468	\$ 692
<b>Other information:</b>		
Weighted average remaining lease term - operating leases	1.90 years	2.49 years
Weighted-average discount rate - operating leases	7.46%	7.66%

The Company records operating lease payments to lease expense using the straight-line method. The Company's lease expense was \$46 and \$168 for the three and nine months ended September 30, 2022, respectively, included in general and administrative expenses which is net of the related party license fee of \$66 and \$173 for the three and nine months ended September 30, 2022, respectively (see Note 10). The Company's lease expense was \$66 and \$190 for the three and nine months ended September 30, 2021, included in general and administrative expenses which is net of the related party license fee of \$47 and \$141 for the three and nine months ended September 30, 2021, respectively.

#### Note 8 – Convertible Note and Long-Term Debt

On July 16, 2021 (the "Effective Date"), the Company entered into a loan facility (the "Kreos Loan Agreement") with Kreos Capital VI (Expert Fund) LP (the "Lender"). Under the Kreos Loan Agreement, the Lender will provide the Company with access to term loans in an aggregate principal amount of up to \$12,000 (the "Loan") in three tranches as follows: (a) on the Effective Date, a loan in the aggregate principal amount of \$4,000 (the "Convertible Note", or "Tranche A"), (b) on the Effective Date, a loan in the aggregate principal amount of \$5,000 ("Tranche B"), and (c) available until December 31, 2021, a loan in the aggregate principal amount of \$3,000 ("Tranche C", together with Tranche B, the "Long-term Debt"). The Kreos Loan Agreement contains customary representations and warranties, indemnification provisions in favor of the Lender, events of default and affirmative and negative covenants, including, among others, covenants that limit or restrict the Company's ability to, among other things, incur additional indebtedness, merge or consolidate, make acquisitions, pay dividends or other distributions or repurchase equity, make investments, dispose of assets and enter into certain transactions with affiliates, in each case subject to certain exceptions. Outstanding borrowings under the Loan are secured by a first priority security interest on substantially all of the personal property assets of the Company, including the Company's material intellectual property and equity interests in its subsidiaries. There are no liquidity or financial covenants.

The Convertible Note and Tranche B were funded on the Effective Date. As of December 31, 2021, the Company drew down the full \$3,000 aggregate principal amount of Tranche C.

The Convertible Note requires forty-eight monthly interest only payments at 7.75% per annum commencing after the Effective Date and thereafter full payment of the then outstanding principal balance of the Convertible Note on July 1, 2025. The Kreos Loan Agreement contains features that would permit the Lender to convert all or any portion of the outstanding principal balance of the Convertible Note at any time, pursuant to which the converted part of the Convertible Note will be converted into that number of shares of common stock of the Company to be issued to the Lender at a price per share equal to the conversion price, of \$28 per share. Following the conversion of any portion of the outstanding principal balance of the Convertible Note, the principal balance of the Convertible Note remaining outstanding shall continue to bear interest at 7.75% per annum. The Tranche B loan requires interest only monthly payments commencing on the Effective Date until September 30, 2022 and, thereafter, thirty-three monthly payments of principal and interest accrued thereon until June 1, 2025. The Tranche C loan requires interest only monthly payments commencing on the date of the draw down until September 30, 2022 and, thereafter, thirty-two monthly payments of principal and interest accrued thereon until June 1, 2025.

In connection with the Kreos Loan Agreement, the Company also issued to the Lender a warrant (“Warrant”), dated July 16, 2021, to purchase up to 9,547 shares of the Company’s common stock, at an exercise price of \$20.948 per share, payable in cash or on a cashless basis according to the formula set forth in the Warrant. The exercise price of the Warrant and the number of shares issuable upon exercise of the Warrant are subject to adjustments for stock splits, combinations, stock dividends or similar events. The Warrant is exercisable until the date that is ten years after the date of issuance. The Company concluded that the Warrant is indexed to its own stock and, accordingly is classified as equity. See note 11 for further discussion of the Warrant.

The Company treated Tranche A, Tranche B and Tranche C, and the Warrant as three separate freestanding financial instruments with the proceeds received in connection with the transaction allocated amongst the instruments based on relative fair value. The proceeds received in connection with the transaction allocated amongst the instruments based on relative fair value resulted in \$165 being allocated to the Warrant and a corresponding amount recorded as a debt discount to the Convertible Note and Long-term Debt. The Company recorded an aggregate debt discount of \$845 related to the Loan, inclusive of the debt discount of \$165 in connection to the Warrant, which will be amortized to interest expense over the term of each respective tranche using the effective interest method. The Company also paid \$540 in cash for debt issuance costs. Additionally, per the Kreos Loan Agreement, with respect to the Long-term Debt, there is an advance payment of \$274 that is recorded as a debt discount. The advance payment represents the last month’s payment in relation to the Long-term Debt. There is also an end of loan payment of \$140 which is included on the balance sheet as a liability within the Long-term Debt and also within the total aggregate debt discount of \$845. Subsequent to the issuance of the consolidated financial statements for the year ended December 31, 2021, the Company identified that the current portion of long-term debt was incorrectly classified as non-current on the balance sheet as of December 31, 2021. Management evaluated this misstatement and concluded it was not material to the financial statements and therefore, the Company elected to correct the current portion of long-term debt as of December 31, 2021 in these condensed consolidated financial statements for comparative purposes.

For the nine months ended September 30, 2022, interest expense for the Loan was as follows:

Contractual interest expense	\$	803
Amortization of debt issuance costs		195
Total interest expense	\$	<u>998</u>

For the three months ended September 30, 2022, interest expense for the Loan was as follows:

Contractual interest expense	\$	268
Amortization of debt issuance costs		70
Total interest expense	\$	<u>338</u>

Future principal payments under the Convertible Note as of September 30, 2022 are as follows:

<b>Years Ending December 31,</b>	<b>Amount</b>
2022	\$ -
2023	-
2024	-
2025	4,000
Total future principal payments	4,000
Less unamortized debt issuance costs	(123)
Total balance	<u>\$ 3,877</u>

Future principal payments under the Long-term Debt as of September 30, 2022 are as follows:

<b>Years Ending December 31,</b>	<b>Amount</b>
2022	\$ 702
2023	2,714
2024	2,983
2025	1,601
Total future principal payments	8,000
End of loan payments	140
Less unamortized debt issuance costs	(436)
Total term-debt balance	\$ 7,704
Less current portion of long-term debt	(2,453)
Total long-term debt	\$ 5,251

## **Note 9 – Commitments and Contingencies**

### **Royalties to the IIA**

The Company has received grants from the Government of the State of Israel through the Israeli National Authority for Technical Innovation (the “IIA”) for the financing of a portion of its research and development expenditures. The total amount that was received and recorded between the periods ending December 31, 2011 through 2016 was \$1,332. No amounts were received during the three and nine months ended September 30, 2022 and 2021. The Company has a contingent obligation to the IIA for the total amount received along with the accumulated LIBOR (“London Interbank Offering Rate”) interest to date in the amount of \$1,426 and \$1,419 as of September 30, 2022 and December 31, 2021, respectively. This obligation is repaid in the form of royalties on revenues generated in any fashion with a rate that is currently at 4% (which may be increased under certain circumstances). The Company may be obligated to pay up to 100% (which may be increased under certain circumstances) of the U.S. dollar-linked value of the grants received, plus interest at the rate of 12-month LIBOR.

Repayment of the grants is contingent upon the successful completion of the Company’s R&D programs and generating sales. The Company has no obligation to repay these grants if the R&D program fails, is unsuccessful, or aborted, or if no sales are generated. The Company has recorded an immaterial expense for the three and nine months ended September 30, 2022 and 2021, and an immaterial liability as of September 30, 2022 and December 31, 2021.

### **Royalty Payment Rights on Royalty Payment Rights Certificates**

The Company filed a Certificate of Designation of Preferences, Rights and Limitations (the “Certificate of Designation”), establishing the rights and preferences of the holders of the Series A Convertible Preferred Stock, including certain directors and officers of the Company (the “Royalty Payment Rights”). As set forth in the Certificate of Designation, the Royalty Payment Rights initially entitled the holders in aggregate, to a royalty in an amount of:

- 3% of net sales subject to a maximum in any calendar year equal to the total dollar amount of Units closed on in the Company’s 2017 private placement (the “2017 Private Placement”); and
- 5% of licensing proceeds subject to a maximum in any calendar year equal to the total dollar amount of Units closed on in the 2017 Private Placement.

In addition, in connection with completion of the 2017 Private Placement, the Company issued the placement agent royalty payment rights certificates (the “Placement Agent Royalty Payment Rights Certificates”) which grants the placement agent, and its designees, the right to receive, in the aggregate, 10% of the amount of payments paid to the holders of the Series A Convertible Preferred Stock, or the holders of the Royalty Payment Rights Certificates (the “Royalty Payment Rights Certificates”), upon the conversion of the Series A Convertible Preferred Stock into shares of the Company’s common stock. The Placement Agent Royalty Payment Rights Certificates are on substantially similar terms as the Royalty Payment Rights of the Series A Convertible Preferred Stock.

The Royalty Payment Rights Certificate obligation and Placement Agent Royalty Payment Rights Certificate obligation (the “Contingent Royalty Obligation”) was recorded as a liability at fair value as “Contingent royalty obligation” in the consolidated balance sheets as of September 30, 2022 and December 31, 2021 (see Contingent Royalty Obligation below). The fair value at inception was allocated to the royalty rights and the residual value was allocated to the preferred shares and recorded as equity.

The Company amended its Certificate of Designation to modify the Royalty Payment Rights when the Company consummated its Initial Public Offering (“IPO”) on February 16, 2018, at which time the Company converted the Series A Convertible Preferred Stock into shares of the Company’s common stock and issued the Royalty Payment Rights Certificates. Pursuant to the terms of the Royalty Payment Rights Certificates, if and when the Company generates sales of the current and potential future versions of the Pure-Vu System, including disposables, parts, and services, or if the Company receives any proceeds from the licensing of the current and potential future versions of the Pure-Vu System, then the Company will pay to the holders of the Royalty Payment Rights Certificates a royalty (the “Royalty Amount”) equal to, in the aggregate, in royalty payments in any calendar year for all products:

- 3% of Net Sales\* for commercialized product directly; and

- 5% of any Licensing Proceeds\*\* for rights to commercialize the product if sublicensed by the Company to a third-party.

\* Notwithstanding the foregoing, with respect to Net Sales based Royalty Amounts, (a) no Net Sales based Royalty Amount shall begin to accrue or become payable until the Company has first generated, in the aggregate, since its inception, Net Sales equal to \$20,000 (the “Initial Net Sales Milestone”), and royalties shall only be computed on, and due with respect to, Net Sales generated in excess of the Initial Net Sales Milestone, and (b) the total Net Sales based Royalty Amount due and payable in any calendar year shall be subject to a royalty cap amount per calendar year of \$30,000. “Net Sales” is defined in the Royalty Payment Rights Certificates. The Company has not reached the Initial Net Sales Milestone as of September 30, 2022.

\*\* Notwithstanding the foregoing, with respect to Licensing Proceeds based Royalty Amounts, (a) no Licensing Proceeds based Royalty Amount shall begin to accrue or become payable until the Company has first generated, in the aggregate, since its inception, Licensing Proceeds equal to \$3,500 (the “Initial Licensing Proceeds Milestone”), and royalties shall only be computed on, and due with respect to, Licensing Proceeds in excess of the Initial Licensing Proceeds Milestone and (b) the total Licensing Proceeds based Royalty Amount due and payable in any calendar year shall be subject to a royalty cap amount per calendar year of \$30,000. “Licensing” Proceeds is defined in the Royalty Payment Rights Certificate. The Company has not reached the Initial Licensing Proceeds Milestone as of September 30, 2022.

The Royalty Amount will be payable up to the later of (i) the latest expiration date of the Company’s patents issued as of December 22, 2016, or (ii) the latest expiration date of any pending patents as of December 22, 2016 that have since been issued or may be issued in the future (which is currently March 2037). Following the expiration of all such patents, the holders of the Royalty Payment Rights Certificates and the holders of the Placement Agent Royalty Payment Rights Certificates will no longer be entitled to any further royalties for any period following the latest to occur of such patent expiration.

On February 16, 2018, the date of the closing of the IPO, (1) the amendment to the Certificate of Designation became effective, (2) all outstanding shares of Series A Convertible Preferred Stock were converted into shares of the Company’s common stock pursuant to a mandatory conversion, and (3) the Royalty Payment Rights Certificates were issued to the former holders of the Series A Convertible Preferred Stock.

#### **Contingent Royalty Obligation**

The Contingent Royalty Obligation was recorded as a non-current liability at fair value in the condensed consolidated balance sheets at September 30, 2022 and December 31, 2021 in the amount of \$1,789 and \$1,760, respectively. The Company recorded a gain on change in fair value of Contingent Royalty Obligation in the amount of \$34 for the three months ended September 30, 2022 and a loss of \$29 for the nine months ended September 30, 2022. The Company recorded a loss on change in fair value of Contingent Royalty Obligation in the amount of \$35 and \$152 for the three and nine months ended September 30, 2021.

## Manufacturing Component Purchase Obligations

The Company utilizes two outsourcing partners to manufacture its workstation and disposable portions of the Pure-Vu System, and to perform final assembly and testing of finished products. These outsourcing partners acquire components and build product based on demand information supplied by the Company. As of September 30, 2022, the Company expects to pay \$211 under manufacturing-related supplier arrangements within the next year, substantially all of which is noncancelable.

## Other Commitments and Contingencies

The Company has a severance contingency for severance payments to its CEO, COO, and CFO in the aggregate of \$1,428, in the event that they are terminated without cause or leave due to good reason, as outlined in their employee agreements. Management estimates that the likelihood of payment is remote; therefore, no liability was reflected in these condensed consolidated financial statements.

## Note 10 – Related Party Transactions

### Shared Space Agreement

In January 2020, the Company entered into a license agreement (the “Shared Space Agreement”) with Orchestra BioMed, Inc. (OBIO), formerly a greater than 5% holder of the Company’s common stock and entity in which David Hochman, the Chairman of the Company’s board of directors, serves as the Chairman of the board of directors and Chief Executive Officer, and Darren Sherman, a member of the Company’s board of directors, serves as a director and as President and Chief Operating Officer. Pursuant to the Shared Space Agreement, the Company granted a license to OBIO for the use of portions of the office space not being used by the Company in the Company’s leased facility in Fort Lauderdale, Florida (the “Premises”), and a proportionate share of common areas of such Premises, which previously covered approximately 35% of the Premises and was to expand incrementally to approximately 60 to 70% of the Premises by September 2024. In May 2022, the Company entered into an amendment to the Shared Space Agreement. Pursuant to the amendment, the area covered by the Shared Space Agreement was expanded to 95% of the premises and the aggregate license fees will generally range from approximately \$212 to approximately \$270 in any given calendar year during the term of the Shared Space Agreement until the termination of the lease in November 2024. During the three and nine months ended September 30, 2022, the Company recorded a license fee of \$66 and \$173 in relation to the Shared Space Agreement. During the three and nine months ended September 30, 2021, the Company recorded license fee of \$47 and \$141, respectively, in relation to the Shared Space Agreement. This amount is netted with rent expense in general and administrative expenses.

## Note 11 – Share-based compensation

The following table sets forth total non-cash share-based compensation for the issuance of common stock, options to purchase common stock, warrants to purchase common stock, and restricted stock unit awards by operating statement classification for the three and nine months ended September 30, 2022 and 2021:

	Three Months ended September 30,		Nine Months ended September 30,	
	2022	2021	2022	2021
Research and development	\$ 96	\$ 145	\$ 292	\$ 448
Sales and marketing	60	71	184	293
General and administrative	285	632	947	2,036
Total	\$ 441	\$ 848	\$ 1,423	\$ 2,777

For the nine and three months ended September 30, 2022, the Company recorded \$283 and \$868, respectively, for share-based compensation expense related to stock options. For the three and nine months ended September 30, 2021, the Company recorded \$536 and \$1,886, respectively, for share-based compensation expense related to stock options.

As of September 30, 2022, unamortized share-based compensation for stock options was \$1,244, with a weighted-average recognition period of 0.93 years.

For the three and nine months ended September 30, 2022, the Company recorded \$0 and \$57, respectively, for share-based compensation expense related to warrants. For the three and nine months ended September 30, 2021, the Company recorded \$89 and \$246, respectively, for share-based compensation expense related to warrants.

For the three and nine months ended September 30, 2022, the Company recorded \$158 and \$498, respectively, for share-based compensation expense related to restricted stock units. For the three and nine months ended September 30, 2021, the Company recorded \$223 and \$645, respectively, for share-based compensation expense related to restricted stock units.

As of September 30, 2022, unamortized stock compensation for restricted stock units was \$417, with a weighted-average recognition period of 0.85 years.

#### *Stock option and warrant activity*

A summary of the Company's stock option and warrant activity is as follows:

	<b>Shares Underlying Options</b>	<b>Weighted Average Exercise Price</b>	<b>Shares Underlying Warrants</b>	<b>Weighted Average Exercise Price</b>
Outstanding at December 31, 2021	307,592	\$ 54.10	420,247	\$ 54.76
Granted	101,497	\$ 8.83	6,000	\$ 10.00
Expired	(6,348)	\$ 66.36	(26,670)	\$ 101.62
Cancelled	-	\$ -	(6,000)	\$ 56.60
Forfeited	(3,104)	\$ 11.74	-	\$ -
Outstanding at September 30, 2022	<u>399,637</u>	\$ 42.76	<u>393,577</u>	\$ 50.86
Exercisable at September 30, 2022	280,061	\$ 54.25	393,577	\$ 50.86

#### *Restricted Stock Units*

A summary of the Company's restricted stock unit awards activity is as follows:

	<b>Number of Shares</b>	<b>Weighted Average Grant Date Fair Value</b>
Nonvested at December 31, 2021	25,120	\$ 44.77
Granted	18,250	9.08
Vested	(18,919)	39.87
Nonvested at September 30, 2022	<u>24,451</u>	<u>\$ 21.93</u>

As of December 31, 2021, there were 3,138 vested and unissued restricted stock units. These restricted stock units were issued as common stock during the nine months ended September 30, 2022.

#### *Issuance of Common Stock*

On January 5, 2022, non-employee members of the Board of Directors were granted an aggregate of 24,458 shares of fully-vested common stock with a fair value of \$9.60 per share of common stock, as compensation, in lieu of \$235 of cash compensation, for service as directors for 2022. The Company recorded \$58 and \$177 in expense for director services during the three and nine months ended September 30, 2022, respectively. The Company recorded \$58 in prepaid expenses for director services as of September 30, 2022.

#### *Issuance of Warrants to Purchase Common Stock*

In February 2020, the Company entered into a services agreement whereby it agreed to issue warrants to purchase 6,000 shares of common stock of the Company. The warrants fully vested over a one-year period on a monthly basis and expire three years from the date of issuance and were exercisable at weighted average exercise price equal to \$56.60 per share of common stock. In March 2022, the Company granted new warrants as a replacement to the vested warrants held by the service provider, for which all the share-based compensation expense had been recognized in prior fiscal periods. The issuance of new warrants concurrently with the cancellation of the existing warrants was treated as a modification. The Company agreed to issue replacement warrants to purchase 6,000 shares of common stock of the Company exercisable at a price equal to \$10 per share of common stock. The replacement warrants immediately vested upon issuance and expire three years from the date of issuance. As a result, the Company recognized \$0 and 26 of share-based compensation for the three and nine months ended September 30, 2022, related to the incremental fair value which is equal to the excess of the fair value of the new stock options granted over the fair value of the original award on the cancellation date.

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

*The following discussion and analysis of our financial condition and results of operations should be read together with our financial statements and the related notes and the other financial information included elsewhere in this Quarterly Report. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below and elsewhere in this Quarterly Report, particularly those under "Risk Factors."*

*All share amounts presented in this Item 2 give effect to the 1-for-20 reverse stock split of our outstanding shares of common stock, par value \$0.0001 per share ("common stock"), that occurred on July 25, 2022.*

### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report on Form 10-Q contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 under Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements include statements with respect to our beliefs, plans, objectives, goals, expectations, anticipations, assumptions, estimates, intentions and future performance, and involve known and unknown risks, uncertainties and other factors, which may be beyond our control, and which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. All statements other than statements of historical fact are statements that could be forward-looking statements. You can identify these forward-looking statements through our use of words such as "may," "can," "anticipate," "assume," "should," "indicate," "would," "believe," "contemplate," "expect," "seek," "estimate," "continue," "plan," "point to," "project," "predict," "could," "intend," "target," "potential" and other similar words and expressions of the future.

There are a number of important factors that could cause the actual results to differ materially from those expressed in any forward-looking statement made by us. These factors include, but are not limited to:

- our limited operating history;
- our history of operating losses in each year since inception and expectation that we will continue to incur operating losses for the foreseeable future;
- our current and future capital requirements to support our development and commercialization efforts for the Pure-Vu System and our ability to satisfy our capital needs;
- our ability to remain compliant with the requirements of The Nasdaq Capital Market for continued listing;
- our dependence on the Pure-Vu System, our sole product;
- our ability to commercialize the Pure-Vu System;
- our Pure-Vu System and the procedure to cleanse the colon in preparation for colonoscopy are not currently separately reimbursable through private or governmental third-party payors;
- our ability to obtain approval or certification from regulatory or other competent entities in different jurisdictions for the Pure-Vu System;
- our dependence on third-parties to manufacture the Pure-Vu System;
- our ability to maintain or protect the validity of our patents and other intellectual property;
- our ability to retain key executives and medical and science personnel;
- our ability to internally develop new inventions and intellectual property;
- interpretations of current laws and the passages of future laws;
- acceptance of our business model by investors;

- the accuracy of our estimates regarding expenses and capital requirements
- our ability to adequately support growth
- our ability to project the hospital medical device environment considering the impact of COVID-19, which continues to evolve; and
- our ability to predict the financial impact of inflation on costs such as labor, freight and materials

The foregoing does not represent an exhaustive list of matters that may be covered by the forward-looking statements contained herein or risk factors that we are faced with that may cause our actual results to differ from those anticipated in our forward-looking statements. Please see “Part II—Item 1A—Risk Factors” for additional risks which could adversely impact our business and financial performance.

All forward-looking statements are expressly qualified in their entirety by this cautionary notice. You are cautioned not to place undue reliance on any forward-looking statements, which speak only as of the date of this report or the date of the document incorporated by reference into this report. We have no obligation, and expressly disclaim any obligation, to update, revise or correct any of the forward-looking statements, whether as a result of new information, future events or otherwise. We have expressed our expectations, beliefs and projections in good faith and we believe they have a reasonable basis. However, we cannot assure you that our expectations, beliefs or projections will result or be achieved or accomplished.

## Overview

We have developed the Pure-Vu System, a medical device that has been cleared by the U.S. Food and Drug Administration (the “FDA”) to help facilitate the cleansing of a poorly prepared gastrointestinal tract during colonoscopy and to help facilitate upper gastrointestinal (“GI”) endoscopy procedures. The Pure-Vu System is also CE marked in the European Economic Area (EEA) for use in colonoscopy. The Pure-Vu System integrates with standard and slim colonoscopes, as well as gastroscopes, to improve visualization during colonoscopy and upper GI procedures while preserving established procedural workflow and techniques. Through irrigation and evacuation of debris, the Pure-Vu System is designed to provide better-quality exams. Challenges exist for inpatient colonoscopy and endoscopy, particularly for patients who are elderly, with comorbidities, or active bleeds, where the ability to visualize, diagnose and treat is often compromised due to debris, including fecal matter, blood, or blood clots. We believe this is especially true in high acuity patients, like GI bleeding where the existence of blood and blood clots can impair a physician’s view and removing them can be critical in allowing a physician the ability to identify and treat the source of bleeding on a timely basis. We believe use of the Pure-Vu System may lead to positive outcomes and lower costs for hospitals by safely and quickly improving visualization of the colon and upper GI tract, potentially enabling effective diagnosis and treatment without delay. In multiple clinical studies to date, involving the treatment of challenging inpatient and outpatient cases, the Pure-Vu System has consistently helped achieve adequate bowel cleanliness rates greater than 95% following a reduced prep regimen. We also believe that the technology may be useful in the future as a tool to help reduce user dependency on conventional pre-procedural bowel prep regimens. Based on our review and analysis of 2019 market data and 2021 projections for the U.S. and Europe, as obtained from iData Research Inc., we believe that during 2021 approximately 1.5 million inpatient colonoscopy procedures were performed in the U.S. and approximately 4.8 million worldwide. Upper GI bleeds occurred in the U.S. at a rate of approximately 400,000 cases per year in 2019, according to iData Research Inc. The Pure-Vu System has been assigned an ICD-10 code in the US. The system does not currently have unique codes with any private or governmental third-party payors in any other country or for any other use; however, we intend to pursue reimbursement activities in the future, particularly in the outpatient colonoscopy market. We received 510(k) clearance in February 2022 from the FDA for our Pure-Vu EVS System and recently commenced commercialization of this product.

## Recent Developments

On October 24, 2022, the Company announced that three abstracts featuring positive clinical data from the feasibility and efficacy study of the Pure-Vu EVS conducted by the Minneapolis VA Health Care System were presented in poster sessions at the ACG’s 2022 Annual Scientific Meeting. The posters presented the results of using the Pure-Vu EVS System on inpatient colonoscopies performed at an ICU bedside, and also featured a case study utilizing the Pure-Vu EVS System during inpatient colonoscopies for patients with a left ventricular assist device.

On October 6, 2022, the Company announced that it has been granted a new patent for methods embodied by its Pure-Vu<sup>®</sup> System by the USPTO. The new patent covers methods for clearing of fecal matter comprised of particles of various sizes and compositions from the wall of a colon or other body lumen for diagnostic inspection. These methods are further adapted for application in patients who have undergone a restricted scope of preparation to reduce and/or remediate the particle structure of colon contents, or no preparation prior to a colonoscopy.

On September 29, 2022, the Company announced that it has officially been recognized as a sole source provider and small business by the Veterans Health Administration (VHA). The VHA is the largest integrated health care system in the U.S., and provides care to over nine million veterans. The special designation will provide the Company with direct access to the VHA's procurement arm, thereby streamlining the purchasing and contracting process.

### **Financial Operations Overview**

We have generated limited revenues to date from the sale of products. We have never been profitable and have incurred significant net losses each year since our inception, including a loss of \$14.9 million for the nine months ended September 30, 2022, and we expect to continue to incur net operating losses for the foreseeable future. As of September 30, 2022, we had \$13.3 million in cash and cash equivalents and an accumulated deficit of \$137.7 million. We expect our expenses to increase in connection with our ongoing activities to commercialize and market the Pure-Vu System, including additional expenditures in sales and marketing personnel, clinical affairs and manufacturing. Accordingly, we will need additional financing to support our continuing operations. We will seek to fund our operations through public or private equity or debt financings or other sources, which may include collaborations with third parties and evaluating other strategic alternative transactions. The sale of equity and convertible debt securities may result in dilution to our shareholders and certain of those securities may have rights senior to those of our common shares. If we raise additional funds through the issuance of preferred stock, convertible debt securities or other debt financing, these securities or other debt could contain covenants that would restrict our operations. Any other third party funding arrangement could require us to relinquish valuable rights. The source, timing and availability of any future financing will depend principally upon market conditions, and, more specifically, on the progress of our product and clinical development programs as well as commercial activities. Adequate additional financing may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategy. We will need to generate significant revenues to achieve profitability, and we may never do so. Additionally, the effects of inflation on costs such as labor, freight and materials as well as the ongoing volatility in the financial markets may negatively affect the financial performance and the liquidity of the business. Furthermore, the potential impact of COVID-19 on the operation of our business, related to possible travel advisories and restrictions and production delays, are highly uncertain and cannot be predicted.

We expect to continue to incur significant expenses and increasing operating losses for at least the next several years as we continue to expand our commercial launch. We expect our expenses will increase in connection with our ongoing activities, as we:

- continue to expand commercialization;
- scale manufacturing with our contracted partners for both the workstation and disposable portions of the Pure-Vu System;
- develop future generations of the Pure-Vu System to improve user interface, optimize handling and reduce the cost structure;
- raise sufficient funds to effectuate our business plan, including commercialization activities and reimbursement efforts related to our Pure-Vu System and our research and development activities, including clinical and regulatory development, and the continued development and enhancement of our Pure-Vu System; and
- operate as a public company.

## **Critical Accounting Policies and Estimates**

Our accounting policies are essential to understanding and interpreting the financial results reported on the condensed consolidated financial statements. The significant accounting policies used in the preparation of our condensed consolidated financial statements are summarized in Note 3 to the consolidated financial statements and notes thereto found in our Annual Report on Form 10-K for the year ended December 31, 2021. Certain of those policies are considered to be particularly important to the presentation of our financial results because they require us to make difficult, complex or subjective judgments, often as a result of matters that are inherently uncertain.

During the nine months ended September 30, 2022, there were no material changes to matters discussed under the heading “Critical Accounting Policies and Significant Judgement and Estimates” in Part II, Item 7 of the Company’s Annual Report on Form 10-K for the year ended December 31, 2021.

## **Results of Operations**

### *Comparison of Three Months Ended September 30, 2022 and 2021*

#### **Revenue**

Revenue totaled \$278.0 thousand for the three months ended September 30, 2022, compared to \$141.0 thousand for the three months ended September 30, 2021. The \$137.0 thousand increase was attributed to sales of the new EVS product recently launched.

#### **Cost of Revenue**

Cost of revenue for the three months ended September 30, 2022 totaled \$83.0 thousand, compared to \$251.0 thousand for the three months ended September 30, 2021. The decrease of \$168.0 thousand was primarily attributed to a decrease of inventory impairment of \$186.0 thousand partially offset by an increase of \$18.0 thousand for the cost of our system disposable evaluation and commercial units.

#### **Research and Development**

Research and development expenses include cash and non-cash expenses relating to the advancement of our development and clinical programs for the Pure-Vu System. We have research and development capabilities in electrical and mechanical engineering with laboratories in our facility in Israel for development and prototyping, and electronics design and testing. We also use consultants and third-party design houses to complement our internal capabilities.

Research and development expenses for the three months ended September 30, 2022 totaled \$1.6 million, compared to \$1.2 million for the three months ended September 30, 2021. The increase of \$0.4 million was primarily attributable to increases of \$0.2 million in clinical trial and related costs and \$0.2 million in salaries and other personnel related costs.

#### **Sales and Marketing**

Sales and marketing expenses include cash and non-cash expenses primarily related to our sales and marketing personnel and infrastructure supporting the commercialization of the second generation Pure-Vu System.

Sales and marketing expenses for the three months ended September 30, 2022 totaled \$1.3 million, compared to \$0.7 million for the three months ended September 30, 2021. The increase of \$0.6 million was primarily attributable to increases of \$0.5 million in salaries and other personnel related costs and \$0.1 million other sales and marketing costs.

#### **General and Administrative**

General and administrative expenses consist primarily of costs associated with our overall operations and being a public company. These costs include personnel, legal and financial professional services, insurance, investor relations, compliance related fees, and expenses associated with obtaining and maintaining patents.

General and administrative expenses for the three months ended September 30, 2022 totaled \$2.0 million, compared to \$2.3 million for the three months ended September 30, 2021. The \$0.3 million decrease is primarily attributed to a decrease of \$0.3 million in stock compensation.

#### **Other Income and Expenses**

Other expense, net for the three months ended September 30, 2022 totaled \$0.3 million compared to other expense of \$0.5 million for the three months ended September 30, 2021. The decrease of \$0.2 million in other expense net, was primarily attributable to a decrease of \$0.2 million in debt extinguishment expense.

#### ***Comparison of Nine months Ended September 30, 2022 and 2021***

#### **Revenue**

Revenue totaled \$483.0 thousand for the nine months ended September 30, 2022, compared to \$292.0 thousand for the nine months ended September 30, 2021. The increase of \$191.0 thousand is primarily attributed to sales of the new EVS product recently launched.

#### **Cost of Revenue**

Cost of revenue for the nine months ended September 30, 2022 totaled \$325.0 thousand, compared to \$321.0 thousand for the nine months ended September 30, 2021. The increase of \$4.0 thousand was primarily attributed to a net decrease of \$27.0 thousand in inventory impairment and an increase of \$31.0 thousand to the cost of our system disposable evaluation and commercial units.

#### **Research and Development**

Research and development expenses for the nine months ended September 30, 2022 totaled \$4.3 million, compared to \$4.0 million for the nine months ended September 30, 2021. The increase of \$0.3 million was primarily attributable to an increase of \$0.4 million in salaries and personnel costs, \$0.3 million in clinical studies, partially offset by a decrease of \$0.3 million in material costs and \$0.2 million in stock compensation.

#### **Sales and Marketing**

Sales and marketing expenses for the nine months ended September 30, 2022 totaled \$3.6 million, compared to \$2.2 million for the nine months ended September 30, 2021. The increase of \$1.4 million was primarily attributable to increases of \$1.3 million in salaries and other personnel related cost to support our commercialization efforts of the Pure-Vu System, \$0.2 million in demonstration product and \$0.1 million in other sales and marketing costs offset by decreases of \$0.2 million professional services and \$0.1 million in share-based compensation and other sales and marketing costs.

#### **General and Administrative**

General and administrative expenses for the nine months ended September 30, 2022 totaled \$6.2 million, compared to \$7.1 million for the nine months ended September 30, 2021. The decrease of \$0.9 million was primarily attributable to decreases of \$1.0 million in share-based compensation, \$0.1 million in professional services and \$0.1 million in investor and public relation fees, offset with a \$0.2 million increase in salaries and other personnel related costs and \$0.1 million in travel costs and other general and administrative costs.

#### **Other Income and Expenses**

Other expense, net for the nine months ended September 30, 2022 totaled \$1.1 million compared to \$0.8 million for the nine months ended September 30, 2021. The increase of \$0.3 million in other expense, was primarily attributable to an increase of \$0.5 million in finance expense offset with a decrease of \$0.1 million in loss on change in the fair value of contingent royalty and a \$0.2 million decrease in loss of debt extinguishment.

## Liquidity and Capital Resources

To date, we have generated minimal revenues, experienced negative operating cash flows and have incurred substantial operating losses from our activities. We expect operating costs will increase significantly as we incur costs associated with commercialization activities related to the Pure-Vu System. We expect to continue to fund our operations primarily through utilization of our current financial resources, future product sales, the issuance of debt or equity, as well as through other strategic alternative transactions. As of September 30, 2022, our accumulated deficit was \$137.7 million. Such conditions raise substantial doubts about our ability to continue as a going concern.

In March 2021, we entered into an Equity Distribution Agreement (the “Equity Distribution Agreement”) with Oppenheimer & Co. Inc. (“Oppenheimer”), under which we may offer and sell from time to time common shares having an aggregate offering price of up to \$25.0 million. During the three and nine months ended September 30, 2022, we sold approximately 258 thousand and 565 thousand shares of our common stock under this agreement, resulting in net cash proceeds of \$1.3 million and \$4.4 million, after deducting issuance costs of \$55.0 thousand and \$0.2 million, respectively. From October 1, 2022 to November 14, 2022, the Company issued and sold approximately 1.6 million common shares of our common stock under this agreement, resulting in net cash proceeds of approximately \$5.5 million, after deducting issuance costs \$171.0 thousand.

Rising inflation and financial market volatility may adversely impact our ability to enter into, modify, and negotiate favorable terms and conditions relative to equity and debt financing initiatives. The uncertain financial markets, potential disruptions in supply chains, and changing priorities could also affect our ability to enter into key agreements. COVID-19 and government measures taken in response have also had an impact, both direct and indirect, on businesses and commerce, as worker shortages have occurred; supply chains have been disrupted; facilities and production have been suspended; and demand for certain goods and services, such as certain medical services and supplies, have spiked, while demand for other goods and services have fallen. The future progression of the outbreak and its longer-term effects on our business and operations continue to evolve and are still uncertain. We and our third-party contract manufacturers, contract research organizations, and clinical sites may also face disruptions in procuring items that are essential to our research and development activities, including, for example, medical and laboratory supplies, in each case, that are sourced from abroad or for which there are shortages because of ongoing efforts related to the outbreak in certain parts of the world. These disruptions may negatively impact our sales, results of operations, financial condition, and liquidity in 2022 and into 2023.

As of September 30, 2022, we had total current assets of \$15.5 million and total current liabilities of \$5.5 million resulting in working capital of \$10.0 million. Net cash used in operating activities for the nine months ended September 30, 2022 was \$13.4 million, which includes a net loss of \$14.9 million, offset by non-cash expenses principally related to share-based compensation expense of \$1.4 million, depreciation and amortization of \$0.4 million, amortization of debt issuance costs of \$0.2 million, issuance of common stock for board of directors’ compensation of \$0.2 million, amortization of operating lease right-of-use asset of \$0.3 million and inventory impairment of \$0.2 million, offset by changes in net working capital items principally related to the increase in prepaid expenses and other current assets of \$0.2 million, amortization of operating lease liability of \$0.3 million and an increase in inventory of \$0.8 million.

Net cash used in investing activities for the nine months ended September 30, 2022 totaled \$0.2 million related to the purchase of fixed assets.

Net cash provided by financing activities for the nine months ended September 30, 2022 totaled \$4.4 million related to proceeds from issuance of common shares pursuant to at-the-market issuance registered offerings of \$4.5 million, offset by financing fees related to the “at-the-market” offerings of \$0.1 million.

As of September 30, 2022, we had cash and cash equivalents of \$13.3 million. We will need to raise significant additional capital to continue to fund operations. We may seek to sell common or preferred equity, convertible debt securities or seek other debt financing. In addition, we may seek to raise cash through collaborative agreements or from government grants, as well as evaluate other strategic alternative transactions. The sale of equity and convertible debt securities may result in dilution to our shareholders and certain of those securities may have rights senior to those of our common shares. If we raise additional funds through the issuance of preferred stock, convertible debt securities or other debt financing, these securities or other debt could contain covenants that would restrict our operations. Any other third-party funding arrangement could require us to relinquish valuable rights. The source, timing and availability of any future financing will depend principally upon market conditions, and, more specifically, on the progress of our product and clinical development programs as well as commercial activities. Funding may not be available when needed, at all, or on terms acceptable to us. Lack of necessary funds may require us, among other things, to delay, scale back or eliminate expenses including those associated with our planned product development, clinical trial and commercial efforts.

## *Shelf Registration Statement*

On March 16, 2021, we filed a shelf registration statement (File No. 333-254343) with the Securities and Exchange Commission (the “2021 Shelf Registration Statement”), which was declared effective on March 26, 2021, that allows us to offer, issue and sell up to a maximum aggregate offering price of \$100.0 million of any combination of our common stock, preferred stock, warrants, debt securities, subscription rights and/or units from time to time, together or separately, in one or more offerings. As of September 30, 2022, we have not sold any securities under the 2021 Shelf Registration Statement, except as described below.

The 2021 Shelf Registration Statement includes a prospectus registering an at-the-market offering program pursuant to an Equity Distribution Agreement (the “Equity Distribution Agreement”) with Oppenheimer & Co. Inc. (“Oppenheimer”), entered into in March 2021, under which Oppenheimer may offer and sell from time to time shares of our common stock having an aggregate offering price of up to \$25.0 million, subject to the provisions of General Instruction I.B.6 of Form S-3, which provides that we may not sell securities in a public primary offering with a value exceeding one-third of our public float in any twelve-month period (approximately \$8.8 million beginning effective as of March 29, 2022, the date of filing of our most recent Annual Report on Form 10-K) unless our public float is at least \$75 million. If our public float meets or exceeds \$75.0 million at any time, we will no longer be subject to the restrictions set forth in General Instruction I.B.6 of Form S-3, at least until the filing of our next Section 10(a)(3) update as required under the Securities Act.

In March 2021, we entered into an Equity Distribution Agreement (the “Equity Distribution Agreement”) with Oppenheimer & Co. Inc. (“Oppenheimer”), under which we may offer and sell from time to time common shares having an aggregate offering price of up to \$25.0 million. During the three and nine months ended September 30, 2022, we sold approximately 258 thousand and 565 thousand shares of our common stock under this agreement, resulting in net cash proceeds of \$1.3 million and \$4.4 million, after deducting issuance costs of \$55.0 thousand and \$0.2 million, respectively.

Our ability to issue securities is subject to market conditions and other factors including, in the case of our debt securities, our credit ratings.

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

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined under SEC rules, such as relationships with unconsolidated entities or financial partnerships, which are often referred to as structured finance or special purpose entities, established for the purpose of facilitating financing transactions that are not required to be reflected on our balance sheets.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

Not Applicable.

### **Item 4. Controls and Procedures.**

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

Management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2022. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of September 30, 2022.

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

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter ended September 30, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II — OTHER INFORMATION

### Item 1. Legal Proceedings.

None.

### Item 1A. Risk Factors.

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Part I, “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2021, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K, for the year ended December 31, 2021 may not be the only risks facing the Company. Additional risks and uncertainties not currently known to the Company or that the Company currently deems to be immaterial also may materially adversely affect the Company’s business, financial condition and/or operating results.

There were no material changes to the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2021 filed with the Securities and Exchange Commission on March 29, 2022.

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

#### Unregistered Sales of Equity Securities

None.

#### Securities Act Exemptions

We deemed the offers, sales and issuances of the securities described above to be exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), in reliance on Section 4(a)(2) of the Securities Act, including Regulation D and Rule 506 promulgated thereunder, relative to transactions by an issuer not involving a public offering.

All certificates representing the securities issued in the transactions described above included appropriate legends setting forth that the securities had not been offered or sold pursuant to a registration statement and describing the applicable restrictions on transfer of the securities.

### Item 3. Defaults Upon Senior Securities.

None.

### Item 4. Mine Safety Disclosures.

Not applicable.

### Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	<a href="#">Bylaws, as amended</a>					X
4.1	<a href="#">Form of November 2018 Consultant Warrant</a>	10-Q	001-38389	4.4	11/14/2018	
31.1	<a href="#">Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a).</a>					X
31.2	<a href="#">Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a).</a>					X
32.1**	<a href="#">Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350).</a>					X
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document).					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibits 101).					X

\*\* Furnished, not filed.

**SIGNATURES**

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

**Motus GI Holdings, Inc.**  
(Registrant)

*Date: November 14, 2022*

By: /s/ Timothy P. Moran  
Name: Timothy P. Moran  
Title: *Chief Executive Officer and Director*  
*(Principal Executive Officer)*

*Date: November 14, 2022*

By: /s/ Andrew Taylor  
Name: Andrew Taylor  
Title: *Chief Financial Officer*  
*(Principal Financial Officer and Chief Accounting Officer)*

- I. Bylaws of Motus GI Holdings, Inc., dated September 20, 2016
  - II. Amendment to the Bylaws of Motus GI Holdings, Inc., dated August 24, 2022
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**BYLAWS  
OF  
MOTUS GI HOLDINGS, INC.  
(the "Corporation")**

ARTICLE I  
Stockholders

SECTION 1.

(a) Annual Meeting. The annual meeting of stockholders (any such meeting being referred to in these Bylaws as an "Annual Meeting") shall be held at the hour, date and place, if any, within or without the United States which is fixed by the Board of Directors of the Corporation (the "Board of Directors") which time, date and place may subsequently be changed at any time by vote of the Board of Directors.

(b) Registered Office. The address of the registered office of the Corporation in the State of Delaware shall be as stated in the Corporation's Certificate of Incorporation, as may be changed from time to time as provided by law. The Corporation may have other offices, both within and without the State of Delaware, as the board of directors of the Corporation (the "Board of Directors") from time to time shall determine or the business of the Corporation may require.

(c) Books and Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be maintained on any information storage device or method; provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to applicable law.

SECTION 2. Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be brought before an Annual Meeting only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Bylaw, who is entitled to vote at the meeting, and who complies with the notice procedures set forth in this Bylaw as to such nomination or business. For the avoidance of doubt, the foregoing clause (iii) shall be the exclusive means for a stockholder to bring nominations or business properly before an Annual Meeting (other than matters properly brought under Rule 14a-8 (or any successor rule) under the Securities Exchange Act of 1934, as amended (with the rules and regulations promulgated thereunder, the "Exchange Act")), and such stockholder must comply with the notice and other procedures set forth in Article I, Section 2 of this Bylaw to bring such nominations or business properly before an Annual Meeting. In addition to the other requirements set forth in this Bylaw, for any proposal of business (other than the nomination of persons for election to the Board of Directors) to be considered at an Annual Meeting, it must be a proper subject for action by stockholders of the Corporation under Delaware law.

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(2) For nominations or other business to be properly brought before an Annual Meeting by a stockholder pursuant to clause (iii) of Article I, Section 2(a)(1) of this Bylaw, the stockholder must (i) have given Timely Notice (as defined below) thereof in writing to the Secretary of the Corporation, (ii) have provided any updates or supplements to such notice at the times and in the forms required by this Bylaw and (iii) together with the beneficial owner(s), if any, on whose behalf the nomination or business proposal is made, have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by this Bylaw. To be timely, a stockholder's written notice shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the one-year anniversary of the preceding year's Annual Meeting; provided, however, that in the event the Annual Meeting is first convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no Annual Meeting were held in the preceding year, notice by the stockholder to be timely must be received by the Secretary of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made (such notice within such time periods shall be referred to as "Timely Notice"). Notwithstanding anything to the contrary provided herein, for the first Annual Meeting following the effective date of the Corporation's registration statement submitted with the U.S. Securities and Exchange Commission, a stockholder's notice shall be timely if received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such Annual Meeting is first made or sent by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's Timely Notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) provided, further, that the Corporation may require any proposed nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting, and any material interest in such business of each Proposing Person (as defined below);

(C) (i) the name and address of the stockholder giving the notice, as they appear on the Corporation's books, and the names and addresses of the other Proposing Persons (if any) and (ii) as to each Proposing Person, the following information: (a) the class or series and number of all shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Proposing Person or any of its affiliates or associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), including any shares of any class or series of capital stock of the Corporation as to which such Proposing Person or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future, (b) all Synthetic Equity Interests (as defined below) in which such Proposing Person or any of its affiliates or associates, directly or indirectly, holds an interest including a description of the material terms of each such Synthetic Equity Interest, including without limitation, identification of the counterparty to each such Synthetic Equity Interest and disclosure, for each such Synthetic Equity Interest, as to (x) whether or not such Synthetic Equity Interest conveys any voting rights, directly or indirectly, in such shares to such Proposing Person, (y) whether or not such Synthetic Equity Interest is required to be, or is capable of being, settled through delivery of such shares and (z) whether or not such Proposing Person and/or, to the extent known, the counterparty to such Synthetic Equity Interest has entered into other transactions that hedge or mitigate the economic effect of such Synthetic Equity Interest, (c) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the Corporation, (d) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, and (e) any performance-related fees (other than an asset based fee) that such Proposing Person, directly or indirectly, is entitled to based on any increase or decrease in the value of shares of any class or series of capital stock of the Corporation or any Synthetic Equity Interests (the disclosures to be made pursuant to the foregoing clauses (a) through (e) are referred to, collectively, as "Material Ownership Interests"), (iii) a description of the material terms of all agreements, arrangements or understandings (whether or not in writing) entered into by any Proposing Person or any of its affiliates or associates with any other person for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the Corporation and (iv) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder;

(D) (i) a description of all agreements, arrangements or understandings by and among any of the Proposing Persons, or by and among any Proposing Persons and any other person (including with any proposed nominee(s)), pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), and (ii) identification of the names and addresses of other stockholders (including beneficial owners) known by any of the Proposing Persons to support such nominations or other business proposal(s), and to the extent known the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); and

(E) a statement whether or not the stockholder giving the notice and/or the other Proposing Person(s), if any, will (i) deliver a proxy statement and form of proxy to holders of, in the case of a business proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by such Proposing Person to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder and/or (ii) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination (such statement, the "Solicitation Statement").

For purposes of this Article I of these Bylaws, the term “Proposing Person” shall mean the following persons: (i) the stockholder of record providing the notice of nominations or business proposed to be brought before a stockholders’ meeting, and (ii) the beneficial owner(s), if different, on whose behalf the nominations or business proposed to be brought before a stockholders’ meeting is made. For purposes of this Section 2 of Article I of these Bylaws, the term “Synthetic Equity Interest” shall mean any transaction, agreement or arrangement (or series of transactions, agreements or arrangements), including, without limitation, any derivative, swap, hedge, repurchase or so-called “stock borrowing” agreement or arrangement, the purpose or effect of which is to, directly or indirectly: (a) give a person or entity economic benefit and/or risk similar to ownership of shares of any class or series of capital stock of the Corporation, in whole or in part, including due to the fact that such transaction, agreement or arrangement provides, directly or indirectly, the opportunity to profit or avoid a loss from any increase or decrease in the value of any shares of any class or series of capital stock of the Corporation, (b) mitigate loss to, reduce the economic risk of or manage the risk of share price changes for, any person or entity with respect to any shares of any class or series of capital stock of the Corporation, (c) otherwise provide in any manner the opportunity to profit or avoid a loss from any decrease in the value of any shares of any class or series of capital stock of the Corporation, or (d) increase or decrease the voting power of any person or entity with respect to any shares of any class or series of capital stock of the Corporation.

(3) A stockholder providing Timely Notice of nominations or business proposed to be brought before an Annual Meeting shall further update and supplement such notice, if necessary, so that the information (including, without limitation, the Material Ownership Interests information) provided or required to be provided in such notice pursuant to this Bylaw shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to such Annual Meeting, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the fifth (5th) business day after the record date for the Annual Meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the Annual Meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting).

(4) Notwithstanding anything in the second sentence of Article I, Section 2(a)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the second sentence of Article I, Section 2(a)(2), a stockholder’s notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(5) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation’s notice of meeting. Nominations for persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation’s notice of meeting (i) by or at the direction of the Board of Directors or any committee thereof or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 2. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation’s notice of meeting, if the stockholder’s notice required by paragraph (a)(2) of this Section 2 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above.

(b) General

(1) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the provisions of this Bylaw shall be eligible for election and to serve as directors and only such business shall be conducted at a meeting as shall have been brought before the meeting in accordance with the provisions of this Bylaw. The Board of Directors or a designated committee thereof shall have the power to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the provisions of this Bylaw. If prior to the meeting neither the Board of Directors nor such designated committee makes a determination as to whether any stockholder proposal or nomination was made in accordance with the provisions of this Bylaw, the presiding officer of the meeting shall have the power and duty to determine whether the stockholder proposal or nomination was made in accordance with the provisions of this Bylaw. If the Board of Directors or a designated committee thereof or the presiding officer, as applicable, determines that any stockholder proposal or nomination was not made in accordance with the provisions of this Bylaw, such proposal or nomination shall be disregarded and shall not be presented for action at the meeting.

(2) Except as otherwise required by any applicable law or rule or regulation promulgated under the Exchange Act, nothing in this Article I, Section 2 shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for director or any other matter of business submitted by a stockholder.

(3) Notwithstanding the foregoing provisions of this Article I, Section 2, if the proposing stockholder (or a qualified representative of the stockholder) does not appear at the meeting to present a nomination or any business, such nomination or business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Article I, Section 2, to be considered a qualified representative of the proposing stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, to the presiding officer at the meeting of stockholders.

(4) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(5) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of (i) stockholders to have proposals included in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor rule) under the Exchange Act and, to the extent required by such rule, have such proposals considered and voted on at an Annual Meeting or (ii) the holders of any series of Preferred Stock as specified in the Certificate of Incorporation of the Corporation (as the same may hereafter be amended and/or restated, the "Certificate") (including any certificate of designation relating to any series of Preferred Stock).

(6) In addition to the requirements set forth elsewhere in these Bylaws, to be eligible to be a nominee for election or re-election as a director of the Corporation pursuant to a nomination under clause (iii) of Article I, Section 2(a)(1) and under clause (ii) of Article I, Section 2(a)(5) of this Bylaw, such proposed nominee or a person on such proposed nominee's behalf must deliver, in accordance with the time periods for delivery of Timely Notice under Section 2(a)(2) of Article I and under clause (ii) of Article I, Section 2(a)(5) of this Bylaw, to the Secretary of the Corporation at the principal executive offices of the Corporation a completed and signed questionnaire with respect to the background and qualification of such proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and (iii) in such proposed nominee's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with, all applicable publicly disclosed corporate governance, code of conduct and ethics, conflict of interest, confidentiality, corporate opportunities, trading and any other policies and guidelines of the Corporation applicable to directors.

SECTION 3. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Board of Directors to be held at such date, time and place either within or without the State of Delaware as may be stated in the notice of the meeting. A special meeting of stockholders shall be called by the Secretary upon the written request, stating the purpose of the meeting, of stockholders who together own of record at least twenty percent (20%) in voting power of the outstanding shares of stock entitled to vote at such meeting. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

SECTION 4. Notice of Meetings; Adjournments.

(a) A notice of each Annual Meeting stating the hour, date and place, if any, of such Annual Meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) shall be given not less than ten (10) days nor more than sixty (60) days before the Annual Meeting, to each stockholder entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting by delivering such notice to such stockholder or by mailing it, postage prepaid, addressed to such stockholder at the address of such stockholder as it appears on the Corporation's stock transfer books. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law ("DGCL").

(b) Notice of all special meetings of stockholders shall be given in the same manner as provided for Annual Meetings, except that the notice of all special meetings shall state the purpose or purposes for which the meeting has been called.

(c) Notice of an Annual Meeting or special meeting of stockholders need not be given to a stockholder if a waiver of notice is executed, or waiver of notice by electronic transmission is provided, before or after such meeting by such stockholder or if such stockholder attends such meeting, unless such attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

(d) The Board of Directors may postpone and reschedule any previously scheduled Annual Meeting or special meeting of stockholders, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 2 of this Article I of these Bylaws or otherwise.

(e) When any meeting is convened, the presiding officer may adjourn the meeting. When any Annual Meeting or special meeting of stockholders is adjourned to another hour, date or place, notice need not be given of the adjourned meeting other than an announcement at the meeting at which the adjournment is taken of the hour, date and place, if any, to which the meeting is adjourned and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting: provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting, or, if after the adjournment a new record date is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

SECTION 5. Quorum. A majority in voting power of the shares entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum at any meeting of stockholders. If less than a quorum is present at a meeting, the holders of voting stock representing a majority of the voting power present at the meeting or the presiding officer may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice, except as provided in Section 4 of this Article I. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 6. Voting and Proxies. Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the stock ledger of the Corporation as of the record date, unless otherwise provided by law or by the Certificate. Stockholders may vote either (i) in person, (ii) by written proxy or (iii) by a transmission permitted by Section 212(c) of the DGCL. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission permitted by Section 212(c) of the DGCL may be substituted for or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. Proxies shall be filed in accordance with the procedures established for the meeting of stockholders. Except as otherwise limited therein or as otherwise provided by law, proxies authorizing a person to vote at a specific meeting shall entitle the persons authorized thereby to vote at any adjournment or postponement of such meeting, but they shall not be valid after final adjournment of such meeting.

SECTION 7. Action at Meeting. When a quorum is present at any meeting of stockholders, any matter before any such meeting (other than an election of a director or directors) shall be decided by a majority of the votes properly cast on such matter, except where a different vote is required by law, by the Certificate, by these Bylaws, by the rules or regulations of any stock exchange applicable to the Corporation, or pursuant to any regulation applicable to the Corporation or its securities, in which case, such different vote shall apply. For purposes of this Section 7, a majority of votes cast shall mean that the number of votes cast “for” a matter exceeds the number of votes cast “against” the matter (with “abstentions” and “broker nonvotes” not counted as a vote cast either “for” or “against” the matter). Any election of directors by stockholders shall be determined by a plurality of the votes properly cast on the election of directors.

SECTION 8. Stockholder Lists. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every Annual Meeting or special meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), 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 at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 8 or to vote in person or by proxy at any meeting of stockholders.

SECTION 9. Conduct of Meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders (referred to herein as the "presiding officer") shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the presiding officer, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding officer, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding officer shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding officer at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if the presiding officer should so determine, the presiding officer shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the presiding officer, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 10. Inspectors of Elections. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer shall appoint one or more inspectors to act at the meeting. Any inspector may, but need not, be an officer, employee or agent of the Corporation. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall perform such duties as are required by the DGCL, including the counting of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. The presiding officer may review all determinations made by the inspectors, and in so doing the presiding officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any determinations made by the inspectors. All determinations by the inspectors and, if applicable, the presiding officer, shall be subject to further review by any court of competent jurisdiction.

SECTION 11. Action Without Meeting. Except as otherwise provided in the Certificate, any action required or permitted to be taken by the stockholders of the Corporation must be effected only at a duly called Annual Meeting or special meeting of stockholders of the Corporation or may be effected by written consent.

## ARTICLE II Directors

SECTION 1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided by the Certificate or required by law.

SECTION 2. Number and Terms. The number of directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The directors shall hold office in the manner provided in the Certificate.

SECTION 3. Qualification. No director need be a stockholder of the Corporation.

SECTION 4. Vacancies. Vacancies in the Board of Directors shall be filled in the manner provided in the Certificate.

SECTION 5. Removal. Directors may be removed from office only in the manner provided in the Certificate.

SECTION 6. Resignation. A director may resign at any time by giving written notice, or notice by electronic transmission, to the Chairman of the Board, if one is elected, the President or the Secretary. A resignation shall be effective upon receipt, unless the resignation otherwise provides.

SECTION 7. Regular Meetings. The regular annual meeting of the Board of Directors shall be held, without notice other than this Section 7, on the same date and at the same place as the Annual Meeting following the close of such meeting of stockholders. Other regular meetings of the Board of Directors may be held at such hour, date and place as the Board of Directors may by resolution from time to time determine and publicized among all directors.

SECTION 8. Special Meetings. Special meetings of the Board of Directors may be called, orally or in writing or by electronic transmission, by or at the request of a majority of the directors, the Chairman of the Board, if one is elected, or the President. The person calling any such special meeting of the Board of Directors may fix the hour, date and place thereof.

SECTION 9. Notice of Meetings. Notice of the hour, date and place of all special meetings of the Board of Directors shall be given to each director by the Secretary or an Assistant Secretary, or by the Chairman of the Board, if one is elected, or the President or such other officer designated by the Chairman of the Board, if one is elected, or the President. Notice of any special meeting of the Board of Directors shall be given to each director in person, by telephone, or by facsimile, electronic mail or other form of electronic communication, sent to his or her business or home address, at least twenty-four (24) hours in advance of the meeting, or by written notice mailed to his or her business or home address, at least three (3) business days in advance of the meeting. Such notice shall be deemed to be delivered when hand-delivered to such address, read to such director by telephone, deposited in the mail so addressed, with postage thereon prepaid if mailed, dispatched or transmitted if sent by facsimile transmission or by electronic mail or other form of electronic communications. A written waiver of notice signed, or an electronic waiver given, before or after a meeting by a director and filed with the records of the meeting shall be deemed to be equivalent to notice of the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because such meeting is not lawfully called or convened. Except as otherwise required by law, by the Certificate or by these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

SECTION 10. Quorum. At any meeting of the Board of Directors, a majority of the Board of Directors shall constitute a quorum for the transaction of business, but if less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice. Any business which might have been transacted at the meeting as originally noticed may be transacted at such adjourned meeting at which a quorum is present.

SECTION 11. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present shall constitute action by the Board of Directors, unless otherwise required by law, by the Certificate or by these Bylaws.

SECTION 12. Action by 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 members of the Board of Directors consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such consent shall be treated as a resolution of the Board of Directors for all purposes.

SECTION 13. Manner of Participation. Directors may participate in meetings of the Board of Directors by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for purposes of these Bylaws.

SECTION 14. Presiding Director. The Board of Directors shall designate a representative to preside over all meetings of the Board of Directors, provided that if the Board of Directors does not so designate such a presiding director or such designated presiding director is unable to so preside or is absent, then the Chairman of the Board, if one is elected, shall preside over all meetings of the Board of Directors. If both the designated presiding director, if one is so designated, and the Chairman of the Board, if one is elected, are unable to preside or are absent, the Board of Directors shall designate an alternate representative to preside over a meeting of the Board of Directors.

SECTION 15. Committees. The Board of Directors may designate one or more committees, including, without limitation, a Compensation Committee, a Nominating & Corporate Governance Committee and an Audit Committee, and may delegate thereto some or all of its powers except those which by law, by the Certificate or by these Bylaws may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by the Board of Directors or in such rules, its business shall be conducted so far as possible in the same manner as is provided by these Bylaws for the Board of Directors. All members of such committees shall hold such offices at the pleasure of the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep records of its meetings and shall report its action to the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 16. Compensation of Directors. Directors shall receive such compensation for their services as shall be determined by the Board of Directors, or a designated committee thereof, provided that directors who are serving the Corporation as employees and who receive compensation for their services as such, shall not receive any salary or other compensation for their services as directors of the Corporation.

### ARTICLE III Officers

SECTION 1. Enumeration. The officers of the Corporation shall consist of a President, a Chief Executive Officer, a Secretary, a Treasurer and such other officers, including, without limitation, a Chairman of the Board of Directors, a Chief Financial Officer, and one or more Vice Presidents (including Executive Vice Presidents or Senior Vice Presidents), Assistant Vice Presidents and Assistant Secretaries, as the Board of Directors may determine.

SECTION 2. Election. At the regular annual meeting of the Board of Directors following the Annual Meeting, the Board of Directors shall elect the President, the Chief Executive Officer, the Secretary and the Treasurer. Other officers may be elected by the Board of Directors at such regular annual meeting of the Board of Directors or at any other regular or special meeting.

SECTION 3. Qualification. No officer need be a stockholder or a director. Any person may occupy more than one office of the Corporation at any time.

SECTION 4. Tenure. Except as otherwise provided by the Certificate or by these Bylaws, each of the officers of the Corporation shall hold office until the regular annual meeting of the Board of Directors following the next Annual Meeting and until his or her successor is elected and qualified or until his or her earlier resignation or removal.

SECTION 5. Resignation. Any officer may resign by delivering his or her written resignation to the Corporation addressed to the President or the Secretary, and such resignation shall be effective upon receipt, unless the resignation otherwise provides.

SECTION 6. Removal. Except as otherwise provided by law, the Board of Directors may remove any officer with or without cause by the affirmative vote of a majority of the directors then in office.

SECTION 7. Absence or Disability. In the event of the absence or disability of any officer, the Board of Directors may designate another officer to act temporarily in place of such absent or disabled officer.

SECTION 8. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

SECTION 9. Chairman of the Board. The Chairman of the Board, if one is elected, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

SECTION 10. Chief Executive Officer. The Chief Executive Officer shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

SECTION 11. President. The President shall, subject to the direction of the Board of Directors, have such powers and shall perform such duties as the Board of Directors may from time to time designate.

SECTION 12. Vice Presidents and Assistant Vice Presidents. Any Vice President (including any Executive Vice President or Senior Vice President) and any Assistant Vice President shall have such powers and shall perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

SECTION 13. Chief Financial Officer. The Chief Financial Officer, if one is elected, shall, subject to the direction of the Board of Directors and except as the Board of Directors or the Chief Executive Officer may otherwise provide, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. He or she shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer.

SECTION 14. Secretary and Assistant Secretaries. The Secretary shall record all the proceedings of the meetings of the stockholders and the Board of Directors (including committees of the Board of Directors) in books kept for that purpose. In his or her absence from any such meeting, a temporary secretary chosen at the meeting shall record the proceedings thereof. The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to affix it to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or that of an Assistant Secretary. The Secretary shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. In the absence of the Secretary, any Assistant Secretary may perform his or her duties and responsibilities. Any Assistant Secretary shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

SECTION 15. Treasurer and Assistant Treasurers. The Treasurer shall have custody of all moneys and securities of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the officer of Treasurer, or as may be designated from time to time by the Board of Directors or the Chief Executive Officer. In the absence of the Treasurer, any Assistant Treasurer may perform his or her duties and responsibilities. Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

SECTION 16. Other Powers and Duties. Subject to these Bylaws and to such limitations as the Board of Directors may from time to time prescribe, the officers of the Corporation shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time may be conferred by the Board of Directors or the Chief Executive Officer.

#### ARTICLE IV Capital Stock

SECTION 1. Certificates of Stock. The shares of the Corporation shall be represented by certificates in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by the Chief Executive Officer, the President or a Vice President and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary. The Corporation seal and the signatures by the Corporation's officers, the transfer agent or the registrar may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such 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 or she were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. Notwithstanding anything to the contrary provided in these Bylaws, the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation), and by the approval and adoption of these Bylaws the Board of Directors has determined that all classes or series of the Corporation's stock may be uncertificated, whether upon original issuance, re-issuance, or subsequent transfer.

SECTION 2. Transfers. Subject to any restrictions on transfer pursuant to applicable federal or state securities law or as otherwise agreed to in writing and unless otherwise provided by the Board of Directors, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

SECTION 3. Record Holders. Except as may otherwise be required by law, by the Certificate or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

SECTION 4. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of 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, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. 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. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(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 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, and which record date shall not be more than sixty (60) days prior to such action. If no such 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.

SECTION 5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock of the Corporation, a duplicate certificate may be issued in place thereof, upon such terms as the Corporation may prescribe.

ARTICLE V  
Indemnification and Advancement

SECTION 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "Indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by 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 such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith; provided, however, that, except with respect to proceedings to enforce rights to indemnification or an advancement of expenses or as otherwise required by law, the Corporation shall not be required to indemnify or advance expenses to any such Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee unless such proceeding (or part thereof) was authorized by the Board of Directors.

SECTION 2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Article V, Section 1 of this Bylaw, an Indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such Indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

SECTION 3. Right of Indemnitees to Bring Suit. If a claim under Article V, Section 1 or 2 of this Bylaw is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, or if a claim for an advancement of expense is not paid in full within thirty (30) days after a statement or statements requesting such amounts to be advanced has been received by the Corporation, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expenses of prosecuting or defending such suit. In (i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article V or otherwise shall be on the Corporation.

SECTION 4. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article V with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

SECTION 5. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Certificate as amended from time to time, these Bylaws, any agreement, any vote of stockholders or disinterested directors or otherwise.

SECTION 6. 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 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 7. Indemnity Agreements. The Corporation may enter into indemnity agreements with any director or officer of the Corporation, with any employee or agent of the Corporation as the Board of Directors may designate and with any officer, director, employee or agent of subsidiaries as the Board of Directors may designate, such indemnity agreements to provide in substance that the Corporation will indemnify such persons as contemplated by this Article V, and to include any other substantive or procedural provisions regarding indemnification as are not inconsistent with the DGCL.

SECTION 8. Nature of Rights. The rights conferred upon Indemnitees in this Article V shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, employee, agent or trustee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article V that adversely affects any right of an Indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal. The Corporation's obligation, if any, to indemnify or to advance expenses to any Indemnitee who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Indemnitee may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

SECTION 9. Severability. If any word, clause, provision or provisions of this Article V shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article V (including, without limitation, each portion of any section of this Article V containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Article V (including, without limitation, each such portion of any section of this Article V containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

#### ARTICLE VI Miscellaneous Provisions

SECTION 1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

SECTION 2. Seal. The Board of Directors shall have power to adopt and alter the seal of the Corporation.

SECTION 3. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations to be entered into by the Corporation in the ordinary course of its business without director action may be executed on behalf of the Corporation by the Chairman of the Board, if one is elected, the President, the Chief Executive Officer, the Chief Financial Officer, if one is elected, the Secretary, the Treasurer or any other officer, employee or agent of the Corporation as the Board of Directors or appropriate committee of the Board may authorize.

SECTION 4. Voting of Securities. Unless the Board of Directors otherwise provides, Chairman of the Board, if one is elected, the President, the Chief Executive Officer, the Chief Financial Officer, if one is elected, the Secretary or the Treasurer may waive notice of and act on behalf of the Corporation, or appoint another person or persons to act as proxy or attorney in fact for the Corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by the Corporation. The power so conferred upon such officers or other persons shall include, without limitation, the voting of any securities of any other entity held by the Corporation, including executing and delivery written consents with respect to such securities.

SECTION 5. Corporate Records. The original or attested copies of the Certificate, Bylaws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock transfer books, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, may be kept outside the State of Delaware and shall be kept at the principal office of the Corporation, at an office of its counsel, at an office of its transfer agent or at such other place or places as may be designated from time to time by the Board of Directors.

SECTION 6. Amendment of Bylaws.

(a) Amendment by Directors. Except as provided otherwise by law, these Bylaws may be amended or repealed by the Board of Directors.

(b) Amendment by Stockholders. These Bylaws may be amended or repealed at any Annual Meeting, or special meeting of stockholders called for such purpose in accordance with these By-Laws, by the affirmative vote of holders of at least a majority in voting power of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class. Notwithstanding the foregoing, stockholder approval shall not be required unless mandated by the Certificate or other applicable law.

SECTION 7. Notices. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

Adopted and effective as of September 20, 2016.

**AMENDMENT**  
**TO THE**  
**BYLAWS**  
**OF**  
**MOTUS GI HOLDINGS, INC.**

This Amendment (this “Amendment”) to the Bylaws, as amended (the “Bylaws”), of Motus GI Holdings, Inc., a Delaware corporation (the “Corporation”), has been adopted and approved by the Board of Directors of the Corporation on August 24, 2022 and is effective as of August 24, 2022. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Bylaws.

1. Article I, Section 5 is hereby amended to read as follows:

Section 5. Quorum. One-third of the voting power of the shares of the capital stock of the Corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum at any meeting of stockholders. If less than a quorum is present at a meeting, the holders of voting stock representing a majority of the voting power present at the meeting or the presiding officer may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice, except as provided in Section 4 of this Article I. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

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

I, Timothy P. Moran, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended September 30, 2022 of Motus GI Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) 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(s) 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

*/s/ Timothy P. Moran*

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Timothy P. Moran  
Chief Executive Officer  
(Principal Executive Officer)

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

I, Andrew Taylor, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended September 30, 2022 of Motus GI Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) 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(s) 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

*/s/ Andrew Taylor*

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Andrew Taylor  
Chief Financial Officer  
(Principal Financial Officer)

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**Certification Pursuant to  
18 U.S.C. Section 1350,  
as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

This Certification is being filed pursuant to 18 U.S.C. Section 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002. This Certification is included solely for the purposes of complying with the provisions of Section 906 of the Sarbanes-Oxley Act and is not intended to be used for any other purpose. In connection with the accompanying Quarterly Report on Form 10-Q of Motus GI Holdings, Inc. for the period ended September 30, 2022 (the "Report"), each of the undersigned hereby certifies in his capacity as an officer of Motus GI Holdings, Inc. (the "Company") that to such officer's knowledge:

- (1) The 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 Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 14, 2022

By: /s/ Timothy P. Moran  
Timothy P. Moran  
Chief Executive Officer  
(Principal Executive Officer)

Dated: November 14, 2022

By: /s/ Andrew Taylor  
Andrew Taylor  
Chief Financial Officer  
(Principal Financial Officer)

This Certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and shall not be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Report, irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Motus GI Holdings, Inc. and will be retained by Motus GI Holdings, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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