

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

AMENDMENT NO. 3  
TO  
FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

INPIXON  
(Exact name of Registrant as specified in its charter)

Nevada  
(State or other jurisdiction of  
incorporation or organization)

7379  
(Primary Standard Industrial  
Classification Code Number)

88-0434915  
(I.R.S. Employer  
Identification No.)

2479 E. Bayshore Road, Suite 195  
Palo Alto, CA 94303  
(408) 702-2167  
(Address and telephone number of principal executive offices)

Nadir Ali  
Chief Executive Officer  
Inpixon  
2479 E. Bayshore Road, Suite 195  
Palo Alto, CA 94303  
(408) 702-2167  
(Name, address and telephone number of agent for service)

Copies to:

Melanie Figueroa, Esq.  
Mitchell Silberberg & Knupp LLP  
437 Madison Ave., 25th Floor  
New York, NY 10022  
Telephone: (917) 546-7707  
Facsimile: (917) 546-7677

John D. Hogoboom, Esq.  
Lowenstein Sandler LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 262-6700  
Facsimile: (212) 262-7402

**Approximate Date of Proposed Sale to the Public:** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐  
Non-accelerated filer ☐

Accelerated filer ☐  
Smaller reporting company ☒  
Emerging growth company ☒

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

# CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered   | Proposed<br>Maximum<br>Aggregate<br>Offering<br>Price <sup>(1)(2)</sup> | Amount of<br>Registration<br>Fee |
|--|---|----------------------------------|
| Shares of common stock, \$0.001 par value per share  | \$ 6,000,000  | \$ 727.20                        |
| Series A warrants to purchase shares of common stock <sup>(3)</sup>  |   |                                  |
| Shares of common stock issuable upon exercise of the Series A warrants                                     | \$ 7,200,000  | \$ 872.64                        |
| Shares of Series 6 Convertible Preferred Stock   |   | (4)                              |
| Shares of common stock issuable upon conversion of the Series 6 Convertible Preferred Stock <sup>(3)</sup> |   |                                  |
| <b>Total</b>   | <u>\$ 13,200,000</u>  | <u>\$ 1,599.84<sup>(5)</sup></u> |

- (1) Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended (the “Securities Act”).
- (2) Pursuant to Rule 416, the securities being registered hereunder include such indeterminate number of additional securities as may be issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (3) No fee is required pursuant to Rule 457(i) under the Securities Act.
- (4) The proposed maximum aggregate offering price of the common stock proposed to be sold in the offering will be reduced on a dollar-for-dollar basis based on the offering price of any Series 6 Convertible Preferred Stock offered and sold in the offering, and, as such, the proposed maximum aggregate offering price of the common stock and Series 6 Convertible Preferred Stock (including the common stock issuable upon conversion of the Series 6 Convertible Preferred Stock), if any, is \$6,000,000.
- (5) Previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION

DATED AUGUST 9, 2019



**15,000,000 Shares of Common Stock**

**or**

**6,000 Shares of Series 6 Convertible Preferred Stock**

**and**

**Series A Warrants to Purchase up to 15,000,000 Shares of Common Stock**

We are offering \$6.0 million of shares of our common stock and Series A warrants. Each share of our common stock is being sold together with a Series A warrant to purchase one share of common stock. Each Series A warrant will have an exercise price per share of not less than 100% but not more than 120% of the combined public offering price per share and related Series A warrant. The Series A warrants will be immediately exercisable and will expire on the fifth anniversary of the original issuance date.

In addition, the Series A warrants also provide that, beginning 30 days after the original issuance date, the Series A warrants may be exercised at the option of the holder on a cashless basis, in whole or in part, for all of the shares that would be received upon cash exercise, if on the date of exercise, the volume weighted average price of our common stock is lower than three times the then applicable exercise price per share. The shares of our common stock and the Series A warrants are immediately separable and will be issued separately, but will be purchased together in this offering.

We are also offering to those purchasers, if any, whose purchase of our common stock in this offering would otherwise result in such purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% of our outstanding common stock immediately following the consummation of this offering, the opportunity, in lieu of purchasing common stock, to purchase shares of our newly designated Series 6 Convertible Preferred Stock, or Series 6 Preferred, convertible into a number of shares of common stock equal to \$1,000 divided by the combined public offering price per share of common stock and related Series A warrant set forth below. Each share of Series 6 Preferred is being sold together with the equivalent number of Series A warrants as would have been issued to such purchaser of Series 6 Preferred if they had purchased shares of common stock based on the combined public offering price per share and related Series A warrant. Pursuant to this prospectus, we are also offering the shares of common stock issuable upon the exercise of the Series A warrants and the conversion of the Series 6 Preferred offered hereby.

Each share of Series 6 Preferred is convertible at any time at the option of the holder, provided that the holder will be prohibited from converting the Series 6 Preferred for shares of our common stock if, as a result of such conversion, the holder, together with its affiliates, would own more than 4.99% of the total number of shares of our common stock then issued and outstanding. However, any holder may increase such percentage to any other percentage not in excess of 9.99%, provided that any increase in such percentage shall not be effective until 61 days after such notice to us.

We expect that certain institutional investors in this offering will enter into leak-out agreements with us pursuant to which each such investor will agree to certain limits on sales by it of the shares of common stock purchased in this offering, including the shares of common stock issuable upon the exercise of the Series A warrants and conversion of the Series 6 Preferred, to the extent applicable.

Our common stock is listed on The Nasdaq Capital Market under the symbol "INPX." On August 7, 2019, the last reported sale price of our common stock on The Nasdaq Capital Market was \$0.40 per share. There is no established trading market for the Series A warrants or the Series 6 Preferred and we do not expect a market to develop. In addition, we do not intend to apply for the listing of the Series A warrants or the Series 6 Preferred on any national securities exchange or other trading market. Without an active trading market, the liquidity of the Series A warrants and the Series 6 Preferred will be limited.

The combined public offering price per share and related Series A warrant will be determined between us, the underwriters and investors based on market conditions at the time of pricing, and may be at a discount to the current market price of our common stock. Therefore, the recent market price of our common stock used throughout this prospectus may not be indicative of the actual combined public offering price.

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We are an “emerging growth company” as defined under the federal securities laws and, as such, may elect to comply with certain reduced public company reporting requirements for future filings. As an emerging growth company, we are able to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We chose to “opt out” of this provision. Therefore, we are subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

**Investing in our securities involves a high degree of risk. See “Risk Factors” beginning on page 12 of this prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

|                                      | Per Share of<br>Common Stock<br>and Related<br>Series A Warrant | Per Share of<br>Series 6 Preferred<br>and Related Series<br>A<br>Warrants | Total |
|--------------------------------------|---|---|-------|
| Public offering price                | \$  | \$  | \$    |
| Underwriting discount <sup>(1)</sup> | \$  | \$  | \$    |
| Proceeds to us, before expenses      | \$  | \$  | \$    |

(1) See “Underwriting” on page 44 for additional disclosure regarding the compensation payable to underwriters.

We anticipate that delivery of the shares of common stock, the shares of Series 6 Preferred and the related Series A warrants against payment will be made on or about , 2019.

*Joint Book-Running Managers*

**Ladenburg Thalmann**

**Maxim Group LLC**

The date of this prospectus is , 2019

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## ABOUT THIS PROSPECTUS

You should rely only on the information contained in this prospectus and in the documents incorporated by reference herein or any amendment hereto or any free writing prospectus prepared by us or on our behalf. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell or soliciting an offer to buy the securities offered hereby in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus, the documents incorporated by reference herein or any free writing prospectus that we have authorized for use in connection with this offering is accurate only as of the date of those respective documents, regardless of the time of delivery of this prospectus, the documents incorporated by reference herein or any authorized free writing prospectus or the time of issuance or sale of any securities. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus, the documents incorporated by reference herein and any free writing prospectus that we have authorized for use in connection with this offering in their entirety before making an investment decision.

We are offering to sell, and seeking offers to buy, the securities only in jurisdictions where offers and sales are permitted. The distribution of this prospectus and the offering of the securities in certain jurisdictions may be restricted by law. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the securities and the distribution of this prospectus outside the United States. This prospectus does not constitute, and may not be used in connection with, an offer to sell, or a solicitation of an offer to buy, any securities offered by this prospectus by any person in any jurisdiction in which it is unlawful for such person to make such an offer or solicitation.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed, or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the section entitled “*Where You Can Find More Information.*”

The representations, warranties and covenants made by us in any agreement that is filed as an exhibit to any document that is incorporated by reference in this prospectus were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties to such agreements, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties or covenants were accurate only as of the date when made. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

This prospectus contains market data and industry statistics and forecasts that are based on independent industry publications and other publicly available information. Although we believe that these sources are reliable, we do not guarantee the accuracy or completeness of this information, and we have not independently verified this information. Although we are not aware of any misstatements regarding the market and industry data presented in this prospectus, these estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed under the heading “*Risk Factors*” and any related free writing prospectus. Accordingly, investors should not place undue reliance on this information.

Our logo and some of our trademarks used in this prospectus remain our intellectual property. This prospectus also includes trademarks, tradenames, and service marks that are the property of other organizations. Solely for convenience, our trademarks and tradenames referred to in this prospectus appear without the TM symbol, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor to these trademarks and tradenames.

Unless otherwise stated or the context otherwise requires, the terms “Inpixon,” “we,” “us,” “our” and the “Company” refer collectively to Inpixon and its subsidiaries.

## CAUTIONARY NOTE CONCERNING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve risks and uncertainties. You should not place undue reliance on these forward-looking statements. Our actual results could differ materially from those anticipated in the forward-looking statements for many reasons, including the reasons described in the “*Prospectus Summary*,” “*Use of Proceeds*” and “*Risk Factors*” sections. In some cases, you can identify these forward-looking statements by terms such as “anticipate,” “believe,” “continue,” “could,” “depends,” “estimates,” “expects,” “intends,” “may,” “ongoing,” “plan,” “potential,” “predict,” “project,” “should,” “will,” “would” or the negative of those terms or other similar expressions, although not all forward-looking statements contain those words.

We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. These forward-looking statements are subject to a number of known and unknown risks, uncertainties and assumptions, including risks described in the section titled “*Risk Factors*” and elsewhere in this prospectus, regarding, among other things:

- our limited cash and our history of losses;
- our ability to achieve profitability;
- our limited operating history with recent acquisitions;
- risks related to our proposed acquisition of Jibestream Inc.;
- our ability to successfully integrate companies we acquire;
- emerging competition and rapidly advancing technology in our industry that may outpace our technology;
- customer demand for the products and services we develop;
- the impact of competitive or alternative products, technologies and pricing;
- our ability to manufacture any products we develop;
- general economic conditions and events and the impact they may have on us and our potential customers;
- our ability to obtain adequate financing in the future;
- our ability to continue as a going concern;
- our ability to consummate strategic transactions, which may include acquisitions, mergers, dispositions or investments;
- uncertainty relating to the ongoing SEC investigation; and
- our success at managing the risks involved in the foregoing items.

These risks are not exhaustive. Other sections of this prospectus, including the documents incorporated by reference herein, may include additional factors that could adversely affect our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for our management to predict all risk factors nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in, or implied by, any forward-looking statements. You should read this prospectus with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. Except as required by law, we undertake no obligation to update publicly any forward looking statements for any reason after the date of this prospectus or to conform these statements to actual results or to changes in our expectations.

We qualify all of our forward-looking statements by these cautionary statements.

## PROSPECTUS SUMMARY

*The following summary highlights information contained elsewhere or incorporated by reference in this prospectus. This summary may not contain all of the information that may be important to you. You should read this entire prospectus carefully, including the matters discussed under the heading “Risk Factors” in this prospectus.*

### The Company

We are a technology company that helps to secure, digitize and optimize any premises with Indoor Positioning Analytics, sometimes referred to herein as “IPA,” for businesses and governments in the connected world. Inpixon Indoor Positioning Analytics is based on new sensor technology that finds all accessible cellular, Wi-Fi, Bluetooth and RFID signals anonymously. Paired with a high-performance, data analytics platform, this technology delivers visibility, security and business intelligence on any commercial or government premises worldwide.

Inpixon Indoor Positioning Analytics offer:

- New sensors with proprietary technology that can find all accessible cellular, Wi-Fi, Bluetooth and RF signals. Utilizing various radio signal technologies ensures precision device positioning accurately down to an arm’s length. This enables highly detailed understanding of customer journeys and dwell time in retail scenarios, detection and identification of authorized and unauthorized devices, and prevention of rogue devices through alert notification when unknown devices are detected in restricted areas.
- Data science analytics with lightning fast data mining using an in-memory database that uses a dynamic blend of RAM and NAND along with specially optimized algorithms that both minimize data movement and maximize system performance. This enables the system to deliver reports with valuable insights to the user as well as to integrate with common third party visualization, charting, graphing and dashboard systems.
- Insights that deliver visibility and business intelligence about detailed customer journey and flow analysis of in-stores and storefronts allowing businesses to better understand customer preferences, measure campaign effectiveness, uncover revenue opportunities and deliver exceptional shopping experiences.

Inpixon Indoor Positioning Analytics can assist all types of establishments, including brands, retailers, shopping malls and shopping centers, hotels and resorts, gaming operators, airports, healthcare facilities, office buildings and government agencies, by providing greater security, gaining better business intelligence, increasing consumer confidence and reducing risk while being compliant with applicable “Personal Identifiable Information” regulations.

### Our Products and Services

We provide the following products and services that may be used by any number of businesses and government agencies, including but not limited to, commercial offices, retail locations, airports, hospitals, financial institutions, hospitality venues and educational institutions.

- ***Inpixon Security (formerly AirPatrol ZoneDefense)*** – This is a mobile security and detection suite of products that locates devices operating within a monitored area, determines their compliance with network security policies for that zone, and if the device is not compliant, can trigger policy modification of device apps and/or features either directly or via third party mobile device, application and network management tools. As explained further below, our recent acquisition of Locality Systems Inc. (“Locality”) enhanced this product by allowing us to offer Locality’s solution, which provides radio frequency (“RF”) augmentation of video monitoring systems, to our customers. Our smart school safety network technology, recently acquired from GTX Corp as explained further below, further strengthens this product line and will assist school staff and first responders with locating students during emergency situations.



- **Inpixon Intelligence (formerly AirPatrol ZoneAware)** – This is a commercial product for enabling location and/or context-based marketing services and information delivery to mobile devices based on zones as small as 10 feet or as large as a square mile. The monitored areas may include a building, a campus, a mall, and outdoor regions like a downtown. Unlike other mobile locationing technologies, our technologies use passive sensors that work over both cellular and Wi-Fi networks and offer device locationing and zone-based app and information delivery accurate to within 10 feet. Additionally, unlike geo-fencing systems, our technologies are capable of simultaneously enabling different policies and delivering different apps or information to multiple devices within the same zone based on contexts such as the type of device, the device user and time of day. Our recent acquisition of Locality enhanced this product by allowing us to now offer a lower cost, Wi-Fi only solution to customers who may later upgrade to our full Inpixon Intelligence solution.
- **Shoom Products** (eTearsheets; eInvoice, AdDelivery, ePaper) – The Shoom products are Cloud based applications and analytics for the media and publishing industry. These products also generate critical data analytics for the customers.

#### *IPA Product Enhancements*

As a company in the information and technology industry, keeping up with the technological advancements within the industry is critical to our long-term success and growth. As a result, our senior management must continuously work to ensure that they remain informed and prepared to quickly adapt and leverage new technologies within our product and service offering as such technologies become available. In connection with that goal, our product roadmap development plans include the use of blockchain technology to maintain and propagate device reputation, enforcing security policies and attaining compliance, artificial intelligence for amassing anonymous device information, integrating video image analytics for additional attributes, ultra-wideband technology for asset tracking and a voice-assisted analytics interface.

#### **Corporate Structure**

We have two operating subsidiaries: (i) Inpixon Canada, Inc. (100% ownership) based in Coquitlam, British Columbia; and (ii) Sysorex India (82.5% ownership) based in Hyderabad, India.

Although the subsidiaries are separate legal entities, we are currently structured by function and organized to operate in an integrated fashion as one business.

#### **Corporate Strategy**

Management continues to pursue a corporate strategy that is focused on building and developing our business as a provider of turnkey solutions ranging from the collection of data to delivering insights from that data to our customers with a focus on securing, digitizing and optimizing premises with IPA for businesses and governments. In connection with such strategy and in order to facilitate our long-term growth, we are evaluating various strategic transactions and acquisitions of companies with technologies and intellectual property (“IP”) that complement such goals by adding technology, differentiation, customers and/or revenue. We are primarily looking for accretive opportunities that have business value and operational synergies. We believe these complimentary technologies will allow us to provide a comprehensive Indoor Positioning Platform, or one-stop shop to our customers. We believe that acquiring complementary products and/or IP will add value to the Company. Candidates with proven technologies that complement our overall strategy may come from anywhere in the world, so long as there are strategic and financial reasons to make the acquisition. If we make any acquisitions in the future, we expect that we may pay for such acquisitions using our equity securities, cash and debt financing in combinations appropriate for each acquisition. In connection with this strategy, on May 21, 2019, we acquired Locality, a technology company based near Vancouver, Canada, specializing in wireless device positioning and radio frequency (“RF”) augmentation of video surveillance systems. In addition, on June 27, 2019, we acquired certain global positioning system (“GPS”) products, software, technologies, and intellectual property from GTX, a U.S. based company specializing in GPS technologies. These transactions expand our patent portfolio and includes certain granted or licensed patents and GPS and RF technologies. Furthermore, on July 9, 2019, we entered into a Share Purchase Agreement to acquire Jibestream Inc., a provider of highly configurable indoor mapping and location platforms to expand our suite of products. Please see “*Pending Acquisition – Jibestream Inc.*” below for more information.

#### **Acquisition of Locality Systems**

On May 21, 2019, we completed through our subsidiary, Inpixon Canada, Inc., our acquisition of Locality pursuant to the terms of a Share Purchase Agreement. Locality is a British Columbia corporation that specializes in wireless device positioning and RF augmentation of video surveillance systems. Locality’s video management system (“VMS”) integration, currently available for a number of VMS vendors, can assist security personnel in identifying potential suspects and tracking their movements cross-camera and from one facility to another. The solution is designed to enhance traditional security video feeds by correlating RF signals with video images. Based on third-party market research, the video surveillance market is forecasted to grow from \$36.9 billion in 2018 to \$68.3 billion by 2023, at a compound annual growth rate, or CAGR, of 13.1%. In addition, this technology can be used within the casino management market, which is estimated to grow to \$12 billion by 2025, at a CAGR of 14.8% and can help retail customers mitigate the harm caused by organized retail crime, which is estimated to cost the retail industry nearly \$30 billion per year.

At closing, the owners of all of the issued and outstanding capital stock of Locality sold all of their shares in exchange for consideration of (i) USD \$1,500,000 (the “Aggregate Cash Consideration”) (A) minus the amount by which the Estimated Working Capital (as defined in the Share Purchase Agreement) is less than the Working Capital Target (as defined in the Share Purchase Agreement), or (B) plus the amount by which the Estimated Working Capital is greater than the Working Capital Target (as the case may be, the “Estimated Working Capital Adjustment”), and (ii) 650,000 shares of the Company’s common stock.

The Aggregate Cash Consideration, minus or plus (as the case may be) the Estimated Working Capital Adjustment to be applied against the Aggregate Cash Consideration (which will be calculated within 90 days of closing), will be paid in installments as follows: (i) the initial installment representing \$250,000 minus or plus (as the case may be) the Estimated Working Capital Adjustment, which was paid at closing; (ii) three additional installments each equal to \$250,000, which will be paid every six months following closing; and (iii) one final installment representing \$500,000, which will be paid on the second anniversary of closing, in each case minus the cash fees payable to the advisor in connection with the acquisition.

#### **Acquisition of Certain Assets of GTX Corp**

On June 27, 2019, we completed its acquisition of certain assets of GTX Corp (“GTX”) pursuant to the terms of an Asset Purchase Agreement. The assets consisted of a portfolio of global positioning system (“GPS”) technologies and intellectual property, including, but not limited to (a) an intellectual property portfolio that includes a registered patent, along with more than 20 pending patent applications or licenses to registered patents or pending applications relating to GPS technologies; (b) a smart school safety network (“SSSN”) solution that consists of a combination of wristbands, gateways and proprietary backend software, which rely on the Bluetooth Low-Energy protocol and a low-power enterprise wireless 2.4Ghz platform, to help school administrators identify the geographic location of students or other people or things (e.g., equipment, vehicles, tools, etc.) in order to, among other things, ensure the safety and security of students while at school; (c) a personnel equipment tracking system and ground personnel safety system, which includes a combination of hardware and software components, for a GPS and RF based personnel, vehicle and asset-tracking solution designed to provide ground situational awareness and near real-time surveillance of personnel and equipment traveling within a designated area for, among other things, government and military applications and (d) a right to 30% of royalty payments that may be received by GTX in connection with its ownership interest in Inventery LBS, LLC (“Inventery”) which is the owner of certain patents related to methods and systems for communicating with a tracking device (collectively, the “Assets”).

We acquired the Assets for aggregate consideration consisting of (i) \$250,000 in cash delivered at the closing (the “Cash Consideration”) and (ii) 1,000,000 shares of our common stock. In addition, 100,000 of such shares are subject to certain holdback restrictions and forfeiture for the purpose of satisfying indemnification claims.

In accordance with the terms of the Asset Purchase Agreement, we agreed to file a resale registration statement within 30 days of the closing date (the “Registration Filing Deadline”), to register the shares issued to GTX (the “GTX Shares”) for resale. In the event that such registration statement is not filed on or prior to the Registration Filing Deadline, or in the event that thereafter such registration statement is not declared effective by the SEC within 45 days of the closing date, we agreed to loan GTX, at its option, up to \$50,000 per month until the earlier of the effectiveness of the registration statement or the date on which such shares may be sold without restriction in accordance with Rule 144 under the Securities Act for up to a maximum of \$250,000 in the aggregate, in accordance with the terms of a promissory note attached as an exhibit to the Asset Purchase Agreement. Each promissory note will have a maturity date that is 210 days from the issue date of such note and will accrue interest at a rate of 5% per annum. Pursuant to the terms of the underwriting agreement to be entered into in connection with this offering, the Company has agreed to delay the registration of the GTX Shares until the end of the thirty-day period commencing upon the execution of the underwriting agreement and provided that a registration statement in connection with the GTX Shares is not declared effective by the SEC until after the end of the 60-day period commencing upon the execution of the underwriting agreement.

#### **Pending Acquisition – Jibestream Inc.**

On July 9, 2019, we entered into a Share Purchase Agreement (the “Purchase Agreement”), with Inpixon Canada, Inc., as purchaser, Jibestream Inc., a British Columbia corporation (“Jibestream”), each of the persons set forth on Exhibit A of the Purchase Agreement (each, a “Vendor” and collectively, the “Vendors”) and Chris Wiegand, as a Vendor and Vendors’ representative, pursuant to which the Purchaser will acquire all of the issued and outstanding shares of Jibestream (the “Shares”) on the terms and subject to the satisfaction of the conditions set forth in the Purchase Agreement (the “Transaction”). As a result of the Transaction, Jibestream will become our indirect, wholly owned subsidiary.

On August 8, 2019, the Purchase Agreement was amended to, among other things, reduce the amount of funds we are required to receive from this offering in order to complete the Transaction from \$15 million to an amount of funds sufficient when aggregated with other immediately available funds to pay the Estimated Cash Closing Amount (as defined below), adjust the Price Per Share (as defined below) to be equal to the price per share at which shares of our common stock are sold in this offering and limit the amount of shares of our common stock that we may issue to the Vendors to no more than 19.99% of our outstanding shares of common stock prior to the closing of the Transaction, unless stockholder approval is obtained, if required by the Nasdaq Listing Rules. In addition, we agreed to loan Jibestream, at its option, cash amounts up to a maximum of \$250,000 in the aggregate, in accordance with the terms of a promissory note. A note will be issued for each loan and will have a maturity date of December 31, 2019 and will accrue interest at a rate of 5% per annum. It is anticipated that Jibestream will use such funds for its operating expenses prior to closing the Transaction.

Subject to the terms and conditions of the Purchase Agreement, as amended, the Purchaser will purchase the Shares in exchange for consideration consisting of: (i) CAD \$5,000,000 (the “Cash Consideration”), plus an amount equal to all cash and cash equivalents held by Jibestream at the closing of the Transaction (the “Closing”), minus, if a negative number, the absolute value of the Estimated Working Capital Adjustment (as defined in the Purchase Agreement), minus any amounts loaned by the Purchaser to Jibestream to settle any Indebtedness (as defined in the Purchase Agreement) or other fees, minus any cash payments to the holders of outstanding options to settle any in-the-money options (the “Option Payout”), minus the deferred revenue costs of \$150,000, and minus the costs associated with the audit and review of the financial statements of Jibestream required by the Purchase Agreement (collectively, the “Estimated Cash Closing Amount”); plus (ii) a number of shares of our common stock (the “Inpixon Shares”), equal to CAD \$3,000,000, which will be converted to U.S. dollars based on the exchange rate at the time of the closing, divided by the price per share at which shares of our common stock are issued in this offering (the “Price Per Share”). To the extent that the Estimated Cash Closing Amount is a negative number, the number of Inpixon Shares will be reduced by the Estimated Cash Closing Amount, adjusted to U.S. dollars based on the exchange rate, divided by the Price Per Share.

Pursuant to the Purchase Agreement, we agreed to file on or before the thirtieth (30th) day from the closing date of the Transaction an “evergreen” shelf registration statement on Form S-1 or Form S-3 pursuant to Rule 415 under the Securities Act, providing for an offering of the Inpixon Shares issued pursuant to the Purchase Agreement on a continuous basis and will use best efforts to cause such registration statement to become effective no later than the date that is 30 days after the registration statement is filed, and in any event as soon as practicable after such filing.

To the extent that approval by our stockholders for the issuance of the Inpixon Shares is required by applicable Nasdaq listing rules and is not obtained prior to December 31, 2019, the Purchaser will pay the portion of the purchase price representing the Inpixon Shares in cash, and the references to the Holdback Amount (as defined below) set forth in the Purchase Agreement will refer to the corresponding cash amount paid pursuant to the foregoing.

The Purchaser will retain an amount of Inpixon Shares representing fifteen percent (15%) of the value of the Purchase Price (the “Holdback Amount”) to secure the indemnification and other obligations of the Vendors in favor of the Purchaser arising out of or pursuant to Article VIII of the Purchase Agreement and, at the option of the Purchaser, to secure the obligation of the Vendors to pay any adjustment to the Purchase Price pursuant to Section 2.5 of the Purchase Agreement. The Holdback Amount is to be governed by the terms and conditions set out in Section 2.6 of the Purchase Agreement, and is to be paid to the Vendors in whole or in part, or retained by the Purchaser in whole or in part, subject to the terms and conditions set out therein.

The closing of the Transaction is conditioned upon the closing of this offering and certain other customary conditions. We can give no assurance that the terms and conditions will be met and that the Transaction will close.

Jibestream provides highly configurable indoor mapping and location technology. Its platform provides customers with a full-featured geospatial platform that integrates business data with high-fidelity indoor maps to create smart indoor spaces. This allows customers to create multi-dimensional and multi-layered indoor maps, which can be added to existing web or mobile applications. Jibestream’s technology integrates with a variety of third-party indoor positioning systems to allow for clear, contextualized indoor wayfinding and directions. We anticipate utilizing Jibestream’s mapping technology with our existing indoor positioning offerings to offer our customers a more comprehensive suite of products going forward.

Jibestream’s products have applications in any indoor space where location and wayfinding is a concern. Jibestream’s existing product solutions have been deployed in hundreds of venues worldwide and within numerous customer segments including government, airports, malls, office buildings, and hospitals.

#### **Preliminary Second Quarter 2019 Operating Results**

Our consolidated financial statements for the quarter ended June 30, 2019 are not yet available. The following expectations regarding our results for this quarterly period are solely management estimates based on currently available information. Our independent registered public accounting firm has not reviewed or performed any procedures with respect to this preliminary financial data and, accordingly, does not express an opinion or any other form of assurance with respect to this data.

Our revenues for the three months ended June 30, 2019 is expected to be between \$1.3 million and \$1.6 million, compared to \$0.8 million for the three months ended June 30, 2018, representing an increase of approximately 55% to 91%. For the six months ended June 30, 2019, our revenues is expected to be between \$2.6 million and \$3.0 million, compared to \$1.7 million for the six months ended June 30, 2018, representing an increase of approximately 54% to 78%. The expected increase in revenues is based on new customer acquisition and growth efforts based on our strategy to add new channel partners.

Our gross margin for the three months ended June 30, 2019 is expected to be between 72% and 74%, compared to 69% for the three months ended June 30, 2018. For the six months ended June 30, 2019, gross margin is expected to be between 73% and 75%, compared to 69% for the six months ended June 30, 2018. The expected increase in gross margin is the result of higher margin sales mix.

Our loss from operations for the three months ended June 30, 2019 is expected to be between \$4.6 million and \$5.3 million, compared to \$4.5 million for the three months ended June 30, 2018, representing an increase in loss of approximately 3% to 18%. For the six months ended June 30, 2019, our loss from operations is expected to be between \$9.5 million and \$10.2 million, compared to \$8.3 million for the six months ended June 30, 2018, representing an increase in loss of approximately 15% to 23%. The expected increase in loss from operations is primarily due to higher administrative and acquisition costs.

## **Recent Note Financings**

On December 21, 2018, we issued a promissory note to Iliad Research and Trading, L.P. (“Iliad”) in the initial principal amount of \$1,895,000, which is payable on or before the date that is 10 months from the issuance date. The initial principal amount includes an original issue discount of \$375,000 and \$20,000 that we agreed to pay to Iliad to cover its legal fees, accounting costs, due diligence, monitoring and other transaction costs. In exchange for the note, Iliad paid an aggregate purchase price of \$1,500,000. Interest on the note accrues at a rate of 10% per annum and is payable on the maturity date or otherwise in accordance with the note. On August 8, 2019, we entered into a standstill agreement with Iliad, pursuant to which Iliad agreed to not redeem all or any portion of the principal amount of the note for a period of 90 days from the date of the agreement. As consideration for such agreement, the outstanding balance of the note was increased by \$206,149.23. As of August 8, 2019, the outstanding balance of the note is \$2,268,214.18.

On May 3, 2019, we issued a promissory note to Chicago Venture Partners, L.P. (“CVP”), an affiliate of Iliad, in the initial principal amount of \$3,770,000, which is payable on or before the date that is 10 months from the issuance date. The initial principal amount includes an original issue discount of \$750,000 and \$20,000 that we agreed to pay to Iliad to cover its legal fees, accounting costs, due diligence, monitoring and other transaction costs. In exchange for the note, CVP paid an aggregate purchase price of \$3,000,000. Interest on the note accrues at a rate of 10% per annum and is payable on the maturity date or otherwise in accordance with the note. As of August 8, 2019, the outstanding balance of the note is \$3,872,946.95.

On June 27, 2019, we issued a second promissory note to CVP in the initial principal amount of \$1,895,000, which is payable on or before the date that is 9 months from the issuance date. The initial principal amount includes an original issue discount of \$375,000 and \$20,000 that we agreed to pay to CVP to cover its legal fees, accounting costs, due diligence, monitoring and other transaction costs. In exchange for the note, CVP paid an aggregate purchase price of \$1,500,000. Interest on the note accrues at a rate of 10% per annum and is payable on the maturity date or otherwise in accordance with the note. Pursuant to the terms of the note purchase agreement entered into in connection with the issuance of the note, we agreed to repay all or a portion of the note in connection with an equity or equity-linked financing. We have requested that CVP waive such repayment. As of August 8, 2019, the outstanding balance of the note is \$1,917,234.70.

On August 8, 2019, we issued a third promissory note to CVP in the initial principal amount of \$1,895,000, which is payable on or before the date that is 9 months from the issuance date. The initial principal amount includes an original issue discount of \$375,000 and \$20,000 that we agreed to pay to CVP to cover its legal fees, accounting costs, due diligence, monitoring and other transaction costs. In exchange for the note, CVP paid an aggregate purchase price of \$1,500,000. Interest on the note accrues at a rate of 9% per annum and is payable on the maturity date or otherwise in accordance with the note.

## **SEC Investigation**

In February 2019, we received a subpoena from the SEC’s Division of Enforcement pursuant to a formal SEC order of investigation requiring us to produce documents and other information relating to our public announcement on January 9, 2018 that we intended to incorporate blockchain technology into our future product offerings and a public financing transaction undertaken by us in proximity to that announcement. We have cooperated with the SEC’s investigation and have provided documents and information requested in the subpoena, as modified by agreement with the SEC. Although we believe that we have fully complied with all relevant laws and regulations, there can be no assurance that the SEC will not commence an enforcement action against us or members of our management, or as to the ultimate resolution of any enforcement action that the SEC may decide to bring. Under applicable law, the SEC has the ability to impose significant sanctions on companies and individuals who are found to have violated the provisions of applicable federal securities laws, including cease and desist orders, civil money penalties, and barring individuals from serving as directors or officers of public companies. We have expended significant financial and managerial resources responding to the SEC subpoena. Defending any enforcement action brought by the SEC against us or members of our management would involve further significant expenditures and the resolution of any such enforcement action could have a material adverse effect on our business, financial condition, results of operations and cash flows.

## **Emerging Growth Company**

As a company with less than \$1.07 billion in revenue during our most recently completed fiscal year, we qualify as an “emerging growth company” as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As an emerging growth company, we may take advantage of specified reduced disclosure and other requirements that are otherwise applicable, in general, to public companies that are not emerging growth companies. These provisions include:

- reduced disclosure about our executive compensation arrangements;
- no non-binding shareholder advisory votes on executive compensation or golden parachute arrangements;
- exemption from the auditor attestation requirement in the assessment of our internal control over financial reporting; and
- reduced disclosure of financial information in this prospectus, limited to two years of audited financial information and two years of selected financial information.

As a smaller reporting company, each of the foregoing exemptions is currently available to us. We will cease to be an emerging growth company on December 31, 2019, or, immediately, if we issue more than \$1.0 billion of non-convertible debt over a three-year-period.

The JOBS Act permits an emerging growth company to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have chosen to “opt out” of this provision. Therefore, we are subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

#### **Corporate Information**

Our principal executive offices are located at 2479 E. Bayshore Road, Suite 195, Palo Alto, CA 94303, and our telephone number is (408) 702-2167. Our subsidiaries maintain offices in Coquitlam and Vancouver, British Columbia and Hyderabad, India. Our Internet website is [www.inpixon.com](http://www.inpixon.com). The information contained on, or that may be obtained from, our website is not a part of this prospectus and should not be considered a part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

## The Offering

*The following summary contains basic information about the offering and the securities we are offering and is not intended to be complete. It does not contain all the information that is important to you. For a more complete understanding of the securities we are offering, please refer to the sections of this prospectus titled "Description of Securities" and "Description of Securities We Are Offering."*

### **Common stock offered by us**

15,000,000 shares, assuming a combined public offering price of \$0.40 per share and related Series A warrant, the last reported sale price of our common stock on The Nasdaq Capital Market on August 7, 2019.

### **Series 6 Preferred offered by us**

We are also offering to those purchasers, if any, whose purchase of common stock in this offering would otherwise result in such purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% of our outstanding common stock immediately following the consummation of this offering, the opportunity, in lieu of purchasing common stock, to purchase up to 6,000 shares of Series 6 Preferred. Each share of Series 6 Preferred is convertible into a number of shares of common stock equal to \$1,000 divided by the combined public offering price per share and related Series A warrant set forth on the cover page of this prospectus. This prospectus also relates to the offering of the shares of common stock issuable upon conversion of such shares of Series 6 Preferred. See *"Description of Securities We are Offering—Series 6 Preferred"* for a discussion on the terms of the Series 6 Preferred.

Each share of Series 6 Preferred is convertible at any time at the option of the holder, provided that the holder will be prohibited from converting the Series 6 Preferred for shares of our common stock if, as a result of such conversion, the holder, together with its affiliates, would own more than 4.99% of the total number of shares of our common stock then issued and outstanding. However, any holder may increase such percentage to any other percentage not in excess of 9.99%, provided that any increase in such percentage shall not be effective until 61 days after such notice to us.

### **Series A warrants offered by us**

Series A warrants to purchase up to 15,000,000 shares of our common stock, assuming a combined public offering price of \$0.40 per share and related Series A warrant, the last reported sale price of our common stock on The Nasdaq Capital Market on August 7, 2019. Each share of our common stock is being sold together with a Series A warrant to purchase one share of our common stock. Each Series A warrant will have an exercise price per share of not less than 100% but not more than 120% of the combined public offering price per share and related Series A warrant.

The Series A warrants will be immediately exercisable and will expire on the fifth anniversary of the original issuance date.

If at any time there is no effective registration statement registering, or the prospectus contained therein is not available for issuance of, the shares issuable upon exercise of the Series A warrants, the holder may exercise the Series A warrants on a cashless basis. In addition, the Series A warrants also provide that, beginning 30 days after the original issuance date, the Series A warrants may be exercised at the option of the holder on a cashless basis, in whole or in part, for all of the shares that would be received upon cash exercise, if on the date of exercise, the volume weighted average price of our common stock is lower than three times the then applicable exercise price per share.

This prospectus also relates to the offering of the shares of common stock issuable upon exercise of the Series A warrants.

**Leak-out Agreements**

We expect that certain institutional investors in this offering will enter into leak-out agreements with us pursuant to which each such investor will agree to certain limits on sales by it of the shares of common stock purchased in this offering, including the shares of common stock issuable upon the exercise of the Series A warrants and conversion of the Series 6 Preferred, to the extent applicable. See “*Description of Securities We Are Offering – Leak-Out Agreements*” for additional information.

**Common stock outstanding after this offering**

27,791,429 shares assuming a combined public offering price of \$0.40 per share and related Series A warrant, the last reported sale price of our common stock on The Nasdaq Capital Market on August 7, 2019. The foregoing assumes only shares of common stock are sold in this offering and none of the related Series A warrants issued in this offering are exercised. For each share of Series 6 Preferred purchased in this offering in lieu of common stock, we will reduce the number of shares of common stock being sold in the offering by the amount of shares of common stock issuable upon conversion of such share of Series 6 Preferred.

**Use of proceeds**

We currently expect to use the net proceeds from this offering as follows: (a) CAD \$5,000,000, which is equal to approximately \$3,744,500 based on a Canadian dollar to U.S. dollar exchange rate of 0.7489 as of March 31, 2019, as partial consideration to acquire Jibestream Inc. (See “*Prospectus Summary – Pending Acquisition – Jibestream Inc.*”); (b) unless waived, the repayment of approximately \$1.9 million plus any unpaid accrued interest under that certain promissory note, dated as of June 27, 2019 (the “Note”), that is required to be repaid upon completion of this offering, and (c) the remainder for general corporate purposes including research and development and sales and marketing. The Note accrues interest at a rate of 10% per annum, matures on March 27, 2020 and the net proceeds from the Note were used for general working capital purposes.

For additional information, please refer to the section entitled “*Use of Proceeds*” on page 25 of this prospectus.

**Risk factors**

See “*Risk Factors*” beginning on page 12 and the other information included in this prospectus for a discussion of factors you should carefully consider before deciding whether to purchase our securities.

**Market symbol and trading**

Our common stock is listed on The Nasdaq Capital Market under the symbol “INPX.” There is no established trading market for the Series A warrants or Series 6 Preferred and we do not expect a market to develop. In addition, we do not intend to apply for the listing of the Series A warrants or Series 6 Preferred on any national securities exchange or other trading market. Without an active trading market, the liquidity of the Series A warrants and Series 6 Preferred will be limited.

Unless otherwise stated, all information contained in this prospectus assumes no investor purchases shares of Series 6 Preferred in lieu of common stock in this offering.

The number of shares of our common stock to be outstanding after this offering is based on 12,791,429 shares of our common stock outstanding as of June 30, 2019 and excludes, as of that date, the following:

- 200 shares of common stock issuable upon the exercise of outstanding stock options under our 2011 Employee Stock Incentive Plan, having a weighted average exercise price of \$28,119.54 per share;
- 4,912,423 shares of common stock issuable upon the exercise of outstanding stock options under our 2018 Employee Stock Incentive Plan, having a weighted average exercise price of \$1.69 per share;
- 39 shares of common stock issuable upon the exercise of outstanding stock options not under our 2011 or 2018 Employee Stock Incentive Plan, having a weighted average exercise price of \$43,392.86 per share;
- 158,224 shares of common stock available for future issuance under our 2011 Employee Stock Incentive Plan, plus any additional shares of our common stock that may become available under our 2011 Employee Stock Incentive Plan;
- 1,403,953 shares of common stock available for future issuance under our 2018 Employee Stock Incentive Plan, plus any additional shares of our common stock that may become available under our 2018 Employee Stock Incentive Plan;
- 3,978,539 shares of common stock issuable upon the exercise of outstanding warrants, having a weighted average exercise price of \$15.18 per share;
- 202 shares of common stock issuable upon the conversion of 1 outstanding share of Series 4 Convertible Preferred Stock, at a conversion price of \$4.96 per share;
- 1,100 shares of common stock reserved for issuance to investor relations firms; and
- 37,838 shares of common stock issuable upon conversion of 126 outstanding shares of Series 5 Convertible Preferred Stock, at a conversion price of \$3.33 per share.



## RISK FACTORS

*Investing in our securities involves a high degree of risk. Before making an investment decision with respect to our securities, we urge you to carefully consider the risks described in the “Risk Factors” section of our SEC filings including the Annual Report on Form 10-K for the fiscal year ended December 31, 2018 and the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2019, which are incorporated by reference into this prospectus. These risk factors relate to our business, intellectual property, regulatory matters, and the ownership of our common stock. In addition, the following risk factors present material risks and uncertainties associated with this offering. The risks and uncertainties incorporated by reference into this prospectus or described below are not the only ones we face. Additional risks and uncertainties not presently known or which we consider immaterial as of the date hereof may also have an adverse effect on our business. If any of the matters discussed in the following risk factors were to occur, our business, financial condition, results of operations, cash flows or prospects could be materially adversely affected, the market price of our securities could decline and you could lose all or part of your investment in our securities.*

### Risks Related to Our Operations

***We recently completed our acquisition of Locality and certain assets of GTX, which may make it difficult for potential investors to evaluate our future business. Furthermore, due to the risks and uncertainties related to the acquisition of new businesses, any such acquisition does not guarantee that we will be able to attain profitability.***

On May 21, 2019 and June 27, 2019, we acquired Locality and certain assets of GTX, respectively. Our limited operating history after these acquisitions may make it difficult for potential investors to evaluate our business or prospective operations or the merits of an investment in our securities. We are subject to the risks inherent in the financing, expenditures, complications and delays characteristic of a newly combined business. In addition, while GTX and the former affiliates of Locality have indemnified the Company from any undisclosed liabilities, there may not be adequate resources to cover such indemnity. Furthermore, there are risks that the vendors, suppliers and customers of these acquired entities may not renew their relationships for which there is no indemnification. Accordingly, our business and success faces risks from uncertainties inherent to developing companies in a competitive environment. There can be no assurance that our efforts will be successful or that we will ultimately be able to attain profitability.

***We may not be able to successfully integrate the operations of entities or assets that we have acquired or may acquire in the future into our ongoing business operations, which may result in our inability to fully realize the intended benefits of these acquisitions, or may disrupt our current operations, which could have a material adverse effect on our business, financial position and/or results of operations.***

We continue to integrate the operations of Locality and the assets acquired from GTX and this process involves complex operational, technological and personnel-related challenges, which are time-consuming and expensive and may disrupt our ongoing business operations. Furthermore, integration involves a number of risks, including, but not limited to:

- difficulties or complications in combining the companies’ operations;
- differences in controls, procedures and policies, regulatory standards and business cultures among the combined companies;
- the diversion of management’s attention from our ongoing core business operations;
- increased exposure to certain governmental regulations and compliance requirements;
- the potential loss of key personnel;
- the potential loss of key customers or suppliers who choose not to do business with the combined business;
  
- difficulties or delays in consolidating the acquired companies’ technology platforms, including implementing systems designed to continue to ensure that the Company maintains effective disclosure controls and procedures and internal control over financial reporting for the combined company and enable the Company to continue to comply with U.S. GAAP and applicable U.S. securities laws and regulations;
- unanticipated costs and other assumed contingent liabilities;
- difficulty comparing financial reports due to differing financial and/or internal reporting systems;
- making any necessary modifications to internal financial control standards to comply with the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder; and/or
- possible tax costs or inefficiencies associated with integrating the operations of the combined company.

These factors could cause us to not fully realize the anticipated financial and/or strategic benefits of the acquisitions and the recent reorganization, which could have a material adverse effect on our business, financial condition and/or results of operations.

Even if we are able to successfully operate the acquired businesses, we may not be able to realize the revenue and other synergies and growth that we anticipated from these acquisitions in the time frame that we currently expect, and the costs of achieving these benefits may be higher than what we currently expect, because of a number of risks, including, but not limited to:

- the possibility that the acquisition may not further our business strategy as we expected;
- the possibility that we may not be able to expand the reach and customer base for the acquired companies current and future products as expected; and
- the possibility that the carrying amounts of goodwill and other purchased intangible assets may not be recoverable.

As a result of these risks, the acquisitions and integration may not contribute to our earnings as expected, we may not achieve expected revenue synergies or our return on invested capital targets when expected, or at all, and we may not achieve the other anticipated strategic and financial benefits of the acquisitions and the reorganization.

***We have a significant amount of debt outstanding. Such indebtedness, along with the other contractual commitments of our company, could adversely affect our business, financial condition and results of operations.***

As of August 8, 2019, we have an aggregate outstanding balance of \$9,953,395.83 underlying the promissory notes issued to Iliad and CVP. The ability to meet payment and other obligations under these notes depends on our ability to generate significant cash flow in the future. This, to some extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors beyond our control as described in this prospectus. If we are not able to generate sufficient cash flow to service our debt obligations, we may need to refinance or restructure debt, exchange debt for other securities, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we are unable to implement one or more of these alternatives, we may not be able to meet debt payment and other obligations, which could have a material adverse effect on our financial condition.

In addition, we may incur additional indebtedness in the future. If new debt or other liabilities are added to our current consolidated debt levels, the related risks that we now face could intensify.

#### **Risks Related to the Sysorex Spin-off**

***The spin-off of Sysorex, Inc. could give rise to disputes or other unfavorable effects, which could have a material adverse effect on our business, financial position and results of operations.***

On August 31, 2018, we completed the spin-off (the “Spin-off”) of our value added reseller business from our indoor positioning analytics business by way of a distribution of all the shares of common stock of our wholly owned subsidiary, Sysorex, Inc. (“Sysorex”), to our stockholders of record and certain warrant holders. Disputes with third parties could arise out of the Spin-off, and we could experience unfavorable reactions to the Spin-off from employees, investors, or other interested parties. These disputes and reactions of third parties could have a material adverse effect on our business, financial position, and results of operations. In addition, following the Spin-off, disputes between Sysorex and us could arise in connection with any of the Spin-off related agreements.

***We may not achieve some or all of the expected benefits of the Spin-off, and the Spin-off may adversely affect our business.***

We may not be able to achieve the full strategic and financial benefits expected to result from the Spin-off, or such benefits may be delayed or not occur at all. The Spin-off is expected to provide the following benefits, among others:

- allow us to more effectively pursue our own distinct operating priorities and strategies, and enable our management to pursue opportunities for long-term growth and profitability, and to recruit, retain and motivate employees pursuant to compensation policies which are appropriate for our lines of business;
- permit us to concentrate our financial resources solely on our own operations, providing greater flexibility to invest capital in our business in a time and manner appropriate for our distinct strategy and business needs; and
- enable investors to evaluate the merits, performance and future prospects of our businesses and to invest in us separately based on these distinct characteristics.

We may not achieve these or other anticipated benefits for a variety of reasons, including, among others: (a) the Spin-off has required significant amounts of management's time and effort, which could otherwise have been spent operating and growing our business; (b) following the Spin-off, our common stock price may be more susceptible to market fluctuations and other events particular to one or more of our products than if Sysorex were still a part of our company; and (c) following the Spin-off, our operational and financial profiles have changed such that our diversification of revenue sources has diminished, and our results of operations, cash flows, working capital, and financing requirements may be subject to increased volatility than prior to the Spin-off. Additionally, we may experience unanticipated competitive developments, including changes in the conditions of our markets that could negate the expected benefits from the Spin-off. In addition, we have incurred one-time costs in connection with the Spin-off that may negate some of the benefits we expect to achieve. If we do not realize some or all of the benefits expected to result from the Spin-off, or if such benefits are delayed, our business, financial condition, and results of operations and cash flows could be adversely affected.

***Either we or Sysorex may fail to perform our obligations under the Separation and Distribution Agreement.***

In connection with the Spin-off, we entered into a Separation and Distribution Agreement with Sysorex (as amended, the "Separation Agreement"), a transition services agreement, a tax matters agreement, an employee matters agreement and an assignment and assumption agreement. If we or Sysorex fail to comply with these agreements, including our respective indemnification obligations, our financial condition and results of operations could be adversely affected.

Pursuant to the terms of the Separation Agreement, we agreed to indemnify Sysorex for certain liabilities and the cost of such indemnification obligations may have a material and adverse effect on our financial performance.

Pursuant to the terms of the Separation Agreement, Sysorex agreed to indemnify us for certain liabilities. However, there can be no assurance that the indemnity will be sufficient to hold us harmless from such liabilities, or that Sysorex's ability to satisfy its indemnification obligation will not be impaired in the future.

In addition, third parties could also seek to hold us responsible for liabilities that Sysorex has agreed to assume, and there can be no assurance that the indemnity from Sysorex will be sufficient to protect us against the full amount of such liabilities, or that Sysorex will be able to fully satisfy its indemnification obligations. In addition, insurers may attempt to deny coverage to us for liabilities associated with certain occurrences of indemnified liabilities prior to the Spin-off.

***If the Spin-off, together with certain related transactions, does not qualify as a transaction that is generally tax-free for U.S. federal income tax purposes, our company, our stockholders and Sysorex, could be subject to significant tax liabilities, and, in certain circumstances, Sysorex could be required to indemnify us for material taxes and other related amounts pursuant to indemnification obligations under the tax matters agreement.***

We believe that the Spin-off qualified as a transaction that is generally tax-free to our stockholders for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Code. We believe that a corporate level gain is likely to be triggered as a result of both pre and post-spin financings and potentially as a result of certain internal restructurings completed in anticipation of the Spin-off, but this gain should be largely or entirely offset by existing net operating losses. There are no assurances, however, that the IRS will not challenge such conclusion or that a court would sustain such a challenge.

If the Spin-off, together with certain related transactions, does not qualify as a transaction that is generally tax-free for U.S. federal income tax purposes, our company and our stockholders could be subject to significant tax liabilities, and, in certain circumstances, Sysorex could be required to indemnify us for material taxes and other related amounts pursuant to indemnification obligations under the tax matters agreement.

If the Spin-off, together with certain related transactions, fails to qualify as a transaction that is generally tax-free for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Code, in general, we would recognize taxable gain as if we had sold the Sysorex common stock in a taxable sale for its fair market value, and our stockholders who receive Sysorex shares in the Spin-off would be subject to tax as if they had received a taxable distribution equal to the fair market value of such shares.

***A court could deem the Spin-off to be a fraudulent conveyance and void the transaction or impose substantial liabilities upon us.***

If a third party challenged the Spin-off, a court could determine that the Spin-off or certain internal restructuring transactions undertaken in connection with the Spin-off constituted a fraudulent conveyance or transfer. Fraudulent conveyances or transfers are defined to include transfers made or obligations incurred with the actual intent to hinder, delay or defraud current or future creditors or transfers made or obligations incurred for less than reasonably equivalent value when the debtor was insolvent, or that rendered the debtor insolvent, inadequately capitalized or unable to pay its debts as they become due. In such circumstances, a court could void the Spin-off or impose substantial liabilities upon us, which could adversely affect our financial condition and our results of operations. Among other things, the court could also require our stockholders to return to us some or all of the shares of Sysorex common stock issued in the Spin-off or require us to fund liabilities of Sysorex for the benefit of creditors.

***We have entered into a loan arrangement with Sysorex and there can be no guarantee Sysorex will be able to repay any amounts borrowed.***

We have entered into a Note Purchase Agreement with Sysorex under which Sysorex may borrow from us a principal amount up to \$10.0 million (the “Note Purchase Agreement”). There can be no assurance that Sysorex will be able to repay the amounts borrowed or that the collateral Sysorex provided pursuant to the Note Purchase Agreement would be sufficient to cover any borrowed amounts in the event of a default. If Sysorex were to default, it could have an adverse material impact on our financial condition and cash flows.

***Borrowings under the Note Purchase Agreement have been the primary source of operating capital for Sysorex since the Spin-off. If Sysorex is unable to fund its working capital requirements from its operations or third party sources, Sysorex may be required to curtail or cease operations and would be unable to repay amounts owed under the Note Purchase Agreement. In the event that Sysorex is unable to continue its operations, we may lose some or all of our investment, which would have a material adverse effect on our financial condition.***

Sysorex has not generated sufficient cash flow to fund its working capital requirements and has relied primarily on increased borrowings under the Note Purchase Agreement to fund its operations since the Spin-off. As a result, the amount Sysorex is entitled to borrow under the Note Purchase Agreement has increased from \$3.0 million to \$10.0 million. If Sysorex is unable to fund its working capital requirements from its operations or third party sources, Sysorex may be required to curtail or cease operations and would be unable to repay amounts owed under the Note Purchase Agreement. In the event that Sysorex is unable to continue its operations, we may lose some or all of our investment, which would have a material adverse effect on our financial condition.

***Our Chief Executive Officer and director, Nadir Ali, is also a director and Chairman of the Board of Sysorex. In addition, certain of our directors and executive officers own shares of Sysorex common stock. These interrelationships may create, or appear to create, conflicts of interest.***

Mr. Ali, our chief executive officer and director, is also the chairman of the board and a director of Sysorex. Mr. Ali’s dual roles may create conflicts of interest between Mr. Ali’s obligations to our company and its shareholders and his obligations to Sysorex and its shareholders. For example, Mr. Ali may be in a position to influence whether Sysorex complies with its obligations under the Note Purchase Agreement, and whether we lend additional amounts to Sysorex, waive defaults or accelerate such indebtedness or take other steps as a secured creditor in a manner that may be viewed as contrary to the best interests of either our company or Sysorex and their respective stockholders. In addition, Mr. Ali is required from time to time to spend a portion of his work time attending to the business and affairs of Sysorex. During such periods, he may be unable to devote sufficient time to our business.

Certain of our executive officers and directors own shares of Sysorex common stock. The continued ownership of such common stock creates or may create the appearance of a conflict of interest when these persons are faced with decisions that could have different implications for us and for Sysorex.

#### **Risks Related to Recent Acquisitions**

***The risks arising with respect to the historic business and operations of GTX and Locality may be different from what we anticipate, which could significantly increase the costs and decrease the benefits of these acquisitions and materially and adversely affect our business, liquidity, capital resources or results of operations.***

The risks arising with respect to the historic business and operations of GTX and Locality may be different from what we anticipate, which could significantly increase the costs and materially and adversely affect our business, liquidity, capital resources or results of operations.

***In connection with the acquisition of Locality, we agreed to guaranty the full and punctual payment by our subsidiary, Inpixon Canada, Inc., of any unpaid portion of the aggregate cash consideration for the acquisition and, therefore, we may be contractually obligated to pay substantial amounts to third parties based on the inactions of our subsidiary.***

In connection with the acquisition of Locality, we entered into a guaranty agreement, pursuant to which we provided the owners of Locality with a full recourse guaranty for the full and punctual payment of any unpaid portion of the aggregate cash consideration, which is equal to \$1.5 million, subject to adjustment. Accordingly, if our subsidiary, Inpixon Canada, Inc., fails to pay any portion of the cash consideration, we will be contractually obligated to pay any unpaid portion to the owners, which would result in a reduction of the amount of our cash available for other purposes, which would adversely affect our business and financial condition.

#### **Risks Relating to the Proposed Jibestream Acquisition and Jibestream's Business and Industry**

***We may not close on the proposed acquisition of Jibestream.***

As part of the Jibestream acquisition, we will purchase all outstanding securities of Jibestream in exchange for consideration consisting of: (i) CAD \$5,000,000 (the "Cash Consideration") (as adjusted pursuant to the Purchase Agreement)), which is equal to approximately \$3,744,500 based on a Canadian dollar to U.S. dollar exchange rate of 0.7489 as of March 31, 2019 (the "Exchange Rate"); plus (ii) a number of shares of our common stock (the "Inpixon Shares"), equal to CAD \$3,000,000, which is equal to \$2,246,700 based on the Exchange Rate, divided by the price per share at which shares of our common stock are issued in this offering. A portion of the funds raised in this offering will be used to pay the Cash Consideration. For more information, please see "Use of Proceeds". The closing of the Transaction is conditioned upon the closing of this offering and certain other customary conditions. We can give no assurance that the terms and conditions will be met and that the Transaction will close. In the event we, for any reason, do not acquire Jibestream, we will use the net proceeds raised in this offering for working capital and general corporate purposes and/or to make what we believe are synergistic and/or complementary acquisitions.

***If we fail to obtain stockholder approval for the issuance of the Inpixon Shares in connection with the Jibestream acquisition, if required by the Nasdaq Listing Rules, we may have to pay the value of the Inpixon Shares in cash.***

Nasdaq Listing Rule 5635(a) requires stockholder approval when, in connection with an acquisition of stock or assets of another company, we issue a number of shares of our common stock that equals or exceeds 20% of the total number of shares of our common stock or voting power outstanding before the transaction. We may be required to issue more than 20% of the total number of shares of our common stock outstanding before the acquisition.

If stockholder approval is required and is not obtained prior to December 31, 2019, then we will be required to pay the portion of the purchase price representing the Inpixon Shares in cash unless otherwise agreed to by the parties. We may utilize remaining net proceeds from this offering to make such payment or, if such funds are not available, we will need to seek alternative sources of financing. We may not be able to obtain alternative sources of financing sufficient to pay for such remaining portion on terms acceptable to us, if at all. If we are required to pay the value of the Inpixon Shares in cash and are unable to obtain financing, then we may be in breach of the Purchase Agreement and can face claims for such breach, which could have a material adverse effect on our business, financial condition and/or results of operations.

***Because Jibestream derives substantially all of its revenues and cash flows from sales of a limited range of products, failure of these products to satisfy customer demands or to achieve increased market acceptance would adversely affect our proposed business, results of operations, financial condition and growth prospects.***

Jibestream derives and expects to continue to derive a substantial portion of its revenues and cash flows from sales of its products. As such, the market acceptance of its products is critical to our continued success. Demand for Jibestream's products is affected by a number of factors beyond our control, including continued market acceptance, the timing of development and release of new products by competitors, technological change, and growth or decline in the mobile device management market. We expect the proliferation of mobile devices to lead to an increase in the data security demands of our customers, and Jibestream's products may not be able to scale and perform to meet those demands. If Jibestream is unable to continue to meet customer demands or to achieve more widespread market acceptance of its products, our business operations, financial results and growth prospects will be materially and adversely affected.

***Jibestream financial statements have been prepared assuming that such company will continue as a going concern.***

The audited financial statements of Jibestream for the fiscal years ended December 31, 2018 and 2017 have been prepared assuming such company will continue as a going concern. As discussed in Note 3 of those financial statements, the continuation of such company as a going concern is dependent upon management's plans, which include the ability to successfully renegotiate the terms of its existing debt, obtain sufficient financing going forward and to generate sufficient cash flows from operations and otherwise meet its obligations as they come due. Its independent registered public accounting firm has included an explanatory paragraph indicating the existence of material uncertainty as to its ability to continue as a going concern. The Company believes that following this offering and the acquisition, the uncertainty surrounding its ability to continue as a going concern will be alleviated based upon the satisfaction of existing liabilities coupled with the existing and projected sales orders and cash flows, resulting in minimal, if any, negative impact on the ongoing business operations of the Company following the acquisition. However, there can be no assurance that Jibestream will be successful in its efforts and it may require additional unanticipated funding from the Company, which may have an adverse effect on the Company and its operations.

***If Jibestream is unable to sell additional products and services to its customers and increase its overall customer base, our future revenue and operating results may suffer.***

The future success of Jibestream depends, in part, on its ability to expand the deployment of its platform with existing customers and finding new customers to sell its products and services to. This may require increasingly sophisticated and costly sales efforts and may not result in additional sales. In addition, the rate at which Jibestream's customers purchase additional products and services, and Jibestream's ability to attract new customers, depends on a number of factors, including the perceived need for indoor mapping products and services, as well as general economic conditions. If Jibestream's efforts to sell additional products and services are not successful, our business may suffer.

Jibestream also depends on its installed customer base for future licensing and support revenues. If customers choose not to continue renewing their licensing and support or seek to renegotiate the terms of licensing and support agreements prior to renewing such agreements, our revenue may decline.

***Jibestream's current research and development efforts may not produce successful products or features that result in significant revenue, cost savings or other benefits in the near future.***

Developing products and related enhancements in our field is expensive. Jibestream's investments in research and development may not result in significant design improvements, marketable products or features or may result in products that are more expensive than anticipated. Jibestream may not achieve the cost savings or the anticipated performance improvements expected, and Jibestream may take longer to generate revenue from products or feature enhancements in development, or generate less revenue than expected.

Jibestream's future plans include meaningful investments in research and development and related product opportunities. Jibestream and our management believe that Jibestream must continue to dedicate a meaningful amount of resources to research and development efforts to maintain a competitive position. However, Jibestream may not receive increased revenue from these investments in the near future, or these investments may not yield the expected benefits, either of which could adversely affect our business and operating results.

***If Jibestream's products do not effectively interoperate with its customers' IT infrastructure, installations could be delayed or cancelled, which would harm the business of Jibestream, and our financial condition, operating results and growth prospects.***

Jibestream's products must effectively interoperate with its customers' existing or future IT infrastructure and indoor positioning systems, which often have different specifications, utilize multiple protocol standards, deploy products from multiple vendors, and contain multiple generations of products that have been added over time. As a result, when problems occur in a company's infrastructure, it may be difficult to identify the sources of these problems. If Jibestream finds errors in the existing software or defects in the hardware used in its customers' infrastructure, Jibestream may have to modify its software so that its products will interoperate with the infrastructure of its customers. In such cases, Jibestream's products may be unable to provide significant performance improvements for applications deployed in the infrastructure of its customers. These issues could cause longer installation times for Jibestream's products and could cause order cancellations, either of which would adversely affect our business, results of operations and financial condition. In addition, other customers may require products to comply with certain security or other certifications and standards. If Jibestream's products are late in achieving or fail to achieve compliance with these certifications and standards, or competitors sooner achieve compliance with these certifications and standards, Jibestream may be unable to sell its products to such customers, or may otherwise be at a competitive disadvantage, either of which would harm our business, results of operations, and financial condition.

***Failure to protect Jibestream's intellectual property rights could adversely affect our financial condition, operating results and growth prospects.***

The success of both our company and Jibestream depends, in part, on our ability to protect proprietary methods and technologies that we develop under patent and other intellectual property laws of the United States so that we can prevent others from using our inventions and proprietary information. If we or Jibestream fail to protect intellectual property rights adequately, competitors might gain access to our technology, and our business might be adversely affected. However, defending our intellectual property rights might entail significant expenses. Any patents issued in the future may not provide us with any competitive advantages, and our patent applications may never be granted. The process of obtaining patent protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, there can be no assurance that these patents will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are complex and often uncertain.

***We may not be able to integrate Jibestream into our ongoing business operations, which may result in our inability to fully realize the intended benefits of the Jibestream acquisition, or may disrupt our current operations, which could have a material adverse effect on the our business, financial position and/or results of operations.***

If we successfully consummate the acquisition of Jibestream, we plan to integrate the operations of Jibestream into our business, and this process involves complex operational, technological and personnel-related challenges, which are time-consuming and expensive and may disrupt our ongoing business operations. Furthermore, integration involves a number of risks, including, but not limited to:

- difficulties or complications in combining the companies' operations;
- differences in controls, procedures and policies, regulatory standards and business cultures among the combined companies;
- the diversion of management's attention from our ongoing core business operations;
- increased exposure to certain governmental regulations and compliance requirements;
- the potential loss of key personnel who choose not to remain with Jibestream or Inpixon;
- the potential loss of key customers or suppliers who choose not to do business with the combined business;
- difficulties or delays in consolidating Jibestream's information technology platforms, including implementing systems designed to continue to ensure that the Company maintains effective disclosure controls and procedures and internal control over financial reporting for the combined company and enable the Company to continue to comply with U.S. GAAP and applicable U.S. securities laws and regulations;
- unanticipated costs and other assumed contingent liabilities;
- difficulty comparing financial reports due to differing financial and/or internal reporting systems;
- making any necessary modifications to internal financial control standards to comply with the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder; and/or
- possible tax costs or inefficiencies associated with integrating the operations of the combined company.

These factors could cause us to not fully realize the anticipated financial and/or strategic benefits of the Jibestream acquisition, which could have a material adverse effect on our business, financial condition and/or results of operations.

***Even if we are able to successfully integrate Jibestream into our business operations, we may not be able to realize the revenue and other synergies and growth that we anticipate from the acquisition as expected.***

Even if we are able to successfully integrate Jibestream into within Inpixon, we may not be able to realize the revenue and other synergies and growth that we anticipate from the acquisition in the time frame that we currently expect, and the costs of achieving these benefits may be higher than what we currently expect, because of a number of risks, including, but not limited to:

- the possibility that the acquisition may not further our business strategy as we expected;
- the possibility that we may not be able to expand the reach and customer base for Jibestream's current and future products as expected;
- the possibility that we may not be able to expand the reach and customer base for our products as expected;
- the possibility that the carrying amounts of goodwill and other purchased intangible assets may not be recoverable; and
- the fact that the acquisition will substantially expand our indoor mapping business, and we may not experience anticipated growth in that market.

As a result of these risks, the Jibestream acquisition and integration may not contribute to our earnings as expected, we may not achieve expected revenue synergies or our return on invested capital targets when expected, or at all, and we may not achieve the other anticipated strategic and financial benefits of the acquisition.

***A significant portion of the purchase price for our acquisition of Jibestream is expected to be allocated to goodwill and intangible assets that are subject to periodic impairment evaluations. An impairment loss could have a material adverse impact on our financial condition and results of operations.***

On a pro forma basis, we anticipate acquiring approximately \$8.3 million of goodwill and intangible assets relating to our acquisition of Jibestream if this acquisition is consummated. As required by current accounting standards, we review intangible assets for impairment either annually or whenever changes in circumstances indicate that the carrying value may not be recoverable. The risk of impairment to goodwill is higher during the early years following an acquisition. This is because the fair values of these assets align very closely with what we paid to acquire the reporting units to which these assets are assigned. As a result, the difference between the carrying value of the reporting unit and its fair value (typically referred to as “headroom”) is smaller at the time of acquisition. Until this headroom grows over time, due to business growth or lower carrying value of the reporting unit, a relatively small decrease in reporting unit fair value can trigger impairment charges. When impairment charges are triggered, they tend to be material due to the size of the assets involved. Our business would be adversely affected, and impairment of goodwill could be triggered, if any of the following were to occur: higher attrition rates than planned as a result of the competitive environment or our inability to provide products and services that are competitive in the marketplace, lower-than-planned adoption rates by Jibestream customers, higher-than-expected expense levels to provide services to clients, and changes in our business model that may impact one or more of these variables.

***We will incur substantial costs in connection with the Jibestream acquisition.***

We and Jibestream expect to incur a number of non-recurring transaction fees and other costs associated with completing the Jibestream acquisition and combining the operations of the two companies, including legal and accounting fees and potential liabilities. These fees and costs will be substantial and many of them will be incurred regardless of whether the acquisition is consummated. Additional unanticipated costs may also be incurred in the integration of the businesses of Inpixon and Jibestream. If the total costs and indebtedness incurred in completing the Jibestream acquisition exceed estimates, the financial results of the combined company may be materially adversely affected, which may adversely affect the value of our common stock following the closing of the offering.

***Consummation of the Jibestream acquisition may expose us to additional liabilities, and insurance and indemnification coverage may not fully protect us from these liabilities.***

If the Jibestream acquisition is consummated, we may be exposed to unknown or contingent liabilities associated with Jibestream, and if these liabilities exceed our estimates, our results of operations and financial condition may be materially and negatively affected. As a part of the Jibestream acquisition, the Jibestream parties have agreed to indemnify us for any breaches of representations, warranties or covenants in the related Purchase Agreement, within the eighteen-month period following the closing of the acquisition. Indemnification of Inpixon is generally limited to shares of common stock of Inpixon representing 15% of the Purchase Price. Inpixon, through Inpixon Canada, Inc., will retain such shares to secure the indemnification and other obligations of the Jibestream parties and to secure the obligation of the Jibestream parties to pay any adjustment to the Purchase Price. Notwithstanding the foregoing, if indemnification claims exceed the value of such retained shares, indemnification of Inpixon by the Jibestream parties is subject to certain caps and floors, and Inpixon may be required to absorb losses relating to the Jibestream acquisition. While we reserve amounts to pay for any losses in connection with acquisitions in accordance with GAAP, those reserves may not be adequate over time to cover actual losses, and if any such losses exceed the reserved amount, we would recognize losses to the extent of such excess, which would adversely affect our net income and stockholders’ equity and, depending on the extent of such excess losses, could adversely affect our business.

***The risks arising with respect to the historic business and operations of Jibestream may be different than we anticipate, which could significantly increase the costs and decrease the benefits of the acquisition and materially and adversely affect our operations going forward.***

Although we performed significant financial, legal, technological and business due diligence with respect to Jibestream, we may not have appreciated, understood or fully anticipated the extent of the risks associated with the acquisition. As mentioned above, we have secured indemnification for certain matters from the former equity holders of Jibestream in order to mitigate the consequences of breaches of representations, warranties and covenants under the Purchase Agreement and the risks associated with historic operations, including those with respect to compliance with laws, accuracy of financial statements, financial reporting controls and procedures, tax matters and undisclosed liabilities, and certain matters known to us. We believe that the indemnification provisions of the Purchase Agreement, together with the Holdback Amount and insurance policies that Jibestream and we have in place will limit the economic consequences of the issues we have identified in our due diligence to acceptable levels. Notwithstanding our exercise of due diligence and risk mitigation strategies, the risks of the acquisition and the costs associated with these risks may be greater than we anticipate. We may not be able to contain or control the costs associated with unanticipated risks or liabilities, which could materially and adversely affect our business, liquidity, capital resources or results of operations.



## **Risks Related to Privacy and Cybersecurity Matters**

### ***New and amended laws and regulations regarding data privacy, cybersecurity and related regulatory activity may adversely affect our business.***

New and amended laws and regulations regarding data privacy, cybersecurity and related regulatory activity may:

- adversely impact the ability of customers to use our products and services in a legally compliant manner in their respective jurisdictions;
- substantially narrow the permissible uses of our products and/or services, and thereby impair our ability to expand our business in the United States and multiple other jurisdictions;
- prevent us from acquiring necessary rights in data collected by us and/or our customers using our API and related technology for the purpose of developing data-driven products and/or services in our current roadmap, and/or otherwise monetizing such data;

### ***Regulatory investigations, enforcement actions and/or private party claims threatened, or commenced, against us or our customers may materially and adversely affect our business.***

If we become subject to any regulatory investigations or private party claims, we may incur significant expenses in connection therewith, our defense to such investigations and actions may not be successful and may materially affect our business. Such matters may also affect users of our products and services which could expose us to liability or make customers and potential customers less likely to use our products and services.

### ***Evolving US and global regulation and changes in applicable laws relating to data privacy and cybersecurity may increase our expenditures related to compliance efforts or otherwise limit the solutions we can offer, which may harm our business and adversely affect our financial condition.***

As the digital economy continues to evolve, there are new and amended laws and increased regulation regarding data privacy by federal, state and foreign jurisdictions. We are particularly sensitive to these risks because data is a critical component of our roadmap for offering “software as a service”, or SaaS applications, expanding our market to the commercial sector, and developing data-driven products. Any law or regulation restricting the collection or processing of data could result in a decline in the use of our products and/or services, and harm our business.

The U.S. and numerous state governments (including California, with the California Consumer Privacy Act of 2018, or “CCPA”) have adopted or proposed limitations on the collection, distribution and use of personal information. Several foreign jurisdictions, including the European Union and the United Kingdom, have adopted legislation (including directives or regulations) that increase or change the requirements governing data collection and storage in these jurisdictions. Proposed or new legislation and regulations could also significantly affect our business. There currently are a number of proposals pending before federal, state, and foreign legislative and regulatory bodies. The European Union General Data Protection Regulation (“GDPR”), which became effective in May 2018, imposes substantial obligations on entities that receive or process personal data of individuals located in the European Economic Area (“EEA”). We strive not to collect personal data from EEA individuals, but we may not always be successful at avoiding such collection and/or at anonymizing such data if and when it’s collected. Our future products and/or services may collect personal data as defined under GDPR, the CCPA or other applicable data protection laws, and we will be required to expend time, effort and money to ensure that our products and/or services comply with such laws, and our efforts may not be successful. For example, we may be required to obtain consent and/or offer new controls to existing and new users in the EEA or California before processing data. The GDPR includes significant penalties for non-compliance, as does the CCPA which also permits private causes of actions by California consumers. We also operate in several other jurisdictions including Canada and India, with stringent and evolving data protection laws.

Violations of these laws, or allegations of such violations, could subject us to litigation, regulatory investigations, cash and non-cash penalties for noncompliance, disrupt our operations, involve significant management distraction and result in a material adverse effect on our business, financial condition and results of operations. Moreover, if future laws and regulations limit our customers’ ability to use our products and/or services, use and share the data they collect, or our ability to continue providing all or part of our products and/or services, or store, process and share data with our customers, demand for our solutions could decrease, our costs could increase, and our results of operations and financial condition could be harmed.

### ***The provision of SaaS business services may expose us to enhanced risks from breaches of our cloud environment or information technology systems, which could damage our reputation, vendor, and customer relationships, and our customers’ access to our services.***

The provision of SaaS business services may expose us to enhanced risk of cyber-attacks and their associated costs, expenses and reputational harm. Our SaaS service will include storage of customer collected data in a cloud environment that we select. We face a number of threats to our cloud environment and our own networks in the form of unauthorized access, security breaches and other system disruptions. It is critical to our business strategy that our cloud environment and internal infrastructure remains secure and is perceived by customers and partners to be secure. We have implemented reasonable security measures in compliance with applicable laws, regulatory requirements and industry best practices. Despite our security measures, our cloud environment or information technology systems may be vulnerable to attacks by hackers, internal employee error, or other disruptive problems. Any such security breach may compromise information used or stored on our cloud or our networks and may result in significant data losses or theft of our, our customers’, or our business partners’ valuable data including personal data. A cybersecurity breach could negatively affect our reputation by adversely affecting the market’s perception of the security or reliability of our products or services. In addition, a cyber-attack could result in other negative consequences, including remediation costs, disruption of internal operations, increased cybersecurity protection costs, lost revenues or litigation, which could have a material adverse effect on our business, results of operations and financial condition.

### ***We intend to rely on third party cloud service providers to operate certain aspects of our SaaS service offerings and any disruption of or interference with our use of these services could negatively impact our operations and materially and adversely affect our business.***

We rely on third party cloud service providers to operate certain aspects of our SaaS service offerings. Any disruption of or interference with our use of these services could negatively impact our operations and materially and adversely affect our business.

## **Risks Related to this Offering**

***Future sales of our common stock or other securities, or the perception that future sales may occur, may cause the market price of our common stock to decline, even if our business is doing well.***

Sales of substantial amounts of our common stock or other securities, or the perception that these sales may occur, could materially and adversely affect the price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. For example, in June 2018, the SEC declared effective a shelf registration statement filed by us. This shelf registration statement allows us to issue any combination of our common stock, preferred stock, warrants, units, debt securities and subscription rights from time to time until expiry in June 2021 for an aggregate initial offering price of up to \$300 million, subject to certain limitations for so long as our public float is less than \$75 million. The specific terms of future offerings, if any, under this shelf registration statement would be established at the time of such offering. Depending on a variety of factors, including market liquidity of our common stock, the sale of shares under this shelf registration statement may cause the trading price of our common stock to decline. The sale of a substantial number of shares of our common stock under this shelf registration statement, or anticipation of such sales, could cause the trading price of our common stock to decline or make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise desire.

In addition, in connection with the acquisition of certain assets of GTX and the proposed acquisition of Jibestream, we agreed to file a registration statement with the SEC registering the resale of shares of our common stock issued to GTX and issuable to stockholders of Jibestream. Pursuant to the terms of the underwriting agreement to be entered into in connection with this offering, we agreed to delay such filing until after the end of the thirty-day period commencing upon execution of the underwriting agreement and to not have such filings declared effective by the SEC until after the end of the 60-day period commencing upon execution of the underwriting agreement. However, the eventual filing of such registration statement and the existence of these registration rights may result in the perception of or actual sales of substantial amounts of shares of our common stock in the public market following this offering, which could cause the trading price of our common stock to decline or make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise desire.

We had outstanding 14,195,201 shares of common stock as of July 16, 2019, of which 1,850,793 shares of common stock are restricted securities that may be sold only in accordance with the resale restrictions under Rule 144 of the Securities Act. In addition, as of July 16, 2019, there were 202 shares issuable upon conversion of 1 share of Series 4 Convertible Preferred Stock, 37,838 shares of common stock issuable upon conversion of 126 shares of Series 5 Convertible Preferred Stock, 3,978,539 shares subject to outstanding warrants, 4,912,623 shares subject to outstanding options under the Company's equity incentive plans, 39 shares subject to options not under such plans, 1,100 shares of common stock reserved for issuance to investor relations firms, an additional 158,224 shares reserved for future issuance under the Company's Amended and Restated 2011 Employee Stock Incentive Plan and up to an additional 2,403,953 shares of common stock which may be issued under the Company's 2018 Employee Stock Incentive Plan that will become, or have already become, eligible for sale in the public market to the extent permitted by any applicable vesting requirements, lock-up agreements, if any, Rule 144 under the Securities Act or in connection with their registration under the Securities Act. The issuance or sale of such shares could depress the market price of our common stock.

In the future, we also may issue our securities if we need to raise additional capital. The number of new shares of our common stock issued in connection with raising additional capital could constitute a material portion of the then-outstanding shares of our common stock.

***Our stockholders may experience substantial dilution in the value of their investment if we issue additional shares of our capital stock.***

Our articles of incorporation allows us to issue up to 250,000,000 shares of our common stock, par value \$0.001 per share, and to issue and designate the rights of, without stockholder approval, up to 5,000,000 shares of preferred stock, par value \$0.001 per share. To raise additional capital, we may in the future sell additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that are lower than the prices paid by existing stockholders, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders, which could result in substantial dilution to the interests of existing stockholders.

In addition, to the extent that outstanding stock options or warrants have been or may be exercised or other shares issued, you may experience further dilution.

***We may issue debt and equity securities or securities convertible into equity securities, any of which may be senior to our common stock as to distributions and in liquidation, which could negatively affect the value of our common stock.***

In the future, we may attempt to increase our capital resources by entering into debt or debt-like financing that is unsecured or secured by up to all of our assets, or by issuing additional debt or equity securities, which could include issuances of secured or unsecured commercial paper, medium-term notes, senior notes, subordinated notes, guarantees, preferred stock, hybrid securities, or securities convertible into or exchangeable for equity securities. In the event of our liquidation, our lenders and holders of our debt and preferred securities would receive distributions of our available assets before distributions to the holders of our common stock. Because our decision to incur debt and issue securities in future offerings may be influenced by market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings or debt financings. Further, market conditions could require us to accept less favorable terms for the issuance of our securities in the future.

***Nasdaq has advised us that our common stock may be delisted from The Nasdaq Capital Market due to public policy concerns even if we are technically able to meet Nasdaq's continued listing requirements.***

Between November 2015 and May 2018, we received four deficiency letters from Nasdaq indicating that we did not comply with certain Nasdaq continued listing requirements. Such deficiencies were later cured. However, on May 30, 2019, we received another deficiency letter from Nasdaq indicating that, based on our closing bid price for the last 30 consecutive business days, we do not comply with the minimum bid price requirement of \$1.00 per share, as set forth in Nasdaq Listing Rule 5550(a)(2). In order to regain compliance with the minimum bid price requirement, the closing bid price of our common stock must be at least \$1.00 per share for a minimum of ten consecutive business days without effecting a reverse split. No assurance can be given that we will be able to satisfy this requirement.

In addition to the failure to comply with Nasdaq Listing Rule 5550(a)(2), the Nasdaq Staff has advised us that our history of non-compliance with Nasdaq's minimum bid price requirement, the corresponding history of reverse stock splits, the dilutive effect of this offering and an inability to cure the bid price deficiency organically without effecting a reverse stock split prior to November 26, 2019 would raise public interest concerns under Nasdaq Listing Rule 5101 and could result in the Nasdaq Staff issuing a delisting determination with respect to our common stock (subject to any appeal we might file). Nasdaq rules provide that Nasdaq may suspend or delist particular securities based on any event, condition or circumstance that exists or occurs that makes continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of the Nasdaq Staff, even though the securities meet all enumerated criteria for continued listing on Nasdaq. In that regard, the Nasdaq Staff has discretion to determine that our failure to comply with the minimum bid price rule or any subsequent price-based market value requirement or the dilutive effect of this offering, constitutes a public interest concern and while we will have an opportunity to appeal, we cannot assure you that Nasdaq will not exercise such discretionary authority or that we will be successful if such discretion is exercised and we appeal.

If our common stock is delisted, market liquidity for our common stock could be severely affected and our stockholders' ability to sell their shares of our common stock could be limited. A delisting of our common stock from Nasdaq would negatively affect the value of our common stock. A delisting of our common stock could also adversely affect our ability to obtain financing for our operations and could result in the loss of confidence in our company.

***If our common stock is delisted from The Nasdaq Capital Market, U.S. holders of the Series A warrants may not be able to exercise their Series A warrants without compliance with applicable state securities laws and the value of your Series A warrants may be significantly reduced.***

If our common stock is delisted from The Nasdaq Capital Market, the exercise of the Series A warrants by U.S. holders may not be exempt from state securities laws. As a result, depending on the state of residence of a holder of the Series A warrants, a U.S. holder may not be able to exercise its Series A warrants unless we comply with any state securities law requirements necessary to permit such exercise or an exemption applies. Although we plan to use our reasonable efforts to assure that U.S. holders will be able to exercise their Series A warrants under applicable state securities laws if no exemption exists, there is no assurance that we will be able to do so. As a result, your ability to exercise your Series A warrants may be limited. The value of the Series A warrants may be significantly reduced if U.S. holders are not able to exercise their Series A warrants under applicable state securities laws.

***If our common stock becomes subject to the penny stock rules, it would become more difficult to trade our shares.***

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than \$5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not retain a listing on The Nasdaq Capital Market, and if the price of our common stock is less than \$5.00, our common stock will be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may have the effect of reducing the trading activity in the secondary market for our common stock, and therefore stockholders may have difficulty selling their shares.

***An investment in the common stock, Series 6 Preferred and related Series A warrants offered in this offering is extremely speculative and there can be no assurance of any return on any such investment.***

An investment in the common stock, Series 6 Preferred and related Series A warrants offered in this offering is extremely speculative and there is no assurance that investors will obtain any return on their investment. Investors will be subject to substantial risks involved in an investment in us, including the risk of losing their entire investment.

***We are the subject of an investigation by the SEC Division of Enforcement, which has required us to expend significant financial and managerial resources. The resolution of that investigation may have a material adverse effect on our business, financial condition, results of operations and cash flows.***

In February 2019, we received a subpoena from the SEC's Division of Enforcement pursuant to a formal SEC order of investigation requiring us to produce documents and other information relating to our public announcement on January 9, 2018 that we intended to incorporate blockchain technology into our future product offerings and a public financing transaction undertaken by us in proximity to that announcement. We have cooperated with the SEC's investigation and have provided documents and information requested in the subpoena, as modified by agreement with the SEC. Although we believe that we have fully complied with all relevant laws and regulations, there can be no assurance that the SEC will not commence an enforcement action against us or members of our management, or as to the ultimate resolution of any enforcement action that the SEC may decide to bring. Under applicable law, the SEC has the ability to impose significant sanctions on companies and individuals who are found to have violated the provisions of applicable federal securities laws, including cease and desist orders, civil money penalties, and barring individuals from serving as directors or officers of public companies. We have expended significant financial and managerial resources responding to the SEC subpoena. Defending any enforcement action brought by the SEC against us or members of our management would involve further significant expenditures and the resolution of any such enforcement action could have a material adverse effect on our business, financial condition, results of operations and cash flows.

***Our management will have broad discretion over the use of the net proceeds from this offering, you may not agree with how we use the proceeds and the proceeds may not be invested successfully.***

Our management will have broad discretion as to the use of the net proceeds from this offering and could use them for purposes other than those contemplated at the time of commencement of this offering. Accordingly, you will be relying on the judgment of our management with regard to the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. It is possible that, pending their use, we may invest the net proceeds in a way that does not yield a favorable, or any, return for us. The failure of our management to use such funds effectively could have a material adverse effect on our business, financial condition, operating results and cash flows.

***We presently do not intend to pay cash dividends on our common stock.***

We have never paid cash dividends in the past, and we currently anticipate that no cash dividends will be paid on the common stock in the foreseeable future.

***We may be or may become the target of securities litigation, which is costly and time-consuming to defend.***

In the past, following periods of market volatility in the price of a company's securities or the reporting of unfavorable news, security holders have often instituted class action litigation. If the market value of our securities experience adverse fluctuations and we become involved in this type of litigation, regardless of the outcome, we could incur substantial legal costs and our management's attention could be diverted from the operation of our business, causing our business to suffer.

***There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock.***

We are generally not restricted from issuing additional common stock, including any securities that are convertible into or exchangeable for, or that represent the right to receive, common stock. The market price of our common stock could decline as a result of sales of common stock or securities that are convertible into or exchangeable for, or that represent the right to receive, common stock after this offering or the perception that such sales could occur. For example, we have a currently effective registration statement that permits us to sell shares of our common stock from time to time at prevailing market prices, which could result in dilution to investors in this offering.

***Holders of our Series A warrants will have no rights as a common stockholder until such holders exercise their Series A warrants and acquire our common stock.***

Until you acquire shares of our common stock upon exercise of your Series A warrants, you will have no rights with respect to shares of our common stock issuable upon exercise of your Series A warrants. Upon exercise of your Series A warrants, you will be entitled to exercise the rights of a common stockholder only as to matters for which the record date occurs after the exercise date.

***There is no public market for the Series A warrants to purchase shares of our common stock or shares of Series 6 Preferred being offered in this offering.***

There is no established public trading market for the Series A warrants or shares of Series 6 Preferred being offered in this offering, and we do not expect a market to develop. In addition, we do not intend to apply to list the Series A warrants or Series 6 Preferred on any national securities exchange or other nationally recognized trading system, including The Nasdaq Capital Market. Without an active trading market, the liquidity of the Series A warrants and Series 6 Preferred will be limited.

***The Series 6 Preferred and the Series A warrants being offered to investors in this offering will designate the state and federal courts in the City of New York, Borough of Manhattan of the State of New York as the sole and exclusive forum for all questions concerning the construction, validity, enforcement and interpretation of the Series 6 Preferred and the Series A warrants, including claims under the federal securities laws, which could have the effect of limiting a holder's rights to bring a legal action against us and could limit a holder's ability to obtain a favorable judicial forum for disputes relating to the applicable securities.***

The Series 6 Preferred and the Series A warrants offered in this offering will designate that the state and federal courts in the City of New York of the State of New York will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for all questions concerning the legal construction, validity, enforcement and interpretation of the applicable securities, including claims under the federal securities laws. However, Section 27 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought in state court to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction and holders of the securities offered hereby will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder.

Any person purchasing or otherwise acquiring any interest in the Series 6 Preferred or the Series A warrants shall be deemed to have notice of and to have consented to this provision. The exclusive forum provisions, if enforced, may limit the ability of a holder of the securities offered hereby to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits. Alternatively, if a court were to find the exclusive forum provisions to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

***Holders of our Series 6 Preferred and Series A warrants being offered in this offering may not be entitled to a jury trial with respect to claims arising under such securities, which could result in less favorable outcomes to the plaintiffs in any such action.***

The Series 6 Preferred and Series A warrants provide that, to the fullest extent permitted by law, holders of such securities waive the right to a jury trial of any claim they may have against us arising out of or relating to such securities, including any claim under the U.S. federal securities laws.

If we opposed a jury trial demand based on the waiver, the court would determine whether the waiver was enforceable based on the facts and circumstances of that case in accordance with the applicable state and federal law. To our knowledge, the enforceability of a pre-dispute jury trial waiver in connection with claims arising under the federal securities laws has not been finally adjudicated by the United States Supreme Court. However, we believe that a pre-dispute jury trial waiver provision is generally enforceable, including under the laws of the State of New York, which govern such securities, by a federal or state court in the State of New York, which has exclusive jurisdiction over matters arising under such securities. In determining whether to enforce a pre-dispute jury trial waiver provision, courts will generally consider whether a party knowingly, intelligently and voluntarily waived the right to a jury trial. We believe that this is the case with respect to these securities.

If you or any other holders or beneficial owners of our Series 6 Preferred or the Series A warrants bring a claim against us in connection with matters arising under our Series 6 Preferred or Series A warrants, including claims under federal securities laws, you or such other holder or beneficial owner may not be entitled to a jury trial with respect to such claims, which may have the effect of limiting and discouraging lawsuits against us. If a lawsuit is brought against us under the governing instruments of such securities, it may be heard only by a judge or justice of the applicable trial court, which would be conducted according to different civil procedures and may result in different outcomes than a trial by jury would have, including results that could be less favorable to the plaintiffs in any such action.

Nevertheless, if this jury trial waiver provision is not permitted by applicable law, an action could proceed under the terms of such securities with a jury trial. No condition, stipulation or provision of our Series 6 Preferred or Series A warrants serves as a waiver by any holder or beneficial owner of such securities or by us of compliance with the U.S. federal securities laws and the rules and regulations promulgated thereunder.

***Since the Series A warrants are executory contracts, they may have no value in a bankruptcy or reorganization proceeding.***

In the event a bankruptcy or reorganization proceeding is commenced by or against us, a bankruptcy court may hold that any unexercised Series A warrants are executory contracts that are subject to rejection by us with the approval of the bankruptcy court. As a result, holders of the Series A warrants may, even if we have sufficient funds, not be entitled to receive any consideration for their Series A warrants or may receive an amount less than they would be entitled to if they had exercised their Series A warrants prior to the commencement of any such bankruptcy or reorganization proceeding.

## USE OF PROCEEDS

We estimate that the net proceeds of this offering will be approximately \$5.1 million, assuming the sale of \$6.0 million of our securities in this offering, after deducting the estimated underwriting discount and estimated offering expenses payable by us, and excluding the proceeds, if any, from the exercise of the Series A warrants.

A \$0.10 increase (decrease) in the assumed combined public offering price of \$0.40 per share and related Series A warrant would increase (decrease) the net proceeds to us from this offering by approximately \$1.4 million, assuming the number of shares and Series A warrants offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting the estimated underwriting discount and estimated offering expenses payable by us. We may also increase or decrease the number of shares of our common stock and related Series A warrants we are offering. An increase (decrease) of 1 million in the number of shares and related Series A warrants sold in this offering would increase (decrease) the expected net proceeds of the offering to us by approximately \$368,000, assuming that the assumed combined public offering price per share and related Series A warrant and the related warrant coverage remains the same.

We currently intend to use the net proceeds from the sale of securities offered by this prospectus for the following purposes:

- Approximately CAD \$5,000,000, which is equal to approximately \$3,744,500 based on a Canadian dollar to U.S. dollar exchange rate of 0.7489 as of March 31, 2019, as partial consideration to complete the acquisition of Jibestream. See “*Summary - Pending Acquisition – Jibestream Inc.*” for the terms of this transaction and additional information concerning Jibestream.
- Approximately \$1.9 million to repay that certain promissory note, dated as of June 27, 2019 (also referred to herein as the “Note”), that is required to be repaid upon completion of this offering, unless waived by the holders of the Note. The Note accrues interest at a rate of 10% per annum, matures on March 27, 2020 and the net proceeds from the Note were used for general working capital purposes. We have requested that the holder of the Note waive such repayment and, if such waiver is granted, we will utilize the remaining net proceeds in accordance with the below.
- The remaining net proceeds will be used for working capital and general corporate purposes (including research and development, sales and marketing and the satisfaction of outstanding amounts payable to our vendors in connection with trade payables). Additionally, to the extent we are required to pay the value of the Inpixon Shares to be issued in connection with the Jibestream acquisition, we may use a portion of the net proceeds of this offering for such purposes. We may also use a portion of the net proceeds of this offering to finance future acquisitions of, or investments in, competitive and complementary businesses, products or services as a part of our growth strategy. However, except with respect to Jibestream, we currently have no commitments with respect to any such acquisitions or investments. We expect to use any proceeds we receive from any cash exercise of Series A warrants for substantially the same purposes and in substantially the same manner.

Investors are cautioned, however, that expenditures may vary substantially from these uses. Investors will be relying on the judgment of our management, who will have broad discretion regarding the application of the proceeds of this offering. The amounts and timing of our actual expenditures will depend upon numerous factors, including the amount of cash generated by our operations, the amount of competition and other operational factors. We may find it necessary or advisable to use portions of the proceeds from this offering for other purposes.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of March 31, 2019:

- on an actual basis as of March 31, 2019;
- on an as adjusted basis to give effect to the assumed sale of 15,000,000 shares of our common stock and related Series A warrants to purchase an aggregate of up to 15,000,000 shares of our common stock in this offering at an assumed combined public offering price of \$0.40 per share and related Series A warrant, the last reported sale price of our common stock on The Nasdaq Capital Market on August 7, 2019, after deducting the underwriting discount and estimated offering expenses payable by us. The table below assumes no exercise of the Series A warrants, no value is attributed to the Series A warrants, and the Series A warrants are classified and accounted for as equity.

Our capitalization following the closing of this offering will be adjusted based on the actual public offering price and other terms of this offering determined at pricing. You should read this table together with the section of this prospectus titled “*Use of Proceeds*,” as well as our consolidated financial statements and the related notes and the sections titled “*Management’s Discussion and Analysis of Financial Condition and Results of Operations*” in our Annual Report for the year ended December 31, 2018 and our Quarterly Report for the three months ended March 31, 2019, each of which is incorporated by reference herein.

|  | As of<br>March 31,<br>2019<br>(in thousands,<br>except number of<br>shares and<br>par value data) |                         |
|--|---|-------------------------|
|  | As  |                         |
|  | Actual  | Adjusted <sup>(1)</sup> |
| <b>Cash and cash equivalents</b>   | \$ 3,830  | \$ 8,975                |
| <b>Stockholders’ Equity:</b>   |   |                         |
| Preferred stock - \$0.001 par value; 5,000,000 shares authorized, consisting of Series 4 Convertible Preferred Stock - 10,415 shares authorized; 1 and 1 issued, and 1 and 1 outstanding, actual and as adjusted, and Series 5 Convertible Preferred Stock - 12,000 shares authorized; 1,938 and 1,938 issued, and 1,938 and 1,938 outstanding, actual and as adjusted | —   | —                       |
| Common Stock - \$0.001 par value; 250,000,000 shares authorized; 6,987,937 and 21,987,937 issued and outstanding, actual and as adjusted   | 7   | 22                      |
| Additional paid-in capital   | 136,482   | 141,612                 |
| Treasury stock, at cost, 13 shares   | (695)   | (695)                   |
| Accumulated other comprehensive income   | 18  | 18                      |
| Accumulated deficit (excluding \$2,442 reclassified to additional paid in capital in quasi-reorganization)   | (122,917)   | (122,917)               |
| Stockholders’ Equity Attributable to Inpixon   | 12,895  | 18,040                  |
| Non-controlling Interest   | 13  | 13                      |
| Total stockholders’ equity   | 12,908  | 18,053                  |

- (1) A \$0.10 increase (decrease) in the assumed combined public offering price of \$0.40 per share and related Series A warrant would increase (decrease) our as adjusted cash and our as adjusted total stockholders’ equity by approximately \$1.4 million, assuming the number of shares and related Series A warrants offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting the underwriting discount and estimated offering expenses payable by us. We may also increase or decrease the number of shares of our common stock and related Series A warrants we are offering. An increase (decrease) of 1 million in the number of shares and related Series A warrants sold in this offering would increase (decrease) our as adjusted cash and our as adjusted total stockholders’ equity by approximately \$368,000, assuming that the assumed combined public offering price per share and the related warrant coverage remains the same.

The foregoing table is based on 6,987,937 shares of our common stock outstanding as of March 31, 2019 and excludes, as of that date, the following:

- 215 shares of common stock issuable upon the exercise of outstanding stock options under our 2011 Employee Stock Incentive Plan, having a weighted average exercise price of \$27,292.02 per share;
- 2,772,209 shares of common stock issuable upon the exercise of outstanding stock options under our 2018 Employee Stock Incentive Plan, having a weighted average exercise price of \$2.52 per share;
- 39 shares of common stock issuable upon the exercise of outstanding stock options not under our 2011 or 2018 Employee Stock Incentive Plan, having a weighted average exercise price of \$43,392.86;
- 158,212 shares of common stock available for future issuance under our 2011 Employee Stock Incentive Plan plus any additional shares of our common stock that may become available under our 2011 Employee Stock Incentive Plan;

- 2,544,167 shares of common stock available for future issuance under our 2018 Employee Stock Incentive Plan plus any additional shares of our common stock that may become available under our 2018 Employee Stock Incentive Plan;
- 5,371,452 shares of common stock issuable upon the exercise of outstanding warrants having a weighted average exercise price of \$12.43 per share;
- 202 shares of common stock issuable upon the conversion of 1 outstanding share of Series 4 Convertible Preferred Stock, at a conversion price of \$4.96 per share;
- 1,100 shares of common stock reserved for issuance to investor relations firms; and
- 581,982 shares of common stock issuable upon conversion of 1,938 outstanding shares of Series 5 Convertible Preferred Stock, at a conversion price of \$3.33 per share.

#### MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock is listed on The Nasdaq Capital Market and trades under the symbol "INPX". The following table sets forth the high and low sales prices per share of our common stock as reported on The Nasdaq Capital Market for the periods indicated. Such quotations represent inter-dealer prices without retail markup, markdown or commission and may not necessarily represent actual transactions. All prices reflect the Company's reverse splits.

| <b>Fiscal Year Ending December 31, 2019</b> | <b>High</b>   | <b>Low</b>    |
|---|---------------|---------------|
| Third Quarter (through August 7, 2019)      | \$ 0.8057     | \$ 0.342      |
| Second Quarter                              | \$ 1.78       | \$ 0.57       |
| First Quarter                               | \$ 5.35       | \$ 1.01       |
| <b>Fiscal Year Ended December 31, 2018</b>  |               |               |
| Fourth Quarter                              | \$ 20.40      | \$ 2.62       |
| Third Quarter                               | \$ 11.12      | \$ 4.327      |
| Second Quarter                              | \$ 50.7338    | \$ 5.0314     |
| First Quarter                               | \$ 455.8946   | \$ 43.1866    |
| <b>Fiscal Year Ended December 31, 2017</b>  |               |               |
| Fourth Quarter                              | \$ 767.2465   | \$ 254.7424   |
| Third Quarter                               | \$ 1,227.6699 | \$ 239.0176   |
| Second Quarter                              | \$ 5,799.3219 | \$ 817.6918   |
| First Quarter                               | \$ 5,849.3489 | \$ 3,122.0731 |

#### Holders of Record

According to our transfer agent, as of July 16, 2019, we had approximately 527 shareholders of record of our common stock. The actual number of common stockholders is greater than the number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities. Our stock transfer agent is Computershare Trust Company, N.A., Meidinger Tower, 462 S. 4th Street, Louisville, KY 40202.

#### Dividend Policy

We have not declared or paid any cash dividends on our common stock, and we currently intend to retain future earnings, if any, to finance the expansion of our business; we do not expect to pay any cash dividends in the foreseeable future. The decision whether to pay cash dividends on our common stock will be made by our board of directors, in their discretion, and will depend on our financial condition, results of operations, capital requirements and other factors that our board of directors considers significant. Holders of Series 4 Convertible Preferred Stock, Series 5 Convertible Preferred Stock and Series 6 Preferred will not be entitled to receive any dividends, unless and until specifically declared by our board of directors.



## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information as of July 16, 2019, regarding the beneficial ownership of our common stock by the following persons:

- Each of the Named Executive Officers (as defined in Item 402(a)(3) of Regulation S-K promulgated by the SEC);
- each director;
- all of our executive officers and directors as a group; and
- each person or entity who, to our knowledge, owns more than 5% of our common stock.

Except as indicated in the footnotes to the following table, subject to applicable community property laws, each stockholder named in the table has sole voting and investment power. Unless otherwise indicated, the address for each stockholder listed is c/o Inpixon, 2479 E. Bayshore Road, Suite 195, Palo Alto, California 94303. Shares of common stock subject to options, warrants, or other rights currently exercisable or exercisable within 60 days of July 16, 2019, are deemed to be beneficially owned and outstanding for computing the share ownership and percentage of the stockholder holding the options, warrants or other rights, but are not deemed outstanding for computing the percentage of any other stockholder. The information provided in the following table is based on our records, information filed with the SEC, and information furnished by our stockholders.

| Name of Beneficial Owner                                    | Amount and<br>nature of<br>beneficial<br>ownership | Percent of<br>Class <sup>(1)</sup> |
|---|--|------------------------------------|
| <b>Named Executive Officers and Directors</b>               |  |                                    |
| Nadir Ali   | 430,829(2)   | 2.9%                               |
| Leonard Oppenheim   | 20,009(3)  | *                                  |
| Kareem Irfan  | 20,006(4)  | *                                  |
| Tanveer Khader  | 20,126(5)  | *                                  |
| Soumya Das  | 258,410(6)   | 1.8%                               |
| Wendy Loundermon  | 301,497(7)   | 2.1%                               |
| All executive officers and directors as a group (6 persons) | 955,043(8)   | 6.9%                               |
| <b>More than 5% Beneficial Owner</b>                        |  |                                    |
| GTX Corp <sup>(9)</sup>                                     | 1,000,000(10)                                      | 7.0%                               |

\* Represents beneficial ownership of less than 1%.

(1) Based on 14,195,201 shares outstanding on July 16, 2019.

(2) Includes (i) 32 shares of common stock held of record by Nadir Ali, (ii) 430,745 shares of common stock issuable upon exercise of options exercisable within 60 days of July 16, 2019, (iii) 3 shares of common stock held of record by Lubna Qureishi, Mr. Ali's wife, (iv) 3 shares of common stock held of record by Naheed Qureishi, Mr. Ali's mother-in-law, (v) 15 shares of common stock held of record by the Qureishi Ali Grandchildren Trust, of which Mr. Ali is the joint-trustee (with his wife Lubna Qureishi) of the Qureishi Ali Grandchildren Trust and has shared voting and investment control over the shares held, and (vi) 31 shares of common stock held of record by the Qureishi 1998 Family Trust, of which Mr. Ali's father-in-law, A. Salam Qureishi, is the sole trustee and has voting and investment control over the shares held.

(3) Includes (i) 6 shares of common stock held of record by Mr. Oppenheim, and (ii) 20,003 shares of common stock issuable upon exercise of options exercisable within 60 days of July 16, 2019.

(4) Includes (i) 3 shares of common stock held of record by Mr. Irfan and (ii) 20,003 shares of common stock issuable upon exercise of options exercisable within 60 days of July 16, 2019.

(5) Includes (i) 120 shares of common stock owned directly by SyHolding Corp., (ii) 3 shares of common stock held of record by Mr. Khader and (iii) 20,003 shares of common stock issuable upon exercise of options exercisable within 60 days of July 16, 2019. Tanveer Khader holds the power to vote and dispose of the SyHolding Corp. shares.

(6) Includes (i) 4 shares of common stock held of record by Mr. Das and (ii) 258,406 shares of common stock issuable upon exercise of options exercisable within 60 days of July 16, 2019.

(7) Includes (i) 1 shares of common stock held of record by Ms. Loundermon and (ii) 301,496 shares of common stock issuable upon exercise of options exercisable within 60 days of July 16, 2019.

(8) Includes (i) 55 shares of common stock held directly, or by spouse or relative, (ii) 166 shares of common stock held of record by entities, and (iii) 954,822 shares of common stock issuable upon exercise of options exercisable within 60 days of July 16, 2019.

(9) The board of directors of GTX Corp, comprised of Patrick E. Bertagna, Christopher M. Walsh, Louis Rosenbaum and Andrew Duncan, has sole voting and investment control and power over such shares. None of the members of its board of directors has individual voting and investment power with respect to such shares and disclaims beneficial ownership of such shares. The mailing address of this beneficial holder is 117 W. 9<sup>th</sup> Street, Suite 1214, Los Angeles, CA 90015.

(10) Includes 1,000,000 shares of common stock held of record by GTX Corp; provided, however, that 100,000 shares are subject to certain holdback restrictions and forfeiture for the purpose of satisfying indemnification claims in accordance with that certain Asset Purchase Agreement, by and between Inpixon and GTX Corp, dated June 27, 2019.

## DESCRIPTION OF CAPITAL STOCK

### Authorized and Outstanding Capital Stock

As of July 16, 2019, we had 255,000,000 authorized shares of capital stock, par value \$0.001 per share, of which 250,000,000 were shares of common stock and 5,000,000 were shares of “blank check” preferred stock. As of July 16, 2019, we had 14,195,201 shares of common stock outstanding and held by 527 stockholders of record, 1,100 shares of common stock reserved for issuance to investor relations firms, 1 share of Series 4 Convertible Preferred Stock and 126 shares of Series 5 Convertible Preferred Stock outstanding.

### Common Stock

The holders of our common stock are entitled to one vote per share. In addition, the holders of our common stock will be entitled to receive pro rata dividends, if any, declared by our board of directors out of legally available funds; however, the current policy of our board of directors is to retain earnings, if any, for operations and growth. Upon liquidation, dissolution or winding-up, the holders of our common stock are entitled to share ratably in all assets that are legally available for distribution. The holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of any series of preferred stock, which may be designated solely by action of our board of directors and issued in the future.

### Preferred Stock

Our board of directors are authorized, subject to any limitations prescribed by law, without further vote or action by our stockholders, to issue from time to time shares of preferred stock in one or more series. Each series of preferred stock will have the number of shares, designations, preferences, voting powers, qualifications and special or relative rights or privileges as shall be determined by our board of directors, which may include, among others, dividend rights, voting rights, liquidation preferences, conversion rights and preemptive rights.

The issuance of our preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change of control or other corporate action. We have no current plan to issue any shares of preferred stock.

### *Conversion Price Adjustment*

*Stock Dividends and Stock Splits.* If we pay a stock dividend or otherwise make a distribution payable in shares of common stock on shares of common stock or any other common stock equivalents, subdivide or combine outstanding common stock, or reclassify common stock, the conversion price will be adjusted by multiplying the then conversion price by a fraction, the numerator of which shall be the number of shares of common stock outstanding immediately before such event, and the denominator of which shall be the number of shares outstanding immediately after such event.

### Series 4 Convertible Preferred Stock

Our board of directors designated 10,415 shares of preferred stock as Series 4 Convertible Preferred Stock, \$0.001 par value with a stated value of \$1,000 (also referred to herein as the Series 4 Preferred). As of July 16, 2019, there was one share of Series 4 Preferred outstanding convertible into 202 shares of common stock. Our board of directors may, without stockholder approval, issue shares of an additional class or series of preferred stock with voting and conversion rights which could adversely affect the voting power of the holders of the common stock or the convertible preferred stock, except as prohibited by the certificate of designation of preferences, rights and limitations of the designated preferred stock.

*Liquidation.* Upon any dissolution, liquidation or winding up, whether voluntary or involuntary, holders of Series 4 Preferred are entitled to receive distributions out of our assets, whether capital or surplus, of the same amount that a holder of common stock would receive if the Series 4 Preferred were fully converted (disregarding for such purposes any conversion limitations hereunder) to common stock which amounts shall be paid *pari passu* with all holders of common stock.

*Dividends.* Holders of the Series 4 Preferred are entitled to receive dividends equal (on an “as converted to common stock” basis) to and in the same form as dividends actually paid on shares of our common stock when, as and if such dividends are paid on shares of our common stock. No other dividends will be paid on shares of Series 4 Preferred.

*Conversion.* Each share of Series 4 Preferred is convertible, at any time and from time to time at the option of the holder thereof, into that number of shares of common stock determined by dividing the stated value of \$1,000 by the conversion price equal to the current conversion price of \$4.96 per share (subject to adjustment described below).

*Anti-Dilution Protection.* The Series 4 Preferred contain an anti-dilution protection feature, to adjust the conversion price if shares of common stock are sold or issued for a consideration per share less than the conversion price then in effect (subject to certain exemptions), provided, that the conversion price will not be less than \$4.96. The current conversion price is \$4.96.

#### **Series 5 Convertible Preferred Stock**

Our board of directors designated 12,000 shares of preferred stock as Series 5 Convertible Preferred Stock, \$0.001 par value with a stated value of \$1,000 (also referred to herein as the Series 5 Preferred). As of July 16, 2019, there were 126 shares of Series 5 Preferred outstanding convertible into 37,838 shares of common stock. Our board of directors may, without stockholder approval, issue shares of an additional class or series of preferred stock with voting and conversion rights which could adversely affect the voting power of the holders of the common stock or the convertible preferred stock, except as prohibited by the certificate of designation of preferences, rights and limitations of the designated preferred stock.

*Conversion.* Each share of Series 5 Convertible Preferred Stock will be convertible at the option of the holder at any time, into the number of shares of our common stock determined by dividing the \$1,000 stated value per share of the Series 5 Convertible Preferred Stock by a conversion price of \$3.33 per share. In addition, the conversion price per share is subject to adjustment for stock dividends, distributions, subdivisions, combinations or reclassifications. Subject to limited exceptions, a holder of the Series 5 Convertible Preferred Stock will not have the right to convert any portion of the Series 5 Convertible Preferred Stock to the extent that, after giving effect to the conversion, the holder, together with its affiliates, would beneficially own in excess of 4.99% (subject to adjustment to up to 9.99% solely at the holder’s discretion upon 61 days’ prior notice to us) of the number of shares of our common stock outstanding immediately after giving effect to its conversion.

*Fundamental Transactions.* In the event we effect certain mergers, consolidations, sales of substantially all of our assets, tender or exchange offers, reclassifications or share exchanges in which our common stock is effectively converted into or exchanged for other securities, cash or property, we consummate a business combination in which another person acquires 50% of the outstanding shares of our common stock, or any person or group becomes the beneficial owner of 50% of the aggregate ordinary voting power represented by our issued and outstanding common stock, then, upon any subsequent conversion of the Series 5 Convertible Preferred Stock, the holders of the Series 5 Convertible Preferred Stock will have the right to receive any shares of the acquiring corporation or other consideration it would have been entitled to receive if it had been a holder of the number of shares of common stock then issuable upon conversion in full of the Series 5 Convertible Preferred Stock.

*Dividends.* Holders of Series 5 Convertible Preferred Stock shall be entitled to receive dividends (on an as-if-converted-to-common-stock basis) in the same form as dividends actually paid on shares of the common stock when, as and if such dividends are paid on shares of common stock.

*Voting Rights.* Except as otherwise provided in the certificate of designation or as otherwise required by law, the Series 5 Convertible Preferred Stock has no voting rights.

**Liquidation Preference.** Upon our liquidation, dissolution or winding-up, whether voluntary or involuntary, holders of Series 5 Convertible Preferred Stock will be entitled to receive out of our assets, whether capital or surplus, the same amount that a holder of common stock would receive if the Series 5 Convertible Preferred Stock were fully converted (disregarding for such purpose any conversion limitations under the certificate of designation) to common stock, which amounts shall be paid pari passu with all holders of common stock.

**Redemption Rights.** We are not obligated to redeem or repurchase any shares of Series 5 Convertible Preferred Stock. Shares of Series 5 Convertible Preferred Stock are not otherwise entitled to any redemption rights, or mandatory sinking fund or analogous provisions.

### Outstanding Warrants

As of July 16, 2019, we have warrants issued and outstanding for the purchase of up to 3,978,539 shares of our common stock, at exercise prices ranging from \$3.33 to \$43,200. The warrants are held by 68 security holders. Outstanding warrants to purchase our common stock are as follows:

| Issuance Date     | Number of Shares | Exercise Period   | Exercise Price |
|-------------------|------------------|---|----------------|
| March 20, 2013    | 5                | From March 20, 2013 to March 20, 2020 (except the Lock-Up Period as defined in the warrant)   | \$ 16,200      |
| August 29, 2013   | 4                | From August 29, 2013 to August 29, 2020 (except the Lock-Up Period as defined in the warrant) | \$ 43,200      |
| June 30, 2017     | 141              | June 30, 2017 to June 30, 2022  | \$ 360         |
| August 9, 2017    | 917              | From August 9, 2017 to August 9, 2022   | \$ 660         |
| January 8, 2018   | 15,003           | From February 2, 2018 to February 2, 2023   | \$ 120         |
| February 20, 2018 | 1,080,669        | From February 20, 2018 to February 20, 2023   | \$ 25.36       |
| April 24, 2018    | 2,769,000        | From April 24, 2018 to April 24, 2023   | \$ 4.96        |
| January 15, 2019  | 112,800          | From January 15, 2019 to January 15, 2024   | \$ 3.33        |

### Options

As of July 16, 2019, there were 158,424 shares of common stock authorized for issuance under the 2011 Employee Stock Incentive Plan, of which 200 shares of common stock are underlying outstanding options having a weighted average exercise price of \$28,119.54 per share, 7,316,376 shares of common stock available for issuance under the 2018 Employee Stock Incentive Plan, of which 4,912,423 shares of common stock are underlying outstanding options having a weighted average exercise price of \$1.69 and 39 shares of common stock underlying outstanding options not under the 2011 or 2018 Employee Stock Incentive Plan having a weighted average of \$43,392.86 per share.

### Anti-Takeover Effects of Nevada Law and our Articles of Incorporation and Bylaws

Our articles of incorporation, our bylaws and the Nevada Revised Statutes contain provisions that could delay or make more difficult an acquisition of control of our company not approved by our board of directors, whether by means of a tender offer, open market purchases, proxy contests or otherwise. These provisions have been implemented to enable us to develop our business in a manner that will foster our long-term growth without disruption caused by the threat of a takeover not deemed by our board of directors to be in the best interest of our company and our stockholders. These provisions could have the effect of discouraging third parties from making proposals involving an acquisition or change of control of our company even if such a proposal, if made, might be considered desirable by a majority of our stockholders. These provisions may also have the effect of making it more difficult for third parties to cause the replacement of our current management without the concurrence of our board of directors.

Set forth below is a description of the provisions contained in our articles of incorporation, bylaws and Nevada Revised Statutes that could impede or delay an acquisition of control of our company that our board of directors has not approved. This description is intended as a summary only and is qualified in its entirety by reference to our articles of incorporation and bylaws, forms of each of which are included as exhibits to the registration statement of which this prospectus forms a part.

#### *Authorized But Unissued Preferred Stock*

We are currently authorized to issue a total of 5,000,000 shares of preferred stock. Our articles of incorporation provide that the board of directors may issue preferred stock by resolutions, without any action of the stockholders. In the event of a hostile takeover, the board of directors could potentially use this preferred stock to preserve control.

#### *Filling Vacancies*

Our bylaws establish that the board shall be authorized to fill any vacancies on the board arising due to the death, resignation or removal of any director. The board is also authorized to fill vacancies if the stockholders fail to elect the full authorized number of directors to be elected at any annual or special meeting of stockholders. Vacancies in the board may be filled by a majority of the remaining directors then in office, even though less than a quorum of the board, or by a sole remaining director.

#### *Removal of Directors*

The provisions of our bylaws may make it difficult for our stockholders to remove one or more of our directors. Our bylaws provide that the entire board of directors, or any individual director, may be removed from office at any special meeting of stockholders called for such purpose by vote of the holders of two-thirds of the voting power entitling the stockholders to elect directors in place of those to be removed. Furthermore, according to our bylaws, no director may be removed (unless the entire board is removed) when the votes cast against removal or not consenting in writing to such removal would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote, were voted) and the entire number of directors authorized at the time of the directors' most recent election were then being elected. Our bylaws also provide that when, by the provisions of our articles of incorporation, the holders of the shares of any class or series voting as a class or series are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series.

#### *Board Action Without Meeting*

Our bylaws provide that the board may take action without a meeting if all the members of the board consent to the action in writing. Board action through consent allows the board to make swift decisions, including in the event that a hostile takeover threatens current management.

#### *No Cumulative Voting*

Our bylaws and articles of incorporation do not provide the right to cumulate votes in the election of directors. This provision means that the holders of a plurality of the shares voting for the election of directors can elect all of the directors. Non-cumulative voting makes it more difficult for an insurgent minority stockholder to elect a person to the board of directors.

#### *Stockholder Proposals*

Except to the extent required under applicable laws, we are not required to include on our proxy card, or describe in our proxy statement, any information relating to any stockholder proposal and disseminated in connection with any meeting of stockholders.

#### *Amendments to Articles of Incorporation and Bylaws*

Our articles of incorporation give both the directors and the stockholders the power to adopt, alter or repeal the bylaws of the corporation. Any adoption, alteration, amendment, change or repeal of the bylaws by the stockholders requires an affirmative vote by a majority of the outstanding stock of the company. Any bylaw that has been adopted, amended, or repealed by the stockholders may be amended or repealed by the board, except that the board shall have no power to change the quorum for meetings of stockholders or of the board or to change any provisions of the bylaws with respect to the removal of directors or the filling of vacancies in the board resulting from the removal by the stockholders. Any proposal to amend, alter, change or repeal any provision of our articles of incorporation requires approval by the affirmative vote of a majority of the voting power of all of the classes of our capital stock entitled to vote on such amendment or repeal, voting together as a single class, at a duly constituted meeting of stockholders called expressly for that purpose.

#### *Nevada Statutory Provisions*

We are subject to the provisions of NRS 78.378 to 78.3793, inclusive, an anti-takeover law, which applies to any acquisition of a controlling interest in an “issuing corporation.” In general, such anti-takeover laws permit the articles of incorporation, bylaws or a resolution adopted by the directors of an “issuing corporation” (as defined in NRS 78.3788) to impose stricter requirements on the acquisition of a controlling interest in such corporation than the provisions of NRS 78.378 to 78.3793, inclusive, as well as permit the directors of an issuing corporation to take action to protect the interests of the corporation and its stockholders, including, but not limited to, adopting plans, arrangements or other instruments that grant or deny rights, privileges, power or authority to holder(s) of certain percentages of ownership and/or voting power. Further, an “acquiring person” (and those acting in association) only obtains such voting rights in the control shares as are conferred by resolution of the stockholders at either a special meeting requested by the acquiring person, provided it delivers an offeror’s statement pursuant to NRS 78.3789 and undertakes to pay the expenses thereof, or at the next special or annual meeting of stockholders. In addition, the anti-takeover law generally provides for (i) the redemption by the issuing corporation of not less than all of the “control shares” (as defined) in accordance with NRS 78.3792, if so provided in the articles of incorporation or bylaws in effect on the 10th day following the acquisition of a controlling interest in an “issuing corporation”, and (ii) dissenter’s rights pursuant to NRS 92A.300 to 92A.500, inclusive, for stockholders that voted against authorizing voting rights for the control shares.

We are also subject to the provisions of NRS 78.411 to 78.444, inclusive, which generally prohibits a publicly held Nevada corporation from engaging in a “combination” with an “interested stockholder” (each as defined) that is the beneficial owner, directly or indirectly, of at least ten percent of the voting power of the outstanding voting shares of the corporation or is an affiliate or associate of the corporation that previously held such voting power within the past three years, for a period of three years after the date the person first became an “interested stockholder”, subject to certain exceptions for authorized combinations, as provided therein.

In accordance with NRS 78.195, our articles of incorporation provide for the authority of the board of directors to issue shares of preferred stock in series by filing a certificate of designation to establish from time to time the number of shares to be included in such series and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof, subject to limitations prescribed by law.

#### *Transfer Agent and Registrar*

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

#### *Nasdaq Capital Market Listing*

Our common stock is currently traded on The Nasdaq Capital Market under the symbol “INPX.”

## DESCRIPTION OF SECURITIES WE ARE OFFERING

We are offering 15,000,000 shares of our common stock together with Series A warrants to purchase up to an aggregate of 15,000,000 shares of our common stock based on an assumed combined offering price of \$0.40 per share and related Series A warrant, the last reported sale price of our common stock on The Nasdaq Capital Market on August 7, 2019. Each share of our common stock is being sold together with a Series A warrant to purchase one share of common stock. The shares of our common stock and related Series A warrants will be issued separately. We are also registering the shares of our common stock issuable from time to time upon the exercise of the Series A warrants offered hereby.

We are also offering to those purchasers, if any, whose purchase of our common stock in this offering would otherwise result in such purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% of our outstanding common stock immediately following the consummation of this offering, the opportunity, in lieu of purchasing common stock, to purchase shares of Series 6 Preferred, convertible into a number of shares of common stock equal to \$1,000 divided by the combined public offering price per share and related Series A warrant. Each share of Series 6 Preferred is being sold together with the equivalent number of Series A warrants as would have been issued to such purchaser of Series 6 Preferred if they had purchased shares of common stock based on the combined public offering price per share and related Series A warrant. Pursuant to this prospectus, we are also offering the shares of common stock issuable upon the conversion of the Series 6 Preferred offered hereby.

### Common Stock

The material terms of our common stock and our other capital stock are described in the section of this prospectus entitled “*Description of Capital Stock*” beginning on page 29 of this prospectus.

### Series 6 Preferred

The following summary of certain terms and provisions of the Series 6 Preferred that are being offered hereby is not complete and is subject to, and qualified in its entirety by the provisions of, the certificate of designation of the Series 6 Preferred, the form of which is filed as an exhibit to the registration statement of which this prospectus is a part. Prospective investors should carefully review the terms and provisions of the certificate of designation of the Series 6 Preferred for a complete description of the terms and conditions of the Series 6 Preferred.

The purpose of the Series 6 Preferred is to enable investors that may have restrictions on their ability to beneficially own more than 4.99% (or, upon election of the holder, up to 9.99%) of our outstanding common stock following the consummation of this offering the opportunity to invest capital in the Company without triggering their ownership restrictions, by receiving Series 6 Preferred in lieu of our common stock which would result in such ownership of more than 4.99% (or up to 9.99%), and receive the ability to convert their shares of Series 6 Preferred into shares of our common stock at a later date.

*Conversion.* Each share of Series 6 Preferred will be convertible at the option of the holder at any time, into the number of shares of our common stock determined by dividing the \$1,000 stated value per share of the Series 6 Preferred by a conversion price equal to the combined public offering price per share and related warrants. In addition, the conversion price per share is subject to adjustment for stock dividends, distributions, subdivisions, combinations or reclassifications. Subject to limited exceptions, a holder of the Series 6 Preferred will not have the right to convert any portion of the Series 6 Preferred to the extent that, after giving effect to the conversion, the holder, together with its affiliates, would beneficially own in excess of 4.99% (subject to adjustment to up to 9.99% solely at the holder’s discretion upon 61 days’ prior notice to us) of the number of shares of our common stock outstanding immediately after giving effect to its conversion.

*Fundamental Transactions.* In the event we effect certain mergers, consolidations, sales of substantially all of our assets, tender or exchange offers, reclassifications or share exchanges in which our common stock is effectively converted into or exchanged for other securities, cash or property, we consummate a business combination in which another person acquires 50% of the outstanding shares of our common stock, or any person or group becomes the beneficial owner of 50% of the aggregate ordinary voting power represented by our issued and outstanding common stock, then, upon any subsequent conversion of the Series 6 Preferred, the holders of the Series 6 Preferred will have the right to receive any shares of the acquiring corporation or other consideration it would have been entitled to receive if it had been a holder of the number of shares of common stock then issuable upon conversion in full of the Series 6 Preferred.

*Dividends.* Holders of Series 6 Preferred shall be entitled to receive dividends (on an as-if-converted-to-common-stock basis) in the same form as dividends actually paid on shares of the common stock when, as and if such dividends are paid on shares of common stock.

*Voting Rights.* Except as otherwise provided in the certificate of designation or as otherwise required by law, the Series 6 Preferred has no voting rights.

*Liquidation Preference.* Upon our liquidation, dissolution or winding-up, whether voluntary or involuntary, holders of Series 6 Preferred will be entitled to receive out of our assets, whether capital or surplus, the same amount that a holder of common stock would receive if the Series 6 Preferred were fully converted (disregarding for such purpose any conversion limitations under the certificate of designation) to common stock, which amounts shall be paid *pari passu* with all holders of common stock.

*Redemption Rights.* We are not obligated to redeem or repurchase any shares of Series 6 Preferred. Shares of Series 6 Preferred are not otherwise entitled to any redemption rights, or mandatory sinking fund or analogous provisions.

*Transferability.* Subject to applicable laws, the Series 6 Preferred may be offered for sale, sold, transferred or assigned without our consent.

*Exchange Listing.* There is no established trading market for the Series 6 Preferred and we do not expect a market to develop. In addition, we do not intend to apply for the listing of the Series 6 Preferred on any national securities exchange or other trading market. Without an active trading market, the liquidity of the Series 6 Preferred will be limited.

*Exclusive Jurisdiction.* The certificate of designation of the Series 6 Preferred provides for investors to consent to exclusive jurisdiction to state and federal courts located in New York, New York, including with respect to suits, actions or proceedings arising under the federal securities laws. It also provides that disputes are governed by New York law. See “*Risk Factors—Risks Related to this Offering— The Series 6 Preferred and the Series A warrants being offered to investors in this offering will designate the state and federal courts in the City of New York, Borough of Manhattan of the State of New York as the sole and exclusive forum for all questions concerning the construction, validity, enforcement and interpretation of the Series 6 Preferred and the Series A warrants, including claims under the federal securities laws, which could have the effect of limiting a holder’s rights to bring a legal action against us and could limit a holder’s ability to obtain a favorable judicial forum for disputes relating to the applicable securities.*”

*Jury Trial Waiver.* The certificate of designation of the Series 6 Preferred provides that, to the extent permitted by law, holders of Series 6 Preferred waive the right to a jury trial of any claim they may have against us arising out of or relating to the Series 6 Preferred, including any claim under the U.S. federal securities laws. If we opposed a jury trial demand based on the waiver, the court would determine whether the waiver was enforceable under the facts and circumstances of that case in accordance with applicable case law. See “*Risk Factors—Risks Related to this Offering— Holders of our Series 6 Preferred and Series A warrants being offered in this offering may not be entitled to a jury trial with respect to claims arising under such securities, which could result in less favorable outcomes to the plaintiffs in any such action.*”

## **Series A Warrants**

The following summary of certain terms and provisions of the Series A warrants offered hereby is not complete and is subject to, and qualified in its entirety by, the provisions of the Series A warrants, the form of which has been filed as an exhibit to the registration statement of which this prospectus is a part. Prospective investors should carefully review the terms and provisions of the form of the Series A warrant for a complete description of the terms and conditions of the Series A warrants.

*Form.* The Series A warrants will be issued as individual warrant agreements to the investors.

*Exercisability.* The Series A warrants are exercisable at any time after their original issuance, expected to be \_\_\_\_\_, 2019, and will expire on the fifth anniversary of the original issuance date. The Series A warrants will be exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice and, at any time a registration statement registering the issuance of the shares of common stock underlying the Series A warrants under the Securities Act is effective and available for the issuance of such shares, or an exemption from registration under the Securities Act is available for the issuance of such shares, by payment in full in immediately available funds for the number of shares of common stock purchased upon such exercise. No fractional shares of common stock will be issued in connection with the exercise of a Series A warrant. In lieu of fractional shares, we will pay the holder, at our election, either an amount of cash equal to the fractional amount multiplied by the exercise price or round up to the next whole share.

*Exercise Limitation.* A holder will not have the right to exercise any portion of the Series A warrant if the holder (together with its affiliates) would beneficially own in excess of 4.99% (or, upon election of the holder, up to 9.99%) of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Series A warrants. However, any holder may increase or decrease such percentage, provided that any increase will not be effective until the 61st day after such election.



*Exercise Price.* The Series A warrants will have an exercise price of not less than 100% but not more than 120% of the combined public offering price per share and related Series A warrant. The exercise price is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock and also upon any distributions of assets, including cash, stock or other property to our stockholders.

*Cashless Exercise.* If, at the time a holder exercises its Series A warrants, a registration statement registering the issuance of the shares of common stock underlying the Series A warrants under the Securities Act is not then effective or available, then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder may elect instead to receive upon such exercise (either in whole or in part) the net number of shares of common stock determined according to a formula set forth in the Series A warrants. In addition, the Series A warrants also provide that, beginning 30 days after the original issuance date, the Series A warrants may be exercised at the option of the holder on a cashless basis, in whole or in part for all of the shares that would be received upon cash exercise, if on the date of exercise, the volume weighted average price of our common stock is lower than three times the then applicable exercise price per share.

*Transferability.* Subject to applicable laws, the Series A warrants may be offered for sale, sold, transferred or assigned without our consent.

*Exchange Listing.* There is no established trading market for the Series A warrants and we do not expect a market to develop. In addition, we do not intend to apply for the listing of the Series A warrants on any national securities exchange or other trading market. Without an active trading market, the liquidity of the Series A warrants will be limited.

*Fundamental Transactions.* If we effect a fundamental transaction, then upon any subsequent exercise of the Series A warrants, the holder thereof shall have the right to receive, for each share of common stock that would have been issuable upon such exercise immediately prior to the occurrence of such fundamental transaction, the number of shares of the successor's or acquiring corporation's common stock or of our common stock, if we are the surviving corporation, and any additional consideration receivable as a result of such fundamental transaction by a holder of the number of shares of common stock into which the Series A warrants are exercisable immediately prior to such fundamental transaction. A fundamental transaction means: (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another entity; (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions; (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another party) is completed pursuant to which holders of common stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding common stock; (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the common stock or any compulsory share exchange pursuant to which the common stock is effectively converted into or exchanged for other securities, cash or property; or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another party whereby such other party or group acquires more than 50% of the outstanding shares of common stock (not including any shares of common stock held by the other party making or party to, or associated or affiliated with the other parties making or party to, such stock or share purchase agreement or other business combination). Any successor to us or surviving entity shall assume the obligations under the Series A warrants and shall, at the option of the holder, deliver to the holder in exchange for the Series A warrant a security of the successor entity which is exercisable for a corresponding number of shares of capital stock of such successor entity equivalent to the shares of common stock acquirable and receivable upon exercise of the Series A warrant prior to such fundamental transaction, and with an exercise price which applies the exercise price under the Series A warrant to such shares of capital stock (but taking into account the relative value of the shares of common stock pursuant to such fundamental transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of the Series A warrant immediately prior to the consummation of such fundamental transaction). In addition, as further described in the Series A warrants, in the event of any fundamental transaction, the holders of the Series A warrants will have the right to require us to purchase the Series A warrants for an amount in cash equal to the value of the Series A warrant based on the Black and Scholes Option Pricing Model obtained from the "OV" function on Bloomberg, L.P. ("Bloomberg") determined as of the day of consummation of the applicable fundamental transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable fundamental transaction and the termination date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the trading day immediately following the public announcement of the applicable fundamental transaction (determined utilizing a 365 day annualization factor), (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such fundamental transaction and (ii) the highest VWAP (as defined in the Series A warrant) during the period beginning on the trading day immediately preceding the announcement of the applicable fundamental transaction and ending on the trading day immediately preceding the consummation of the applicable fundamental transaction, (D) a remaining option time equal to the time between the date of the public announcement of the applicable fundamental transaction and the termination date and (E) a zero cost of borrow ("Black Scholes Value"), provided, however, if the fundamental transaction is not within our control, including not approved by our board of directors, the holders shall only be entitled to receive from the Company or any successor entity, as of the date of consummation of such fundamental transaction, the same type or form of consideration (and in the same proportion), at the Black Scholes Value) of the unexercised portion of the Series A warrant, that is being offered and paid to the holders of common stock of the Company in connection with the fundamental transaction.

*Rights as a Stockholder.* Except as otherwise provided in the Series A warrants or by virtue of such holder's ownership of shares of our common stock, the holder of a Series A warrant does not have the rights or privileges of a holder of our common stock, including any voting rights, until the holder exercises the Series A warrant.

*Exclusive Jurisdiction.* The Series A warrants provide for investors to consent to exclusive jurisdiction to state and federal courts located in New York, New York, including with respect to suits, actions or proceedings arising under the federal securities laws. It also provides that disputes are governed by New York law. See “*Risk Factors—Risks Related to this Offering—The Series 6 Preferred and the Series A warrants being offered to investors in this offering will designate the state and federal courts in the City of New York, Borough of Manhattan of the State of New York as the sole and exclusive forum for all questions concerning the construction, validity, enforcement and interpretation of the Series 6 Preferred and the Series A warrants, including claims under the federal securities laws, which could have the effect of limiting a holder's rights to bring a legal action against us and could limit a holder's ability to obtain a favorable judicial forum for disputes relating to the applicable securities.*”

*Jury Trial Waiver.* The Series A warrants provide that, to the extent permitted by law, holders of the Series A warrants waive the right to a jury trial of any claim they may have against us arising out of or relating to the Series A warrants, including any claim under the U.S. federal securities laws. If we opposed a jury trial demand based on the waiver, the court would determine whether the waiver was enforceable under the facts and circumstances of that case in accordance with applicable case law. See “*Risk Factors—Risks Related to this Offering—Holders of our Series 6 Preferred and Series A warrants being offered in this offering may not be entitled to a jury trial with respect to claims arising under such securities, which could result in less favorable outcomes to the plaintiffs in any such action.*”

#### **Leak-Out Agreements**

We expect that certain institutional investors in this offering will enter into leak-out agreements with us wherein, each investor who is party to a leak-out agreement (together with certain of its affiliates) will agree to not sell, dispose or otherwise transfer, directly or indirectly (including, without limitation, any sales, short sales, swaps or any derivative transactions that would be equivalent to any sales or short positions), on any trading day from the public announcement of the pricing of this offering and ending at 4:00 pm (New York City time) on the earlier of (i) the date that is seventy-five (75) days after the pricing announcement and (ii) the date on which a total of more than 450,000,000 shares of common stock have traded since the pricing announcement, shares of common stock purchased in this offering, including the shares of common stock issuable upon exercise of the Series A warrants and conversion of the Series 6 Preferred, to the extent applicable, in an amount more than a specified percentage of the trading volume of the common stock on the principal trading market, subject to certain exceptions. This restriction will not apply to any actual “long” (as defined in Regulation SHO promulgated under the Exchange Act) sales by such investor (together with certain of its affiliates) at or above a certain price or to any actual “long” sales of shares of common stock purchased in open market transactions by such investor (together with certain of its affiliates) during the restricted period. Further, this restriction will not apply to sales or transfers of any such shares of common stock in transactions which do not need to be reported on the Nasdaq consolidated tape so long as the purchaser or transferee executes and delivers a leak-out agreement in substantially the same form. After such sale or transfer, future sales of the securities covered by the leak-out agreement by the original owner (together with certain of its affiliate) and the purchaser or transferee will be aggregated to determine compliance with the terms of the leak-out agreement.

## MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of the material U.S. federal income tax consequences of the purchase, ownership and disposition of our common stock, our Series 6 Preferred or the related Series A warrants, but does not purport to be a complete analysis of all the potential tax considerations relating thereto. This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, or the Code, U.S. Treasury Regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed or subject to differing interpretations, possibly with retroactive effect, so as to result in United States federal income tax consequences different from those set forth below. We have not sought and will not seek any ruling from the Internal Revenue Service, or the IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS or a court will agree with such statements and conclusions.

This summary also does not address the tax considerations arising under the laws of any U.S. state or local or any non-U.S. jurisdiction, estate or gift tax, the 3.8% Medicare tax on net investment income or any alternative minimum tax consequences. In addition, this discussion does not address tax considerations applicable to a Non-U.S. holder's particular circumstances or to a Non-U.S. holder that may be subject to special tax rules, including, without limitation:

- banks, insurance companies or other financial institutions;
- tax-exempt or government organizations;
- brokers of or dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- persons that own, or are deemed to own, more than five percent of our capital stock;
- certain U.S. expatriates, citizens or former long-term residents of the United States;
- persons who hold our common stock as a position in a hedging transaction, "straddle," "conversion transaction," synthetic security, other integrated investment, or other risk reduction transaction;
- persons who do not hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, for investment purposes);
- persons deemed to sell our common stock under the constructive sale provisions of the Code;
- real estate investment trusts or regulated investment companies;
- pension plans;
- partnerships, or other entities or arrangements treated as partnerships for United States federal income tax purposes, or investors in any such entities;
- persons for whom our stock constitutes "qualified small business stock" within the meaning of Section 1202 of the Code;
- integral parts or controlled entities of foreign sovereigns;
- tax-qualified retirement plans;
- controlled foreign corporations;
- persons subject to special tax accounting rules under Section 451(b) of the Code;
- passive foreign investment companies and corporations that accumulate earnings to avoid United States federal income tax; or
- persons that acquire our common stock as compensation for services.

In addition, if a partnership, including any entity or arrangement classified as a partnership for United States federal income tax purposes, holds our common stock, the tax treatment of a partner generally will depend on the status of the partner, the activities of the partnership, and certain determinations made at the partner level. Accordingly, partnerships that hold our securities, and partners in such partnerships, should consult their tax advisors regarding the U.S. federal income tax consequences to them of the purchase, ownership, and disposition of our common stock.

You are urged to consult your tax advisor with respect to the application of the U.S. federal income tax laws to your particular situation, as well as any tax consequences of the purchase, ownership and disposition of our securities arising under the U.S. federal estate or gift tax rules or under the laws of any United States state or local or any non-U.S. or other taxing jurisdiction or under any applicable tax treaty.

#### **Allocation of Purchase Price**

For U.S. federal income tax purposes, the purchase of shares of our common stock and related Series A warrants in this offering will be treated as the purchase of multiple components: a component consisting of one share of common stock and a component consisting of one Series A warrant to purchase one share of common stock. Alternatively, for those acquiring the Series 6 Preferred, the purchase of the Series 6 Preferred and related Series A warrants in this offering will be treated as the purchase of multiple components: a component consisting of one share of Series 6 Preferred and a component consisting of one Series A warrant to purchase a total of 2,500 shares of common stock, assuming a combined public offering price of \$0.40 per share and related Series A warrant, the last reported sale price of our common stock on The Nasdaq Capital Market on August 7, 2019. The purchase price for the shares (whether common stock or Series 6 Preferred) and related Series A warrants will be allocated between these components in proportion to their relative fair market values at the time the shares and the related Series A warrants are purchased. This allocation of the purchase price will establish the holder's initial tax basis for U.S. federal income tax purposes for each share and each Series A warrant.

A holder's allocation of the purchase price between the shares and the related Series A warrants is not binding on the IRS or the courts, and no assurance can be given that the IRS or the courts will agree with a holder's allocation. Each holder should consult its own tax advisor regarding the allocation of the purchase price between the shares and the related Series A warrants.

#### **Tax Considerations Applicable to U.S. Holders**

##### ***Definition of U.S. Holder***

In general, a "U.S. holder" means a beneficial owner of our securities (other than a partnership or an entity or arrangement treated as a partnership for U.S. federal income tax purposes) that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation, or an entity treated as a corporation for U.S. federal income tax purposes, created or organized in the United States or under the laws of the United States or of any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust if (a) a U.S. court can exercise primary supervision over the trust's administration and one or more U.S. persons have the authority to control all of the trust's substantial decisions or (b) the trust has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

#### ***Gain on Sale or Other Taxable Disposition of the Shares or the Related Series A Warrants***

Upon the sale, exchange or other taxable disposition of shares of common stock, shares of Series 6 Preferred, or the related Series A warrants, a U.S. holder will generally recognize capital gain or loss equal to the difference between the amount of cash and the fair market value of any property received upon the sale, exchange or other taxable disposition and such U.S. holder's adjusted tax basis in the shares (or shares received upon exercise of the related Series A warrants) or the Series A warrants (as applicable). This capital gain or loss will be long-term capital gain or loss if the U.S. holder's holding period in shares of stock (or shares received upon exercise of the related Series A warrants) or the Series A warrants (as applicable) is more than one year at the time of the sale, exchange or other taxable disposition. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, generally will be subject to reduced rates of U.S. federal income tax. The deductibility of capital losses is subject to certain limitations.

#### ***Exercise of the Series A Warrants***

A U.S. holder generally will not recognize gain or loss on the exercise of a Series A warrant and the related receipt of shares of our common stock upon exercise thereof (unless cash is received in lieu of the issuance of a fractional share of common stock upon exercise). A U.S. holder's initial tax basis in a share of our common stock received upon exercise of a Series A warrant will be equal to the sum of (a) such U.S. holder's tax basis in the Series A warrant plus (2) the exercise price paid by such U.S. holder on the exercise of such Series A warrant. A U.S. holder's holding period in a share of common stock received exercise of a Series A warrant should begin on the day after the date that such warrant is exercised by such U.S. holder.

In certain limited circumstances, a U.S. holder may be permitted to undertake a cashless exercise of Series A warrants into shares of our common stock. The U.S. federal income tax treatment of a cashless exercise of warrants into shares of common stock is unclear, and the tax consequences of a cashless exercise could differ from the consequences upon the exercise of a warrant described in the preceding paragraph. U.S. holders should consult their own tax advisors regarding the U.S. federal income tax consequences of a cashless exercise of Series A warrants.

#### ***Certain Adjustments to the Series A Warrants or the Series 6 Preferred***

An adjustment to the number of shares of our common stock that will be issued upon the exercise of a Series A warrant or conversion of a share of Series 6 Preferred, or an adjustment to the exercise price of a Series A warrant, may be treated as a constructive distribution to a U.S. holder of the Series A warrant or share depending on the circumstances of such adjustment under Section 305 of the Code if, and to the extent that, such adjustment has the effect of increasing such U.S. holder's proportionate interest in our earnings and profits as determined under U.S. federal income tax principles or our assets, depending on the circumstances of such adjustment (for example, if such adjustment is to compensate for a distribution of cash or other property to our shareholders). Adjustments to the exercise price of the Series A warrants or conversion price of the Series 6 Preferred made pursuant to a bona fide reasonable adjustment formula that has the effect of preventing dilution of the interest of the holders thereof generally should not be considered to result in a constructive distribution. Any such constructive distribution would be taxable whether or not there is an actual distribution of cash or other property.

### ***Conversion of the Series 6 Preferred***

A U.S. holder generally will not recognize gain or loss upon the conversion of a share of Series 6 Preferred into common stock. A U.S. holder's initial tax basis in the shares of our common stock received upon the conversion of a share of Series 6 Preferred will be equal to such U.S. holder's tax basis in the share of Series 6 Preferred. A U.S. holder's holding period for the shares of our common stock received upon the conversion of a share of Series 6 Preferred will include the U.S. holder's holding period in such share of Series 6 Preferred.

### ***Lapse of the Series A Warrants***

If a U.S. holder allows a Series A warrant to expire unexercised, such U.S. holder will recognize a capital loss in an amount equal to such holder's tax basis in the Series A warrant. Because the term of the Series A warrants purchased in this offering is more than one year, the U.S. holder's capital loss will be treated as a long-term capital loss. The deductibility of capital losses is subject to certain limitations.

### ***Backup Withholding and Information Reporting***

A U.S. holder may be subject to information reporting and backup withholding when such holder receives payments on our securities (including constructive dividends) or receives proceeds from the sale or other taxable disposition of our securities. Certain U.S. holders are exempt from backup withholding, including C corporations and certain tax-exempt organizations. A U.S. holder will be subject to backup withholding if such holder is not otherwise exempt and such holder:

- fails to furnish the holder's taxpayer identification number, which for an individual is ordinarily his or her social security number;
- furnishes an incorrect taxpayer identification number;
- is notified by the IRS that the holder previously failed to properly report payments of interest or dividends; or
- fails to certify under penalties of perjury that the holder has furnished a correct taxpayer identification number and that the IRS has not notified the holder that the holder is subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS. U.S. holders should consult their tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption.

## **Tax Considerations Applicable to Non-U.S. Holders**

### ***Definition of Non-U.S. Holder***

For purposes of this discussion, a “non-U.S. holder” is a beneficial owner of our securities that is neither a U.S. holder nor an entity treated as a partnership for U.S. federal income tax purposes.

### ***Distributions on the Common Stock or the Series 6 Preferred***

If we pay distributions of cash or property with respect to our common stock or our Series 6 Preferred (including constructive distributions), those distributions generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the non-U.S. holder’s investment, up to such holder’s tax basis in its shares of our common stock or our Series 6 Preferred. Any remaining excess will be treated as capital gain. Dividends paid to a non-U.S. holder generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder’s country of residence. In the case of any constructive distribution, it is possible that this tax would be withheld from any amount owed to the non-U.S. holder, including, but not limited to, distributions of cash, common stock or sales proceeds subsequently paid or credited to that holder. If we are unable to determine, at the time of payment of a distribution, whether the distribution will constitute a dividend, we may nonetheless choose to withhold any U.S. federal income tax on the distribution as permitted by U.S. Treasury Regulations.

Distributions that are treated as effectively connected with a trade or business conducted by a non-U.S. holder within the United States are generally not subject to the 30% withholding tax if the non-U.S. holder provides a properly executed IRS Form W-8ECI stating that the distributions are not subject to withholding because they are effectively connected with the non-U.S. holder’s conduct of a trade or business in the United States. If a non-U.S. holder is engaged in a trade or business in the United States and the distribution is effectively connected with the conduct of that trade or business, the distribution will generally have the consequences described above for a U.S. holder (subject to any modification provided under an applicable income tax treaty). Any U.S. effectively connected income received by a non-U.S. holder that is treated as a corporation for U.S. federal income tax purposes may also, under certain circumstances, be subject to an additional “branch profits tax” at a 30% rate (or such lower rate as may be specified by an applicable income tax treaty).

A non-U.S. holder who claims the benefit of an applicable income tax treaty between the United States and such holder’s country of residence generally will be required to provide a properly executed IRS Form W-8BEN or W-8BEN-E, as applicable, and satisfy applicable certification and other requirements. A non-U.S. holder that is eligible for a reduced rate of U.S. withholding tax under an income tax treaty generally may obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim with the IRS. Non-U.S. holders should consult their own tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

### ***Gain on Sale, Exchange or Other Taxable Disposition***

Subject to the discussion below, a non-U.S. holder generally will not be subject to U.S. federal income tax on gain recognized on a sale, exchange or other taxable disposition of our common stock, preferred stock or warrants unless:

- the gain is effectively connected with the non-U.S. holder’s conduct of a trade or business in the United States and, if an applicable income tax treaty so provides, the gain is attributable to a permanent establishment maintained by the non-U.S. holder in the United States; in these cases, the non-U.S. holder will be taxed on a net income basis at the regular graduated rates and in the manner applicable to a U.S. holder, and, if the non-U.S. holder is a corporation, an additional branch profits tax at a rate of 30%, or a lower rate as may be specified by an applicable income tax treaty, may also apply;
- the non-U.S. holder is an individual present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax (or such lower rate as may be specified by an applicable income tax treaty) on the amount by which such non-U.S. holder’s capital gains allocable to U.S. sources exceed capital losses allocable to U.S. sources during the taxable year of the disposition; or
- we are or were a “U.S. real property holding corporation” during the shorter of the five-year period ending on the date of the disposition or the period that the non-U.S. holder held our common stock. Generally, a corporation is a “U.S. real property holding corporation” if the fair market value of its “U.S. real property interests” (within the meaning of the Internal Revenue Code) equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. We believe that we are not currently, and we do not anticipate becoming, a “U.S. real property holding corporation” for U.S. federal income tax purposes.

### ***Dividend Equivalents***

Section 871(m) of the Code treats as dividends from sources within the United States, and therefore subject to withholding of U.S. federal income tax at a 30% rate (or such lower applicable treaty rate) certain payments or deemed payments on certain financial instruments to the extent that such payments or deemed payments are contingent upon or determined by reference to U.S.-source dividends. Under U.S. Treasury Regulations promulgated under Section 871(m), certain payments or deemed payments to non-U.S. holders with respect to certain equity-linked instruments that reference U.S. stocks may be treated as dividend equivalents. Under these regulations, withholding may be required even in the absence of any actual dividend related payment or adjustment made pursuant to the terms of the instrument. Under IRS and U.S. Treasury guidance Section 871(m) will apply only to “delta-one” instruments issued prior to 2021. A “delta one” instrument is one in which the ratio of the change in the fair market value of the instrument to the change in the fair market value of the property referenced by the contract is equal to 1.00. Non-U.S. holders should consult with their tax advisors regarding the application of Section 871(m) and the regulations thereunder in respect of their acquisition and ownership of the Series A warrants.

### ***Backup Withholding and Information Reporting***

Generally, we must file information returns annually to the IRS in connection with any dividends on our common stock paid to a non-U.S. holder, regardless of whether any tax was actually withheld. A similar report will be sent to the non-U.S. holder. Pursuant to applicable income tax treaties or other agreements, the IRS may make these reports available to tax authorities in the non-U.S. holder’s country of residence. Payments of dividends or of proceeds on the disposition of stock made to a non-U.S. holder may be subject to additional information reporting and backup withholding at a current rate of 24% unless such non-U.S. holder establishes an exemption, for example by properly certifying its non-U.S. status on an IRS Form W-8BEN, IRS Form W-8BEN-E, IRS Form W-8ECI, or another appropriate version of IRS Form W-8 (or a successor form). Notwithstanding the foregoing, backup withholding and information reporting may apply if either we or our paying agent has actual knowledge, or reason to know, that a holder is a non-U.S. person. Backup withholding is not an additional tax; rather, the U.S. income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may generally be obtained from the IRS, provided that the required information is furnished to the IRS in a timely manner.

### ***Foreign Account Tax Compliance Act***

FATCA imposes withholding tax on certain types of payments made to foreign financial institutions and certain other non-United States entities. The legislation imposes a 30% withholding tax on dividends on or after January 1, 2019, and subject to the discussion of the proposed U.S. Treasury Regulations below, the gross proceeds from the sale or other disposition of, our securities paid to a “foreign financial institution” or to certain “non-financial foreign entities” (each as defined in the Code), unless (i) the foreign financial institution undertakes certain diligence and reporting obligations, (ii) the non-financial foreign entity either certifies it does not have any “substantial United States owners” (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (iii) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (i) above, it must enter into an agreement with the U.S. Treasury requiring, among other things, that it undertake to identify accounts held by “specified United States persons” or “United States-owned foreign entities” (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. If the country in which a payee is resident has entered into an “intergovernmental agreement” with the United States regarding FATCA, that agreement may permit the payee to report to that country rather than to the U.S. Department of the Treasury.

The U.S. Department of the Treasury recently released proposed regulations, which, if finalized in their present form, would eliminate the federal withholding tax of 30% applicable to the gross proceeds of a sale or disposition of our securities. In its preamble to the proposed regulations, the U.S. Treasury stated that taxpayers may generally rely on the proposed regulations until final regulations are issued.

Prospective investors should consult their own tax advisors regarding the possible impact of these rules on their investment in our securities, and the possible impact of these rules on the entities through which they hold our securities, including, without limitation, the process and deadlines for meeting the applicable requirements to prevent the imposition of this 30% withholding tax under FATCA.

**The preceding discussion of U.S. federal tax considerations is for general information only. It is not tax advice. Each prospective investor should consult its tax advisor regarding the particular U.S. federal, state and local and non-U.S. tax consequences of purchasing, holding and disposing of our common stock, our Series 6 Preferred or the related Series A warrants, including the consequences of any proposed change in applicable laws.**



## UNDERWRITING

We have entered into an underwriting agreement with Ladenburg Thalmann & Co. Inc. (“Ladenburg”) and Maxim Group LLC (“Maxim”), acting as the representatives of the several underwriters named below (collectively, the “Representatives”), with respect to the securities subject to this offering. Subject to certain conditions, we have agreed to sell to the underwriters, and the underwriters have severally agreed to purchase, the shares of our common stock, shares of Series 6 Preferred and corresponding Series A warrants listed next to their respective name in the following table:

| Underwriter                   | Number of Shares of<br>Common Stock and<br>Related Series A<br>Warrants | Number of<br>Shares of Series 6<br>Preferred and<br>Related Series A<br>Warrants |
|-------------------------------|---|--|
| Ladenburg Thalmann & Co. Inc. | \$  | \$   |
| Maxim Group LLC               | \$  | \$   |
| Total                         | \$  | \$   |

The underwriters’ obligations are several, which means that each underwriter is required to purchase a specific number of shares of common stock, shares of Series 6 Preferred and Series A warrants but is not responsible for the commitment of any other underwriter to purchase such securities. The underwriters are committed to purchase and pay for all of the securities if any are purchased.

The underwriters have advised us that they propose to offer the shares of our common stock, shares of Series 6 Preferred and related Series A warrants to the public at the respective public offering prices set forth on the cover page of this prospectus and to certain dealers at the combined public offering price less a concession not in excess of \$ per share of our common stock and related Series A warrants or \$ per share of Series 6 Preferred and related Series A warrants. After this offering, the public offering price and concession to dealers may be changed by the Representatives. No such change shall change the amount of proceeds to be received by us as set forth on the cover page of this prospectus. The shares of our common stock, shares of our Series 6 Preferred and related Series A warrants are offered by the underwriters as stated herein, subject to receipt and acceptance by them and subject to their right to reject any order in whole or in part. The underwriters have informed us that they do not intend to confirm sales to any accounts over which they exercise discretionary authority.

### Underwriter Compensation

The following table shows the public offering price, underwriting discount payable to the underwriters by us and proceeds before expenses to us:

|                                 | Per Share of<br>Common Stock and<br>Related<br>Series A Warrants | Per Share of Series<br>6 Preferred and<br>Related<br>Series A Warrants | Total |
|---------------------------------|--|--|-------|
| Public offering price           | \$   | \$   | \$    |
| Underwriting discount           | \$   | \$   | \$    |
| Proceeds to us, before expenses | \$   | \$   | \$    |

In addition to the underwriting discount, we have agreed to pay the underwriters a non-accountable expense allowance of 1% of the gross proceeds of this offering and have agreed to reimburse the underwriters for up to \$125,000 of the fees and expenses of the underwriters, including the fees and expenses of counsel to the underwriters. We paid Ladenburg an advance against expenses in the amount of \$80,000, which will be applied against actual, out-of-pocket accountable expenses that will be paid by us to the underwriters in connection with this offering. Any portion of the expense advance will be returned to us to the extent that offering expenses are not actually incurred by the underwriters in compliance with FINRA Rule 5110(f)(2)(C). The non-accountable expense allowance and the fees and expenses of the underwriters that we have agreed to reimburse are not included in the underwriting discount set forth in the table above. The underwriters have not received and will not receive from us any other item of compensation or expense in connection with this offering considered by the Financial Industry Regulatory Authority, Inc., or FINRA, to be underwriting compensation under its rules. The underwriting discount and other items of compensation the underwriters will receive were determined through arms’ length negotiations between us and the underwriters. We estimate that total expenses payable by us in connection with this offering, excluding the underwriting discount and the non-accountable expense allowance referred to above, will be approximately \$375,000.

## **Indemnification**

We also have agreed to indemnify the underwriters against certain liabilities, including civil liabilities under the Securities Act, or to contribute to payments that the underwriters may be required to make in respect of those liabilities.

## **No Sales of Similar Securities**

We and each of our officers and directors have agreed not to offer, sell, agree to sell, directly or indirectly, or otherwise dispose of any shares of common stock or any securities convertible into or exchangeable for shares of common stock without the prior written consent of the Representatives, for a period of 90 days after the date of this prospectus. We have also agreed not to issue or register additional shares of common stock or securities convertible into, exercisable for, or exchangeable into, shares of our common stock for such 90-day period. These lock-up agreements provide certain exceptions, including, but not limited to, exceptions permitting us, subject to certain limitations, to issue securities as consideration pursuant to acquisitions, dispositions or strategic transactions approved by a majority of our disinterested directors, and their restrictions may be waived at any time by the Representatives.

## **Price Stabilization, Short Positions and Penalty Bids**

The underwriters have advised us that they do not intend to conduct any stabilization or over-allotment activities in connection with this offering.

In connection with this offering, the underwriters and selling group members may engage in passive market making transactions in our common stock on The Nasdaq Capital Market. Passive market making consists of displaying bids on The Nasdaq Capital Market limited by the prices of independent market makers and effecting purchases limited by those prices in response to order flow. Rule 103 of Regulation M promulgated by the SEC limits the amount of net purchases that each passive market maker may make and the displayed size of each bid. Passive market making may stabilize the market price of our common stock at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

## **Electronic Offer, Sale and Distribution of Shares**

The underwriters or syndicate members may facilitate the marketing of this offering online directly or through one of their affiliates. In those cases, prospective investors may view offering terms and a prospectus online and place orders online or through their financial advisors. Such websites and the information contained on such websites, or connected to such sites, are not incorporated into and are not a part of this prospectus.

## **Other Relationships**

The underwriters and each of their affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriters have in the past, and may in the future, engage in investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. The underwriters have in the past, and may in the future, receive customary fees and commissions for these transactions. Maxim previously served as the dealer-manager in connection with our rights offering, which was closed in January 2019, pursuant to the terms of that certain Dealer-Manager Agreement, dated as of December 7, 2019, as amended. In accordance with that agreement, for a period of six (6) months from the date of commencement of sale of the rights offering, we granted Maxim the right of participation to act as book runner or manager with at least 50.0% of the economics for any and all public and private equity, equity-linked or debt (excluding commercial bank debt) offerings undertaken during such period by us or any of our subsidiaries or successor entities.

In the ordinary course of their various business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of the issuer. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that it acquires, long and/or short positions in such securities and instruments.

### **Selling Restrictions**

**Canada.** The offering of the securities in Canada is being made on a private placement basis in reliance on exemptions from the prospectus requirements under the securities laws of each applicable Canadian province and territory where the securities may be offered and sold, and therein may only be made with investors that are purchasing as principal and that qualify as both an “accredited investor” as such term is defined in National Instrument 45-106 - Prospectus Exemptions, and as a “permitted client” as such term is defined in National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any offer and sale of the securities in any province or territory of Canada may only be made through a dealer that is properly registered under the securities legislation of the applicable province or territory wherein the common stock is offered and/or sold or, alternatively, by a dealer that qualifies under and is relying upon an exemption from the registration requirements therein.

Any resale of the securities by an investor resident in Canada must be made in accordance with applicable Canadian securities laws, which may require resales to be made in accordance with prospectus and registration requirements, statutory exemptions from the prospectus and registration requirements or under a discretionary exemption from the prospectus and registration requirements granted by the applicable Canadian securities regulatory authority. These resale restrictions may under certain circumstances apply to resales of the securities outside of Canada.

**European Economic Area.** In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive each, a Relevant Member State, no offer to the public of any of our securities will be made, other than under the following exemptions:

- to any legal entity that is a qualified investor as defined in the Prospectus Directive;
- to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the issuer for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of shares of our common stock will result in a requirement for the publication by us or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive or any supplementary prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer to the public” in relation to any of our securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer so as to enable an investor to decide to purchase or subscribe for any of our securities, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State. The expression “Prospectus Directive” means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State, and the expression “2010 PD Amending Directive” means Directive 2010/73/EU.

**United Kingdom.** This document is not an approved prospectus for the purposes of section 85 of the UK Financial Services and Markets Act 2000, as amended, or FSMA, and a copy of it has not been, and will not be, delivered to or approved by the UK Listing Authority or approved by any other authority which could be a competent authority for the purposes of the Prospectus Directive.

This prospectus is only being distributed to, and is only directed at, persons in the United Kingdom that are “qualified investors” within the meaning of section 86(7) of FSMA that are also (i) investment professionals falling within Article 19(5) of the UK Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, or the Order, and/or (ii) high net worth companies, unincorporated associations or partnerships and the trustees of high value trusts falling within Article 49(2)(a) to (d) of the Order and other persons to whom it may lawfully be communicated (each such person being referred to as a “relevant person”).

Any person in the United Kingdom that is not a relevant person should not act or rely on these documents or any of their contents. Any investment, investment activity or controlled activity to which this document relates is available in the United Kingdom only to relevant persons and will be engaged in only with such persons. Accordingly, this document has not been approved by an authorized person, as would otherwise be required by Section 21 of FSMA. Any purchaser of shares of common stock, Series 6 Preferred and related Series A warrants resident in the United Kingdom will be deemed to have represented to us and the underwriters, and acknowledge that each of us and the underwriters are relying on such representation, that it, or the ultimate purchaser for which it is acting as agent, is a relevant person.

## LEGAL MATTERS

The validity of the securities offered hereby will be passed upon for us by Mitchell Silberberg & Knupp LLP (“MSK”), New York, New York. As of the date of this prospectus, MSK and certain principals of the firm own securities of our company representing in the aggregate less than five percent of the shares of our common stock outstanding immediately prior to the filing of this prospectus. MSK may receive securities offered pursuant to the registration statement of which this prospectus is a part in connection with the satisfaction of outstanding legal fees payable to MSK. Although MSK is not under any obligation to accept shares of our common stock in payment for services, it may do so in the future. Lowenstein Sandler LLP, New York, New York, is acting as counsel for the underwriters in connection with this offering.

## EXPERTS

Marcum LLP, independent registered public accounting firm, has audited our consolidated financial statements for the years ended December 31, 2018 and 2017 included in our Annual Report on Form 10-K for the year ended December 31, 2018, as set forth in their report, which is incorporated by reference in this prospectus. Our consolidated financial statements are incorporated by reference in reliance on Marcum LLP, given on their authority as experts in accounting and auditing.

MNP LLP, independent registered public accounting firm, has audited the financial statements of Jibestream Inc. for the years ended December 31, 2018 and 2017, included in our Current Report on Form 8-K/A filed with the SEC on July 25, 2019, as set forth in their report, which is incorporated herein by reference in this prospectus. Such financial statements are incorporated by reference in reliance on MNP LLP, given their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission (the “SEC”) a registration statement on Form S-1 under the Securities Act, with respect to the securities covered by this prospectus. This prospectus, which is a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information with respect to us and the securities covered by this prospectus, please see the registration statement and the exhibits filed with the registration statement. The SEC maintains an Internet website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the website is <http://www.sec.gov>.

We are subject to the information and periodic reporting requirements of the Exchange Act and, in accordance therewith, we file periodic reports, proxy statements and other information with the SEC. Such periodic reports, proxy statements and other information are available for inspection and copying at the Public Reference Room and website of the SEC referred to above. We maintain a website at <http://www.inpixon.com>. You may access our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed pursuant to Sections 13(a) or 15(d) of the Exchange Act with the SEC free of charge at our website as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. Our website and the information contained on that site, or connected to that site, are not incorporated into and are not a part of this prospectus.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” the information we file with them, which means that we can disclose important information by referring you to those documents. The information incorporated by reference is considered to be part of the accompanying prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below:

- our Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2018, as filed with the SEC on March 28, 2019;
- our Quarterly Report on [Form 10-Q](#) for the quarterly period ended March 31, 2019, as filed with the SEC on May 14, 2019;
- our Current Reports on Form 8-K, as filed with the SEC on [January 8, 2019](#), [January 15, 2019](#), [January 18, 2019](#), [January 29, 2019](#), [February 8, 2019](#), [February 20, 2019](#), [February 22, 2019](#), [April 5, 2019](#), [April 12, 2019](#), [April 25, 2019](#), [May 3, 2019](#), [May 22, 2019](#), [May 30, 2019](#), [June 13, 2019](#), [June 20, 2019](#), [June 25, 2019](#), [June 27, 2019](#), [July 1, 2019](#), [July 5, 2019](#), [July 10, 2019](#), [July 11, 2019](#) and [August 9, 2019](#), and on [Form 8-K/A](#), as filed with the SEC on July 25, 2019; and
- the description of our common stock included in our Registration Statement on [Form 8-A](#), as filed with the SEC on April 7, 2014 pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

In addition, all filed information contained in reports and documents filed with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of filing the registration statement that includes the accompanying prospectus and prior to the filing of a post-effective amendment to the registration statement containing the accompanying prospectus, which indicates that all securities offered have been sold or which deregisters all of such securities then remaining unsold, shall be deemed to be incorporated by reference in this prospectus. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein or in any other subsequently filed document which is also incorporated or deemed to be incorporated herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will provide, without charge, to each person to whom a copy of this prospectus is delivered, including any beneficial owner, upon the written or oral request of such person, a copy of any or all of the documents incorporated by reference herein, including exhibits. Requests should be directed to:

Inpixon  
Attn: Secretary  
2479 E. Bayshore Road, Suite 195  
Palo Alto, CA 94303  
(408) 702-2167

In addition, you may obtain a copy of these filings from the SEC as described in the section entitled “Where You Can Find More Information.”

**15,000,000 Shares of Common Stock**

**or**

**6,000 Shares of Series 6 Convertible Preferred Stock**

**and**

**Series A Warrants to Purchase up to 15,000,000 Shares of Common Stock**



**PROSPECTUS**

*Joint Book-Running Managers*

**Ladenburg Thalmann**

**Maxim Group LLC**

**, 2019**

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth the costs and expenses payable by us in connection with the issuance and distribution of the securities being registered. All of the amounts shown are estimates, except for the SEC registration fee and FINRA filing fee.

|                              |           |                |
|------------------------------|-----------|----------------|
| SEC registration fee         | \$        | 1,600          |
| FINRA filing fee             | \$        | 8,150          |
| Legal fees and expenses      | \$        | 300,000        |
| Accounting fees and expenses | \$        | 35,000         |
| Transfer agent fees          | \$        | 10,000         |
| Miscellaneous                | \$        | 20,250         |
| <b>TOTAL</b>                 | <b>\$</b> | <b>375,000</b> |

#### ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Nevada Revised Statutes provide that we may indemnify our officers and directors against losses or liabilities that arise in their corporate capacity. The effect of these provisions could be to dissuade lawsuits against our officers and directors.

The Nevada Revised Statutes Section 78.7502 provides that:

1) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he: (a) Is not liable pursuant to NRS 78.138; or (b) Acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person is liable pursuant to NRS 78.138 or did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, or that, with respect to any criminal action or proceeding, he had reasonable cause to believe that his conduct was unlawful.

2) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he: (a) Is not liable pursuant to NRS 78.138; or (b) Acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

3) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

The Nevada Revised Statutes Section 78.751 provides that:

1) Any discretionary indemnification pursuant to NRS 78.7502, unless ordered by a court or advanced pursuant to Section 78.751 subsection 2; may be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made: (a) By the stockholders; (b) By the board of directors by majority vote of a quorum consisting of directors who were not parties to the action, suit or consisting of directors who were not parties to the action, suit or proceeding so orders, by independent legal counsel in a written opinion; or (c) If a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

2) The articles of incorporation, the bylaws or an agreement made by the corporation may provide that the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the corporation. The provisions of this subsection do not affect any rights to advancement of expenses to which corporate personnel other than directors or officers may be entitled under any contract or otherwise by law.

3) The indemnification pursuant to NRS 78.7502 and advancement of expenses authorized in or ordered by a court pursuant to this section: (a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, for either an action in his official capacity or an action in another capacity while holding his office, except that indemnification, unless ordered by a court pursuant to NRS 78.7502 or for the advancement of expenses made pursuant to subsection 2, may not be made to or on behalf of any director or officer if a final adjudication establishes that his acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action; and, (b) Continues for a person who has ceased to be a director, officer, employee or agent and inures to the benefit of the heirs, executors and administrators of such a person.

Our Corporate By-Laws at Article X, provide that the Company has accepted a provision indemnifying to the full extent permitted by the law, thereby eliminating or limiting the personal liability of directors, officers, employees or corporate agents for damages for breach of fiduciary duty as a director or officer, but such provision must not eliminate or limit the liability of a director or officer for (a) Acts or omissions involving willful misconduct, gross negligence, fraud, or knowing violation of law; or (b) the payments of distributions in violation of Nevada Revised Statute 78.300.

INSOFAR AS INDEMNIFICATION FOR LIABILITIES ARISING UNDER THE SECURITIES ACT OF 1933 MAY BE PERMITTED TO OUR DIRECTORS, OFFICERS AND CONTROLLING PERSONS PURSUANT TO THE FORGOING PROVISIONS OR OTHERWISE, WE HAVE BEEN ADVISED THAT, IN THE OPINION OF THE SECURITIES AND EXCHANGE COMMISSION, SUCH INDEMNIFICATION IS AGAINST PUBLIC POLICY AS EXPRESSED IN THAT ACT AND IS, THEREFORE, UNENFORCEABLE.



## ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES.

Since January 1, 2016, the Company has made the following sales of unregistered securities (after giving effect to a 1-for-15 reverse stock split effective March 1, 2017, a 1-for-30 reverse stock split effective February 6, 2018 and a 1-for-40 reverse stock split effective November 2, 2018).

### Stock Issuances

1. During the year ended December 31, 2016, the Company issued 11 shares of common stock for services, which were fully vested upon the date of issuance. The Company recorded an expense of \$71,000 for the fair value of those shares.
2. During the year ended December 31, 2016, the Company issued an aggregate of 86 shares of common stock for the settlement of \$2,895,000 of amounts accrued in accordance with the terms of the LightMiner Asset Purchase Agreement, dated April 24, 2015. As of December 31, 2016, the fair value of \$567,000 was accrued and held in escrow, which represented 16 shares of common stock. Subsequent to December 31, 2016, the escrow was released and the Company issued the shares for settlement of the liability.
3. On November 21, 2016, the Company issued 29 shares of restricted common stock in connection with the purchase of Integrio Technologies, LLC. The Company recorded the \$101,000 value of the shares as part of the purchase price of the assets during the year ended December 31, 2016.
4. During the three months ended March 31, 2017, the Company issued 2 shares of common stock related to the acquisition of Integrio Technologies, LLC, which were fully vested upon the date of grant. The Company recorded an expense of \$7,050 for the fair value of those shares.
5. During the three months ended March 31, 2017, the Company issued 3 shares of common stock for services, which were fully vested upon the date of grant. The Company recorded an expense of approximately \$14,100 for the fair value of those shares.
6. During the three months ended March 31, 2017, the Company issued 16 shares of common stock for the settlement of \$567,000 of shares held in escrow related to the LightMiner asset acquisition dated April 24, 2015.
7. During the three months ended June 30, 2017, the Company issued 44 shares of common stock for services, which were fully vested upon the date of grant. The Company recorded an expense of approximately \$144,800 for the fair value of those shares.
8. During the three months ended September 30, 2017, the Company issued 82 shares of common stock for services, which were fully vested upon the date of grant. The Company recorded an expense of \$87,000 for the fair value of those shares.
9. During the three months ended December 31, 2017, the Company issued 133 shares of common stock for services, which were fully vested upon the date of grant. The Company recorded an expense of approximately \$55,000 for the fair value of those shares.
10. On October 8, 2018, the Company issued 37,500 shares of common stock to a consultant for services. The Company recorded an expense of approximately \$465,000 for the fair value of those shares.
11. On February 28, 2019, the Company issued 200,000 shares of common stock to a consultant for services. The Company recorded an expense of approximately \$242,000 for the fair value of those shares.
12. On April 10, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$2,689,868.23 as of April 10, 2019, entered into an exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$500,000 and then cause the outstanding balance of the original note to be reduced by \$500,000; and (ii) exchange the partitioned note for the delivery of 626,566 shares of common stock at an effective price per share equal to \$0.798. The shares were delivered on April 12, 2019.
13. On April 24, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$2,198,399.77 as of April 24, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$400,000 and then cause the outstanding balance to be reduced by \$400,000; and (ii) exchange the partitioned note for the delivery of 444,988 shares of common stock at an effective price per share equal to \$0.8989. The shares were delivered to the note holder on April 25, 2019.
14. On May 21, 2019, the Company, through its wholly owned subsidiary, Inpixon Canada, Inc., as purchaser (the "Purchaser"), completed its acquisition (the "Acquisition") of Locality Systems Inc. pursuant to the terms of a Share Purchase Agreement (the "Purchase Agreement"). Pursuant to the terms and conditions of the Purchase Agreement, the Company issued 650,000 shares of common stock as part of the aggregate consideration for the Acquisition.

15. On May 28, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$1,815,462.74 as of May 28, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$250,000 and then cause the outstanding balance to be reduced by \$250,000; and (ii) exchange the partitioned note for the delivery of 312,891 shares of common stock, at an effective price per share equal to \$0.799. The shares were delivered to the note holder on May 29, 2019.
16. On June 13, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$1,572,434.87 as of June 13, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$150,000 and then cause the outstanding balance to be reduced by \$150,000; and (ii) exchange the partitioned note for the delivery of 239,044 shares of common stock, at an effective price per share equal to \$0.6275. The shares were delivered to the note holder on June 14, 2019.
17. On June 20, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$1,425,203.02 as of June 20, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$200,000 and then cause the outstanding balance to be reduced by \$200,000; and (ii) exchange the partitioned note for the delivery of 317,461 shares of common stock, at an effective price per share equal to \$0.63. The shares were delivered to the note holder on June 21, 2019.
18. On June 25, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$1,226,905.63 as of June 25, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$200,000 and then cause the outstanding balance to be reduced by \$200,000; and (ii) exchange the partitioned note for the delivery of 327,869 shares of common stock, at an effective price per share equal to \$0.61. The shares were delivered to the note holder on June 26, 2019.
19. On June 26, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$1,027,190.88 as of June 26, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$135,000 and then cause the outstanding balance to be reduced by \$135,000; and (ii) exchange the partitioned note for the delivery of 228,814 shares of common stock, at an effective price per share equal to \$0.59. The shares were delivered to the note holder on June 27, 2019.
20. On June 27, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$892,438.72 as of June 27, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$170,000 and then cause the outstanding balance to be reduced by \$170,000; and (ii) exchange the partitioned note for the delivery of 275,974 shares of common stock, at an effective price per share equal to \$0.616. The shares were delivered to the note holder on June 28, 2019.
21. On June 27, 2019, the Company acquired GTX in accordance with that certain Asset Purchase Agreement. As part of the consideration for such acquisition, the Company issued 1,000,000 shares of its common stock to GTX. Of such shares, 100,000 shares are subject to certain holdback restrictions and forfeiture for the purpose of satisfying indemnification claims.
22. On July 5, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$724,045.70 as of July 5, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$178,500 and then cause the outstanding balance to be reduced by \$178,500; and (ii) exchange the partitioned note for the delivery of 350,000 shares of common stock, at an effective price per share equal to \$0.51. The shares were delivered to the note holder on July 8, 2019.
23. On July 9, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$546,152.11 as of July 9, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$204,000 and then cause the outstanding balance to be reduced by \$204,000; and (ii) exchange the partitioned note for the delivery of 400,000 shares of common stock, at an effective price per share equal to \$0.51. The shares were delivered to the note holder on July 10, 2019.
24. On July 9, 2019, the Company entered into a Share Purchase Agreement (the “Purchase Agreement”), with Inpixon Canada Inc., a wholly owned subsidiary of Inpixon (the “Purchaser”), Jibestream Inc., a British Columbia corporation (“Jibestream”), each of the persons set forth on Exhibit A of the Purchase Agreement (each, a “Vendor” and collectively, the “Vendors”) and Chris Wiegand, as a Vendor and Vendors’ representative, pursuant to which the Purchaser will acquire all of the issued and outstanding shares of Jibestream. As part of the transaction consideration, the Company will issue the Vendors a number of shares of common stock equal to CAD \$3,000,000 divided by the lesser of (a) the price per share at which the securities are issued in the offering described in this registration statement and (b) the average closing price of the Company’s common stock as reported or quoted by the Nasdaq Stock Market for the five trading days immediately preceding the closing. The Company intends to issue these shares (a) in reliance upon an exemption from registration under Section 4(a)(2) of the Securities Act for private transactions and (b) in reliance on an exemption from registration provided by Regulation S of the Securities Act inasmuch as the Vendors are persons other than “U.S. persons” (as defined in Rule 902 under the Securities Act) and the requirements of Rule 903 under the Securities Act were otherwise met.

25. On July 10, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with an outstanding balance of \$342,247.15 as of July 10, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$127,500 and then cause the outstanding balance to be reduced by \$127,500; and (ii) exchange the partitioned note for the delivery of 250,000 shares of common stock, at an effective price per share equal to \$0.51. The shares were delivered to the note holder on July 11, 2019.
26. On July 11, 2019, the Company and the holder of that certain outstanding promissory note, issued on October 12, 2018, with a remaining outstanding balance of \$214,806.81 as of July 11, 2019, entered into another exchange agreement, pursuant to which the Company and the note holder agreed to (i) partition a new promissory note in the form of the original note in the original principal amount equal to \$214,806.81 and then cause the outstanding balance to be reduced by \$214,806.81; and (ii) exchange the partitioned note for the delivery of 403,772 shares of common stock, at an effective price per share equal to \$0.532. The shares were delivered to the note holder on July 12, 2019.

#### **Debenture and Series 1 Convertible Preferred Stock Related Issuances**

1. On August 9, 2016, the Company issued to Hillair Capital Investments L.P. (“Hillair”) (i) an 8% Original Issue Discount Senior Convertible Debenture (the “Debenture”) in an aggregate principal amount of \$5,700,000 due on August 9, 2018 and (ii) 2,250 shares of Series 1 Convertible Preferred Stock, par value \$0.001 per share, for an aggregate purchase price of \$5,000,000.
2. On April 20, 2017, the Company issued to Hillair 92 shares of the Company’s common stock in payment for an interest amount of \$315,700 due on May 9, 2017 at an interest conversion rate equal to \$3,444.00 per share.
3. On May 9, 2017, the Company issued 83 shares of the Company’s common stock upon conversion of 2,250 shares of the Company’s Series 1 Convertible Preferred Stock by Hillair.
4. During December 2017, 5,725 shares of the Company’s common stock were issued to pay \$1,649,000 in principal of the Debenture at a conversion rate equal to \$288.00 per share.
5. During December 2017, 827 shares of the Company’s common stock were issued to pay \$158,000 in principal of the Debenture at a conversion rate equal to \$190.80 per share.
6. On February 5, 2018, the holder of the Debenture delivered a conversion notice to the Company pursuant to which it converted \$300,000 of principal of the Debenture into 1,254 shares of the Company’s common stock. Such shares of common stock were issued on February 6, 2018.
7. On February 7, 2018, the holder of the Debenture delivered a conversion notice to the Company pursuant to which it converted \$400,000 of principal of the Debenture into 2,982 shares of the Company’s common stock.
8. On February 9, 2018, the holder of the Debenture delivered a final conversion notice to the Company pursuant to which it converted \$317,000 of principal of the Debenture into 2,645 shares of the Company’s common stock, which paid the Debenture in full.

#### **Other Convertible Debt Related Issuances**

##### May 31, 2017 Subordinated Convertible Promissory Notes

On May 31, 2017, the Company issued and sold subordinated convertible promissory notes in an aggregate principal amount of \$2,200,000 due on May 31, 2018 for an aggregate purchase price of \$2,000,000, representing an approximately 9% original issue discount.

##### November 17, 2017 Convertible Promissory Note

On November 17, 2017, the Company issued a \$1,745,000 principal face amount convertible promissory note to an accredited investor which yielded net proceeds of \$1,500,000 to the Company (the “November 17, 2017 Note”).

Pursuant to an exchange agreement dated October 5, 2018, the Company and the note holder partitioned a new convertible promissory note in the principal amount of \$1,536,649.00 to reduce the outstanding balance of the November 17, 2017 Note by the same amount and exchanged the partitioned note for the delivery of 142,282 shares of common stock, at an effective price per exchange share equal to \$10.80. The offer and sale of the exchange shares was not registered under the Securities Act, in reliance on an exemption from registration under Section 3(a)(9) of the Securities Act, in that (a) the exchange shares were being issued in exchange for the partitioned note which was another outstanding security of the Company; (b) there was no additional consideration of value being delivered by the note holder in connection with the exchange; and (c) there were no commissions or other remuneration being paid by the Company in connection with the exchange.

Pursuant to an exchange agreement dated January 29, 2019, the Company and the note holder partitioned a new convertible promissory note in the principal amount of \$383,768.07 to reduce the outstanding balance of the November 17, 2017 Note by the same amount and exchanged the partitioned note for the delivery of 172,869 shares of common stock, at an effective price per exchange share equal to \$2.22. Following this partition and exchange, the November 17, 2017 Note was paid in full. The offer and sale of the exchange shares was not registered under the Securities Act, in reliance on an exemption from registration under Section 3(a)(9) of the Securities Act, in that (a) the exchange shares were being issued in exchange for the partitioned note which was another outstanding security of the Company; (b) there was no additional consideration of value being delivered by the note holder in connection with the exchange; and (c) there were no commissions or other remuneration being paid by the Company in connection with the exchange.

## **Issuances of Warrants and Exchange Shares**

### December 2016 Warrants and Exchange Shares

On December 15, 2016, the Company sold, in a registered offering, 278 shares of common stock at a purchase price of \$7,200 per share to certain investors (the “December 2016 Purchasers”). Concurrently with the sale of the common stock, the Company also issued warrants to purchase up to 208 shares of common stock (the “December 2016 Warrants”) to the December 2016 Purchasers. The Company engaged Rodman & Renshaw, a unit of H.C. Wainwright & Co., LLC as exclusive placement agent for the issuance and sale of common stock and warrants.

Pursuant to exchange agreements dated December 15, 2017, the Company issued up to an aggregate of 1,667 shares of the Company’s common stock to the December 2016 Purchasers, in exchange for the termination and cancellation of the December 2016 Warrants. The offer and sale of the exchange shares was not registered under the Securities Act, in reliance on an exemption from registration under Section 3(a)(9) of the Securities Act, in that (a) the exchange shares were being issued in exchange for the December 2016 Warrants which were other outstanding securities of the Company; (b) there was no additional consideration of value being delivered by the holders in connection with the exchange; and (c) there were no commissions or other remuneration being paid by the Company in connection with the Exchange.

### August 2017 Warrants

On August 9, 2017, the Company issued warrants to purchase up to an aggregate of 917 shares of common stock to certain purchasers in consideration for such purchasers’ exercise of certain warrants issued by the Company in a registered offering pursuant to that certain warrant agency agreement dated as of June 30, 2017.

### January 2018 Warrants

On January 8, 2018, the Company sold, in a registered offering, an aggregate of 14,996 shares of the Company’s common stock, at a purchase price of \$212.40 per share to certain investors. Concurrently with the sale of the common stock, the Company also issued warrants to purchase up to 14,996 shares of common stock to the purchasers of common stock. Roth Capital Partners, LLC acted as the exclusive placement agent for this sale and issuance of the common stock and warrants.

Unless otherwise stated, the sales of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act (or Regulation D promulgated thereunder). The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon any stock certificates issued in these transactions.

## ITEM 16. EXHIBITS.

Reference is hereby made to the attached Exhibit Index, which is incorporated herein by reference.

## ITEM 17. UNDERTAKINGS.

(a) The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*Provided, however,* that paragraphs (i), (ii) and (iii) above do not apply if the registration statement is on Form S-1, Form S-3, Form SF-3 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
4. That, for the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to the offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

5. That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
- (d) The undersigned registrant hereby undertakes that:
- 1. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
  - 2. For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 3 to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Palo Alto, State of California on the 9th day of August, 2019.

### INPIXON

By: /s/ Nadir Ali  
Nadir Ali  
Chief Executive Officer

By: /s/ Wendy Loundemon  
Wendy Loundemon  
VP of Finance

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 3 to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature                                     | Title  | Date           |
|---|--|----------------|
| <u>/s/ Nadir Ali</u><br>Nadir Ali             | Chief Executive Officer and Director<br>(Principal Executive Officer)      | August 9, 2019 |
| <u>/s/ Wendy Loundemon</u><br>Wendy Loundemon | VP of Finance and Director<br>(Principal Financial and Accounting Officer) | August 9, 2019 |
| <u>*</u><br>Leonard A. Oppenheim              | Director   | August 9, 2019 |

\*By: /s/ Nadir Ali  
Nadir Ali  
Attorney-in-fact

# EXHIBIT INDEX

| Exhibit Number | Exhibit Description   | Incorporated by Reference |            |         |                   | Filed Herewith |
|----------------|---|---------------------------|------------|---------|-------------------|----------------|
|                |   | Form                      | File No.   | Exhibit | Filing Date       |                |
| 1.1            | <a href="#">Form of Underwriting Agreement.</a>   |                           |            |         |                   | X              |
| 2.1†           | <a href="#">Asset Purchase and Merger Agreement dated March 1, 2013 by and among Sysorex Global Holdings Corp., Lilien, LLC and Lilien Systems.</a>   | S-1                       | 333-190574 | 2.1     | August 12, 2013   |                |
| 2.2            | <a href="#">Agreement and Plan of Merger dated August 31, 2013 by and among Sysorex Global Holdings Corp., Sysorex Merger Sub, Inc., Shoom, Inc. and the Shareholder Representative.</a>  | S-1                       | 333-191648 | 2.4     | October 9, 2013   |                |
| 2.3            | <a href="#">Agreement and Plan of Merger dated as of December 20, 2013, by and among Sysorex Global Holdings Corp., AirPatrol Corporation, AirPatrol Acquisition Corp. I, AirPatrol Acquisition Corp. II, and Shareholders Representative Services LLC.</a> | S-1/A                     | 333-191648 | 2.6     | January 21, 2014  |                |
| 2.4            | <a href="#">Amendment No. 1 to Agreement and Plan of Merger dated February 28, 2014 with AirPatrol Corporation.</a>   | S-1/A                     | 333-191648 | 2.7     | March 13, 2014    |                |
| 2.5            | <a href="#">Amendment No. 2 to Agreement and Plan of Merger dated April 18, 2014 with AirPatrol Corporation.</a>  | 8-K                       | 001-36404  | 2.8     | April 24, 2014    |                |
| 2.6            | <a href="#">Waiver and Amendment No. 3 to Agreement and Plan of Merger dated May 30, 2014 with AirPatrol Corporation.</a>   | S-1                       | 333-198502 | 12.9    | August 29, 2014   |                |
| 2.7†           | <a href="#">Asset Purchase Agreement, dated as of April 24, 2015, between Sysorex Global Holdings Corp., LightMiner Systems, Inc. and Chris Baskett.</a>  | 8-K                       | 001-36404  | 2.1     | April 30, 2015    |                |
| 2.8            | <a href="#">Agreement and Plan of Merger, dated as of December 14, 2015, between Sysorex Global Holdings Corp. and Sysorex Global.</a>  | 8-K                       | 001-36404  | 10.3    | December 18, 2015 |                |
| 2.9†           | <a href="#">Asset Purchase Agreement, dated November 14, 2016, among Integrio Technologies, LLC, Emtec Federal, LLC, Sysorex Government Services, Inc. and Sysorex Global.</a>  | 8-K                       | 001-36404  | 2.1     | November 18, 2016 |                |
| 2.10           | <a href="#">Amendment No. 1 to Asset Purchase Agreement, dated as of November 21, 2016, by and among Sysorex Global, Sysorex Government Services, Inc., Integrio Technologies, LLC and Emtec Federal, LLC.</a>  | 8-K                       | 001-36404  | 2.2     | November 28, 2016 |                |



| Exhibit Number | Exhibit Description   | Incorporated by Reference |            |         |                   | Filed Herewith |
|----------------|---|---------------------------|------------|---------|-------------------|----------------|
|                |   | Form                      | File No.   | Exhibit | Filing Date       |                |
| 2.11           | <a href="#">Agreement and Plan of Merger, dated as of February 27, 2017, between Sysorex Global and Inpixon.</a>  | 8-K                       | 001-36404  | 2.1     | March 1, 2017     |                |
| 2.12           | <a href="#">Agreement and Plan of Merger, dated as of July 25, 2018, between Inpixon USA and Sysorex, Inc.</a>  | 8-K                       | 001-36404  | 2.1     | July 31, 2018     |                |
| 2.13           | <a href="#">Separation and Distribution Agreement, dated August 7, 2018 between Inpixon and Sysorex, Inc.</a>   | 10-Q                      | 001-36404  | 2.1     | August 13, 2018   |                |
| 2.14           | <a href="#">Amendment No. 1 to Separation and Distribution Agreement dated August 31, 2018 between Inpixon and Sysorex, Inc.</a>  | 8-K                       | 001-36404  | 10.5    | September 4, 2018 |                |
| 2.15†          | <a href="#">Share Purchase Agreement, dated May 21, 2019, by and among Inpixon, Inpixon Canada, Inc., Locality Systems Inc., Kirk Moir, in his capacity as the Sellers' Representative, the Sellers and Garibaldi Capital Advisors Ltd.</a> | 8-K                       | 001-36404  | 2.1     | May 22, 2019      |                |
| 2.16†          | <a href="#">Asset Purchase Agreement, dated June 27, 2019, by and between Inpixon and GTX Corp.</a>   | 8-K                       | 001-36404  | 2.1     | July 1, 2019      |                |
| 2.17†          | <a href="#">Share Purchase Agreement, dated July 9, 2019, by and among Inpixon, Inpixon Canada, Inc., Jibestream Inc., the Vendors, and Chris Wiegand, in his capacity as the Vendors' Representative.</a>                                  | 8-K                       | 001-36404  | 2.1     | July 11, 2019     |                |
| 2.18†          | <a href="#">Amendment to Share Purchase Agreement, dated as of August 8, 2019, by and among Inpixon, Inpixon Canada, Inc., Jibestream Inc., the Vendors, and Chris Wiegand, in his capacity as the Vendors' Representative.</a>             | 8-K                       | 001-36404  | 2.1     | August 9, 2019    |                |
| 3.1            | <a href="#">Restated Articles of Incorporation.</a>   | S-1                       | 333-190574 | 3.1     | August 12, 2013   |                |
| 3.2            | <a href="#">Certificate of Amendment to Articles of Incorporation (Increase Authorized Shares).</a>   | S-1                       | 333-218173 | 3.2     | May 22, 2017      |                |
| 3.3            | <a href="#">Certificate of Amendment to Articles of Incorporation (Reverse Split).</a>  | 8-K                       | 001-36404  | 3.1     | April 10, 2014    |                |
| 3.4            | <a href="#">Articles of Merger (renamed Sysorex Global).</a>  | 8-K                       | 001-36404  | 3.1     | December 18, 2015 |                |
| 3.5            | <a href="#">Articles of Merger (renamed Inpixon).</a>   | 8-K                       | 001-36404  | 3.1     | March 1, 2017     |                |
| 3.6            | <a href="#">Certificate of Amendment to Articles of Incorporation (Reverse Split).</a>  | 8-K                       | 001-36404  | 3.2     | March 1, 2017     |                |
| 3.7            | <a href="#">Certificate of Amendment to Articles of Incorporation (authorized share increase).</a>  | 8-K                       | 001-36404  | 3.1     | February 5, 2018  |                |
| 3.8            | <a href="#">Certificate of Amendment to Articles of Incorporation (Reverse Split).</a>  | 8-K                       | 001-36404  | 3.1     | February 6, 2018  |                |
| 3.9            | <a href="#">Certificate of Amendment to Articles of Incorporation (Reverse Split).</a>  | 8-K                       | 001-36404  | 3.1     | November 1, 2018  |                |

| Exhibit<br>Number | Exhibit Description  | Incorporated by Reference |            |         |                   | Filed<br>Herewith |
|-------------------|--|---------------------------|------------|---------|-------------------|-------------------|
|                   |  | Form                      | File No.   | Exhibit | Filing Date       |                   |
| 3.10              | <a href="#">Bylaws, as amended.</a>  | S-1                       | 333-190574 | 3.2     | August 12, 2013   |                   |
| 4.1               | <a href="#">Specimen Stock Certificate of the Company.</a>   | S-1                       | 333-190574 | 4.1     | August 12, 2013   |                   |
| 4.2               | <a href="#">Form of Certificate of Designation of Preferences, Rights and Limitations of Series 4 Convertible Preferred Stock.</a> | 8-K                       | 001-36404  | 3.1     | April 24, 2018    |                   |
| 4.3               | <a href="#">Certificate of Designation of Series 5 Convertible Preferred Stock, dated as of January 14, 2019.</a>                  | 8-K                       | 001-36404  | 3.1     | January 15, 2019  |                   |
| 4.4               | <a href="#">Promissory Note, dated as of October 12, 2018.</a>   | 8-K                       | 001-36404  | 4.1     | October 18, 2018  |                   |
| 4.5               | <a href="#">Promissory Note, dated as of December 21, 2018.</a>  | 8-K                       | 001-36404  | 4.1     | December 31, 2018 |                   |
| 4.6               | <a href="#">Warrant to purchase common stock dated March 20, 2013 held by Bridge Bank N.A.</a>                                     | S-1                       | 333-190574 | 4.3     | August 12, 2013   |                   |
| 4.7               | <a href="#">Warrant to purchase common stock dated August 29, 2013 held by Bridge Bank N.A.</a>                                    | S-1                       | 333-191648 | 4.5     | October 9, 2013   |                   |
| 4.8               | <a href="#">Form of Warrant Agency Agreement.</a>  | S-1/A                     | 333-218173 | 4.7     | June 23, 2017     |                   |

| Exhibit Number | Exhibit Description  | Incorporated by Reference |            |         |                   | Filed Herewith |
|----------------|--|---------------------------|------------|---------|-------------------|----------------|
|                |  | Form                      | File No.   | Exhibit | Filing Date       |                |
| 4.9            | <a href="#">Form of Additional Warrant.</a>  | 8-K                       | 001-36404  | 4.1     | August 9, 2017    |                |
| 4.10           | <a href="#">Form of Warrant.</a>   | 8-K                       | 001-36404  | 4.1     | January 9, 2018   |                |
| 4.11           | <a href="#">Form of Warrant.</a>   | 8-K                       | 001-36404  | 4.1     | February 16, 2018 |                |
| 4.12           | <a href="#">Form of Warrant.</a>   | 8-K                       | 001-36404  | 4.1     | April 24, 2018    |                |
| 4.13           | <a href="#">Form of Warrant.</a>   | 8-K                       | 001-36404  | 4.1     | January 15, 2019  |                |
| 4.14           | <a href="#">Form of Warrant Agency Agreement.</a>  | 8-K                       | 001-36404  | 4.2     | January 15, 2019  |                |
| 4.15           | <a href="#">Promissory Note, dated as of May 3, 2019.</a>  | 8-K                       | 001-36404  | 4.1     | May 3, 2019       |                |
| 4.16           | <a href="#">Promissory Note, dated as of June 27, 2019.</a>  | 8-K                       | 001-36404  | 4.1     | June 27, 2019     |                |
| 4.17           | <a href="#">Form of Series A Warrant for this Offering.</a>  |                           |            |         |                   | X              |
| 4.18           | <a href="#">Form of Certificate of Designation of Preferences, Rights and Limitations of Series 6 Convertible Preferred Stock.</a> |                           |            |         |                   | X              |
| 4.19           | <a href="#">Promissory Note, dated as of August 8, 2019</a>  | 8-K                       | 001-36404  | 4.1     | August 9, 2019    |                |
| 5.1            | <a href="#">Legal Opinion of Mitchell Silberberg &amp; Knupp LLP.</a>  |                           |            |         |                   | X              |
| 10.1+          | <a href="#">Amended and Restated 2011 Employee Stock Incentive Plan.</a>   | S-8                       | 333-195655 | 10.22   | May 2, 2014       |                |
| 10.2+          | <a href="#">Form of Incentive Stock Option Agreement.</a>  | 8-K                       | 001-36404  | 10.9    | October 27, 2014  |                |
| 10.3+          | <a href="#">Form of Non-Qualified Stock Option Agreement.</a>  | 8-K                       | 001-36404  | 10.5    | October 27, 2014  |                |
| 10.4+          | <a href="#">Form of Restricted Stock Award Agreement.</a>  | 8-K                       | 001-36404  | 10.6    | October 27, 2014  |                |
| 10.5+          | <a href="#">2018 Employee Stock Incentive Plan.</a>  | S-8                       | 333-229374 | 99.1    | January 25, 2019  |                |
| 10.6+          | <a href="#">2018 Employee Stock Incentive Plan Form of Incentive Stock Option Agreement.</a>                                       | 8-K                       | 001-36404  | 10.1    | May 18, 2018      |                |
| 10.7+          | <a href="#">2018 Employee Stock Incentive Plan Form of Non-Qualified Stock Option Agreement.</a>                                   | 8-K                       | 001-36404  | 10.2    | May 18, 2018      |                |
| 10.8+          | <a href="#">Director Services Agreement with Leonard A. Oppenheim dated October 21, 2014.</a>                                      | 8-K                       | 001-36404  | 10.1    | October 27, 2014  |                |

| Exhibit Number | Exhibit Description   | Incorporated by Reference |           |         |                   | Filed Herewith |
|----------------|---|---------------------------|-----------|---------|-------------------|----------------|
|                |   | Form                      | File No.  | Exhibit | Filing Date       |                |
| 10.9+          | <a href="#">Waiver and Amendment No. 1 to Board of Directors Services Agreement with Leonard A. Oppenheim dated February 4, 2019.</a>   | 10-K                      | 001-36404 | 10.9    | March 28, 2019    |                |
| 10.10+         | <a href="#">Director Services Agreement with Kareem M. Irfan dated October 21, 2014.</a>  | 8-K                       | 001-36404 | 10.3    | October 27, 2014  |                |
| 10.11+         | <a href="#">Waiver and Amendment No. 1 to Board of Directors Services Agreement with Kareem M. Irfan dated February 4, 2019.</a>  | 10-K                      | 001-36404 | 10.11   | March 28, 2019    |                |
| 10.12+         | <a href="#">Director Services Agreement with Tanveer A. Khader dated October 21, 2014.</a>  | 8-K                       | 001-36404 | 10.4    | October 27, 2014  |                |
| 10.13+         | <a href="#">Waiver and Amendment No. 1 to Board of Directors Services Agreement with Tanveer A. Khader dated February 4, 2019.</a>  | 10-K                      | 001-36404 | 10.13   | March 28, 2019    |                |
| 10.15+         | <a href="#">Amended and Restated Employment Agreement by and between the Company and Nadir Ali</a>  | 10-Q                      | 001-36404 | 10.14   | May 15, 2018      |                |
| 10.16+         | <a href="#">Employment Agreement, effective as of October 1, 2014, between Wendy Loundermon and the Company.</a>  | 8-K                       | 001-36404 | 10.8    | October 27, 2014  |                |
| 10.17+         | <a href="#">Employment Agreement dated November 4, 2016, by and between Sysorex USA and Soumya Das.</a>   | 10-K                      | 001-36404 | 10.51   | April 17, 2017    |                |
| 10.18+         | <a href="#">Amended Compensation Terms for Soumya Das</a>   | 10-Q                      | 001-36404 | 10.9    | August 13, 2018   |                |
| 10.19+         | <a href="#">Amendment to Employment Agreement dated August 31, 2018 among Inpixon, Sysorex, Inc. and Soumya Das</a>   | 8-K                       | 001-36404 | 10.8    | September 4, 2018 |                |
| 10.20          | <a href="#">Lease Agreement dated August 21, 2014, by and between ECI Two Bayshore LLC and Sysorex Global Holdings Corp.</a>  | 10-K                      | 001-36404 | 10.57   | April 17, 2017    |                |
| 10.21          | <a href="#">Commercial Lease Amendment dated September 19, 2016, by and between 424116 B.C. Ltd. and Sysorex Canada Corp.</a>   | 10-K                      | 001-36404 | 10.53   | April 17, 2017    |                |
| 10.22          | <a href="#">Amended and Restated GemCap Loan and Security Agreement; Payplant Loan and Security Agreement, by and among GemCap Lending, LLC, Inpixon, Inpixon USA, Inpixon Federal, Inc. and Payplant LLC, as agent for Payplant Alternatives Fund LLC.</a> | 8-K                       | 001-36404 | 10.1    | August 18, 2017   |                |
| 10.23          | <a href="#">Payplant Client Agreement by and among Inpixon, Inpixon USA, Inpixon Federal, Inc. and Payplant LLC.</a>  | 8-K                       | 001-36404 | 10.2    | August 18, 2017   |                |
| 10.24          | <a href="#">Amendment 1 to Payplant Client Agreement dated August 31, 2018 between Inpixon, Sysorex, Inc., Sysorex Government Services, Inc. and Payplant LLC.</a>  | 8-K                       | 001-36404 | 10.6    | September 4, 2018 |                |

| Exhibit Number | Exhibit Description   | Incorporated by Reference |           |         |                   | Filed Herewith |
|----------------|---|---------------------------|-----------|---------|-------------------|----------------|
|                |   | Form                      | File No.  | Exhibit | Filing Date       |                |
| 10.25          | <a href="#">Transition Services Agreement dated August 31, 2018 between Inpixon and Sysorex, Inc.</a>   | 8-K                       | 001-36404 | 10.1    | September 4, 2018 |                |
| 10.26          | <a href="#">Tax Matters Agreement dated August 31, 2018 between Inpixon and Sysorex, Inc.</a>   | 8-K                       | 001-36404 | 10.2    | September 4, 2018 |                |
| 10.27          | <a href="#">Employee Matters Agreement dated August 31, 2018 between Inpixon and Sysorex, Inc.</a>  | 8-K                       | 001-36404 | 10.3    | September 4, 2018 |                |
| 10.28          | <a href="#">Assignment and Assumption Agreement dated August 31, 2018 between members of the Inpixon Group and members of the Sysorex Group</a> | 8-K                       | 001-36404 | 10.4    | September 4, 2018 |                |
| 10.29          | <a href="#">Note Purchase Agreement, dated as of October 12, 2018</a>   | 8-K                       | 001-36404 | 10.1    | October 18, 2018  |                |
| 10.30          | <a href="#">Note Purchase Agreement, dated as of December 21, 2018.</a>   | 8-K                       | 001-36404 | 10.1    | December 31, 2018 |                |
| 10.31          | <a href="#">Global Amendment, dated February 8, 2019.</a>   | 8-K                       | 001-36404 | 10.1    | February 8, 2019  |                |
| 10.32          | <a href="#">Dealer-Manager Agreement, dated December 7, 2018, between Maxim Group LLC and Inpixon.</a>  | 8-K                       | 001-36404 | 1.1     | December 7, 2018  |                |
| 10.33          | <a href="#">Amendment to Dealer-Manager Agreement, dated January 14, 2019, between Maxim Group LLC and Inpixon.</a>                             | 8-K                       | 001-36404 | 1.1     | January 15, 2019  |                |
| 10.34          | <a href="#">Note Purchase Agreement, dated as of December 31, 2018, by and between Inpixon and Sysorex, Inc.</a>                                | 8-K                       | 001-36404 | 10.2    | December 31, 2018 |                |
| 10.35          | <a href="#">Sysorex Secured Promissory Note, dated as of December 31, 2018.</a>   | 8-K                       | 001-36404 | 10.3    | December 31, 2018 |                |
| 10.36          | <a href="#">First Amendment Agreement, dated as of February 4, 2019, between Inpixon and Sysorex, Inc.</a>                                      | 8-K                       | 001-36404 | 10.2    | February 8, 2019  |                |
| 10.37+         | <a href="#">Waiver and Amendment No. 1 to Board of Directors Services Agreement with Leonard A. Oppenheim dated February 4, 2019.</a>           | 10-K                      | 001-36404 | 10.9    | March 28, 2019    |                |
| 10.38+         | <a href="#">Waiver and Amendment No. 1 to Board of Directors Services Agreement with Kareem M. Irfan dated February 4, 2019.</a>                | 10-K                      | 001-36404 | 10.11   | March 28, 2019    |                |
| 10.39+         | <a href="#">Waiver and Amendment No. 1 to Board of Directors Services Agreement with Tanveer A. Khader dated February 4, 2019.</a>              | 10-K                      | 001-36404 | 10.13   | March 28, 2019    |                |
| 10.40          | <a href="#">Second Amendment Agreement, dated as of April 2, 2019, between Inpixon and Sysorex, Inc.</a>  | 8-K                       | 001-36404 | 10.1    | April 5, 2019     |                |

| Exhibit Number | Exhibit Description  | Incorporated by Reference |            |                            |                | Filed Herewith |
|----------------|--|---------------------------|------------|----------------------------|----------------|----------------|
|                |  | Form                      | File No.   | Exhibit                    | Filing Date    |                |
| 10.41†         | <a href="#">Note Purchase Agreement, dated as of May 3, 2019.</a>  | 8-K                       | 001-36404  | 10.1                       | May 3, 2019    |                |
| 10.42#         | <a href="#">Das Commission Plan.</a>   | 10-Q                      | 001-36404  | 10.11                      | May 14, 2019   |                |
| 10.43          | <a href="#">General Security Agreement, dated May 21, 2019, executed by Locality Systems Inc. in favor of the Sellers.</a>         | 8-K                       | 001-36404  | 10.1                       | May 22, 2019   |                |
| 10.44          | <a href="#">Guaranty Agreement, dated May 21, 2019, executed by Inpixon in favor of the Sellers.</a>                               | 8-K                       | 001-36404  | 10.2                       | May 22, 2019   |                |
| 10.45          | <a href="#">Third Amendment Agreement, dated as of May 22, 2019, between Inpixon and Sysorex, Inc.</a>                             | 8-K                       | 001-36404  | 10.3                       | May 22, 2019   |                |
| 10.46          | <a href="#">Note Purchase Agreement, dated as of June 27, 2019.</a>  | 8-K                       | 001-36404  | 10.2                       | June 27, 2019  |                |
| 10.47†         | <a href="#">Patent Assignment and License-Back Agreement, dated June 27, 2019, by and between Inpixon and GTX Corp.</a>            | 8-K                       | 001-36404  | 10.1                       | July 1, 2019   |                |
| 10.48†         | <a href="#">Patent License Agreement, dated June 27, 2019, by and between Inpixon and Inventergy.</a>                              | 8-K                       | 001-36404  | 10.4                       | July 1, 2019   |                |
| 10.49†         | <a href="#">Patent License Agreement, dated June 27, 2019, by and between Inpixon and GTX Corp.</a>                                | 8-K                       | 001-36404  | 10.2                       | July 1, 2019   |                |
| 10.50†#        | <a href="#">Consulting Agreement, dated June 27, 2019, by and between Inpixon and GTX Corp.</a>                                    | 8-K                       | 001-36404  | 10.5                       | July 1, 2019   |                |
| 10.51          | <a href="#">Form of Promissory Note.</a>   | 8-K                       | 001-36404  | 10.6                       | July 1, 2019   |                |
| 10.52          | <a href="#">Form of Leak-Out Agreement.</a>  | S-1/A                     | 333-232448 | 10.52                      | August 2, 2019 |                |
| 10.53†         | <a href="#">Note Purchase Agreement, dated as of August 8, 2019.</a>   | 8-K                       | 001-36404  | 10.1                       | August 9, 2019 |                |
| 10.54          | <a href="#">Standstill Agreement, dated as of August 8, 2019.</a>  | 8-K                       | 001-36404  | 10.2                       | August 9, 2019 |                |
| 10.55          | <a href="#">Form of Jibestream Note.</a>   | 8-K                       | 001-36404  | 10.3                       | August 9, 2019 |                |
| 21             | <a href="#">List of Subsidiaries of the Company.</a>   | 10-K                      | 001-36404  | 21                         | March 28, 2019 |                |
| 23.1           | <a href="#">Consent of Marcum LLP.</a>   |                           |            |                            |                | X              |
| 23.2           | <a href="#">Consent of MNP LLP.</a>  |                           |            |                            |                | X              |
| 23.3           | <a href="#">Consent of Mitchell Silberberg &amp; Knupp LLP. (included in Exhibit 5.1).</a>   |                           |            |                            |                | X              |
| 24.1           | <a href="#">Power of Attorney.</a>   | S-1                       | 333-232448 | Included on signature page | June 28, 2019  |                |
| 99.1           | <a href="#">Jibestream's Audited Consolidated Financial Statements and the notes related thereto.</a>                              | 8-K/A                     | 001-36404  | 99.1                       | July 25, 2019  |                |
| 99.2           | <a href="#">Jibestream's Interim Unaudited Consolidated Financial Statements and the notes related thereto.</a>                    | 8-K/A                     | 001-36404  | 99.2                       | July 25, 2019  |                |
| 99.3           | <a href="#">Inpixon and Jibestream's Unaudited Pro Form Condensed Combined Financial Statements and the notes related thereto.</a> | 8-K/A                     | 001-36404  | 99.3                       | July 25, 2019  |                |

+ Indicates a management contract or compensatory plan.

† Exhibits, schedules and similar attachments have been omitted pursuant to Item 601 of Regulation S-K and the registrant undertakes to furnish supplemental copies of any of the omitted exhibits and schedules upon request by the SEC.

# Certain confidential portions of this Exhibit were omitted by means of marking such portions with brackets (“[\*\*\*]”) because the identified confidential portions (i) are not material and (ii) would be competitively harmful if publicly disclosed.

[●] Shares of Common Stock  
[●] Shares of Series 6 Convertible Preferred Stock  
and  
Series A Warrants to Purchase up to [●] Shares of Common Stock  
INPIXON  
UNDERWRITING AGREEMENT

[●], 2019

Ladenburg Thalmann & Co. Inc.  
Maxim Group LLC  
*As the Representatives of the  
Several Underwriters Named on Schedule I hereto*

c/o Ladenburg Thalmann & Co. Inc.  
277 Park Avenue, 26<sup>th</sup> Floor  
New York, NY 10172

Ladies and Gentlemen:

Inpixon, a Nevada corporation (the “Company”), proposes, subject to the terms and conditions stated herein, to issue and sell to the underwriters named in Schedule I hereto (the “Underwriters,” or each, an “Underwriter”), for whom Ladenburg Thalmann & Co. and Maxim Group LLC are acting as the representatives (the “Representatives”), an aggregate of (i) [●] authorized but unissued shares (the “Shares”) of common stock, par value \$0.001 per share (the “Common Stock”), of the Company, (ii) [●] authorized but unissued shares of the Company’s Series 6 Convertible Preferred Stock (the “Preferred Shares”), convertible into shares of Common Stock (the “Conversion Shares”) and having the relative rights, preferences and limitations set forth the Certificate of Designation of Preferences, Rights and Limitations of Series 6 Convertible Preferred Stock attached hereto as **Exhibit A** (the “Certificate of Designation”), and (iii) Series A warrants (the “Warrants”) to purchase up to an aggregate of [●] shares of Common Stock (such shares, the “Warrant Shares”). The Shares, the Preferred Shares, the Conversion Shares, the Warrants and the Warrant Shares are collectively referred to as the “Securities.” The terms of the Warrants are set forth in the form of Series A Warrant attached hereto as **Exhibit B**.

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The Company and the several Underwriters hereby confirm their agreement as follows:

**1. Registration Statement and Prospectus.** The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-1 (File No. 333-232448), including the related preliminary prospectus or prospectuses, covering the registration of the sale of the Securities under the Securities Act of 1933, as amended (the "Securities Act"), and the rules and regulations of the Commission thereunder (the "Rules and Regulations"). The Securities are referred to herein as the "Registered Securities." Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430A ("Rule 430A") of the Rules and Regulations and Rule 424(b) ("Rule 424(b)") of the Rules and Regulations. The information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of such registration statement at the time it became effective pursuant to Rule 430A(b) is herein called the "Rule 430A Information." Such registration statement, including the amendments thereto, the exhibits thereto and any schedules thereto, at the time it became effective, and including the Rule 430A Information, is herein called the "Registration Statement." Any registration statement filed pursuant to Rule 462(b) of the Rules and Regulations is herein called the "Rule 462(b) Registration Statement" and, after such filing, the term "Registration Statement" shall include the Rule 462(b) Registration Statement. Each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of this Agreement, is herein called a "preliminary prospectus." The prospectus, in the form first furnished to the Underwriters for use in connection with the offering of the Registered Securities, is herein called the "Prospectus." For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system ("EDGAR").

All references in this Agreement to financial statements and schedules and other information which is "described," "contained," "included" or "stated" in the Registration Statement or the Prospectus (or other references of like import) shall be deemed to mean and include all such financial statements, pro forma financial information and schedules and other information which is incorporated by reference in or otherwise deemed by the Rules and Regulations to be a part of or included in the Registration Statement or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include the subsequent filing of any document under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that is deemed to be incorporated therein by reference or otherwise deemed by the Rules and Regulations to be a part thereof.



## **2. Representations and Warranties of the Company Regarding the Offering.**

(a) The Company represents and warrants to, and agrees with, the several Underwriters, as of the date hereof, as of the Closing Date (as defined in Section 4(b) below) except as otherwise indicated, as follows:

(i) At the time of effectiveness, as of the date hereof, as of the Closing Date, the Registration Statement and any post-effective amendment thereto complied or will comply in all material respects with the requirements of the Securities Act and the Rules and Regulations and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Time of Sale Disclosure Package (as defined in Section 2(a)(iii)(A)(1) below) as of [●] (Eastern time) (the “Applicable Time”) on the date hereof, at the Closing Date, and the Prospectus, as amended or supplemented, as of its date, at the time of filing pursuant to Rule 424(b) under the Securities Act, at the Closing Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences shall not apply to statements in or omissions from the Registration Statement, the Time of Sale Disclosure Package or any Prospectus in reliance upon, and in conformity with, written information furnished to the Company by any Underwriter specifically for use in the preparation thereof, which written information is described in Section 7(f). The Registration Statement contains all exhibits and schedules required to be filed by the Securities Act or the Rules and Regulations. No stop order preventing or suspending the effectiveness or use of the Registration Statement or any Prospectus is in effect and no proceedings for such purpose have been instituted or are pending, or, to the knowledge of the Company, are contemplated or threatened by the Commission.

(ii) The Company has not distributed any prospectus or other offering material in connection with the offering and sale of the Securities other than the Time of Sale Disclosure Package and the roadshow or investor presentations delivered to and approved by the Underwriters in connection with the marketing of the offering of the Securities (the “Marketing Materials”). The documents incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and any Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act and the respective rules thereunder, as applicable, were filed on a timely basis with the Commission and none of such documents, when they were filed (or, if amendments to such documents were filed, when such amendments were filed), contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Any further documents so filed and incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(iii) (A) The Company has provided to the Underwriters a copy of each Issuer Free Writing Prospectus (as defined below) used in the sale of the Securities, if any. The Company has filed all Issuer Free Writing Prospectuses required to be so filed with the Commission, and no stop order preventing or suspending the effectiveness or use of any Issuer Free Writing Prospectus is in effect and no proceedings for such purpose have been instituted or are pending, or, to the knowledge of the Company, are contemplated or threatened by the Commission. When taken together with the rest of the Time of Sale Disclosure Package or the Prospectus, no Issuer Free Writing Prospectus, as of its date of first use, at the Closing Date, has, does or will include (1) any untrue statement of a material fact or omission of any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (2) information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus. The representations and warranties set forth in the immediately preceding sentence shall not apply to statements in or omissions from the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus in reliance upon, and in conformity with, written information furnished to the Company by any Underwriter specifically for use in the preparation thereof. As used in this paragraph and elsewhere in this Agreement:

(1) “Time of Sale Disclosure Package” means each Issuer Free Writing Prospectus, the most recent preliminary prospectus that is distributed to investors prior to the time of effectiveness and any description of the transaction provided by the Underwriters included in Schedule II.

(2) “Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act, relating to the Securities that (A) is required to be filed with the Commission by the Company, or (B) is exempt from filing pursuant to Rule 433(d)(5)(i) or (d)(8) under the Securities Act, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g) under the Securities Act. For the avoidance of doubt, the term “Issuer Free Writing Prospectus” shall not include any “free writing prospectus” (as defined in Rule 405 under the Securities Act) that was prepared by the Underwriters or provided to any person by the Underwriters without the knowledge and consent of the Company.

(B) At the time of filing of the Registration Statement and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405 under the Securities Act or an “excluded issuer” as defined in Rule 164 under the Securities Act.

(C) Each Issuer Free Writing Prospectus satisfied, as of its issue date and at all subsequent times through the Prospectus Delivery Period (defined below), all other conditions as may be applicable to its use as set forth in Rules 164 and 433 under the Securities Act, including any legend, record-keeping or other requirements.

(iv) The financial statements of the Company, together with the related notes, included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act and fairly present the financial condition of the Company as of the dates indicated and the results of operations and changes in cash flows for the periods therein specified in conformity with United States generally accepted accounting principles (“GAAP”) consistently applied throughout the periods involved; and the supporting schedules included in or incorporated by reference into the Registration Statement fairly present the information required to be stated therein. The pro forma and pro forma as adjusted financial information, if any, included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus has been properly compiled and prepared in all material respects in accordance with the applicable requirements of the Securities Act and the Rules and Regulations and includes all adjustments necessary to present fairly in accordance with GAAP the pro forma and as adjusted financial position of the respective entity or entities presented therein at the respective dates indicated and their cash flows and the results of operations for the respective periods specified. The assumptions used in preparing the pro forma and pro forma as adjusted financial information included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein. The related pro forma and pro forma as adjusted adjustments give appropriate effect to those assumptions; and the pro forma and pro forma as adjusted financial information reflect the proper application of those adjustments to the corresponding historical financial statement amounts. The financial statements of Jibestream Inc., a Canadian federal corporation (“Jibestream”), together with the related notes, included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act and, to the knowledge of the Company, fairly present the financial condition of Jibestream as of the dates indicated and the results of operations and changes in cash flows for the periods therein specified in conformity with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board applied on a consistent basis through the periods involved, except as otherwise stated therein. No other financial statements, pro forma financial information or schedules are required under the Securities Act and the Rules and Regulations to be included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus.

(v) To the Company’s knowledge, Marcum LLP, which has expressed its opinion with respect to the audited financial statements for the year ended December 31, 2018 for the Company, filed as a part of the Registration Statement and included in or incorporated by reference into the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, is an independent public accounting firm with respect to the Company within the meaning of the Securities Act and the Rules and Regulations.

(vi) To the Company’s knowledge, MNP LLP, which has expressed its opinion with respect to the audited financial statements for the year ended December 31, 2018 for Jibestream, included in or incorporated by reference into the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, is an independent public accounting firm with respect to Jibestream within the meaning of the Securities Act and the Rules and Regulations.

(vii) The Company had a reasonable basis for, and made in good faith, each “forward-looking statement” (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) contained in or incorporated by reference into the Registration Statement, the Time of Sale Disclosure Package, the Prospectus or the Marketing Materials.

(viii) All statistical or market-related data included in or incorporated by reference into the Registration Statement, the Time of Sale Disclosure Package or the Prospectus, or included in the Marketing Materials, are based on or derived from sources that the Company reasonably believes to be reliable and accurate, and the Company has obtained the written consent for the use of such data from such sources, to the extent required.

(ix) The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed or approved for listing on The Nasdaq Capital Market ("Nasdaq"). Except as disclosed in the Registration Statement or Time of Sale Disclosure Package, there is no action pending by the Company or, to the Company's knowledge, no action pending by Nasdaq to delist the Common Stock from Nasdaq, nor has the Company received any notification that Nasdaq is contemplating terminating such listing. As of the Closing Date, the Shares, the Conversion Shares and the Warrant Shares will have been authorized for listing, subject to official notice of issuance, on Nasdaq. The Company has no securities that are rated by any "nationally recognized statistical organization" as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act.

(x) Neither the Company nor any of its officers, directors or controlled affiliates has taken or will take, directly or indirectly, any action that is designed or intended to or that has constituted or that would reasonably be expected to cause or result in the unlawful stabilization or manipulation of the price of any security of the Company.

(xi) No material relationship, direct or indirect, exists between or among the Company on the one hand, and the directors, officers, stockholders (or analogous interest holders), customers or suppliers of the Company or any of its affiliates on the other hand, which is required to be described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus and which is not so described.

(xii) The Registration Statement (and any further documents to be filed with the Commission in connection with the offering) contains all exhibits and schedules as required by the Securities Act. Each of the Registration Statement and any post-effective amendment thereto, if any, at the time it became effective, complied in all material respects with the Securities Act and the applicable Rules and Regulations and did not and, as amended or supplemented, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus complies in all material respects with the Securities Act and the applicable Rules and Regulations, and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, misleading. The SEC Reports (as defined below), when they respectively were filed with the Commission, conformed in all material respects to the requirements of the Securities Act and the Exchange Act, as applicable, and the applicable rules and regulations, and none of such documents, when they respectively were filed with the Commission, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (with respect to the SEC Reports incorporated by reference in the Prospectus), in the light of the circumstances under which they were made not misleading; and any further documents so filed and incorporated by reference in the Prospectus when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act and the applicable rules and regulations, as applicable, and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made not misleading. No post-effective amendment to the Registration Statement reflecting any facts or events arising after the date thereof which represent, individually or in the aggregate, a fundamental change in the information set forth therein is required to be filed with the Commission. There are no documents required to be filed with the Commission in connection with the transaction contemplated hereby that (x) have not been filed as required pursuant to the Securities Act or (y) will not be filed within the requisite time period. There are no contracts or other documents required to be described in the Prospectus, or to be filed as exhibits or schedules to the Registration Statement, which have not been described or filed as required.

(xiii) The Company has not, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of any applicable shareholder approval provisions of any trading market on which any of the securities of the Company are listed or designated.

(b) Any certificate that is signed by any officer of the Company and delivered to the Representatives on behalf of the Underwriters or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby.

***3. Representations and Warranties of the Company Regarding the Company.***

(a) The Company represents and warrants to and agrees with, the several Underwriters, except as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, as of the date hereof and as of the Closing Date, as follows:

(i) The Company has been duly organized and validly exists as a corporation in good standing under the laws of the State of Nevada, and each of the Company's subsidiaries has been duly organized and validly exists as a corporation or other entity in good standing under the laws of its jurisdiction of incorporation. Each of the Company and its subsidiaries has the corporate power and authority to own its properties and conduct its business as currently being carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, and is duly qualified to do business as a foreign corporation or other entity in good standing in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification necessary and in which the failure to so qualify would have or is reasonably likely to result in a material adverse effect upon the business, prospects, properties, assets, operations, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole, or in its ability to perform its obligations under this Agreement ("Material Adverse Effect").

(ii) The Company has the power and authority to enter into this Agreement and the Warrants and to authorize, issue and sell the Securities as contemplated by this Agreement. Each of this Agreement and the Warrants have been duly authorized, executed and delivered by the Company, and constitutes a valid, legal and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity.

(iii) The Shares, the Preferred Shares, the Conversion Shares and the Warrant Shares have been duly authorized for issuance and sale and, when issued and paid for, will be validly issued, fully paid and non-assessable.

(iv) The execution, delivery and performance of this Agreement and the Warrants by the Company, the issuance and sale of the Securities by the Company and the consummation by the Company of the other transactions contemplated herein and therein will not (A) result in a breach or violation of any of the terms and provisions of, or constitute a default under, any law, order, rule or regulation to which the Company or any subsidiary is subject, or by which any property or asset of the Company or any subsidiary is bound or affected, (B) conflict with, result in any violation or breach of, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, lease, credit facility, debt, note, bond, mortgage, indenture or other instrument (the "Contracts") or obligation or other understanding to which the Company or any subsidiary is a party or by which any property or asset of the Company or any subsidiary is bound or affected, or (C) result in a breach or violation of any of the terms and provisions of, or constitute a default under, the Company's certificate of incorporation or by-laws, except in the case of clauses (A) and (B), to the extent not reasonably likely to have a Material Adverse Effect.

(v) Neither the Company nor any of its subsidiaries is in violation, breach or default under its certificate of incorporation, by-laws or other equivalent organizational or governing documents, each as amended and currently in effect, except where the violation, breach or default in the case of a subsidiary of the Company is not reasonably likely to result in a Material Adverse Effect.

(vi) Neither the Company, its subsidiaries nor, to its knowledge, any other party is in violation, breach or default of any Contract that is reasonably likely to result in a Material Adverse Effect.

(vii) All consents, approvals, orders, authorizations and filings required on the part of the Company and its subsidiaries in connection with the execution, delivery or performance of this Agreement and the Warrants, the issuance and sale of the Securities and the other transactions herein contemplated, have been obtained or made, other than (A) any such consents, approvals, orders, authorizations and required filings that will be obtained or made after the date of this Agreement under the Securities Act, the Exchange Act, the Rules and Regulations and applicable state and foreign securities laws and the rules of FINRA in connection with the offer and sale of the Registered Securities, and (B) such consents, approvals, orders, authorizations and required filings, the failure of which to make or obtain is not reasonably likely to result in a Material Adverse Effect.

(viii) The Company is subject to and in compliance in all material respects with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, and has timely filed all reports required to be filed pursuant to Sections 13(a), 13(e), 14 and 15(d) of the Exchange Act during the preceding twelve (12) months (the “SEC Reports”).

(ix) The Company has an authorized capitalization as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus. All of the issued and outstanding shares of capital stock of the Company are duly authorized and validly issued, fully paid and nonassessable, and have been issued in compliance with all applicable securities laws, and conform in all material respects to the description thereof in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus. The Shares, when issued and paid for as provided herein, will be duly authorized and validly issued, fully paid and nonassessable, will be issued in compliance with all applicable securities laws, and, except as otherwise stated in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, the issuance of such Shares is not subject to any preemptive or similar rights. The Preferred Shares, when issued and paid for as provided herein, will be duly authorized and validly issued, fully paid and nonassessable and will have the relative rights, preferences and limitations set forth the Certificate of Designation, will be issued in compliance with all applicable securities laws, and, except as otherwise stated in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, the issuance of such Preferred Shares is not subject to any preemptive or similar rights. The Conversion Shares, when issued, paid for and delivered upon due conversion of the Preferred Shares, will be duly authorized and validly issued, fully paid and nonassessable, and will be issued in compliance with all applicable securities laws. The Warrant Shares, when issued, paid for and delivered upon due exercise of the Warrants, will be duly authorized and validly issued, fully paid and nonassessable, and will be issued in compliance with all applicable securities laws. The Company has reserved and kept available for the conversion of the Preferred Shares and the exercise of the Warrants such number of authorized but unissued shares as are sufficient to permit the conversion in full of the Preferred Shares and the exercise in full of the Warrants. The Securities, when issued, will conform in all material respects to the descriptions thereof set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus.

(x) Except as set forth in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus, no person or entity has the right to require registration of shares of Common Stock or other securities of the Company or any of its subsidiaries because of the filing or effectiveness of the Registration Statement, except for persons and entities who have expressly waived such right in writing or who have been given timely and proper written notice and have failed to exercise such right within the time or times required under the terms and conditions of such right. Except as set forth in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus, there are no persons with registration rights or similar rights to have any securities registered by the Company or any of its subsidiaries under the Securities Act.

(xi) The exercise price of each option issued under the Company's stock option or other employee benefit plans has been no less than the fair market value of a share of common stock as determined on the date of grant of such option. All grants of options were validly issued and properly approved by the board of directors of the Company (or pursuant to duly delegated authority therefrom) in material compliance with all applicable laws and regulations and recorded in the Company's financial statements in accordance with GAAP and, to the Company's knowledge, no such grants involved "back dating," "forward dating" or similar practice with respect to the effective date of grant.

(xii) The financial statements of the Company and the financial statements of Jibestream included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP or IFRS, as applicable, applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP or IFRS, as applicable, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries and, to the Company's knowledge, fairly present in all material respects the financial position of Jibestream as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(xiii) Since the date of the latest audited financial statements of the Company included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof, (i) there has been no event, occurrence or development that has had or is reasonably likely to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (v) the Company has not issued any equity securities to any officer, director or affiliate, except pursuant to Company equity incentive plans, employee stock purchase plan, stock ownership plan or dividend reinvestment plan, in each case described in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus (collectively, the "Equity Plans"), (vi) no executive officer or director of the Company has resigned from any position with the Company and (vii) there has not been any change in the capital stock of the Company or any of its subsidiaries (other than changes resulting from exercises, issuances, repurchases, expirations, terminations or forfeitures (A) of warrants outstanding as of the date hereof in accordance with their terms or (B) with respect to awards outstanding under the Equity Plans as of date hereof in accordance with their terms or any new grants of awards under the Equity Plans in the ordinary course of business). The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least one trading day prior to the date that this representation is made.



(xiv) Except as otherwise stated in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, there are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of, any shares of Common Stock pursuant to the Company's certificate of incorporation, by-laws or any agreement or other instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound.

(xv) Except as otherwise stated in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity except for the Company's interests in its wholly-owned subsidiaries Inpixon Merger Sub, Inc. and Inpixon Spain, SLU.

(xvi) Each of the Company and its subsidiaries has filed all foreign, federal, state and local returns (as hereinafter defined) required to be filed with taxing authorities prior to the date hereof or has duly obtained extensions of time for the filing thereof and paid all taxes (as hereinafter defined) shown as due on such returns that were filed and has paid all taxes imposed on or assessed against the Company or such respective subsidiary, except, in all cases, for any such amounts that the Company or any subsidiary is contesting in good faith and except in any case in which the failure to so file or pay would not reasonably be expected to have a Material Adverse Effect. The provisions for taxes payable, if any, shown on the financial statements filed with or as part of the Registration Statement are sufficient for all accrued and unpaid taxes, whether or not disputed, and for all periods to and including the dates of such consolidated financial statements. Except as disclosed in writing to the Underwriters, (i) no issues have been raised (and are currently pending) by any taxing authority in connection with any of the returns or taxes asserted as due from the Company or its subsidiaries, and (ii) no waivers of statutes of limitation with respect to the returns or collection of taxes have been given by or requested from the Company or its subsidiaries, in either case to the extent material to the Company and its subsidiaries taken as a whole. Neither the Company nor its subsidiaries has engaged in any transaction which is a corporate tax shelter or which would reasonably be expected to be characterized as such by the Internal Revenue Service or any other taxing authority to which the Company or such subsidiary reports or by which it is governed. The term "taxes" means all federal, state, local, foreign, and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments, or charges of any kind whatever, together with any interest and any penalties, additions to tax, or additional amounts with respect thereto. The term "returns" means all returns, declarations, reports, statements, and other documents required to be filed in respect to taxes.

(xvii) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15 of the General Rules and Regulations under the Exchange Act (the “Exchange Act Rules”)) that, except as disclosed in the Company’s SEC Reports, complies in all material respects with the requirements of the Exchange Act and has been designed by the Company’s principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus, the Company’s internal control over financial reporting was effective as of the end of the Company’s most recent audited fiscal year. Except as described in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus, since the end of the Company’s most recent audited fiscal year, there has been (A) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (B) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting. The Company maintains disclosure controls and procedures (as such is defined in Rule 13a-15 of the Exchange Act Rules) that comply in all material respects with the requirements of the Exchange Act; such disclosure controls and procedures have been reasonably designed to ensure that information required to be disclosed by the Company and its subsidiaries is accumulated and communicated to the Company’s management, including the Company’s principal executive officer and principal financial officer by others within those entities, and such disclosure controls and procedures are effective.

(xviii) Since the respective dates as of which information is given in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus, (a) neither the Company nor any of its subsidiaries has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions other than in the ordinary course of business, and (b) there has not been any material change in the Company’s long-term or short-term debt. Except as described in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus, there is not pending or, to the knowledge of the Company, threatened, any action, suit or proceeding to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject before or by any court or governmental agency, authority or body, or any arbitrator or mediator, which is reasonably likely to result in a Material Adverse Effect.

(xix) The Company and each of its subsidiaries holds, and is in compliance with, all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders (“Permits”) of any governmental or self-regulatory agency, authority or body required for the conduct of its business, and all such Permits are in full force and effect, in each case except where the failure to hold, or comply with, any of them is not reasonably likely to result in a Material Adverse Effect. All such Permits are free and clear of any material restriction or condition that are in addition to, or materially different from, those normally applicable to similar licenses, certificates, authorizations and permits. The Company has not received notification of any material revocation, modification, suspension, termination or invalidation (or proceedings related thereto) of any such Permit.

(xx) The Company and its subsidiaries have good and marketable title to all property (whether real or personal, and other than intellectual property which is subject to clause (xxi) below) described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus as being owned by them that are material to the business of the Company, in each case free and clear of all liens, claims, security interests, other encumbrances or defects, except those that are not reasonably likely to result in a Material Adverse Effect. To the Company’s knowledge, the property held under lease by the Company and its subsidiaries is held by them under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of the Company and its subsidiaries.

(xxi) The Company and each of its subsidiaries owns or possesses or has valid right to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, inventions, trade secrets and similar rights (collectively, “Intellectual Property Rights”) necessary for the conduct of the business of the Company and its subsidiaries as currently carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, except where the failure to own, possess or have such right is not reasonably likely to result in a Material Adverse Effect. There is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes, misappropriates or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus infringe, misappropriate or otherwise violate any patent, trademark, copyright, trade secret or other proprietary rights of others, and, except as would not reasonably be expected to result in a Material Adverse Effect, the Company is not aware of any factual basis for any such action, suit, proceeding or claim.

(xxii) The Company and each of its subsidiaries has at all times complied in all material respects with the Privacy Laws (as defined below) including, without limitation, by (a) posting Privacy Policies (as defined below) on their respective business websites and mobile applications, implementing and maintaining reasonable and appropriate measures, plans, controls and programs to secure and protect Personal Information (as defined below) that Company or any subsidiary receives, creates or otherwise processes in connection with the operation of Company's or any subsidiary's respective businesses from loss, illegal or unauthorized disclosure, processing or breach, and (b) implementing plans, controls and programs that are designed to identify internal and external risks to the security of Personal Information, implement, monitor and improve adequate and effective administrative, electronic and physical safeguards to control those risks, and ensure that appropriate plans and procedures are in place to promptly address any breach of security compromising data, including data containing Personal Information, except where the failure to comply with such Privacy Laws is not reasonably likely to result in a Material Adverse Event. "Personal Information" means any information that identifies, or can be used to identify, directly or indirectly, a natural person, or as otherwise specified in applicable Privacy Laws. "Privacy Law" means any and/or all (a) laws, rules, directives and regulations, on any local, provincial, state, federal or national level, pertaining to data privacy, data security, marketing (including the transmission of unsolicited commercial emails, phone calls, faxes and mail and marketing campaigns), and/or the protection of Personal Information; (b) Privacy Policies; (c) rules or requirements of any applicable self-regulatory organizations or self-certification mechanisms that Company or any subsidiary has committed to comply with contractually or otherwise; or (d) and/or any laws or regulations that provide rights of privacy or publicity to natural persons. "Privacy Policy" means each of Company's or any subsidiary's (a) policies or notices relating to Personal Information, privacy and/or security (e.g., posted privacy policies; (b) internal privacy policies or guidelines; and (c) any third party privacy policies that Company or any subsidiary has committed to comply with, contractually or otherwise.

(xxiii) The Company and each of its subsidiaries has at all times made all required disclosures to, and obtained all consents from, users, customers, employees, contractors, governmental bodies and other applicable third parties required by all applicable Privacy Laws, as necessary for the Company's and any subsidiary's processing of Personal Information in connection with the conduct of their respective businesses, and have filed any and all required registrations with the applicable data protection authority, except where the failure to make such disclosure or obtain such consent is not reasonably likely to result in a Material Adverse Event.

(xxiv) The Company and each of its subsidiaries has obtained written agreements from all subcontractors to which they have provided or disclosed Personal Information that (1) satisfy the requirements of the applicable Privacy Laws; (2) bind the subcontractor to at least the same restrictions and conditions that apply to the Company and its subsidiaries with respect to such Personal Information as set forth in this Agreement, except where the failure to obtain such written agreement is not reasonably likely to result in a Material Adverse Event.

(xxv) The Company and each of its subsidiaries has complied with, is not in violation of, and has not received any notice of violation relating to any law, rule or regulation relating to the conduct of its business, or the ownership or operation of its property and assets, including, without limitation, (A) any laws, rules or regulations related to health, safety or the environment, including those relating to the regulation of hazardous or toxic substances or waste and protection of health and safety or the environment which are applicable to its business ("Environmental Laws"), (B) the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder, (C) the Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder, (D) the Employment Retirement Income Security Act of 1974 and the rules and regulations thereunder, and (E) the Currency and Foreign Transactions Reporting Act of 1970, as amended, and the money laundering statutes of all applicable jurisdictions and the rules and regulations thereunder, in each case except where the failure to be in compliance is not reasonably likely to result in a Material Adverse Effect.

(xxvi) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance in all material respects with all applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder, including but not limited to the Bank Secrecy Act, as amended by the USA PATRIOT Act, and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xxvii) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, employee, representative, agent or affiliate of the Company or any of its subsidiaries is, or is 50% or more owned or otherwise controlled by a person (a “Sanctioned Person”) that is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”) or located, organized or resident in a country or territory that is, or whose government is, the subject of sanctions that broadly prohibit dealings with that country or territory (collectively, “Sanctioned Countries” and each, a “Sanctioned Country”); and the Company will not directly or indirectly use the proceeds of the offering of the Securities contemplated hereby, or lend, contribute or otherwise make available such proceeds to any person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxviii) Except as has been disclosed to the Underwriters or is not material to the analysis under any sanctions, neither the Company nor any of its subsidiaries has engaged in any dealings or transactions with or for the benefit of a Sanctioned Person, or with or in a Sanctioned Country, in the preceding five years, nor does the Company or any of its subsidiaries have any plans to increase its dealings or transactions with Sanctioned Persons, or with or in Sanctioned Countries.

(xxix) Neither the Company nor, to the Company’s knowledge, any employee or agent of the Company, has (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate funds, (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any other unlawful payment.

(xxx) There are no transactions, arrangements or other relationships between and/or among the Company, any of its affiliates (as such term is defined in Rule 405 of the Rules and Regulations) and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity that would reasonably be expected to materially affect the Company's liquidity or the availability of or requirements for its capital resources required to be described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus which have not been described as required.

(xxxi) There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of their respective family members, except as disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus. All transactions by the Company with office holders or control persons of the Company have been duly approved by the board of directors of the Company, or duly appointed committees or officers thereof, if and to the extent required under U.S. law.

(xxxii) The Company and each of its subsidiaries carries, or is covered by, insurance covering the Company's or any of its subsidiaries', respective businesses, assets, employees, officers and directors in such amounts and covering such risks as, in the Company's reasonable judgment, is adequate for the conduct of its business and the value of its properties and as is customary for similarly sized companies engaged in similar businesses in similar industries. The Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect. All policies of insurance owned by the Company are, to the Company's knowledge, in full force and effect and the Company is in compliance with the terms of such policies. There are no material claims by the Company or any of its subsidiaries under any such policy as to which any insurer is denying liability or defending under a reservation of rights clause. The Company has not received written notice from any insurer, agent of such insurer or the broker of the Company that any material capital improvements or any other material expenditures (other than premium payments) are required or necessary to be made in order to continue such insurance. The Company does not insure risk of loss through any captive insurance, risk retention group, reciprocal group or by means of any fund or pool of assets specifically set aside for contingent liabilities other than as described in the Time of Sale Disclosure Package.

(xxxiii) Except as would not reasonably be expected, singly or in the aggregate, to have a Material Adverse Effect, there is (A) no significant unfair labor practice complaint pending against the Company, nor to the knowledge of the Company, threatened against it, before the National Labor Relations Board, any state or local labor relation board or any foreign labor relations board applicable to or with jurisdiction over the Company, and no significant grievance or significant arbitration proceeding arising out of or under any collective bargaining agreement is so pending against the Company, or, to the knowledge of the Company, threatened against it and (B) no labor disturbance by the employees of the Company that exists or, to the Company's knowledge, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers, customers or contractors. The Company is not aware that any key employee or significant group of employees of the Company plans to terminate employment with the Company.

(xxxiv) No “prohibited transaction” (as defined in Section 406 of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (“ERISA”), or Section 4975 of the Internal Revenue Code of 1986, as amended from time to time (the “Code”)) or “accumulated funding deficiency” (as defined in Section 302 of ERISA) or any of the events set forth in Section 4043(b) of ERISA (other than events with respect to which the thirty (30)-day notice requirement under Section 4043 of ERISA has been waived) has occurred or would reasonably be expected to occur with respect to any employee benefit plan of the Company which would, singularly or in the aggregate, have a Material Adverse Effect. Each employee benefit plan of the Company is in compliance in all material respects with applicable law, including ERISA and the Code. The Company has not incurred any material liability under Title IV of ERISA with respect to the termination of, or withdrawal from, any pension plan (as defined in ERISA). Each pension plan for which the Company would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified, and nothing has occurred, whether by action or by failure to act, which would reasonably be expected to, singularly or in the aggregate, cause the loss of such qualification.

(xxxv) No supplier, customer, distributor or sales agent of the Company has notified the Company that it intends to discontinue or decrease the rate of business done with the Company, except where such decrease is not reasonably likely to result in a Material Adverse Effect.

(xxxvi) The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company’s certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or would reasonably be expected to become applicable as a result of the Underwriters and the Company fulfilling their obligations or exercising their rights under this Agreement or the Registered Securities.

(xxxvii) The Company is not, and, after giving effect to the offering and sale of the Securities and the application of the net proceeds thereof, including the proceeds received upon exercise of the Warrants, will not be an “investment company,” as such term is defined in the Investment Company Act of 1940, as amended.

(xxxviii) Except as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, the Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. The SEC Reports set forth as of the date hereof all outstanding secured and unsecured indebtedness of the Company or any subsidiary, or for which the Company or any subsidiary has material commitments.

(xxxix) Except as described in the Time of Sale Disclosure Package, the Registration Statement or the Prospectus, there are no claims, payments, issuances, arrangements or understandings for services in the nature of a finder's, consulting or origination fee with respect to the introduction of the Company to any Underwriter or the sale of the Securities hereunder or any other arrangements, agreements, understandings, payments or issuances with respect to the Company that may affect the Underwriters' compensation, as determined by FINRA.

(xl) Except as set forth in or incorporated by reference into the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, the Company has not made any direct or indirect payments (in cash, securities or otherwise) to (i) any person, as a finder's fee, investing fee or otherwise, in consideration of such person raising capital for the Company or introducing to the Company persons who provided capital to the Company, (ii) any FINRA member, or (iii) to the Company's knowledge, any person or entity that has any direct or indirect affiliation or association with any FINRA member, in each case within the 12-month period prior to the date on which the Registration Statement was filed with the Commission ("Filing Date") or thereafter.

(xli) None of the net proceeds of the offering will be paid by the Company to any participating FINRA member or any affiliate or associate of any participating FINRA member, except as specifically authorized herein.

(xlii) No (i) officer or director of the Company or its subsidiaries, (ii) to the Company's knowledge, owner of 5% or more of the Company's unregistered securities or that of its subsidiaries or (iii) to the Company's knowledge, owner of any amount of the Company's unregistered securities acquired within the 180-day period prior to the Filing Date, other than Atlas Technology Group, LLC, has any direct or indirect affiliation or association with any FINRA member. The Company will advise the Representatives and counsel to the Underwriters if it becomes aware that any officer, director or stockholder of the Company or its subsidiaries is or becomes an affiliate or associated person of a FINRA member participating in the offering.

(xlili) The Company has not entered into any arrangements, nor has the Company granted any rights, pursuant to which anyone other than the Underwriters has the right to act as an underwriter or as a financial advisor to the Company in connection with the transactions contemplated hereby.

(xliv) The Company is not a party to any contract, agreement or understanding with any person that would give rise to a valid claim against the Company or the Underwriters for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities or any transaction contemplated by this Agreement, the Registration Statement, the Time of Sale Disclosure Package or the Prospectus.



(xlv) All of the information provided to the Representative or to counsel to the Underwriters by the Company, its officers and directors in connection with letters, filings or other supplemental information provided to FINRA pursuant to NASD Conduct Rule 2710 or 2720 is true, correct and complete in all material respects.

(xlvi) Except as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus and as preapproved in accordance with the requirements set forth in Section 10A of the Exchange Act, neither Marcum LLP nor MNP LLP has been engaged by the Company to perform any “prohibited activities” (as defined in Section 10A of the Exchange Act).

(xlvii) Except as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, there are no material off-balance sheet arrangements (as defined in Item 303 of Regulation S-K) that have or are reasonably likely to have a material current or future effect on the Company’s financial condition, revenues or expenses, changes in financial condition, results of operations, liquidity, capital expenditures or capital resources.

(xlviii) Since the date of the preliminary prospectus included in the Registration Statement filed with the Commission on June 28, 2019 (or, if earlier, the first date on which the Company engaged directly or through any an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind (a “Person”) authorized to act on its behalf in any Testing-the-Waters Communication (as defined herein)) through the date hereof, the Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Securities Act (an “Emerging Growth Company”). “Testing-the-Waters Communication” means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act.

(xlix) The Company (a) has not alone engaged in any Testing-the-Waters Communication other than Testing-the-Waters Communications with the consent of the Underwriters with entities that are qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are accredited investors within the meaning of Rule 501 under the Securities Act, and (b) has not authorized anyone other than the Underwriters to engage in Testing-the-Waters Communications. The Company reconfirms that the Underwriters have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications (as defined herein) other than those listed on Schedule III hereto. “Written Testing-the-Waters Communication” means any Testing-the- Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

#### **4. Purchase, Sale and Delivery of Securities.**

(a) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell the Shares, the Preferred Shares and the Warrants to the Underwriters, and the Underwriters, severally and not jointly, agree to purchase the Shares, the Preferred Shares and the Warrants set forth opposite the name of the Underwriter in Schedule I hereto. The Shares, the Preferred Shares and Warrants shall be issued and sold to the Underwriters in fixed combinations consisting of (i) one Share and one Warrant to purchase one Warrant Share (a “Common Share Combination”) at a purchase price of \$[●] per Common Share Combination, and (ii) one Preferred Share and Warrants to purchase up to [●] Warrant Shares (a “Preferred Share Combination”) at a purchase price of \$[●] per Preferred Share Combination.

(b) The Shares, the Preferred Shares and the Warrants will be delivered by the Company to the Underwriters (or, if an investor purchasing Preferred Shares is required to purchase such Preferred Shares directly from the Company, to such investor) against payment of the purchase price therefor by wire transfer of same day funds payable to the order of the Company at the offices of Ladenburg Thalmann & Co. Inc., 277 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10172 (or, if an investor purchasing Preferred Shares is required to purchase such Preferred Shares directly from the Company, at the office of such investor for such Preferred Shares), or such other location as may be mutually acceptable, at 10:00 a.m. Eastern Time, on the second (or if the Securities are priced, as contemplated by Rule 15c6-1(c) under the Exchange Act, after 4:30 p.m. Eastern time, the third) full business day following the date hereof, or at such other time and date as the Representatives and the Company determine pursuant to Rule 15c6-1(a) under the Exchange Act. The time and date of delivery of the Shares, the Preferred Shares and the Warrants, as applicable, is referred to herein as the “Closing Date.” Delivery of the Shares and the Preferred Shares shall be made through the facilities of the Depositary Trust Company designated by the Representatives (or by an applicable investor purchasing Preferred Shares). Delivery of the Warrants shall be made by physical delivery to be received or directed by the Underwriters no later than one (1) business day following the Closing Date. In the event that an investor purchasing Preferred Shares delivers a Conversion Notice (as defined in the Certificate of Designation) prior to the Closing Date, to convert any Preferred Shares between the date hereof and the Closing Date, the Company shall deliver the Conversion Shares with respect to any conversion to such investor on the Closing Date as specified in such Conversion Notice.

(c) On the Closing Date, the Company shall pay the Representatives a non-accountable expense allowance of 1% of the gross proceeds of the offering, not including the proceeds of any exercise of Warrants.

#### **5. Covenants.**

(a) The Company covenants and agrees with the Underwriters as follows:

(i) During the period beginning on the date hereof and ending on the earlier of (i) such date as determined by the Representatives that the Prospectus is no longer required by law to be delivered in connection with sales by an underwriter or dealer or (ii) the completion of the distribution of the Securities by the Representatives (the “Prospectus Delivery Period”), prior to amending or supplementing the Registration Statement, including any Rule 462 Registration Statement, the Time of Sale Disclosure Package or the Prospectus, the Company shall furnish to the Representatives for review and comment a copy of each such proposed amendment or supplement, and the Company shall not file any such proposed amendment or supplement to which the Representatives reasonably object.

(ii) From the date of this Agreement until the end of the Prospectus Delivery Period, the Company shall promptly advise the Representatives in writing (A) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (B) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, (C) of the time and date that any post-effective amendment to the Registration Statement becomes effective and (D) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending its use or the use of the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time during the Prospectus Delivery Period, the Company will use its reasonable efforts to obtain the lifting of such order at the earliest possible moment. Additionally, the Company agrees during the Prospectus Delivery Period that it shall comply with the provisions of Rules 424(b) and 430A, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under Rule 424(b) or Rule 433 were received in a timely manner by the Commission (without reliance on Rules 424(b)(8) or 164(b) under the Securities Act).

(iii) (A) During the Prospectus Delivery Period, the Company will comply with all requirements imposed upon it by the Securities Act, as now and hereafter amended, and by the Rules and Regulations, as from time to time in force, and by the Exchange Act, as now and hereafter amended, so far as necessary to permit the continuance of sales of or dealings in the Registered Securities as contemplated by the provisions hereof, the Time of Sale Disclosure Package, the Registration Statement and the Prospectus. If during the Prospectus Delivery Period any event occurs as the result of which would cause the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) to include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which such statement was made, not misleading, or if during such period it is necessary or appropriate in the opinion of the Company or its counsel or the Representatives or counsel to the Underwriters to amend the Registration Statement or supplement the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) to comply with the Securities Act or to file under the Exchange Act any document that would be deemed to be incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, the Company will promptly notify the Representatives, allow the Representatives the opportunity to provide reasonable comments on such amendment, Prospectus or document, and will amend the Registration Statement or supplement the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) or file such document (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(B) During the Prospectus Delivery Period, if at any time following the issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development the result of which is that such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement or any Prospectus or included or would include, when taken together with the Time of Sale Disclosure Package, an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company has promptly notified or promptly will notify the Representatives and has promptly amended or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(iv) The Company shall take or cause to be taken all necessary action to qualify the Securities for sale under the securities laws of such jurisdictions as the Representatives reasonably designate and to continue such qualifications in effect so long as required for the distribution of the Securities, except that the Company shall not be required in connection therewith to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified, to execute a general consent to service of process in any state or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise subject.

(v) The Company shall deliver to the Underwriters and counsel to the Underwriters copies, without charge, of the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus, and all amendments and supplements to such documents, and signed copies of all consents and certificates of experts, in each case as soon as available and in such quantities as the Underwriters may from time to time reasonably request.

(vi) The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement (which need not be audited) covering a 12-month period that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 of the Rules and Regulations, provided that the Company will be deemed to have satisfied this obligation to the extent it files such documents on the EDGAR system of the Commission.

(vii) The Company shall use commercially reasonable efforts to maintain the listing of the shares of Common Stock on Nasdaq, The Nasdaq Global Market or The Nasdaq Global Select Market for at least three years from the date of this Agreement unless the Company is acquired or goes private under Exchange Act Rule 13e-3 prior to such time.

(viii) For a period of three years from the Closing Date, the Company shall use its commercially reasonable efforts to maintain the registration of the Shares, and, when issued, the Conversion Shares and the Warrant Shares under the Exchange Act unless the Company is acquired or goes private under Exchange Act Rule 13e-3 prior to such time.

(ix) For so long as any Preferred Shares or Warrants remain outstanding, the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to effect the issuance of the Conversion Shares and the Warrant Shares.

(x) The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid (A) all expenses (including transfer taxes allocated to the respective transferees) incurred in connection with the delivery to the Underwriters of the Registered Securities, (B) all expenses and fees (including, without limitation, fees and expenses of the Company's counsel) in connection with the preparation, printing, filing, delivery, and shipping of the Registration Statement (including the financial statements therein and all amendments, schedules, and exhibits thereto), the Registered Securities, the Time of Sale Disclosure Package, any Prospectus, any Issuer Free Writing Prospectus and any amendment thereof or supplement thereto, (C) all reasonable filing fees (including those incurred in connection with blue sky filings) and, subject to the Expense Cap (as defined below), reasonable fees and disbursements of the Underwriters' counsel incurred in connection with the qualification of the Securities for offering and sale by the Underwriters or by dealers under the securities or blue sky laws of the states and other jurisdictions that the Representatives shall designate, (D) the fees and expenses of any transfer agent or registrar, (E) all reasonable filing fees and, subject to the Expense Cap, reasonable fees and disbursements of the counsel to the Underwriters incident to any required review and approval by FINRA, of the terms of the sale of the Securities, (F) listing fees, if any, and (G) all other costs and expenses incident to the performance of its obligations hereunder that are not otherwise specifically provided for herein. In addition to the foregoing, the Company will reimburse the Representatives for the Underwriters' reasonable, documented out-of-pocket legal fees, costs and other expenses incurred in connection with the purchase and sale of the Securities contemplated hereby, provided that such out of pocket legal fees, costs and other expenses, including the fees described in clauses (C) and (D) of the prior sentence as subject to the Expense Cap, and including costs and expenses associated with travel and lodging in connection with the Company's road show, shall not exceed \$125,000 in the aggregate (the "Expense Cap") less the advance to the Representatives in the amount of \$80,000 (the "Advance"), the receipt of which the Representatives hereby acknowledge. The Representatives shall promptly reimburse the Company for the portion, if any, of the Advance not used for actual out-of-pocket expenses if the offering contemplated hereby is not consummated. Except for legal, any fees or expenses incurred in excess of \$2,500 individually require the advance written consent of the Company (email shall suffice) such consent not to be unreasonably withheld, conditioned or delayed.

(xi) The Company intends to apply the net proceeds from the sale of the Securities to be sold by it hereunder for the purposes set forth in the Registration Statement, the Time of Sale Disclosure Package and in the Prospectus.

(xii) The Company has not taken and will not take, directly or indirectly, during the Prospectus Delivery Period, any action designed to or which might reasonably be expected to cause or result in, or that has constituted, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xiii) The Company represents and agrees that, unless it obtains the prior written consent of the Representatives, and each Underwriter, severally, and not jointly, represents and agrees that, unless it obtains the prior written consent of the Company, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the free writing prospectuses included in Schedule III. Any such free writing prospectus consented to by the Company and the Representatives is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied or will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record-keeping.

(xiv) The Company hereby agrees that, without the prior written consent of the Representatives, it will not, during the period ending ninety (90) days after the date hereof ("Lock-Up Period"), (i) offer, pledge, issue, sell, contract to sell, purchase, contract to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock; or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; or (iii) file any registration statement with the Commission relating to the offering of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock. The restrictions contained in the preceding sentence shall not apply to (1) the Securities to be sold hereunder, (2) the issuance of Common Stock upon the exercise of options or warrants or the conversion of outstanding preferred stock or other outstanding convertible securities disclosed as outstanding in the Registration Statement (excluding exhibits thereto), the Time of Sale Disclosure Package, and the Prospectus, so long as such options, warrants, preferred stock or convertible securities are not amended or modified after the date hereof to increase the number of shares of Common Stock issuable in respect thereof, (3) the issuance of up to 1,100 shares of Common Stock reserved for issuance to investor relations firms as disclosed in the Registration Statement (excluding exhibits thereto), the Time of Sale Disclosure Package, and the Prospectus, (4) the granting of equity awards pursuant to any equity incentive plans described in the Registration Statement (excluding exhibits thereto), the Time of Sale Disclosure Package, and the Final Prospectus, provided such awards do not vest or become not exercisable prior to the end of the Lock-up Period, (5) (A) the registration under the Securities Act of the shares of Common Stock (the "GTJ Shares") issued to GTJ Corp pursuant to the terms of that certain Asset Purchase Agreement, dated as of June 27, 2019, as in effect on the date hereof, and (B) the issuance and registration under the Securities Act of the shares of Common Stock issuable to the stockholders of Jibestream (the "Jibestream Shares") pursuant to the terms of that certain Share Purchase Agreement, dated as of July 9, 2019, as in effect on the date hereof; provided that (i) no registration statement covering the GTJ Shares or the Jibestream Shares shall be filed with the Commission until after the end of the thirty-day period commencing on the date hereof (a "Permitted Registration Statement"), and (ii) no Permitted Registration Statement is declared effective by the Commission until after the end of the 60-day period commencing on the date hereof, and (6) the issuance of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock as purchase price consideration pursuant to acquisitions, dispositions or strategic transactions entered into after the date hereof and approved by a majority of the disinterested directors of the Company, provided that (i) such securities are issued as "restricted securities" (as defined in Rule 144), (ii) no registration statement registering the issuance or resale of such securities is filed with the Commission until after the expiration of the Lock-Up Period, (iii) any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and (iv) the securities issued do not, in the aggregate, represent more than 20% of the Common Stock outstanding immediately following the Closing.

(xv) Prior to the Closing Date, the Company will issue no press release or other communications directly or indirectly and hold no press conference with respect to the Company, the condition, financial or otherwise, or the earnings, business affairs or business prospects of any of them, or the offering of the Securities without the prior written consent of the Representatives (such consent not to be unreasonably withheld, conditioned or delayed) unless in the judgment of the Company and its counsel, and after notification to the Representatives, such press release or communication is required by law.

(xvi) If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.

**6. Conditions of the Underwriters' Obligations.** The obligations of the several Underwriters hereunder to purchase the Shares, the Preferred Shares and the Warrants are subject to the accuracy, as of the date hereof and at the Closing Date, of and compliance with all representations, warranties and agreements of the Company contained herein, the performance by the Company of its obligations hereunder and the following additional conditions:

(a) If filing of the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, is required under the Securities Act or the Rules and Regulations, the Company shall have filed the Prospectus (or such amendment or supplement) or such Issuer Free Writing Prospectus with the Commission in the manner and within the time period so required (without reliance on Rules 424(b)(8) or 164(b) under the Securities Act); the Registration Statement shall remain effective; no stop order suspending the effectiveness of the Registration Statement or any part thereof, any Rule 462 Registration Statement, or any amendment thereof, nor suspending or preventing the use of the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus shall have been issued; no proceedings for the issuance of such an order shall have been initiated or threatened by the Commission; any request of the Commission or the Representatives for additional information (to be included in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus, any Issuer Free Writing Prospectus or otherwise) shall have been complied with to the Representatives' satisfaction.

(b) The Shares, the Conversion Shares and the Warrant Shares shall be qualified and approved for listing on Nasdaq, subject to official notice of issuance.

(c) The Certificate of Designation shall have been filed with the Secretary of State of Nevada and shall be effective.

(d) FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(e) The Representatives shall not have reasonably determined, and advised the Company, that the Registration Statement, the Time of Sale Disclosure Package or the Prospectus, or any amendment thereof or supplement thereto, or any Issuer Free Writing Prospectus, contains an untrue statement of fact which, in the Representatives' reasonable opinion, is material, or omits to state a fact which, in the Representatives' reasonable opinion, is material and is required to be stated therein or necessary to make the statements therein not misleading

(f) On or after the date hereof, (i) no downgrading shall have occurred in the rating, if any, accorded any of the Company's securities by any "nationally recognized statistical organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's securities.

(g) On the Closing Date, there shall have been furnished to the Representatives, for the benefit of the Underwriters, (i) the opinion and negative assurance letters of Mitchell Silberberg & Knupp LLP, United States corporate counsel for the Company, and (ii) the opinion of Borden Ladner Gervais LLP, Canadian counsel for the Company, each dated as of the Closing Date and addressed to the Representatives, in form and substance reasonably satisfactory to the Representatives.



(h) On the Closing Date, there shall have been furnished to the Representatives, for the benefit of the Underwriters, an opinion letter from Pillsbury Winthrop Shaw Pittman LLP, the Company's intellectual property counsel, dated as of the Closing Date and addressed to the Representatives, in form and substance reasonably satisfactory to the Representatives.

(i) On the Closing Date, there shall be furnished to the Representatives, for the benefit of the Underwriters, a negative assurance letter from Lowenstein Sandler LLP, counsel to the Underwriters, dated as of the Closing Date and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives.

(j) The Representatives, for the benefit of the Underwriters, shall have received letters from Marcum LLP and MNP LLP, on the date hereof and on the Closing Date, addressed to the Underwriters, confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualifications of accountants under Rule 2-01 of Regulation S-X of the Commission, and confirming, as of the date of each such letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus, as of a date not prior to the date hereof or more than five days prior to the date of such letters), the conclusions and findings of said firms, of the type ordinarily included in accountants' "comfort letters" to underwriters, with respect to the financial information, including any financial information contained in Exchange Act Reports filed by the Company or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, and other matters required by the Underwriters.

(k) On the Closing Date, there shall have been furnished to the Representatives, for the benefit of the Underwriters, a certificate, dated as of the Closing Date and addressed to the Underwriter, signed by the chief executive officer and the principal financial officer of the Company, in their capacity as officers of the Company, to the effect that:

(i) The representations and warranties of the Company in this Agreement that are qualified by materiality or by reference to any Material Adverse Effect are true and correct in all respects, and all other representations and warranties of the Company in this Agreement are true and correct, in all material respects, as if made at and as of the Closing Date, and the Company has complied in all material respects with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) No stop order or other order (A) suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof, (B) suspending the qualification of the Securities for offering or sale, or (C) suspending or preventing the use of the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, has been issued, and no proceeding for that purpose has been instituted or, to their knowledge, is contemplated by the Commission or any state or regulatory body; and

(iii) There has been no occurrence of any event resulting or reasonably likely to result in a Material Adverse Effect during the period from and after the date of this Agreement and prior to the Closing Date.

(l) On or before the date hereof, the Representatives shall have received duly executed "lock-up" agreements, in the form attached hereto as Schedule IV, between the Representatives and each of the parties set forth on Schedule V hereto.

(m) The Representatives shall have received electronic copies of certificates representing the Warrants executed by the Company.

(n) The Common Stock shall be registered under the Exchange Act and shall be listed on Nasdaq, and the Company shall not have taken any action designed to terminate, or likely to have the effect of terminating, the registration of the Common Stock under the Exchange Act or delisting or suspending from trading the Common Stock from Nasdaq, nor shall the Company have received any information suggesting that the Commission is contemplated terminating such registration or listing.

(o) The Company shall have furnished to the Underwriters and its counsel such additional documents, certificates and evidence as the Representatives or counsel to the Underwriters may have reasonably requested.

(p) On the Closing Date, the Shares and the Preferred Shares shall have been delivered via the Depository Trust Company system to the accounts of the Underwriters (or to the account of an applicable investor purchasing Preferred Shares).

If any condition specified in this Section 6 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Representatives by notice to the Company at any time at or prior to the Closing Date, and such termination shall be without liability of any party to any other party, except that Section 5(a)(x), Section 7 and Section 8 shall survive any such termination and remain in full force and effect.

#### ***7. Indemnification and Contribution.***

(a) The Company agrees to indemnify, defend and hold harmless each Underwriter, its affiliates, directors and officers and employees, and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities to which such party may become subject, under the Securities Act or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the information deemed to be a part of the Registration Statement at the time of effectiveness and at any subsequent time pursuant to Rule 430A of the Rules and Regulations, or arise out of or are based upon the omission from the Registration Statement, or alleged omission to state therein, a material fact required to be stated therein or necessary to make the statements therein not misleading (ii) an untrue statement or alleged untrue statement of a material fact contained in the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Registration Statement or the Prospectus), or any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication or the Marketing Materials, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (iii) in whole or in part, any inaccuracy in the representations and warranties of the Company contained herein, or (iv) in whole or in part, any failure of the Company to perform its obligations hereunder or under law, and will reimburse the such party for any legal or other expenses reasonably incurred by such party in connection with evaluating, investigating or defending against such loss, claim, damage, liability or action (or any legal or other expense reasonably incurred in connection with the evaluation, investigation or defense thereof); *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto or any Issuer Free Writing Prospectus or Written Testing-the-Waters Communication, in reliance upon and in conformity with written information furnished to the Company by the related Underwriter specifically for use in the preparation thereof, which written information is described in Section 7(f).

(b) Each Underwriter, severally and not jointly, will indemnify, defend and hold harmless the Company, its affiliates, directors, officers and employees, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto or any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Act in reliance upon and in conformity with written information furnished to the Company by such Underwriter specifically for use in the preparation thereof, and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with defending against any such loss, claim, damage, liability or action. The obligation of each Underwriter to indemnify the Company (including any controlling person, director or officer thereof) shall be limited to the amount of the underwriting discount applicable to the Securities to be purchased by such Underwriter hereunder actually received by such Underwriter.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the failure to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure. In case any such action shall be brought against any indemnified party, it shall notify the indemnifying party of the commencement thereof, and the indemnifying party shall be entitled to participate in, and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof; *provided, however*, that if (i) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (ii) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party), or (iii) the indemnifying party has not in fact employed counsel reasonably satisfactory to the indemnified party to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, the indemnified party shall have the right to employ a single counsel to represent it in any claim in respect of which indemnity may be sought under subsection (a) or (b) of this Section 7, in which event the reasonable fees and expenses of such separate counsel shall be borne by the indemnifying party or parties and reimbursed to the indemnified party as incurred.

The indemnifying party under this Section 7 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is a party or could be named and indemnity was or would be sought hereunder by such indemnified party, unless such settlement, compromise or consent (a) includes an unconditional release of such indemnified party from all liability for claims that are the subject matter of such action, suit or proceeding and (b) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 7 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering and sale of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discount received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relevant intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the first sentence of this subsection (d). The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim that is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), the Underwriters shall not be required to contribute any amount in excess of the amount of the underwriting discount set forth in the table on the cover of the Prospectus. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' respective obligations to contribute as provided in this Section 7 are several in proportion to their respective underwriting commitments and not joint.

(e) The obligations of the Company under this Section 7 shall be in addition to any liability that the Company may otherwise have and the benefits of such obligations shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act; and the obligations of the each Underwriter under this Section 7 shall be in addition to any liability that each Underwriter may otherwise have and the benefits of such obligations shall extend, upon the same terms and conditions, to the Company, and officers, directors and each person who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.

(f) For purposes of this Agreement, each Underwriter severally confirms, and the Company acknowledges, that there is no information concerning such Underwriter furnished in writing to the Company by such Underwriter specifically for preparation of or inclusion in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, other than the statements set forth in the fourth, eighth and ninth paragraphs of the "Underwriting" section of the Registration Statement, the Time of Sale Disclosure Package and the Prospectus.

**8. Representations and Agreements to Survive Delivery:** All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto, including, but not limited to, the agreements of the several Underwriters and the Company contained in Section 5(a)(x) and Section 7 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the several Underwriters or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Securities to and by the Underwriters hereunder.

#### **9. Termination of this Agreement.**

(a) The Representatives shall have the right to terminate this Agreement by giving notice to the Company as hereinafter specified at any time at or prior to the Closing Date if in the discretion of the Representatives, (i) there has occurred any material adverse change in the securities markets or any event, act or occurrence that has materially disrupted, or in the opinion of the Representatives, will in the future materially disrupt, the securities markets or there shall be such a material adverse change in general financial, political or economic conditions or the effect of international conditions on the financial markets in the United States is such as to make it, in the judgment of the Representatives, inadvisable or impracticable to market the Securities or enforce contracts for the sale of the Securities, (ii) trading in the Company's Common Stock shall have been suspended by the Commission or Nasdaq, or trading in securities generally on The Nasdaq Stock Market, the New York Stock Exchange ("**NYSE**"), or the NYSE American shall have been suspended, (iii) minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required, on The Nasdaq Stock Market, NYSE or NYSE American, by such exchange or by order of the Commission or any other governmental authority having jurisdiction, (iv) a banking moratorium shall have been declared by federal or New York State authorities, (v) there shall have occurred any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration by the United States of a national emergency or war, any substantial change or development involving a prospective substantial change in United States or international political, financial or economic conditions or any other calamity or crisis, (vi) the Company suffers any loss by strike, fire, flood, earthquake, accident or other calamity, whether or not covered by insurance, or (vii) in the judgment of the Representatives, there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the Prospectus, any material adverse change in the assets, properties, condition, financial or otherwise, or in the results of operations, business affairs or business prospects of the Company and its subsidiaries considered as a whole, whether or not arising in the ordinary course of business. Any such termination shall be without liability of any party to any other party except that the provisions of Section 5(a)(x) and Section 7 hereof shall at all times be effective and shall survive such termination.

(b) If the Representatives elect to terminate this Agreement as provided in this Section, the Company shall be notified promptly by the Representatives by telephone, confirmed by letter.

**10. Substitution of Underwriters.** If any Underwriter or Underwriters shall default in its or their obligations to purchase Securities hereunder on the Closing Date and the aggregate number of Securities which such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed ten percent (10%) of the total number of Securities to be purchased by all Underwriters on such Closing Date, the other Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Securities which such defaulting Underwriter or Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters shall so default and the aggregate number of Securities with respect to which such default or defaults occur is more than ten percent (10%) of the total number of Securities to be purchased by all Underwriters on such Closing Date and arrangements satisfactory to the remaining Underwriters and the Company for the purchase of such Securities by other persons are not made within forty-eight (48) hours after such default, this Agreement shall terminate.

If the remaining Underwriters or substituted Underwriters are required hereby or agree to take up all or part of the Securities of a defaulting Underwriter or Underwriters on such Closing Date as provided in this Section 10, (i) the Company shall have the right to postpone such Closing Date for a period of not more than five (5) full business days in order to permit the Company to effect whatever changes in the Registration Statement, the Final Prospectus, or in any other documents or arrangements, which may thereby be made necessary, and the Company agrees to promptly file any amendments to the Registration Statement or the Final Prospectus which may thereby be made necessary, and (ii) the respective numbers of Securities to be purchased by the remaining Underwriters or substituted Underwriters shall be taken as the basis of their underwriting obligation for all purposes of this Agreement. Nothing herein contained shall relieve any defaulting Underwriter of its liability to the Company or any other Underwriter for damages occasioned by its default hereunder. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of any non-defaulting Underwriters or the Company, except that the representations, warranties, covenants, indemnities, agreements and other statements set forth in Section 2 and 3, the obligations with respect to expenses to be paid or reimbursed pursuant to Section 5 and the provisions of Section 5(a)(x) and Section 9 and Sections 11 through 18, inclusive, shall not terminate and shall remain in full force and effect.

As used in this Agreement, the term "Underwriter" shall be deemed to include any person substituted for a defaulting Underwriter under this Section 10. Any action taken under this Section 10 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

**11. Notices.** Except as otherwise provided herein, all communications hereunder shall be in writing and, if to the Representatives, shall be mailed, delivered or telecopied to Ladenburg Thalmann & Co. Inc., 277 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10172, telecopy number: [ ] Attention: General Counsel and Maxim Group LLC, 405 Lexington Avenue, New York, NY 10174, telecopy number: [ ], Attention: [ ], with a copy to Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, telecopy number: (212) 262-7402, Attention: John D. Hogoboom; and if to the Company, shall be mailed, delivered or telecopied to it at 2479 E. Bayshore Road, Suite 195, Palo Alto, CA 94303, telecopy number: (703) 880-7219, Attention: Nadir Ali, with a copy to Mitchell Silberberg & Knupp LLP, 437 Madison Avenue, 25<sup>th</sup> Floor, New York, NY 10022, telecopy number: (917) 546-7677, Attention: Melanie Figueroa; or in each case to such other address as the person to be notified may have requested in writing. Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

**12. Persons Entitled to Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 7. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. The term "successors and assigns" as herein used shall not include any purchaser, as such purchaser, of any of the Securities from any Underwriter.

**13. Absence of Fiduciary Relationship.** The Company acknowledges and agrees that: (a) each Underwriter has been retained solely to act as underwriter in connection with the sale of the Securities and that no fiduciary, advisory or agency relationship between the Company and any Underwriter has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Underwriter has advised or is advising the Company on other matters; (b) the price and other terms of the Securities set forth in this Agreement were established by the Company following discussions and arms-length negotiations with the Underwriters and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Underwriters and their affiliates are engaged in a broad range of transactions that may involve interests that differ from those of the Company and that the Underwriters have no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that each Underwriter is acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of such Underwriter, and not on behalf of the Company.

**14. Amendments and Waivers.** No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. The failure of a party to exercise any right or remedy shall not be deemed or constitute a waiver of such right or remedy in the future. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver be deemed or constitute a continuing waiver unless otherwise expressly provided.

**15. Partial Unenforceability.** The invalidity or unenforceability of any section, paragraph, clause or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph, clause or provision.

**16. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**17. Submission to Jurisdiction.** The Company irrevocably (a) submits to the jurisdiction of any court of the State of New York for the purpose of any suit, action, or other proceeding arising out of this Agreement, or any of the agreements or transactions contemplated by this Agreement, the Registration Statement, the Time of Sale Disclosure Package and the Prospectus (each a "Proceeding"), (b) agrees that all claims in respect of any Proceeding may be heard and determined in any such court, (c) waives, to the fullest extent permitted by law, any immunity from jurisdiction of any such court or from any legal process therein, (d) agrees not to commence any Proceeding other than in such courts, and (e) waives, to the fullest extent permitted by law, any claim that such Proceeding is brought in an inconvenient forum. THE COMPANY (ON BEHALF OF ITSELF AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ON BEHALF OF ITS RESPECTIVE EQUITY HOLDERS AND CREDITORS) HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE REGISTRATION STATEMENT, AND THE PROSPECTUS.

**18. Counterparts.** This Agreement may be executed and delivered (including by facsimile transmission and electronic mail attaching a portable document file (.pdf)) in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original and all such counterparts shall together constitute one and the same instrument.



Please sign and return to the Company the enclosed duplicates of this Agreement whereupon this Agreement will become a binding agreement between the Company and the Representatives in accordance with its terms.

Very truly yours,

INPIXON

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Confirmed as of the date first above mentioned-  
By the Representatives of the several Underwriters.

LADENBURG THALMANN & CO. INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MAXIM GROUP LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature page to Underwriting Agreement]

\_\_\_\_\_

**SCHEDULE I**

Schedule of Underwriters

| Name                          | Shares of Common Stock and Related Series A Warrants to<br>Be Purchased | Shares of Series 6 Convertible Preferred Stock and Related<br>Series A Warrants to Be Purchased |
|-------------------------------|---|---|
| Ladenburg Thalmann & Co. Inc. |   |   |
| Maxim Group LLC               |   |   |
| TOTAL                         |   |   |

Sch. I-1

**SCHEDULE II**

Pricing Information (to be provided orally only)

Number of Shares of Common Stock to be Issued:

Number of Preferred Shares to be Issued:

Number of Warrants to be Issued:

Warrant Exercise Price:

Combined Public Offering Price per Common Share Combination:

Combined Public Offering Price per Preferred Share Combination:

Underwriting Discount:

**SCHEDULE III**

Free Writing Prospectus

Free Writing Prospectus dated July 26, 2019

Sch. III-1

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## SCHEDULE IV

### Form of Lock-Up Agreement

Date: \_\_\_\_\_

Ladenburg Thalmann & Co. Inc.  
277 Park Avenue, 26<sup>th</sup> Floor  
New York, NY 10022

Maxim Group LLC  
405 Lexington Avenue, 2<sup>nd</sup> Floor  
New York, NY 10174

Ladies and Gentlemen:

As an inducement to the Ladenburg Thalmann & Co. Inc. and Maxim Group LLC (the “**Representatives**”) to execute an underwriting agreement (the “**Underwriting Agreement**”) providing for a public offering (the “**Offering**”) of common stock, par value \$0.001 per share (the “**Common Stock**”), or other securities, of Inpixon, a Nevada corporation (the “**Company**”), the undersigned hereby agrees that, without the prior written consent of the Representatives, during the period commencing on the date of this Agreement and ending on the date ninety (90) days after the date of the final prospectus used to sell Common Stock in the Offering pursuant to the Underwriting Agreement (the “**Lock-Up Period**”), the undersigned will not: (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, any shares of the Company’s Common Stock or any securities convertible into, exercisable or exchangeable for or that represent the right to receive Common Stock (including without limitation, Common Stock which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant) whether now owned or hereafter acquired (the “**Undersigned’s Securities**”); (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned’s Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; (3) make any demand for or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock; or (4) publicly disclose the intention to do any of the foregoing.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Securities (i) as a *bona fide* gift or gifts, (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, (iii) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity (1) transfers to another corporation, partnership, limited liability company, trust or other business entity that is a direct or indirect affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned or (2) distributions of shares of Common Stock or any security convertible into or exercisable for Common Stock to limited partners, limited liability company members or stockholders of the undersigned, (iv) if the undersigned is a trust, transfers to the beneficiary of such trust, (v) transfers by testate succession or intestate succession, or (vi) pursuant to the Underwriting Agreement; *provided*, in the case of clauses (i) through (v), that (x) such transfer shall not involve a disposition for value, (y) the transferee agrees in writing with the Representatives to be bound by the terms of this Agreement, and (z) no filing by any party under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), shall be required or shall be made voluntarily (in either case, during the Lock-Up Period) in connection with such transfer. For purposes of this Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, no more remote than first cousin.

In addition, the foregoing restrictions shall not apply to (i) the exercise of stock options granted pursuant to the Company's equity incentive plans; *provided* that they shall apply to any of the Undersigned's Securities issued upon such exercise, (ii) the sale of Common Stock to the Company to cover the exercise price of stock options or tax liability in connection with the exercise of stock vesting or settlement of stock options, restricted stock or restricted stock units, or (iii) the establishment of any contract, instruction or plan (a "*Plan*") that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; *provided* that no sales of the Undersigned's Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period, and such a Plan may only be established if no public announcement of the establishment or existence thereof and no filing with the Securities and Exchange Commission or other regulatory authority in respect thereof or transactions thereunder or contemplated thereby, by the undersigned or the Company, shall be required, and no such announcement or filing is made voluntarily, by the undersigned or the Company, prior to the expiration of the Lock-Up Period.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement and that upon request, the undersigned will execute any additional documents necessary to ensure the validity or enforcement of this Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that the undersigned shall be released from all obligations under this Agreement if (i) the Company notifies the Representatives that it does not intend to proceed with the Offering, (ii) the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, or (iii) the Offering is not completed by August 31, 2019.

The undersigned understands that the Representatives are entering into the Underwriting Agreement and proceeding with the Offering in reliance upon this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Very truly yours,

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Printed Name of Holder

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Signature

---

Printed Name and Title of Person Signing  
*(if signing as custodian, trustee, or on behalf  
of an entity)*

## SCHEDULE V

### List of Lock-Up Parties

Nadir Ali  
Leonard Oppenheim  
Kareem Irfan  
Tanveer Khader  
Soumya Das  
Wendy Loundermon

Sch. V-1

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Form of Certificate of Designation

[See Exhibit 4.18 to the Registration Statement on Form S-1/A (SEC File No. 333-232448) filed on August 9, 2019]

Exh. A

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Form of Series A Warrant

[See Exhibit 4.17 to the Registration Statement on Form S-1/A (SEC File No. 333-232448) filed on August 9, 2019]

Exh. B

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**FORM OF SERIES A WARRANT TO PURCHASE COMMON STOCK  
INPIXON**

Warrant Shares: [    ]

THIS SERIES A WARRANT TO PURCHASE COMMON STOCK (the “Warrant”) certifies that, for value received, \_\_\_\_\_ or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the “Initial Exercise Date”) and on or prior to 5:00 p.m. (New York City time) on [ \_\_\_\_\_ ] (the “Termination Date”) but not thereafter, to subscribe for and purchase from Inpixon, a Nevada corporation (the “Company”), up to \_\_\_\_\_ shares (as subject to adjustment hereunder, the “Warrant Shares”) of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Business Days” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Offering” means the underwritten public offering of shares of Common Stock, shares of Series 6 Convertible Preferred Stock and the Warrants pursuant to the Registration Statement.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Registration Statement” means the Company’s registration statement on Form S-1, as amended (File No. 333-232448).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Subsidiary” means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the Common Stock is traded on a Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transfer Agent” means Computershare Trust Company, N.A., the current transfer agent of the Company with a mailing address of 250 Royall Street, Canton, MA 02021 and a facsimile number of (866) 519-2854, and any successor transfer agent of the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Warrants” means this Warrant and other Common Stock purchase warrants issued by the Company pursuant to the Registration Statement.

## Section 2. Exercise.

a) Exercise of Warrant. Subject to the provisions of Section 2(e) herein, exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company at notices@inpixon.com of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the “Notice of Exercise”). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$[ ] , subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

In addition, a cashless exercise may occur after 30 days from the Company's public announcement of the pricing of the Offering (the "Cashless Date"), if the VWAP of the Common Stock on any Trading Day on or after the Cashless Date fails to exceed three times the Exercise Price in effect as of the date hereof (subject to adjustment for any stock splits, stock dividends, stock combinations, recapitalizations and similar events). In such event, in lieu of the formula, the aggregate number of Warrant Shares issuable in such cashless exercise pursuant to any given Notice of Exercise electing to effect a cashless exercise shall equal the product of (x) the aggregate number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise and (y) 1.0.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth (5th) Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any such failure that is solely due to any action or inaction by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith.

To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

### Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all (or substantially all) of the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all (or substantially all) of holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).



d) Fundamental Transaction.

i. Other than the issuance of securities in connection with the Company's public offering pursuant to which this Warrant is being issued, which offering was registered on the Registration Statement, if, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding the foregoing, this Section 3(d) (i) shall be subject to the restrictions set forth in Section 5(a) below.

ii. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, if the Fundamental Transaction is not within the Company's control for purposes of GAAP, including not approved by the Company's Board of Directors, Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Fundamental Transaction, the same type or form of consideration (and in the same proportion), at the Black Scholes Value (as defined below) of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg, L.P. ("Bloomberg") determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction (determined utilizing a 365 day annualization factor), (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the greater of (x) the last VWAP immediately prior to the public announcement of such Fundamental Transaction and (y) the last VWAP immediately prior to the consummation of such Fundamental Transaction, (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date and (E) a zero cost of borrow. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within five Business Days of the Holder's election (or, if later, on the effective date of the Fundamental Transaction). The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. For the avoidance of doubt, if at any time while this Warrant is outstanding, a Fundamental Transaction occurs, pursuant to the terms of this Section 3(d), the Holder shall not be entitled to receive more than one of (i) the consideration receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction, (ii) an amount of cash equal to the Black Scholes Value of the remaining unconverted portion of this Warrant on the date of the consummation of such Fundamental Transaction, or (iii) the assumption by the Successor Entity of all of the obligations of the Company under this Warrant and the option to receive a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant.

e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

f) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice (unless such information is filed with the Commission, in which case a notice shall not be required) stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

g) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Required Holders (as defined below), reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

#### Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

#### Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting the rights of a Holder to receive Warrant Shares on a "cashless exercise," and to receive the cash payments contemplated pursuant to Sections 2(d)(i) and 2(d)(iv) and Section 3(d)(ii), in no event will the Company be required to net cash settle a Warrant exercise.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the holders of a majority of the then outstanding Warrants (based on the number of Warrant Shares underlying such Warrants), which shall include all of the holders who each own, at the time of the waiver or consent, at least 20% of the Warrants issued at the closing of the Offering (based on the number of Warrant Shares underlying such Warrants), if any (the “Required Holders”), the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of this Warrant shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the “New York Courts”). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Warrant. As between a Holder and the Company, if any party shall commence an action or proceeding to enforce any provisions of this Warrant, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys’ fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder’s rights, powers or remedies. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys’ fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 2479 E. Bayshore Road, Suite 195, Palo Alto, CA 94303, Attention: Chief Executive Officer, facsimile number (703) 880-7219, E-mail: notices@inpixon.com, or such other facsimile number, email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the first Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Required Holders, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall also be required.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

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*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**INPIXON**

By:

Name:

Title:

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**NOTICE OF EXERCISE**

TO: INPIXON

[e-mail address: notices@Inpixon.com]

(1) The undersigned hereby elects to purchase Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_  
The Warrant Shares shall be delivered to the following DWAC Account Number:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[SIGNATURE OF HOLDER]

Name of Investing Entity:

\_\_\_\_\_  
*Signature of Authorized Signatory of Investing Entity:*

\_\_\_\_\_  
Name of Authorized Signatory:

\_\_\_\_\_  
Title of Authorized Signatory:

\_\_\_\_\_  
Date:

\_\_\_\_\_

\_\_\_\_\_



## ASSIGNMENT FORM

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

|                     |                |
|---------------------|----------------|
| Name:               | (Please Print) |
| Address:            | (Please Print) |
| Phone Number:       | _____          |
| Email               | _____          |
| Address:            |                |
| Dated: _____, _____ |                |
| Holder's Signature: |                |
| Holder's Address:   |                |

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**INPIXON**  
**CERTIFICATE OF DESIGNATION OF PREFERENCES,**  
**RIGHTS AND LIMITATIONS**  
**OF**  
**SERIES 6 CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 78.195 OF THE  
NEVADA REVISED STATUTES

The undersigned, Nadir Ali and Wendy Loundermon, do hereby certify that:

1. They are the Chief Executive Officer and Secretary, respectively, of Inpixon, a Nevada corporation (the "Corporation").
2. The Corporation is authorized to issue 5,000,000 shares of preferred stock, of which 127 shares are issued and outstanding.
3. The following resolutions were duly adopted by the board of directors of the Corporation (the "Board of Directors"):

WHEREAS, the articles of incorporation of the Corporation provides for a class of its authorized stock known as preferred stock, consisting of 5,000,000 shares, \$0.001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board of Directors is authorized to fix the dividend rights, dividend rate, voting rights, conversion rights, rights and terms of redemption and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of [●] shares of the preferred stock which the Corporation has the authority to issue, as follows:

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NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

#### **TERMS OF PREFERRED STOCK**

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 7(e).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 6(d).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 6(c)(iv).

“Closing” means the closing of the offering of the Securities pursuant to the Underwriting Agreement.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Fundamental Transaction” shall have the meaning set forth in Section 7(e).

“Holder” shall have the meaning set forth in Section 2.

“Liquidation” shall have the meaning set forth in Section 5.

“New York Courts” shall have the meaning set forth in Section 8(d).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Securities” means the Preferred Stock, the Warrants, the Conversion Shares and the Warrant Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Share Delivery Date” shall have the meaning set forth in Section 6(c).

“Stated Value” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“Subsidiary” means any direct or indirect subsidiary of the Corporation.

“Successor Entity” shall have the meaning set forth in Section 7(d).

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

“Transaction Documents” means this Certificate of Designation, the Warrants, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated therein.

“Transfer Agent” means Computershare Trust Company, N.A., the current transfer agent of the Corporation, with a mailing address of 250 Royall Street, Canton, MA 02021 and a facsimile number of (866) 519-2854, and any successor transfer agent of the Corporation.

“Underwriting Agreement” means the underwriting agreement, dated [●], 2019, among the Corporation and Ladenburg Thalmann & Co. Inc. and Maxim Group LLC, as the representatives of the several underwriters named therein.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Preferred Stock then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

“Warrants” means, collectively, the Common Stock purchase warrants to be delivered to the Holders at the Closing.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series 6 Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be [●] (which shall not be subject to increase without the written consent of a majority of the holders of the Preferred Stock then outstanding (each, a “Holder” and collectively, the “Holders”). Each share of Preferred Stock shall have a par value of \$0.001 per share and a stated value equal to \$1,000 (the “Stated Value”). The shares of Preferred Stock shall initially be issued and maintained in the form of securities held in book-entry form and the Depository Trust Company or its nominee (“DTC”) shall initially be the sole registered holder of the shares of Preferred Stock.

Section 3. Dividends. Except for stock dividends or distributions for which adjustments are to be made pursuant to Section 7, the Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal (on an as-if-converted-to-Common-Stock basis, disregarding for such purpose any conversion limitations hereunder) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of Preferred Stock. The Corporation shall not pay any dividends on the Common Stock unless the Corporation simultaneously complies with this provision.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Preferred Stock (and which shall include the affirmative vote of all Holders, if any, who each own, at the time of the vote, at least 20% of the shares of Preferred Stock issued at the closing of the offering pursuant to the Underwriting Agreement), (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (b) amend its articles of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (c) increase the number of authorized shares of Preferred Stock, or (d) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation the same amount that a holder of Common Stock would receive if the Preferred Stock were fully converted (disregarding for such purposes any conversion limitations hereunder) to Common Stock which amounts shall be paid *pari passu* with all holders of Common Stock. A Fundamental Transaction shall not be deemed a Liquidation. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Conversion.

a) Conversions at Option of Holder

i. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Conversion Date").

ii. If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

iii. Without limiting the rights and remedies of a holder of Preferred Stock hereunder and without limiting the right of a Holder to deliver a Notice of Conversion to the Corporation, a holder whose interest in the shares of Preferred Stock is a beneficial interest in certificate(s) representing the shares of Preferred Stock held in book-entry form through DTC (or another established clearing corporation performing similar functions), may effect conversions made pursuant to this Section 6(a) by delivering to DTC (or such other clearing corporation, as applicable) the appropriate instruction form for conversion, complying with the procedures to effect conversions that are required by DTC (or such other clearing corporation, as applicable).

b) Conversion Price. The conversion price for the Preferred Stock shall equal \$[●]<sup>1</sup>, subject to adjustment as provided herein (the "Conversion Price").

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<sup>1</sup> NTD: Insert combined public offering price per share of common stock and the related warrants pursuant to Underwriting Agreement.

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than the earlier of (y) two (2) Trading Days and (z) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder (A) the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions, and (B) a wire in the amount of accrued and unpaid dividends, if any. The Corporation shall deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Corporation’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion. Notwithstanding the foregoing, with respect to any Notice(s) of Conversion delivered by 12:00 p.m. (New York City time) on the Original Issue Date, the Corporation agrees to deliver the Conversion Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Original Issue Date.

ii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

iii. Obligation Absolute; Partial Liquidated Damages. The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Preferred Stock being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder’s right to pursue actual damages for the Corporation’s failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.



iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share. Notwithstanding anything to the contrary contained herein, but consistent with the provisions of this subsection with respect to fractional Conversion Shares, nothing shall prevent any Holder from converting fractional shares of Preferred Stock.

vii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Preferred Stock or the Warrants) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such representation. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Corporation shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any shares of Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

#### Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) [Intentionally Omitted].

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. The amount of any consideration to be received by a Holder in connection with a Fundamental Transaction shall be payable in the same type or form of consideration (and in the same proportion) that is being offered and paid to the holders of Common Stock of the Corporation in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein. For the avoidance of doubt, if, at any time while this Preferred Stock is outstanding, a Fundamental Transaction occurs, pursuant to the terms of this Section 7(d), the Holder shall not be entitled to receive more than one of (i) the consideration receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction or (ii) the assumption by the Successor Entity of all of the obligations of the Corporation under this Certificate of Designation and the option to receive a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designation.

f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by facsimile or email to each Holder at its last facsimile number or email address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service, addressed to the Corporation, to Inpixon, 2479 E. Bayshore Road, Suite 195, Palo Alto, CA 94303, Attention: Nadir Ali, Chief Executive Officer; facsimile number 703-880-7219; e-mail address [notices@inpixon.com](mailto:notices@inpixon.com); or such other facsimile number, e-mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8, with a copy to Mitchell Silberberg & Knupp, LLP, Attention: Melanie Figueroa, Esq., 437 Madison Avenue, 25th Floor, New York, NY 10022, facsimile number 212-509-7239, email address [mxmf@msk.com](mailto:mxmf@msk.com). Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Corporation. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail at the e-mail address set forth in this Section 8 prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, and accrued dividends, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Nevada without regard to the principles of conflict of laws thereof. Each of the Corporation and each Holder agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by this Certificate of Designation (whether brought against the Corporation, a Holder or any of their respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). The Corporation and each Holder hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. The Corporation and each Holder hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. The Corporation and each Holder hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If the Corporation or any Holder shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series 6 Convertible Preferred Stock.

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RESOLVED, FURTHER, that the Chairman, the Chief Executive Officer, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Nevada law.

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IN WITNESS WHEREOF, the undersigned have executed this Certificate this [●] day of [●], 2019.

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Name: Nadir Ali  
Title: Chief Executive Officer

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Name: Wendy Loundermon  
Title: Secretary

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ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

TO: COMPUTERSHARE TRUST COMPANY, N.A.  
[e-mail address: [●]@computershare.com]  
INPIXON [e-mail address: notices@Inpixon.com]

The undersigned hereby elects to convert the number of shares of Series 6 Convertible Preferred Stock indicated below into shares of common stock, par value \$0.001 per share (the "Common Stock"), of Inpixon, a Nevada corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

HOLDER

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_



Mitchell Silberberg & Knupp llp  
A Law Partnership Including Professional Corporations

August 9, 2019

Inpixon  
2479 E. Bayshore Road, Suite 195  
Palo Alto, California 94303

Re: Inpixon  
*Registered Offering*

Ladies and Gentlemen:

We have acted as counsel to Inpixon, a Nevada corporation (the “**Company**”), in connection with the preparation and filing with the Securities and Exchange Commission (the “**Commission**”) pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), of a Registration Statement on Form S-1 (the “**Registration Statement**”), including a related prospectus filed with the Registration Statement (the “**Prospectus**”), covering an underwritten public offering (the “**Offering**”) of up to \$6 million in the aggregate of (i) shares (the “**Shares**”) of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”), (ii) shares of Series 6 Convertible Preferred Stock, par value \$0.001 per share (the “**Series 6 Preferred**”), which are convertible into shares of Common Stock (the “**Conversion Shares**”), (iii) Series A warrants to purchase shares of Common Stock (the “**Warrants**”), and (iv) shares of Common Stock issuable upon exercise of the Warrants (the “**Warrant Shares**”; together with the Shares, the Series 6 Preferred, the Conversion Shares and the Warrants, the “**Securities**”). The Securities are to be sold by the Company as described in the Registration Statement and the Prospectus. This opinion covers the offer and sale of any additional Securities registered in reliance on and conforming to the requirements of Securities Act Rule 462(b).

At your request, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of the Registration Statement, the Prospectus, the Articles of Incorporation, as amended, and the Bylaws, as amended, of the Company, both as currently in effect, resolutions of the Board of Directors of the Company, the form of Certificate of Designation of Preferences, Rights and Limitations of the Series 6 Convertible Preferred Stock to be filed with the Secretary of State of Nevada in connection with the Offering (the “**Certificate of Designation**”), the form of the Warrant, and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render the opinions set forth below. In our examination, we have assumed without independent investigation the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

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437 Madison Ave., 25th Floor, New York, New York 10022  
Phone: (212) 509-3900 Fax: (212) 509-7239 Website: [www.msk.com](http://www.msk.com)

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Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that: (i) the Shares, when issued against payment therefor as set forth in the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable; (ii) the Series 6 Preferred, when issued against payment therefor as set forth in the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable; (iii) provided that the Warrants have been duly executed and delivered by the Company to the purchasers thereof against payment therefor, when issued against payment therefor as set forth in the Registration Statement and the Prospectus, will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms; (iv) the Conversion Shares, when issued in accordance with the provisions of the Certificate of Designation, will be validly issued, fully paid and non-assessable; and (v) the Warrant Shares, when issued and paid for in accordance with the terms of the Warrants, will be validly issued, fully paid and non-assessable.

The opinions expressed above are subject to the following additional exceptions, qualifications, limitations and assumptions:

A. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the Nevada Revised Statutes. This opinion is limited to the effect of the current state of the laws of the State of New York, the Nevada Revised Statutes, and the facts stated herein as they currently exist.

B. The opinion in clause (iii) above is subject to (a) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors' generally, including without limitation the effect of statutory or other laws regarding fraudulent transfers or preferential transfers, and (b) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus and in any amendment or supplement thereto. We further consent to the incorporation by reference of this letter and consent into any registration statement filed pursuant to Rule 462(b) with respect to the Securities. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes of the facts stated or assumed herein or any subsequent changes in applicable law.

Sincerely yours,

/s/ Mitchell Silberberg & Knupp LLP

Mitchell Silberberg & Knupp LLP

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**INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT**

We consent to the incorporation by reference in this Registration Statement of Inpixon and Subsidiaries on Form S-1 Amendment No. 3 [File No. 333-232448 ] of our report which includes an explanatory paragraph as to the Company's ability to continue as a going concern, dated March 28, 2019, with respect to our audits of the consolidated financial statements of Inpixon and Subsidiaries as of December 31, 2018 and 2017 and for the years ended December 31, 2018 and 2017 appearing in the Annual Report on Form 10-K of Inpixon and Subsidiaries for the year ended December 31, 2018. We also consent to the reference to our firm under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Marcum llp

Marcum llp  
New, York, NY  
August 8, 2019

Independent Registered Public Accounting Firm's Consent

We consent to the incorporation by reference in this Amendment No. 3 to the Registration Statement on Form S-1 [File No. 333-232448] of our report, which includes an explanatory paragraph as to Jibestream Inc.'s ability to continue as a going concern, dated July 15, 2019, with respect to our audits of the consolidated financial statements of Jibestream Inc. as of December 31, 2018 and 2017 and for the years ended December 31, 2018 and 2017. We also consent to the reference to our firm under the heading "Experts" in the prospectus, which is part of such Registration Statement.

/s/ MNP LLP

MNP LLP  
Toronto, ON  
August 8, 2019