

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K/A

(Amendment No. 1)

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 11, 2023

SPHERE 3D CORP.

(Exact name of registrant as specified in its charter)

Ontario
(State or other jurisdiction
of incorporation)

001-36532
(Commission
File Number)

98-1220792
(IRS Employer
Identification No.)

895 Don Mills Road
Bldg. 2, Suite 900
Toronto, Ontario, Canada M3C 1W3
(Address of principal executive offices) (ZIP Code)

Registrant's telephone number, including area code: (647) 952 5049

Not Applicable

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of each class

Trading Symbols

**Name of each exchange on which
registered**

Common Shares

ANY

NASDAQ Capital Market

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

Private Placement

On August 11, 2023, Sphere 3D Corp. (the "Company") entered into a Securities Purchase Agreement, which we subsequently amended on August 23, 2023 (the "Purchase Agreement") pursuant to which the Company expects, upon closing, to issue to two institutional accredited investors (the "Investors"), a total of 13,764 of the Company's Series H Preferred Shares (the "Series H Shares") and a total of 1,966,292 Common Share Purchase Warrants (the "Warrants"), each of which will entitle the holder to purchase one common share of the Company (the "Warrant Shares"). Per the terms of the Purchase Agreement, upon closing, the Company expects to receive \$3,047,727.

The Warrants, when issued, will be exercisable the day after the date that is six months after the date of issuance at an initial exercise price of \$2.75 per share for a term ending on the 3-year anniversary of the date of issuance. Upon issuance, the exercise price of the Warrants will be subject to adjustment for certain stock splits and stock combinations, but will not be subject to adjustment for dilutive share issuances.

Pursuant to the terms of the Purchase Agreement, the Company will reserve for issuance the maximum aggregate number of common shares that are issuable upon exercise in full of the Warrant at any time.

In connection with the transaction described above, the Company expects to issue a total of 1,376 Series H Shares and 196,629 Warrants to two finders, as a finder's fee for the transaction.

Amendment to Hertford Agreement

On August 11, 2023, the Company entered into an Amended and Restated Agreement (the "Hertford Amendment") with Hertford Advisors Ltd. and certain other parties listed in the Hertford Amendment (together, the "Hertford Group"), which amends and restates in its entirety the purchase agreement between the Company and Hertford Advisors Ltd. dated July 31, 2021, as modified by the amendment to such agreement dated November 7, 2022 (together, the "Original Hertford Agreement"). Pursuant to the Hertford Amendment, upon closing the Company expects to issue to Hertford (i) 1,376 Series H Shares and (ii) 800,000 Warrants.

The Company plans to rely on the exemption from registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act") and Regulation D promulgated thereunder in connection with the issuance and sale of the Series H Preferred Shares and the Warrants. The offer and sale of the Series H Shares and the Warrants will not be registered under the Securities Act and may not be offered or sold in the United States in the absence of an effective registration statement or exemption from the registration requirements of the Securities Act, and in each case in compliance with applicable state securities laws.

Prepayment of LDA Note

As previously disclosed, on April 17, 2023, the Company entered into a Securities Purchase Agreement (the "LDA Agreement") pursuant to which the Company issued to an institutional accredited investor, LDA Capital Limited ("LDA"), a Senior Convertible Promissory Note having an aggregate principal amount of \$1,000,000 (the "LDA Note") and Common Share Purchase Warrants (the "LDA Warrants") to purchase up to 455,927 common shares of the Company. On August 14, 2023, in accordance with the terms of the LDA Agreement, the Company repaid the full amount of the LDA Note. As a result of the Company's repayment, the Company shall have the right to redeem from LDA 40% of the then outstanding LDA Warrants.

The foregoing descriptions of the Warrant, the Purchase Agreement and the Hertford Amendment are not complete and are subject to, and qualified in their entirety by, the full text of the Warrant, the Purchase Agreement and the Hertford Amendment, copies of which are attached to hereto as Exhibits 4.1, 10.1 and 10.2 and are incorporated herein by reference.

Update to Previous Disclosure

The above disclosure amends in its entirety the disclosure under (i) Item 1.01 and Item 3.02 in the Company's Current Report on Form 8-K previously filed by the Company on August 14, 2023 and (ii) Footnote 14 - Subsequent Events in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2023, filed on August 14, 2023.

Item 2.02. Results of Operations and Financial Condition.

On August 14, 2023, we issued a press release announcing our financial results for our second fiscal quarter ended June 30, 2023. The information contained in the press release is incorporated herein by reference and furnished as Exhibit 99.1. The information in this Item 2.02 and Exhibit 99.1 is being furnished and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that Section.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 is incorporated by reference into this Item 3.02.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
4.1	Form of Warrant
10.1	Securities Purchase Agreement
10.2	Amended and Restated Agreement with Hertford Group
99.1	Press release dated August 14, 2023
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

Date: August 23, 2023

SPHERE 3D CORP.

By: /s/ Patricia Trompeter
Patricia Trompeter
Chief Executive Officer

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

COMMON SHARE PURCHASE WARRANT

SPHERE 3D CORP.

Warrant Shares:

Issue Date: August 23, 2023

THIS COMMON SHARE PURCHASE WARRANT (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 that is six (6) months from the date hereof (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the third anniversary of the date hereof (the "Termination Date") but not thereafter, to subscribe for and purchase from Sphere 3D Corp., an Ontario, Canada corporation (the "Company"), up to _____ (as subject to adjustment hereunder, the "Warrant Shares") of the Company's common shares (the "Common Shares"). The purchase price of one Common Share under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated August 23, 2023, among the Company and the purchaser signatory thereto.

Section 2. Exercise.

a) Exercise of Warrant. 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 Issue Date and on or before the Termination Date by delivery to the Company 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 (the "Aggregate Exercise Price") by wire transfer or cashier's check drawn on a United States bank. 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 Common Share under this Warrant shall be \$2.75, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), if at the time of exercise hereof a Registration Statement (as defined in the Registration Rights Agreement) is not effective (or the prospectus contained therein is not available for use) for the resale by the Holder of all of the Warrant Shares, then the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of Warrant Shares determined according to the following formula (a "Cashless Exercise"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B = as elected by the Holder: (i) the VWAP of the Common Shares on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(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 Exercise Notice or (z) the Bid Price of the Common Shares as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 1(a) hereof, or (iii) the Closing Sale Price of the Common Shares on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of "regular trading hours" on such Trading Day.

C = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

If the Warrant Shares are issued in a Cashless Exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the 1933 Act, the Warrant Shares take on the registered characteristics of the Warrants being exercised. For purposes of Rule 144(d) promulgated under the 1933 Act, as in effect on the Subscription Date, it is intended that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Securities Purchase Agreement.

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) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, 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, (x) so long as the Holder delivers the Aggregate Exercise Price on or prior to the first (1st) Trading Day following the date on which the Notice of Exercise has been delivered to the Company, then on or prior to the second (2nd) Trading Day following the date on which the Notice of Exercise has been delivered to the Company, or, (y) if the Holder does not deliver the Aggregate Exercise Price on or prior to the first (1st) Trading Day following the date on which the Notice of Exercise has been delivered to the Company, then on or prior to the first (1st) Trading Day following the date on which the Aggregate Exercise Price is delivered (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 is received by the Warrant Share Delivery Date provided that the Aggregate Exercise Price is received within two (2) Trading Days 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 Shares on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth 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 Shares as in effect on the date of delivery of the Notice of Exercise. "VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Shares are then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Shares for such date (or the nearest preceding date) on the Trading Market on which the Common Shares are 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 Shares for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Shares are not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Shares 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 Common Share so reported, or (d) in all other cases, the fair market value of a Common Share 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.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of the 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, 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, Common Shares 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 Common Shares 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 Common Shares that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Shares having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Common Shares 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 the 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 Common Shares 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 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. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such 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") collectively would beneficially own in excess of 4.99% (the "Beneficial Ownership Limitation") of the number of Common Shares outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of Common Shares beneficially owned by the Holder and the other Attribution Parties shall include the number of Common Shares held by the Holder and all other Attribution Parties plus the number of Common Shares issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of Common Shares which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred shares or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 2(e). For purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act").

For purposes of this Warrant, in determining the number of outstanding Common Shares the Holder may acquire upon the exercise of this Warrant without exceeding the Beneficial Ownership Limitation, the Holder may rely on the number of outstanding Common Shares as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, and Current Reports on Form 8-K or other public filing with the Securities and Exchange Commission (the "SEC"), as the case may be, (y) a more recent public announcement by the Company or (3) any other written notice by the Company or the Transfer Agent setting forth the number of Common Shares outstanding (the "Reported Outstanding Share Number"). If the Company receives an Notice of Exercise from the Holder at a time when the actual number of outstanding Common Shares is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of Common Shares then outstanding and, to the extent that such Notice of Exercise would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Beneficial Ownership Limitation, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Notice of Exercise (the number of shares by which such purchase is reduced, the "Reduction Shares") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of Common Shares then outstanding. In any case, the number of outstanding Common Shares shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported.

In the event that the issuance of Common Shares to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Beneficial Ownership Limitation of the number of outstanding Common Shares (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Beneficial Ownership Limitation (the "Excess Shares") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares.

Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Beneficial Ownership Limitation to any other percentage not in excess of 9.99% as specified in such notice; provided, however, that (i) any such increase in the Beneficial Ownership Limitation will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of warrants that is not an Attribution Party of the Holder.

For purposes of clarity, the Common Shares issuable pursuant to the terms of this Warrant in excess of the Beneficial Ownership Limitation shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this section shall have any effect of the applicability of the provisions of this section with respect to any subsequent determination of exercisability. 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 the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 2(e) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant. The Holder acknowledges that the Company may rely on the information set forth in the Notice of Exercise, and shall not be required to independently verify whether or not an exercise would trigger the provisions of this section.

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 a class or series of its Common Shares (which, for avoidance of doubt, shall not include any Common Shares issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding Common Shares into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding Common Shares into a smaller number of shares, or (iv) issues by reclassification of Common Shares 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 Common Shares (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of Common Shares 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 at the close of business on the effective date of the transaction.

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 options, warrants or other securities convertible into Common Stock or rights to purchase stock, warrants, securities or other property pro rata to all 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) 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 holders of Common Shares, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock (not including Common Shares of the Company) 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 Common Shares acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as on which the record holders of Common Shares are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, then the Holder shall only be entitled to participate in such Distribution to the extent of the Beneficial Ownership Limitation (and shall not be entitled to beneficial ownership of such Common Shares as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, at which time the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

d) Fundamental Transaction. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of Common Shares are entitled to receive securities or other assets with respect to or in exchange for Common Shares (a "Corporate Event"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the Corporate Event but prior to the Expiration Date, in lieu of Common Shares purchasable upon the exercise of this Warrant prior to such Corporate Event, such securities or other assets which the Holder would have been entitled to receive upon the happening of such Corporate Event had this Warrant been exercised immediately prior to such Corporate Event. The provisions of this Section 3(c) shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant.

"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 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 Shares 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 Shares, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Shares or any compulsory share exchange pursuant to which the Common Shares are 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 Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding Common Shares (not including any Common Shares 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).

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 Common Shares deemed to be issued and outstanding as of a given date shall be the sum of the number of Common Shares (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 Shares, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Shares, (C) the Company shall authorize the granting to all holders of the Common Share 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 Shares, 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 Shares are 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 20 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 Shares 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 Shares of record shall be entitled to exchange their shares of the Common Shares 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.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in the Purchase Agreement, this Warrant and all rights hereunder (including, without limitation, any registration rights) 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 Issue 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.

d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the provisions of the Purchase Agreement.

e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

a) No Rights as Shareholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a shareholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. 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 Shares 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 Shares 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 Holder, 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) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

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

g) Nonwaiver. 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, notwithstanding the fact that the right to exercise this Warrant terminates on the Termination Date.

h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

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 Shares or as a shareholder 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 record Holders of Warrants issued under the Purchase Agreement covering a majority of the number of Warrant Shares into which the Warrants are then exercisable; provided that amendments to the Exercise Price, Expiration Date, or number of Warrant Shares into which the Warrants are then exercisable, would require the consent of the Holder of the Warrants that are being so amended.

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.

(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.

SPHERE 3D CORP.

By:

Name: Patricia Trompeter
Title: Chief Executive Officer

NOTICE OF EXERCISE

TO: SPHERE 3D CORP.

(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. Payment shall take the form of lawful money of the United States.

(2) 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:

(3) The time of day this Notice of Exercise is being executed is:

[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 exercise the Warrant 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: _____



PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made as of August 23, 2023 by and among Sphere 3D Corp., an Ontario corporation (the "Company"), and the Investors set forth on the signature pages affixed hereto (each, an "Investor" and collectively, the "Investors").

A. The Company and the Investors are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the 1933 Act (as defined below) and/or Rule 506 promulgated thereunder by the United States Securities and Exchange Commission (the "SEC"); and

B. The Investors wish to purchase from the Company, and the Company wishes to sell and issue to the Investor, upon the terms and conditions stated in this Agreement, (i) up to an aggregate of 13,764 of the Company's Preferred Shares (as defined below) and a Warrant to purchase 1,966,292 Warrant Shares (as defined below), (collectively, the "Transaction").

In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to those terms defined above and elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is controlled by, or is under common control with, such Person.

"Business Day" means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

"Capital Stock" means the Common Shares and any other classes of capital stock of the Company.

"Common Share Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Shares, including without limitation, any debt, preferred shares, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Shares.

"Common Shares" means the common shares of the Company, no par value.

"Company's Knowledge" means the actual knowledge of the executive officers (as defined in Rule 405 under the 1933 Act) of the Company, after due inquiry.

"Confidential Information" means trade secrets, confidential information and know-how (including but not limited to ideas, formulae, compositions, processes, procedures and techniques, research and development information, computer program code, performance specifications, support documentation, drawings, specifications, designs, business and marketing plans, and customer and supplier lists and related information).

"Control" (including the terms "controlling", "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Conversion Shares" means the Common Shares issuable upon conversion of the Preferred Shares.

"Distributor" means any underwriter, dealer or other person who participates, pursuant to a contractual arrangement, in the distribution of Preferred Shares or Warrants.

"Intellectual Property" means all of the following: (i) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice); (ii) trademarks, service marks, trade dress, trade names, corporate names, logos, slogans and Internet domain names, together with all goodwill associated with each of the foregoing; (iii) copyrights and copyrightable works; (iv) registrations, applications and renewals for any of the foregoing; and (v) proprietary computer software (including but not limited to data, data bases and documentation).

"Material Adverse Effect" means a material adverse effect on (i) the assets, liabilities, results of operations, condition (financial or otherwise), business or prospects of the Company and its Subsidiaries taken as a whole, or (ii) the ability of the Company to perform its obligations under the Transaction Documents.

"Material Contract" means any contract, instrument or other agreement to which the Company or any Subsidiary is a party or by which it is bound which has been listed as an exhibit in the SEC Filings.

"Nasdaq" means The Nasdaq Capital Market.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Preferred Shares" means the Series H Convertible Preferred Shares of the Company, convertible into Common Shares.

"Purchase Price" means \$221.43 per Preferred Share.

"Rule 144" means Rule 144 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

"SEC Filings" has the meaning set forth in Section 4.6.

"Securities" means the Preferred Shares, Warrants, Conversion Shares and Warrant Shares.

"Short Sales" means all "short sales" as defined in Rule 200 of Regulation SHO under the 1934 Act.

"Subsidiary" of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

"Transaction Documents" means this Agreement.

"Warrants" means the Common Share purchase warrants delivered to the Investors at the Closing, which Warrants shall be exercisable the day after the date that is six (6) months after Closing and have a term of exercise equal to three (3) years from the Closing.

"Warrant Shares" means the Common Shares issuable upon exercise of the Warrants.

"1933 Act" means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"1934 Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

2. Purchase and Sale of the Preferred Shares and Warrants. Subject to the terms and conditions of this Agreement, each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to the Investors, the Preferred Stock and Warrants in the respective amounts set forth on Schedule I attached hereto.

3. Closing. Unless other arrangements have been made with a particular Investor, upon confirmation that the other conditions to closing specified herein have been satisfied or duly waived by the Investors, the Company shall deliver to Pryor Cashman LLP, in trust, a certificate or certificates, registered in such name or names as the Investors may designate, representing the Preferred Shares and Warrants, with instructions that such certificates are to be held for release to the Investors only upon payment in full of the aggregate Purchase Price to the Company by the Investors. Unless other arrangements have been made with a particular Investor, upon such receipt by Pryor Cashman LLP of the certificates issuable to an Investor, such Investor shall promptly, but no more than one (1) Business Day thereafter, cause a wire transfer in same day funds to be sent to the account of the Company as instructed in writing by the Company, in an amount representing such Investor's payment of the Purchase Price. The Company will hold one closing for the Preferred Shares and Warrants; on the date the Company receives the Purchase Price, the certificates evidencing the Preferred Shares, along with the Warrants shall be released to the Investors (the "Closing"). The Closing of the purchase and sale of the Preferred Shares and of the Warrants shall occur remotely, or at such location and on such date(s) as the Company and the Investors shall mutually agree.

4. Representations and Warranties of the Company. The Company hereby represents and warrants to each Investor that:

4.1 Organization, Good Standing and Qualification. Each of the Company and its Subsidiaries is a corporation duly organized, validly existing and in good standing (where such concept exists) under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own or lease its properties, in each case as described in the SEC Filings. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification or leasing necessary unless the failure to so qualify has not had and could not reasonably be expected to have a Material Adverse Effect.

4.2 Authorization. The Company has the corporate power and authority to enter into this Agreement and has taken all requisite action on its part, its officers, directors and shareholders necessary for (i) the authorization, execution and delivery of the Transaction Documents, (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance) and delivery of the Securities. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally and to general equitable principles.

4.3 Capitalization. The authorized capital of the Company consists of an unlimited number of Common Shares, as set forth in the SEC Filings and in the Articles of Amalgamation of the Company, as amended and as in effect as of the date of this Agreement (the "Articles of Amalgamation"). All of the issued and outstanding Common Shares have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights and were issued in full compliance with applicable provincial, state and federal securities law and any rights of third parties. Except as described in the SEC Filings, all of the issued and outstanding shares of capital stock of each Subsidiary have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights, were issued in full compliance with applicable provincial, state and federal securities law and any rights of third parties and are owned by the Company, beneficially and of record, subject to no lien, encumbrance or other adverse claim. Except as described in the SEC Filings, no Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any securities of the Company. Except as described in the SEC Filings, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company or any of its Subsidiaries is or may be obligated to issue any equity securities of any kind. Except as described or listed in the SEC Filings, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the security holders of the Company relating to the securities of the Company held by them. Except as described in the SEC Filings, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person. Except as described in the SEC Filings, the issuance and sale of the Securities hereunder will not obligate the Company to issue Common Shares or other securities to any other Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security. Except as described in the SEC Filings, the Company does not have outstanding shareholder purchase rights, a "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.4 Valid Issuance. The Securities have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws.

4.5 Consents. The execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than filings that have been made pursuant to applicable provincial and state securities laws and post-sale filings pursuant to applicable provincial, state and federal securities laws which the Company undertakes to file within the applicable time periods.

4.6 Delivery of SEC Filings; Business. The Company has made available to the Investors all reports filed or furnished by the Company pursuant to Sections 13(a), 13(e), 14 and 15(d) of the 1934 Act (collectively, the "SEC Filings"). The SEC Filings are the only filings required of the Company pursuant to the 1934 Act for such period. The Company and its Subsidiaries are engaged in all material respects only in the business described in the SEC Filings and the SEC Filings contain a complete and accurate description in all material respects of the business of the Company and its Subsidiaries, taken as a whole.

4.7 Use of Proceeds. The net proceeds of the sale of the Preferred Shares and Warrants hereunder shall be used by the Company for working capital and general corporate purposes, as well as to repay certain outstanding debt obligations.

4.8 No Material Adverse Change. Since December 31, 2022, except as described in the SEC Filings or the reports filed or furnished with the SEC by the Company's Affiliates, there has not been:

(i) any change in the consolidated assets, liabilities, financial condition or operating results of the Company from that reflected in the financial statements included in the SEC Filings, except for changes in the ordinary course of business which have not had and could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate;

(ii) any declaration or payment of any dividend, or any authorization or payment of any distribution, on any of the capital stock of the Company, or any redemption or repurchase of any securities of the Company;

(iii) any material damage, destruction or loss, whether or not covered by insurance to any assets or properties of the Company or its Subsidiaries;

(iv) any change or amendment to the Articles of Amalgamation (other than in connection with the transactions contemplated hereby) or Bylaws, or material change to any material contract or arrangement by which the Company or any Subsidiary is bound or to which any of their respective assets or properties is subject;

(v) any material labor difficulties or labor union organizing activities with respect to employees of the Company or any Subsidiary;

(vi) any material transaction entered into by the Company or a Subsidiary other than in the ordinary course of business;

(vii) the loss of the services of any key employee, or material change in the composition or duties of the senior management of the Company or any Subsidiary;

(viii) the loss or, to the Company's Knowledge, threatened loss of any customer which has had or could reasonably be expected to have a Material Adverse Effect; or

(ix) any other event or condition of any character that has had or could reasonably be expected to have a Material Adverse Effect.

4.9 SEC Filings. At the time of filing thereof, the SEC Filings complied as to form in all material respects with the requirements of the 1934 Act and did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

4.10 No Conflict, Breach, Violation or Default. The execution, delivery and performance of the Transaction Documents by the Company and the issuance and sale of the Securities will not (i) conflict with or result in a breach or violation of (a) any of the terms and provisions of, or constitute a default under the Articles of Amalgamation or the Bylaws (true and complete copies of which have been made available to the Investors through the EDGAR system), or (b) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company, any Subsidiary or any of their respective assets or properties, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien, encumbrance or other adverse claim upon any of the properties or assets of the Company or any Subsidiary or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract, except in the case of clauses (i)(b) and (ii) above, such as could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.11 Tax Matters. The Company and each Subsidiary has prepared and filed (or filed applicable extensions therefore) all tax returns required to have been filed by the Company or such Subsidiary with all appropriate governmental agencies and paid all taxes shown thereon or otherwise owed by it, other than any such taxes which the Company or any Subsidiary are contesting in good faith and for which adequate reserves have been provided and reflected in the Company's financial statements included in the SEC Filings. The charges, accruals and reserves on the books of the Company in respect of taxes for all fiscal periods are adequate in all material respects, and there are no material unpaid assessments against the Company or any Subsidiary nor, to the Company's Knowledge, any basis for the assessment of any additional taxes, penalties or interest for any fiscal period or audits by any federal, state or local taxing authority except for any assessment which is not material to the Company and its Subsidiaries, taken as a whole. All taxes and other assessments and levies that the Company or any Subsidiary is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper governmental entity or third party when due, other than any such taxes which the Company or any Subsidiary are contesting in good faith and for which adequate reserves have been provided and reflected in the Company's financial statements included in the SEC Filings. There are no tax liens or claims pending or, to the Company's Knowledge, threatened in writing against the Company or any Subsidiary or any of their respective assets or property. Except as described in the SEC Filings, there are no outstanding tax sharing agreements or other such arrangements between the Company and any Subsidiary or other corporation or entity.

4.12 Title to Properties. Except as disclosed in the SEC Filings, the Company and each Subsidiary has good and marketable title to all real properties and all other properties and assets (excluding Intellectual Property assets which are the subject of Section 4.15 hereof) owned by it, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or currently planned to be made thereof by them; and except as disclosed in the SEC Filings, the Company and each Subsidiary holds any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or currently planned to be made thereof by them.

4.13 Certificates, Authorities and Permits. The Company and each Subsidiary possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by it, except to the extent failure to possess such certificates, authorities or permits could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or such Subsidiary, could reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.14 Labor Matters. Except as set forth in the SEC Filings, the Company is not a party to or bound by any collective bargaining agreements or other agreements with labor organizations. The Company has not violated in any material respect any laws, regulations, orders or contract terms, affecting the collective bargaining rights of employees, labor organizations or any laws, regulations or orders affecting employment discrimination, equal opportunity employment, or employees' health, safety, welfare, wages and hours.

4.15 Intellectual Property. The Company and the Subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the Intellectual Property necessary for the conduct of the business of the Company and the Subsidiaries as currently conducted and as described in the SEC Filings as being owned or licensed by them, except where the failure to own, license or have such rights could not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate. Except as described in the SEC Filings, (i) to the Company's Knowledge, there are no third parties who have or will be able to establish rights to any Intellectual Property, except for the ownership rights of the owners of the Intellectual Property which is licensed to the Company as described in the SEC Filings or where such rights could not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate, (ii) there is no pending or, to the Company's Knowledge, threat of any, action, suit, proceeding or claim by others challenging the Company's or any Subsidiary's rights in or to, or the validity, enforceability, or scope of, any Intellectual Property owned by or licensed to the Company or any Subsidiary or claiming that the use of any Intellectual Property by the Company or any Subsidiary in their respective businesses as currently conducted infringes, violates or otherwise conflicts with the intellectual property rights of any third party, and (iii) to the Company's Knowledge, the use by the Company or any Subsidiary of any Intellectual Property by the Company or any Subsidiary in their respective businesses as currently conducted does not infringe, violate or otherwise conflict with the intellectual property rights of any third party.

4.16 Litigation. There are no pending actions, suits or proceedings against or affecting the Company, its Subsidiaries or any of its or their properties; and to the Company's Knowledge, no such actions, suits or proceedings are threatened, except (i) as described in the SEC Filings or (ii) any such proceeding, which if resolved adversely to the Company or any Subsidiary, could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or since January 1, 2020 has been the subject of any action involving a claim of violation of or liability under federal, provincial, or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the Company's Knowledge, there is not pending or contemplated, any investigation by the SEC involving the Company or any current or former director or officer of the Company. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the 1933 Act or the 1934 Act.

4.17 Financial Statements. The financial statements included in each SEC Filing comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent restatement) and present fairly, in all material respects, the consolidated financial position of the Company as of the dates shown and its consolidated results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis ("GAAP") (except as may be disclosed therein or in the notes thereto). Except as set forth in the SEC Filings filed prior to the date hereof, neither the Company nor any of its Subsidiaries has incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which, individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

4.18 Insurance Coverage. The Company and each Subsidiary maintain in full force and effect insurance coverage that is customary for comparably situated companies for the business being conducted and properties owned or leased by the Company and each Subsidiary.

4.19 No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration of the Securities being offered hereby under the Securities Act or cause this offering of Securities to be integrated with any prior offering of securities of the Company for purposes of the Securities Act or any applicable stockholder approval provisions.

4.20 Transactions with Affiliates. Except as disclosed in the SEC Filings and except as would not be required to be disclosed in the SEC Filings, none of the officers or directors of the Company and, to the Company's Knowledge, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than as holders of stock options and/or warrants, and for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the Company's Knowledge, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

4.21 Internal Controls. The Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002 currently applicable to the Company. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance 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 asset accountability, (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 the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in 1934 Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company, including the Subsidiaries, is made known to the certifying officers by others within those entities, particularly during the period in which the Company's most recently filed periodic report under the 1934 Act, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by the most recently filed periodic report under the 1934 Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the 1934 Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 308 of Regulation S-K) or, to the Company's Knowledge, in other factors that could significantly affect the Company's internal controls. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP and the applicable requirements of the 1934 Act.

4.22 Investment Company. The Company is not required to be registered as, and is not an Affiliate of, and immediately following each of the Closings will not be required to register as, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

The Investors acknowledges and agrees that the Company has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 4. Each of the Investors further acknowledges and agrees that neither the Company nor any other Person has made any representation or warranty, expressed or implied, as to the accuracy or completeness of any information received by any such Investor which constitutes or may be deemed to constitute a projection, estimate or other forecast and certain business plan information, except that such information was prepared in good faith and based upon assumptions that the Company believes to have been reasonable at the time such information, if any, was provided to the Investor.

5. Representations and Warranties of the Investors. Each of the Investors hereby severally, and not jointly, represents and warrants to the Company that:

5.1 Organization and Existence. If such Investor is a corporation, limited partnership or limited liability company, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite corporate, partnership or limited liability company power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder.

5.2 Authorization. The execution, delivery and performance by such Investor of the Transaction Documents to which such Investor is a party have been duly authorized and each will constitute the legal, valid and binding obligation of such Investor, enforceable against such Investor in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

5.3 Consents. All consents, approvals, orders and authorizations required on the part of the Investor in connection with the execution, delivery or performance of each Transaction Document and the consummation of the transactions contemplated hereby and thereby have been obtained and are effective as of the date hereof.

5.4 Purchase Entirely for Own Account. The Securities to be received by the Investor hereunder will be acquired for the Investor's own account, not as nominee, trustee, representative or agent, and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same and has no arrangement or understanding with any other Persons regarding the distribution of such Securities in violation of the 1933 Act or any applicable federal, provincial or state securities law without prejudice, however, to the Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal, provincial and state securities laws. Such Investor is acquiring the Securities hereunder in the ordinary course of its business. Nothing contained herein shall be deemed a representation or warranty by such Investor to hold the Securities for any period of time. Such Investor is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.5 Investment Experience. The Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.6 Disclosure of Information. The Investor has had an opportunity to receive all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities. The Investor acknowledges receipt of copies of the SEC Filings. Neither such inquiries nor any other due diligence investigation conducted by the Investor shall modify, limit or otherwise affect the Investor's right to rely on the Company's representations and warranties contained in this Agreement.

5.7 Legends. It is understood that, except as provided below, certificates evidencing the Securities and any record of a book entry or electronic issuance evidencing the Securities may bear the following or any similar legend:

(a)

[THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.]

(b) If required by the authorities of any state in connection with the issuance of sale of the Securities, the legend required by such state authority.

5.8 No General Solicitation. The Investor did not learn of the investment in the Securities as a result of any general solicitation or general advertising.

5.9 Brokers and Finders. No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Investor.

5.10 Prohibited Transactions. Since the time the Investor was first contacted by the Company or any other Person acting on behalf of the Company regarding the transactions contemplated hereby through the public announcement of the Transaction, neither such Investor nor any Affiliate of such Investor which (a) had knowledge of the transactions contemplated hereby, (b) has or shares discretion relating to such Investor's investments or trading or information concerning such Investor's investments, including in respect of the Securities, or (c) is subject to such Investor's review or input concerning such Affiliate's investments or trading (collectively, "Trading Affiliates") has, directly or indirectly, effected or agreed to effect, or will directly or indirectly effect, any short sale, whether or not against the box, established any "put equivalent position" (as defined in Rule 16a-1(h) under the 1934 Act) with respect to the Common Shares, granted any other right with respect to the Common Shares or with respect to any security that includes, relates to or derived any significant part of its value from the Common Shares (each, a "Prohibited Transaction"); *provided*, however, that the trading of put or call options as part of the Investor's or its Affiliates' option strategy shall not be considered a Prohibited Transaction hereunder.

5.11 Transfer or Resale. The Investor understands that (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) the Investor shall have delivered to the Company (if requested by the Company) an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Investor provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144; (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) the Company is under no obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and in connection with effecting a pledge of Securities, the Investor shall not be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to the Transaction Documents.

The Company acknowledges and agrees that each Investor has not made any representations or warranties with respect to the transactions contemplated by the Transaction Documents other than those specifically set forth in this Section 5.

6. Conditions to Closings.

6.1 Conditions to the Investors' Obligations. The obligation of each Investor to purchase the Preferred Shares and Warrants is subject to the fulfillment to such Investor's satisfaction, on or prior to the Closing Date, of the following conditions, any of which may be waived by such Investor (as to itself only):

(a) The representations and warranties made by the Company in Section 4 hereof qualified as to materiality shall be true and correct at all times prior to and on the applicable Closing Date as so qualified, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date as so qualified, and, the representations and warranties made by the Company in Section 4 hereof not qualified as to materiality shall be true and correct in all material respects at all times prior to and on the Closing Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing Date.

(b) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the purchase and sale of the Securities and the consummation of the other transactions contemplated by the Transaction Documents, all of which shall be in full force and effect.

(c) If applicable, the Company shall have filed with Nasdaq a Notification Form: Listing of Additional Shares for the listing of the Conversion Shares and Warrant Shares on Nasdaq.

(d) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby or in the other Transaction Documents.

(e) No stop order or suspension of trading shall have been imposed by Nasdaq, the SEC or any other governmental or regulatory body with respect to public trading in the Common Shares.

6.2 Conditions to Obligations of the Company. The Company's obligation to (i) sell and issue the Preferred Shares and Warrants is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) The representations and warranties made by the Investors in Section 5 hereof, other than the representations and warranties contained in Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 (the "Investment Representations"), shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the applicable Closing Date with the same force and effect as if they had been made on and as of said date. The Investment Representations shall be true and correct in all respects when made, and shall be true and correct in all respects on the applicable Closing Date with the same force and effect as if they had been made on and as of said date. The Investors shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the applicable Closing Date.

(b) The Investors shall have delivered the Purchase Price to the Company.

6.3 Termination of Obligations to Effect Closing; Effects. The obligations of the Company, on the one hand, and the Investors, on the other hand, to effect the Closing shall terminate as follows:

(a) Upon the mutual written consent of the Company and the Investors;

(b) By the Company if any of the conditions set forth in Section 6.2 shall have become incapable of fulfillment, and shall not have been waived by the Company;

(c) By an Investor (with respect to itself only) if any of the conditions set forth in Section 6.1 shall have become incapable of fulfillment, and shall not have been waived by the Investor; or

(d) By either the Company or an Investor (with respect to itself only), the Closing has not occurred on or prior to August 14, 2023;

provided, however, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in the circumstances giving rise to such party's seeking to terminate its obligation to effect the applicable Closing.

7. Covenants and Agreements.

7.1 Reports. The Company will furnish to the Investors and/or their assignees such information relating to the Company and its Subsidiaries as from time to time may reasonably be requested by the Investors and/or their assignees; provided, however, that the Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, in connection with the transactions contemplated by this Agreement unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

7.2 No Conflicting Agreements. The Company will not take any action, enter into any agreement or make any commitment that would conflict or interfere in any material respect with the Company's obligations to the Investors under the Transaction Documents.

7.3 Compliance with Laws. The Company will comply in all material respects with all applicable laws, rules, regulations, orders and decrees of all governmental authorities.

7.4 Termination of Covenants. The provisions of Sections 7.2 and 7.3 shall terminate and be of no further force and effect on the earlier of (i) the sale or disposition of any Securities by an Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable securities or (ii) any Securities of the Investor becoming eligible to be sold without restriction pursuant to Rule 144.

7.5 Removal of Legends. Upon the earlier of (i) the sale or disposition of any Securities by an Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable securities or (ii) any Securities of the Investor becoming eligible to be sold without restriction pursuant to Rule 144, upon the written request of such Investor, the Company shall or, in the case of Common Shares, shall cause the transfer agent for the Common Shares (the "Transfer Agent") to issue replacement certificates representing such Securities or updated or replacement records of book entries or electronic issuances evidencing such Securities. From and after the earlier of such dates, upon the Investor's written request, the Company shall promptly cause certificates or records of book-entries or electronic issuances evidencing an Investor's Securities to be replaced with certificates or records of book-entries or electronic issuances, respectively, which do not bear such restrictive legends. In addition, upon the Conversion Shares or Warrant Shares becoming eligible to be sold without restriction pursuant to Rule 144, the Company shall (1) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall reissue a certificate or a record of book entry or electronic issuance representing Common Shares without legends upon receipt by such Transfer Agent of the legended certificates or the appropriate ownership records of book-entry or electronically issued Common Shares bearing legends, as applicable, for such Common Shares, together with either (A) a customary representation by the Investor that Rule 144 applies to the Common Shares represented thereby or (B) a statement by the Investor that such Investor has sold the Common Shares represented thereby in accordance with the Plan of Distribution contained in the Registration Statement, and (2) cause its counsel to deliver to the Transfer Agent one or more blanket opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act.

7.6 Prohibited Financings. The Company hereby covenants and agrees that, for a period of ninety (90) days from the date hereof, the Company will not issue any equity or equity-linked securities that are convertible into, exchangeable or exercisable for, or include the right to receive shares of the Company's Capital Stock, without the consent of a majority of the Common Shares then held by the Investors, such consent not to be unreasonably withheld; *provided*, however that the foregoing shall not prevent the Company from issuing securities under the Company's 2015 performance incentive plan.

8. Indemnification.

8.1 Indemnification. The Company agrees to indemnify and hold harmless the Investor and its Affiliates and their respective directors, officers, trustees, members, managers, employees and agents, and their respective successors and assigns, from and against any and all losses, claims, damages, liabilities and expenses (including, without limitation, reasonable attorney fees and disbursements (subject to Section 8.2 below) and other expenses incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, "Losses") to which such Person may become subject as a result of any breach of any representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person.

8.2 Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed to pay such fees or expenses, (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. The Company will not be liable to any indemnified party under this Agreement (x) for any settlement by such indemnified party effected without the Company's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, or (y) for any Losses incurred by such indemnified party which a court of competent jurisdiction determines in a final judgment which is not subject to further appeal are solely attributable to (A) a breach of any of the representations, warranties, covenants or agreements made by such indemnified party under this Agreement or in any other Transaction Document or (B) the fraud, gross negligence or willful misconduct of such indemnified party.

9. Miscellaneous.

9.1 Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or the Investors, as applicable, provided, however, that an Investor may assign its rights and delegate its duties hereunder in whole or in part to an Affiliate or to a third party acquiring some or all of its Securities in a transaction complying with applicable securities laws without the prior written consent of the Company or the other Investors. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Without limiting the generality of the foregoing, in the event that the Company is a party to a merger, amalgamation, consolidation, share exchange or similar business combination transaction in which the Common Shares is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Common Shares" shall be deemed to refer to the securities received by the Investors in connection with such transaction. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.2 Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

9.3 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.4 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by electronic mail, telex or telecopier, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (a) receipt of such notice by the recipient or (b) three days after such notice is deposited in first class mail, postage prepaid, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one Business Day after delivery to such carrier. All notices shall be addressed to the party to be notified at the address as follows, or at such other address as such party may designate by ten days' advance written notice to the other party:

If to the Company:

Sphere 3D Corp.
4 Greenwich Office Park, 1st Floor
Greenwich, CT 06831
Attention: Patricia Trompeter, Chief Executive Officer
Fax: (858) 495-4267

With a copy to:

Pryor Cashman LLP
7 Times Square
New York, New York 10036
Attention: M. Ali Panjwani, Esq.
Fax: (212) 326-0806

If to the Investor:

9.5 Expenses. The parties hereto shall pay their own costs and expenses in connection herewith, regardless of whether the transactions contemplated hereby are consummated, except that at Closing, the Investors shall be reimbursed for their reasonable, documented, out-of-pocket legal expenses associated with the transactions contemplated by this Agreement, in an amount not to exceed \$10,000 in the aggregate. In the event that legal proceedings are commenced by any party to this Agreement against another party to this Agreement in connection with this Agreement or the other Transaction Documents, the party or parties which do not prevail in such proceedings shall severally, but not jointly, pay their pro rata share of the reasonable attorneys' fees and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

9.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investors representing a majority of the Preferred Shares issued pursuant to this Agreement. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Securities purchased under this Agreement at the time outstanding, each future holder of all such Securities, and the Company.

9.7 Publicity. Except as set forth below, no public release or announcement concerning the transactions contemplated hereby shall be issued by the Company or the Investors without the prior consent of the Company (in the case of a release or announcement by the Investors) or the Investors (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Investors, as the case may be, shall allow the Investors or the Company, as applicable, to the extent reasonably practicable in the circumstances, reasonable time to comment on the portion of such release or announcement concerning the transactions contemplated hereby in advance of such issuance. The Company will make such filings and notices in the manner and time required by the SEC or Nasdaq. The Company will disclose the consummation of the transactions contemplated by this Agreement, and any other material, non-public information provided to the Investor by the Company or its agents in connection with the Transaction, no later than 9:00 am, local time in New York, NY, on the first trading day following the consummation of the transactions contemplated by this Agreement.

9.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

9.9 Entire Agreement. This Agreement, including any Exhibits and Schedules, and the other Transaction Documents constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

9.10 Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

9.11 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York (except to the extent the provisions of the Business Corporations Act (Ontario)). Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **TO THE EXTENT ALLOWABLE UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

SPHERE 3D CORP.

By: _____
Name: Patricia Trompeter
Title: Chief Executive Officer

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Investor:

By: _____
Name: _____
Title: _____

Address for Notice:

Fax: _____

Investor Aggregate Purchase Price:

\$ _____

Schedule I

Purchase and Sale of Preferred Shares and Warrants

Name	Number of Preferred Shares / Warrants	Aggregate Purchase Price
Maab Global Ltd.	7,865 / 1,123,596	\$1,741,547
Greenfield Investments Ltd. Regent Village	5,899 / 842,697	\$1,306,180

AMENDED AND RESTATED AGREEMENT WITH HERTFORD GROUP

This Amended and Restated Agreement (the "**Agreement**") with Hertford Group dated August 11, 2023 (the "**Effective Date**") is entered into by and among Sphere 3D Corp., a company organized under the law of Ontario ("**Sphere**" or the "**Company**"), and Hertford Advisors Ltd., a Cayman Islands exempted company with offices at Office #122, Windward #3 Building, Regatta Office Park, West Bay Road, Grand Cayman E9 KY 1-9006 ("**Hertford**" and, collectively with each of the parties identified on Exhibit A attached hereto, the "**Hertford Group**"). The Company and Hertford are collectively referred to herein as the "**Parties**," and each, respectively, as a "**Party**." Unless otherwise defined herein, capitalized terms shall have the meanings given to them in Section 12 herein.

WHEREAS, the Company and Hertford are parties to a Purchase Agreement dated as of July 31, 2021 (the "**Purchase Agreement**");

WHEREAS, Hertford beneficially owns an aggregate of 47,028 Series H convertible preferred shares of the Company (the "**Series H Preferred Shares**");

WHEREAS, as an inducement to enter into this Agreement, Hertford will receive 1,376 Series H Preferred Shares and warrants to purchase 800,000 of the Company's Common Shares;

WHEREAS, on November 7, 2022 the Parties executed that certain Agreement with Shareholder (the "**Superseded Agreement**") with respect to the nomination and election of an independent member to the Company's board of directors (the "**Board**"), understandings with respect to the Purchase Agreement, certain releases and certain other matters, as provided in the Superseded Agreement; and

WHEREAS, as of the date hereof, the Parties have determined to amend and restate the Superseded Agreement on the terms set forth in this Agreement, which, upon execution and delivery by the Parties, shall supersede and replace entirely the Superseded Agreement.

NOW, THEREFORE, in consideration of the promises, representations and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Agreements.

(a) Series H Preferred Shares.

(i) The Parties acknowledge that Hertford beneficially owns 47,028 Series H Preferred Shares, originally issued on October 1, 2021 (the "**October 2021 Series H Preferred Shares**"), each of which is convertible into 142.857 Common Shares (which has been adjusted for the 1-for-7 share consolidation that became effective on June 28, 2023, and subject to further adjustment in the case of any stock split, split-up, reverse stock split, stock dividend or similar distribution of Common Shares) and remains subject to the terms and conditions of the Purchase Agreement, as modified by this Agreement.

(ii) The Parties acknowledge that, at the 2022 Annual Meeting, the Shareholders passed a resolution approving the issuance of the Common Shares issuable to Hertford upon the conversion of the October 2021 Series H Preferred Shares.

(iii) The Parties hereby represent and warrant that, as of August 3, 2023, there are 47,028 October 21 Series H Preferred Shares issued and outstanding.

(iv) The Parties hereby agree that as an inducement to enter into this Agreement, the Company shall issue to Hertford (1) 1,376 Series H Preferred Shares ("**2023 Series H Preferred Shares**") and (2) warrants to purchase 800,000 of the Company's Common Shares;

(v) Hertford shall, in making any and each request to convert any October 21 Series H Preferred Shares into Common Shares pursuant to section 5.1 of the Company's Certificate of Amendment dated October 1, 2021 (the "**Articles of Amendment**"), be required to represent and warrant to the Company in writing (the "**Conversion Certification**") that, after giving *pro forma* effect to such conversion, Hertford, together with any of its Affiliates and any other member of a section 13(d) "group" with Hertford, will not beneficially own in excess of 9.99% of the Common Shares outstanding immediately after giving effect to such conversion. The Parties agree to work constructively and in good faith together to promptly prepare and mutually agree on the forms of the conversion request, Conversion Certification and any other required applicable documentation for the Company's transfer agent so that such Converted Common Shares (as defined herein) may be issued without a restrictive legend if and to the extent permissible under applicable securities laws and any other applicable laws, and which shall be used, as applicable, for each requested conversion of the October 2021 Series H Preferred Shares; provided, however, that for the avoidance of doubt no Converted Common Shares shall be issued without a restrictive legend if doing so would violate applicable securities laws or other applicable law.

(vi) Hertford hereby irrevocably and unconditionally covenants and agrees to indemnify and hold harmless (including by advancing any attorney's fees and expenses) the Company and its Representatives from and against all claims, losses, damages, expenses and costs whatsoever incurred by the Company or any of its Representatives to the extent caused by or resulting from any breach of any representation and warranty in any Conversion Certification.

(vii) The Parties acknowledge and agree that, except as supplemented by this Agreement, the terms and conditions of the Articles of Amendment creating eighth series of Preferred Stock, being the Series H Preferred Stock, shall govern the October 2021 Series H Preferred Shares.

(b) **Leak-Out Provisions.** The Parties agree that, except as set forth in this Section 1(b), Hertford (or any of its Affiliates, Representatives, or members of the Hertford Group or their Affiliates and Representatives) will not (1) file (or participate in the filing of) a registration statement with the Securities and Exchange Commission in respect of, any Common Shares issued upon the conversion of the October 2021 Series H Preferred Shares (the "**Converted Common Shares**") or any of the October 2021 Series H Preferred Shares, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of Common Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Shares 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 Shares or any security convertible into or exercisable or exchangeable for Common Shares, or (4) publicly announce an intention to effect any transaction specific in clause (1), (2), or (3) above, except as follows:

(i) Commencing on the Effective Date and until January 1, 2024, Hertford shall have the right to convert 1,376 October 2021 Series H Preferred Shares into Common Shares subject to the limitations and restrictions set forth in Section 1(b)(iv) below.

(ii) In addition to and separate from Hertford's right to convert October 2021 Series H Preferred Shares pursuant to Section 1(b)(i) hereof, commencing on January 1, 2023 and in each month thereafter until December 31, 2023 (the "**First Year**"), Hertford shall be permitted to convert October 2021 Series H Preferred Shares in an aggregate amount up to or equal to three percent (3%) of the aggregate number of Series H Preferred Shares owned by Hertford on the first day of each such month; *provided* that, if, during the First Year, the closing price for the Common Shares is greater than \$5 per share (subject to adjustment to reflect any stock splits, consolidations, reclassifications, combinations or similar changes to the Common Shares or Series H Preferred Shares) for at least 15 consecutive trading days on NASDAQ (the "**NASDAQ Milestone**") then, in only the immediately succeeding calendar month to the calendar month in which a NASDAQ Milestone has occurred, Hertford shall be permitted to convert October 2021 Series H Preferred Shares in an aggregate amount up to or equal to five percent (5%) of the aggregate number of October 2021 Series H Preferred Shares owned by Hertford as of the first day of such month.

(iii) Commencing on January 1, 2024 and in each month thereafter until December 31, 2024 (the "**Second Year**"), Hertford shall only be permitted to convert October 2021 Series H Preferred Shares in an aggregate amount equal to ten percent (10%) of the aggregate number of October 2021 Series H Preferred Shares owned by Hertford on the first day of such month.

(iv) The allowed number of conversions in the preceding clauses 1(b)(i) and 1(b)(ii) may cumulate or carryover from month to month; *provided that*: (i) at no time shall Hertford be permitted to convert October 2021 Series H Preferred Shares that, when aggregated with any Common Shares beneficially owned by Hertford prior to such conversion, would result in Hertford exceeding 9.99% of the Common Shares outstanding immediately after giving effect to such conversion; and (ii) in any trading day, Hertford shall not be permitted to sell more than that number of Common Shares equal to 20% of the previous trading day's volume for Common Shares traded on the principal Exchange upon which the Common Shares are listed and, for any subsequent trading day, the shares sold by Hertford on the previous trading day shall be excluded when calculating the day's volume (such restriction, the "**20% Restriction**").

(v) Notwithstanding the foregoing or anything else in this Agreement or the Purchase Agreement, on January 1, 2025 (the "**Leak-Out Termination Date**"), Hertford shall not be prohibited, restrained or otherwise limited from converting its October 2021 Series H Preferred Share or selling any such Converted Common Shares on or after the Leak-Out Termination Date, subject to applicable laws, Exchange Requirements and the terms and conditions of the Series H Preferred Shares, as amended.

(vi) Notwithstanding the foregoing or anything else in this Agreement or the Purchase Agreement, Hertford shall have a one time right to exchange 14,980 shares of its October 2021 Series H Preferred Shares for 2023 Series H Preferred Shares held by other persons (the "**Exchanged Series H Preferred Shares**"), provided that at no time shall any recipient of Exchanged Series H Preferred Shares be permitted to convert October 2021 Series H Preferred Shares that, when aggregated with any Common Shares beneficially owned by the recipient of Exchanged Series H Preferred Shares prior to such conversion, would result in exceeding 9.99% of the Common Shares outstanding immediately after giving effect to such conversion. In addition, for greater clarity, the recipients of Exchanged Series H Preferred Shares shall be bound by the 20% Restriction.

(vii) For the avoidance of doubt, any Common Shares after having been sold or otherwise transferred in accordance with the terms of Section 1(b) in an open market transaction to an unaffiliated third party shall no longer be subject to the terms and conditions of Section 1(b).

(c) Series H Preferred Share Waiver. The Parties agree that, as required by this Agreement only, the restrictions set forth in Section 7(c) of the Articles of Amendment creating the Series H Preferred Shares shall be waived, such that the Company may issue additional Series H Preferred Shares in excess of the number of Series H Preferred Shares authorized for issuance on the date of initial issuance of the Series H Preferred Shares. This waiver and authorization is limited to the 1,376 Series H Preferred Shares being delivered to Hertford as an inducement to enter into this Agreement in addition to that number of Series H Preferred Shares actually required to be issued under that certain Purchase Agreement of even date herewith between Company and those certain Investors entering into such Purchase Agreement. For clarity, if only a portion of the anticipated financing is received, the number of Series H Preferred Shares issued for the amount of financing actually received shall determine the number of Series H Preferred Shares to be added to the 1,376 Series H Preferred Shares being delivered to Hertford, resulting in the total number of new Series H Preferred Shares that can be issued.

2. Voting. From the Effective Date until the date that is forty-five (45) days following the conclusion of the Company's 2023 Annual Meeting (the "**Standstill Period**"), each member of the Hertford Group agrees that it will appear in person or by proxy at each annual or special meeting of Shareholders (including any adjournments or postponements thereof and any meetings which may be called in lieu thereof), whether such meeting is held at a physical location or virtually by means of remote communications, and will vote (or execute a consent or proxy with respect to) all Voting Securities beneficially owned by it in accordance with the Board's recommendations with respect to (a) each election of directors, any removal of directors and any replacement of directors, and (b) any other proposal to be submitted to the Shareholders by either the Company or any shareholder of the Company; provided, however, that if Institutional Shareholder Services Inc. ("**ISS**") or Glass Lewis & Co. LLC ("**GL**") recommend otherwise with respect to any proposals (other than as related to the election, removal or replacement of directors), each member of the Hertford Group shall be permitted to vote in accordance with ISS's or GL's recommendation; provided, further, that each member of the Hertford Group shall be permitted to vote in its sole discretion on any special resolution in respect of any Extraordinary Transaction.

3. No Litigation and Mutual Releases.

(a) Hertford hereby covenants and agrees that, during the Standstill Period, it shall not, and shall not permit any of its Affiliates or Associates, or Representatives acting on its behalf or any members of the Hertford Group (or their Affiliates, Associates, or Representatives), to, alone or in concert with others, knowingly encourage or pursue, or knowingly assist any other person to threaten, initiate or pursue, any lawsuit, claim or proceeding before any court or governmental, administrative or regulatory body (collectively, a "**Legal Proceeding**") against the Company or any of its Affiliates, Associates or Representatives; provided, however, that the foregoing shall not prevent Hertford or any of its Affiliates, Associates, or Representatives or any members of the Hertford Group (or their Affiliates, Associates, or Representatives) from responding to oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demands or similar processes (collectively, a "**Legal Requirement**") in connection with any Legal Proceeding if (i) such Legal Proceeding has not been initiated by, or on behalf of, or with the knowing material assistance of, Hertford or any of its Affiliates, Associates or Representatives or any members of the Hertford Group (or their Affiliates, Associates, or Representatives) or (ii) the Company has Materially Breached (as defined herein) this Agreement; provided, further, that in the event that Hertford or any of its Affiliates, Associates or Representatives or any members of the Hertford Group (or their Affiliates, Associates, or Representatives) receive such Legal Requirement, Hertford shall, unless prohibited by applicable law, give prompt written notice of such Legal Requirement to the Company. Notwithstanding the foregoing, nothing in this Section 3(a) shall prevent or restrict Hertford from enforcing the terms of this Agreement.

(b) The Company hereby covenants and agrees that, during the Standstill Period, it shall not, and shall not permit any of its Affiliates or Associates, or Representatives acting on its behalf, to, alone or in concert with others, knowingly encourage or pursue, or knowingly support or assist any other person to threaten, initiate or pursue, any Legal Proceedings against any member of the Hertford Group; provided, however, that the foregoing shall not prevent the Company or Affiliates or Associates, or Representatives acting on its behalf from responding to a Legal Requirement in connection with any Legal Proceeding if (i) such Legal Proceeding has not been initiated by, or on behalf of, or with the knowing material assistance of, the Company or any of its Affiliates, Associates or Representatives or (ii) any member of the Hertford Group has Materially Breached this Agreement; provided, further, that in the event that the Company or any of its Representatives receives such Legal Requirement, the Company shall, unless prohibited by applicable law, give prompt written notice of such Legal Requirement to Hertford. Notwithstanding the foregoing, nothing in this Section 3(b) shall prevent or restrict the Company from enforcing the terms of this Agreement.

(c) Each member of the Hertford Group, as well as its and their respective current, former, and future Affiliates, Associates, partners, managers, affiliates, subsidiaries, parents, officers, directors, owners, representatives, agents, attorneys, trustees, successors, and assigns, as applicable (collectively, the "**Hertford Releasors**"), in consideration of the terms agreed to in this Agreement, hereby fully release and discharge the Company, and each of its respective Affiliates, Associates and Representatives, from all actions, liabilities, proceedings, obligations, losses, costs, expenses, incidental damages, consequential damages, fines, penalties, charges, fees, awards, attorneys' fees or expenses, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, liens, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty, and/or equity, whether known or unknown, suspected or unsuspected, contingent or fixed, including but not limited to any claims related to or arising out of the Purchase Agreement, the NuMiner Agreements, the 2022 Annual Meeting or applicable U.S. or Canadian securities law, which the Hertford Releasors ever had, now have, have asserted, or could have asserted, from the beginning of time to the Effective Date (the "**Hertford Released Claims**").

(d) Hertford, on behalf of the Hertford Releasors, represents and warrants that the Hertford Releasors have not and will not solicit any person or entity to bring, or assist or participate in bringing, any action or proceeding, judicial or otherwise, against the Company related to or arising out of the Hertford Released Claims.

(e) By executing and delivering this Agreement, Hertford (including on behalf of the Hertford Group and their Affiliates and Representatives) represents and warrants to the Company that Hertford has all necessary power and authority to execute and deliver this Agreement (including without limitation, the releases, covenants, representations and warranties set forth in Section 3(a), (c) and (d) hereof) on behalf of, and bind, each of the Hertford Releasors and irrevocably and unconditionally covenants and agrees to indemnify and hold harmless each of the Company Releasors (as defined below) from and against all claims, losses, damages, expenses and costs whatsoever incurred by the Company Releasors or any of them resulting from any breach of such representation and warranty.

(f) The Company, as well as its current, former, and future Affiliates, Associates, partners, managers, affiliates, subsidiaries, parents, officers, directors, owners, representatives, agents, attorneys, trustees, successors, and assigns (collectively, the "**Company Releasors**"), in consideration of the terms agreed to in this Agreement, hereby fully release and discharge Hertford, the Identified Parties, and each of its and their respective Affiliates, Associates and Representatives, from all actions, liabilities, proceedings, obligations, losses, costs, expenses, incidental damages, consequential damages, fines, penalties, charges, fees, awards, attorneys' fees or expenses, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, liens, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty, and/or equity, whether known or unknown, suspected or unsuspected, contingent or fixed, including but not limited to any claims related to or arising out of the Purchase Agreement, the NuMiner Agreements, the 2022 Annual Meeting or applicable U.S. or Canadian securities law, which the Company Releasors ever had, now have, have asserted, or could have asserted, from the beginning of time through the Effective Date (the "**Company Released Claims**").

(g) The Company, on behalf of the Company Releasers, represents and warrants that the Company Releasers has not and will not solicit any person or entity to bring, or assist or participate in bringing, any action or proceeding, judicial or otherwise, against Hertford or any of the Identified Parties related to or arising out of the Company Released Claims.

(h) By executing and delivering this Agreement, the Company (including on behalf of its Affiliates and Representatives) represents and warrants to Hertford that the Company has all necessary power and authority to execute and deliver this Agreement (including without limitation, the releases, covenants, representations and warranties set forth in Section 3(b), (f) and (g) hereof) on behalf of, and bind, each of the Company Releasers and irrevocably and unconditionally covenants and agrees to indemnify and hold harmless each of the Hertford Releasers from and against all claims, losses, damages, expenses and costs whatsoever incurred by the Hertford Releasers or any of them resulting from any breach of such representation and warranty.

(i) This Agreement is not and shall not constitute, nor be interpreted, construed, or used as evidence of, any admission of liability, wrongdoing, or fact of any kind by any party, and such liability is expressly denied by each party. This Agreement is entered into solely to avoid the expense and inconvenience of litigating the parties' disputes.

(j) Each of the Parties expressly waives and relinquishes all rights and benefits of Section 1542 of the Civil Code of the State of California, and any other similar statute or law of any other jurisdiction, and he, it or they do so understanding and acknowledging the significance and consequence of specifically waiving such statute or law. Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Thus, notwithstanding the provisions of such Section 1542 (or any other similar statute or law of any other jurisdiction), and to implement a full and complete release and discharge set forth in this Section 3, each of the Parties, for themselves and, as the case may be, for their releasers and releasees, expressly acknowledges that this Agreement is intended to include in its effect without limitation all claims (including without limitation claims that each of the Parties does not know or suspect to exist in his, its, or their favor at the time of signing this Agreement), and that this Agreement contemplates the extinguishment of any such claims and any such claims described in this Section 3.

For the avoidance of doubt, however, either Party may bring a suit, claim, or cause action to enforce the provisions of this Agreement.

4. Standstill.

(a) During the Standstill Period, each member of the Hertford Group agrees that it shall not, and shall cause its Affiliates and Associates not to, directly or indirectly:

(i) engage in any solicitation of proxies or consents (including, without limitation, any solicitation of consents that seek to call a special meeting of shareholders, or any action by written consent), in each case, with respect to any securities of the Company;

(ii) form, join or in any way knowingly participate in any "group" (within the meaning of Section 13(d) (3) of the Exchange Act) or become a joint actor with another shareholder of the Company with respect to any securities of the Company (other than a "group" or joint actors that include Affiliates or Associates of Hertford as of the date hereof); provided, however, that nothing herein shall limit the ability of an Affiliate of Hertford to join the "group" or become a joint actor following the execution of this Agreement, so long as any such Affiliate agrees to be bound in writing by the terms and conditions of this Agreement;

(iii) deposit any Common Shares in any voting trust or subject any Common Shares to any arrangement or agreement with respect to the voting of any Common Shares, other than any such voting trust, arrangement or agreement solely among Hertford and its Affiliates and Associates, and otherwise in accordance with this Agreement;

(iv) seek or submit, or knowingly encourage any person or entity to seek or submit, nomination(s), proxies or consents in furtherance of a "contested solicitation" for the appointment, election or removal of directors with respect to the Company or seek, knowingly encourage or take any other action with respect to the appointment, election or removal of any directors;

(v) (A) make any proposal for consideration by shareholders at any annual or special meeting of shareholders of the Company or through any shareholder action by written consent, (B) make any offer or proposal (with or without conditions) with respect to any merger, takeover offer, tender (or exchange) offer, acquisition, recapitalization, restructuring, disposition or other business combination involving the Company or any of its subsidiaries, (C) affirmatively solicit a third party to make an offer or proposal (with or without conditions) with respect to any merger, takeover offer, tender (or exchange) offer, acquisition, recapitalization, restructuring, disposition or other business combination involving the Company or any of its subsidiaries, or knowingly publicly encourage, initiate or support any third party in making such an offer or proposal, (D) publicly comment on any third party proposal regarding any merger, takeover offer, tender (or exchange) offer, acquisition, recapitalization, restructuring, disposition, or other business combination with respect to the Company or any of its subsidiaries by such third party, or (E) call or seek to call a special meeting of shareholders, or initiate or participate in any shareholder action by written consent;

(vi) seek, alone or in concert with others, representation on the Board;

(vii) advise, knowingly encourage, knowingly support or knowingly influence any person or entity with respect to the voting or disposition of any securities of the Company at any annual or special meeting of shareholders or any shareholder action by written consent; or

(viii) make any request or submit any proposal to amend the terms of this Agreement other than through non-public communications with the Company that would not be reasonably determined to trigger public disclosure obligations for any Party.

(b) Notwithstanding anything to the contrary contained in Section 4(a) or elsewhere in this Agreement, each member of the Hertford Group shall not be prohibited or restricted from: (A) communicating privately with the Board or any officer of the Company regarding any matter, so long as such communications are not intended to, and would not reasonably be expected to, require any public disclosure of such communications by any Party; (B) taking any action necessary to comply with any law, rule or regulation or any action required by any governmental or regulatory authority or stock exchange that has, or may have, jurisdiction over Hertford; provided that a breach by Hertford of this Agreement is not the cause of the applicable requirement; and provided further that, unless prohibited by applicable law or legal process, Hertford shall provide prior written notice to the Company; or (C) communicating with Shareholders and others in a manner that does not otherwise violate this Agreement.

(c) Nothing in this Agreement shall limit in any respect the actions or rights of any director of the Company (including, for the avoidance of doubt, the New Director) under applicable law in his or her capacity as such. Without limitation to the foregoing, the New Director shall have the exact same (i) access to members of management as every other director and (ii) rights as every other director to access the books and records of the Company and to make information requests of management in order to facilitate these rights.

5. Representations and Warranties of the Company. The Company represents and warrants to Hertford that (a) the Company has the corporate power and authority to execute this Agreement and to bind it thereto, (b) this Agreement has been duly and validly authorized, executed and delivered by the Company, constitutes a valid and binding obligation and agreement of the Company, and is enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights and remedies of creditors and subject to general equity principles, and (c) the execution, delivery and performance of this Agreement by the Company does not and will not violate or conflict with (i) any law, rule, regulation, order, judgment or decree applicable to it, or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could become a default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, or any material agreement, contract, commitment, understanding or arrangement to which the Company is a party or by which it is bound.

6. Representations and Warranties of Hertford. Hertford represents and warrants to the Company that (a) this Agreement has been duly and validly authorized, executed and delivered by Hertford, and constitutes a valid and binding obligation and agreement of Hertford, enforceable against Hertford in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights and remedies of creditors and subject to general equity principles, (b) the signatory for Hertford has the power and authority to execute this Agreement and any other documents or agreements entered into in connection with this Agreement on behalf of Hertford, and to bind Hertford to the terms hereof and thereof, (c) the execution, delivery and performance of this Agreement by Hertford does not and will not violate or conflict with (i) any law, rule, regulation, order, judgment or decree applicable to it, or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could become a default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which such member is a party or by which it is bound, and (d) as of the Effective Date, Hertford beneficially owns an aggregate of 47,028 Series H Preferred Shares.

7. Press Release. During the Standstill Period, neither the Company nor any member of the Hertford Group shall make, or cause to be made, any public announcement or statement that is inconsistent with or contrary to the terms of this Agreement, except as required by law or the rules of any stock exchange.

8. Term; Termination. The term of this Agreement shall commence on the Effective Date and shall continue until the Leak-Out Termination Date (the "**Termination Date**"). Hertford may earlier terminate this Agreement if the Company commits a material breach of its obligations under this Agreement that (if capable of being cured) is not cured within five (5) business days after receipt by the Company from Hertford specifying the material breach, or, if impossible to cure within five (5) business days, that the Company has not taken any substantive action to cure within such five (5) business day period. The Company may earlier terminate this Agreement if Hertford commits a material breach of this Agreement that (if capable of being cured) is not cured within five (5) business days after receipt by Hertford from the Company specifying the material breach, or, if impossible to cure within five (5) business days, that Hertford has not taken any substantive action to cure within such five (5) business day period. Notwithstanding the foregoing, the provisions of Section 8 through Section 17 shall survive the termination of this Agreement. Termination of this Agreement shall not relieve any Party from its responsibilities in respect of any breach of this Agreement prior to such termination.

9. Expenses. Each Party shall be responsible for its own fees and expenses in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby.

10. Governing Law; Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without reference to the conflict of laws principles thereof that would result in the application of the law of another jurisdiction. Each of the Parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other Party hereto or its successors or assigns, shall be brought and determined exclusively in the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York. Each of the Parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement in any court other than the aforesaid courts. Each of the Parties hereto hereby irrevocably waives, and agrees not to assert in any action or proceeding with respect to this Agreement, (A) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason, (B) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (C) to the fullest extent permitted by applicable legal requirements, any claim that (1) the suit, action or proceeding in such court is brought in an inconvenient forum, (2) the venue of such suit, action or proceeding is improper or (3) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. In the event of any dispute filed in court related to this Agreement, the prevailing Party shall be entitled to recover 100% of its attorneys' fees and costs and other expenses.

11. Specific Performance. Hertford, on one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other Party hereto would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such injury would cause irreparable harm that could not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that Hertford, on one hand, and the Company, on the other hand (the "**Moving Party**"), shall each be entitled to specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, and the other Party hereto will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity, and the Moving Party shall not be required to post a bond or other collateral in connection with seeking such specific enforcement or injunctive relief. This Section 11 is not the exclusive remedy for any violation of this Agreement.

12. Certain Definitions. As used in this Agreement:

(a) "**2022 Annual Meeting**" shall mean the Company's 2022 annual and special meeting of security holders scheduled to be held on December 20, 2022, including any adjournments, postponements, reschedulings or continuations thereof;

(b) "**2023 Annual Meeting**" shall mean the Company's 2023 annual meeting of security holders, including any adjournments, postponements, reschedulings or continuations thereof;

(c) "**Affiliate**" shall mean any "**Affiliate**" as defined in Rule 12b-2 promulgated by the SEC under the Exchange Act, including, for the avoidance of doubt, persons who become Affiliates subsequent to the Effective Date; provided, however, that, for purposes of this Agreement, Hertford shall not be deemed an Affiliate of the Company and the Company shall not be deemed an Affiliate of Hertford;

(d) "**Associate**" shall mean any "**Associate**" as defined in Rule 12b-2 promulgated by the SEC under the Exchange Act, including, for the avoidance of doubt, persons who become Associates subsequent to the Effective Date;

(e) "**beneficial owner**," "**beneficial ownership**" and "**beneficially own**" shall have the same meanings as set forth in Rule 13d-3 promulgated by the SEC under the United States *Exchange Act of 1934*;

(f) "**business combination**" has the meaning ascribed to such term in Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*;

(g) "**business day**" shall mean any day other than a Saturday, Sunday or day on which the commercial banks in the Province of Ontario or the State of New York are authorized or obligated to be closed by applicable law; provided, however, that banks shall not be deemed to be authorized or obligated to be closed due to a "shelter in place," "non-essential employee" or similar closure of physical branch locations at the direction of any Governmental Authority if such banks' electronic funds transfer systems (including for wire transfers) are open for use by customers on such day;

(h) a "**Change of Control**" transaction shall be deemed to have taken place if (i) any person is or becomes a beneficial owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the equity interests and voting power of the Company's then-outstanding equity securities or (ii) the Company enters into a business combination whereby immediately after the consummation of the transaction the Shareholders retain less than fifty percent (50%) of the equity interests and voting power of the surviving or amalgamated entity's then-outstanding equity securities;

(i) "**Control**" an entity will be deemed to be controlled by any person, or "group" of persons acting jointly or in concert, who is a beneficial owner, directly or indirectly, of securities of the entity representing more than fifty percent (50%) of the equity interests and voting power of the entity's then-outstanding equity securities;

(j) "**Extraordinary Transaction**" shall mean any business combination, financing, recapitalization, reorganization, restructuring, disposition, distribution, or other transaction with a third party that, in each case, would result in a Change of Control or require approval by a special resolution under the OBCA;

(k) "**Identified Parties**" shall mean those individuals and entities indicated on Exhibit A attached hereto.

(l) "**NuMiner Agreements**" shall mean, collectively, (i) that certain sale and purchase agreement dated as of October 7, 2021 by and among the Company, NuMiner NA Ltd. (n/k/a NuMiner Global Inc.) and NuMiner Technologies Ltd. and (ii) that certain sale and purchase agreement dated as of February 3, 2022 by and between the Company and NuMiner Global Inc.

(m) "**OBCA**" means the *Business Corporations Act* (Ontario);

(n) "**person**" or "**persons**" shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization or other entity of any kind, structure or nature;

(o) "**Representative**" shall mean a person's Affiliates and Associates and its and their respective directors, officers, employees, partners, members, managers, consultants, legal or other advisors, agents and other representatives;

(p) "**special resolution**" has the meaning ascribed to such term in the OBCA; and

(q) "**Voting Securities**" means the Common Shares and any other securities of the Company entitled to vote in the election of directors.

13. **Notices.** Any notices, consents, determinations, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (A) upon receipt, when delivered personally; (B) one (1) business day after being sent by email; or (C) two (2) business days after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the Party to receive the same. The addresses for such communications shall be:

If to the Company, to:

Sphere 3D Corp.
895 Don Mills Road, Bldg. 2, Suite 900
Toronto, Ontario, M3C1W3, Canada
Attention: Kurt L. Kalbfleisch
E-mail: Kurt.Kalbfleisch@sphere3d.com

with a copy (which shall not constitute notice) to:

Dontzin Nagy & Fleissig LLP
980 Madison Avenue
New York, NY 10075
Attention: Tibor L. Nagy, Jr.
Gregory N. Wolfe
Facsimile: (212) 717-8088
E-mail: tibor@dnflp.com
greg@dnflp.com

and

McCarthy Tétrault LLP
421 7th Avenue SW, Suite 4000
Calgary AB T2P 4K9, Canada
Attention: Robert Richardson
Shane D'Souza
Facsimile: (403) 260-3501
E-mail: r-richardson@mccarthy.ca
sdsouza@mccarthy.ca

and

Pryor Cashman LLP
7 Times Square Tower, 40th Floor
New York, NY 10036
Attention: M. Ali Panjwani
Evan Mendelsohn
E-mail: mpanjwani@pryorcashman.com
emendelsohn@pryorcashman.com

If to Hertford, to:

Hertford Advisors Ltd.
Suite 3204, Unit 2A 49 Market Street
PO Box 1586, Grand Cayman KY1-1201
Box N-9204, Cayman Islands
Attention: Eric Strachan
Facsimile: (242) 362-6015
Email: eric@euro-dutch.com

with a copy (which shall not constitute notice) to:

Robert Barandes, Esq.
Robert Barandes, P.C.
Box 509
170 Ericas Lane
Sagaponack, NY 11962
Facsimile: (646) 807-4557
Email: RBarandes@barandeslaw.com

14. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is hereby stipulated and declared to be the intention of the Parties that the Parties would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable. In addition, the Parties agree to use their best efforts to agree upon and substitute a valid and enforceable term, provision, covenant or restriction for any of such that is held invalid, void or enforceable by a court of competent jurisdiction.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

16. Entire Agreement; Amendment and Waiver; Successors and Assigns; Third Party Beneficiaries.

(a) This Agreement (including Exhibit A), that certain Memorandum of Agreement dated November 7, 2022, and that certain Confirmation Letter dated November 7, 2022, contain the entire understanding of the Parties with respect to its subject matter. There are no restrictions, agreements, promises, representations, warranties, covenants or undertakings between the Parties other than those expressly set forth herein. No modifications of this Agreement can be made except in writing signed by an authorized representative of each of the Company and Hertford. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law. The terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective successors, heirs, executors, legal representatives, and permitted assigns; provided that, the released parties described in Section 2 shall be express third party beneficiaries of Section 2 and Section 2 shall inure to the benefit of and be enforceable by those released parties. No Party shall assign this Agreement or any rights or obligations hereunder without, with respect to Hertford, the prior written consent of the Company, and with respect to the Company, the prior written consent of Hertford. This Agreement is solely for the benefit of the Parties and is not enforceable by any other persons or entities except as set forth in this Section 16(a).

17. Interpretation. Each of the Parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said counsel. Each of the Parties and its respective counsel cooperated and participated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged among the parties shall be deemed the work product of all Parties and may not be construed against any Party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted or prepared it is of no application and is expressly waived by each of the Parties hereto, and any controversy over interpretations of this Agreement shall be decided without regard to events of drafting or preparation. The headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision of this Agreement. In this Agreement, unless a clear contrary intention appears, (a) the word "including" (in its various forms) means "including, without limitation;" (b) the words "hereunder," "hereof," "hereto" and words of similar import are references in this Agreement as a whole and not to any particular provision of this Agreement; (c) the word "or" is not exclusive; (d) references to "Sections" in this Agreement are references to Sections of this Agreement unless otherwise indicated; and € whenever the context requires, the masculine gender shall include the feminine and neuter genders.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

The Company:

SPHERE 3D CORP.

By: /s/ Patricia Trompeter

Name: Patricia Trompeter

Title: CEO

*Signature Page to
Amended and Restated Cooperation Agreement*

Hertford:

HERTFORD ADVISORS LTD.

By: /s/ Eric Strachan

Name: Eric Strachan

Title: Director

*Signature Page to
Amended and Restated Cooperation Agreement*

Exhibit A

Identified Parties

Caravel Capital Investments Inc.

Glen Gibbons

Jeff Banfield

Jordan Spring

Alan Wu

Eric Strachan

Robert Barandes

Caravel Capital Fund Ltd.

Caravel CAD Fund Ltd.

Anna Marie Lowe

Janet Wedgewood

Red Dragon Coin Ltd.

Mint Capital Advisors Ltd.

Glenardo Knowles



Sphere 3D Corp. Reports Second Quarter 2023 Financial Results and Operational Updates

TORONTO, Ontario, Canada, August 14, 2023- Sphere 3D Corp. ("Sphere 3D" or the "Company") (Nasdaq: ANY), dedicated to becoming the leading carbon-neutral Bitcoin mining company operating at an industrial scale, today reported financial results for the second quarter ended June 30, 2023.

Q2 2023 Highlights and Recent Developments

- Revenue increased 189% year-over-year to \$5.5 million.
- Mined 178.4 Bitcoin, representing a 381% increase year-over-year.
- As of June 30, 2023, the Company held 10.2 Bitcoin with a market value of \$0.6 million.
- As of August 11, 2023, the Company increased total operating hash rate to 1.35 EH/s.

CEO Comments

"I'm pleased to report that we delivered very strong results and made significant progress in our operations during the quarter," said Patricia Trompeter, CEO of Sphere 3D. "We increased our operating hashrate to 1.0 EH/s at the end of June 2023 from just under 0.1 EH/s in the same period last year. This resulted in a 381% increase in Bitcoin mined year-over-year from 37.1 to 178.4. Looking forward, we are excited to complete our near-term target of 1.5 EH/s and achieve positive operating cash flows on a run-rate basis at prevailing market levels."

Three Months Ended June 30, 2023 Financial Results

- Bitcoin production was 178.4 Bitcoin, compared to 37.1 in same period last year, an increase of 381%.
- Revenue was \$5.5 million, compared to \$1.9 million in same period last year, an increase of 189%.
- Digital mining revenue was \$5.0 million, compared to \$1.2 million in same period last year, an increase of 317%.
- Operating costs and expenses were \$10.2 million, compared to \$17.3 million in same period last year, a reduction of 41%.
- Net loss attributable to common shareholders was \$4.8 million, or a net loss of \$0.44 per share, compared to a net loss attributable to common shareholders of \$40.7 million, or a net loss of \$4.31 per share, in same period last year.

Six Months Ended June 30, 2023 Financial Results

- Bitcoin production was 348.5 Bitcoin, compared to 55.3 in same period last year, an increase of 530%.
 - Revenue was \$8.5 million, compared to \$3.3 million in same period last year, an increase of 158%.
 - Digital mining revenue was \$7.5 million, compared to \$2.0 million in same period last year, an increase of 275%.
 - Operating costs and expenses were \$16.9 million, compared to \$33.8 million in same period last year, a reduction of 50%.
 - Net loss attributable to common shareholders was \$8.3 million, or a net loss of \$0.78 per, compared to a net loss attributable to common shareholders of \$55.3 million, or a net loss of \$5.96 per share, in same period last year.
-

About Sphere 3D

Sphere 3D Corp. (Nasdaq: ANY) is a net carbon-neutral cryptocurrency miner with decades of proven enterprise data-services expertise. The Company is growing its industrial-scale digital asset mining operation through the capital-efficient procurement of next-generation mining equipment and partnering with best-in-class data center operators. Sphere 3D is dedicated to increasing shareholder value while honoring its commitment to strict environmental, social, and governance standards. For more information about the Company, please visit Sphere3D.com.

Forward-Looking Statements

This communication contains forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements generally relate to future events, including the timing of the proposed transaction and other information related to the proposed transaction. In some cases, you can identify forward-looking statements because they contain words such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these words or other similar terms or expressions. Expectations and beliefs regarding matters discussed herein may not materialize, and actual results in future periods are subject to risks and uncertainties that could cause actual results to differ materially from those projected. The forward-looking statements contained in this communication are also subject to other risks and uncertainties, including those more fully described in filings with the SEC, including Sphere 3D's reports filed on Form 10-K and Form 8-K and in other filings made by Sphere 3D with the SEC from time to time and available at www.sec.gov. These forward-looking statements are based on current expectations, which are subject to change.

Sphere 3D Contact

Kurt Kalbfleisch, CFO, Sphere 3D
Investor.relations@sphere3d.com

Sphere 3D Corp.
Condensed Consolidated Statements of Operations
(in thousands of U.S. dollars, except share and per share amounts)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenues:				
Digital mining revenue	\$ 4,966	\$ 1,211	\$ 7,490	\$ 1,958
Service and product revenue	500	710	1,002	1,335
Total revenues	<u>5,466</u>	<u>1,921</u>	<u>8,492</u>	<u>3,293</u>
Operating costs and expenses:				
Cost of digital mining revenue	4,074	619	6,039	974
Cost of service and product revenue	209	341	507	700
Sales and marketing	277	264	551	495
Research and development	227	139	497	253
General and administrative	3,634	7,788	7,105	16,757
Depreciation and amortization	1,375	7,485	2,400	13,849
Loss on disposal of property and equipment	251	-	251	-
Realized gain on sale of digital assets	(139)	-	(772)	-
Impairment of digital assets	254	679	350	770
Total operating expenses	<u>10,162</u>	<u>17,315</u>	<u>16,928</u>	<u>33,798</u>
Loss from operations	(4,696)	(15,394)	(8,436)	(30,505)
Other income (expense):				
Interest expense	(1,173)	-	(1,173)	-
Interest income and other expense, net	1,113	281	1,364	745
Forgiveness of note receivable	-	(13,145)	-	(13,145)
Impairment of investments	-	(12,429)	-	(12,429)
Net loss before taxes	(4,756)	(40,687)	(8,245)	(55,334)
Provision for income taxes	4	-	4	-
Net loss	(4,760)	(40,687)	(8,249)	(55,334)
Less: Non-controlling interest - income	67	-	83	-
Net loss available to common shareholders	<u>\$ (4,827)</u>	<u>\$ (40,687)</u>	<u>\$ (8,332)</u>	<u>\$ (55,334)</u>
Net loss per share:				
Net loss per share basic and diluted	<u>\$ (0.44)</u>	<u>\$ (4.31)</u>	<u>\$ (0.78)</u>	<u>\$ (5.96)</u>
Shares used in computing net loss per share:				
Basic and diluted	<u>11,051,588</u>	<u>9,449,735</u>	<u>10,673,876</u>	<u>9,285,878</u>

Sphere 3D Corp.
Condensed Consolidated Balance Sheet
(in thousands of U.S. dollars)
(unaudited)

	June 30, 2023	December 31, 2022
	(Unaudited)	(Unaudited)
<u>ASSETS</u>		
Cash and cash equivalents	\$ 506	\$ 1,337
Digital assets, net	626	1,695
Other current assets	3,546	7,252
Total current assets	<u>4,678</u>	<u>10,284</u>
Property and equipment, net	28,695	34,259
Intangible assets, net	8,666	9,477
Funds held in trust account	8,542	10,297
Other assets	20,697	18,699
Total assets	<u>\$ 71,278</u>	<u>\$ 83,016</u>
<u>LIABILITIES, TEMPORARY EQUITY AND SHAREHOLDERS' EQUITY</u>		
Current liabilities	\$ 7,160	\$ 6,200
Other long-term liabilities	5,675	5,784
Total temporary equity	30,541	36,467
Total shareholders' equity	27,902	34,565
Total liabilities, temporary equity, and shareholders' equity	<u>\$ 71,278</u>	<u>\$ 83,016</u>