

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number 001-40992

**SURGEPAYS, INC.**

(Exact Name of Registrant as Specified in Its Charter)

Nevada

(State or Other Jurisdiction of  
Incorporation or Organization)

98-0550352

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

3124 Brother Blvd, Suite 104, Bartlett, TN

(Address of Principal Executive Offices)

38133

(Zip Code)

901-302-9587

(Registrant's telephone number, including area code)

Not applicable

(Former name, former address, and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	SURG	The Nasdaq Stock Market LLC (Nasdaq Capital Market)
Common Stock Purchase Warrants	SURGW	The Nasdaq Stock Market LLC (Nasdaq Capital Market)

Securities registered under Section 12(g) of the Exchange Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

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

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

Indicate by check mark whether the registrant is a shell company (as defined in rule 12b-2 of the Exchange Act).

Yes  No

The number of shares of the registrant's common stock outstanding as of March 30, 2023 was 14,121,773 shares.

As of June 30, 2022, the aggregate market value of the shares of common stock, par value \$0.001 per share held by non-affiliates of the registrant was approximately \$35,232,507 based on the \$4.83 closing price of the registrant's common stock, par value \$0.001 per share, on that date.

## TABLE OF CONTENTS

	<u>Page No.</u>
<b>PART I</b>	
Item 1. <a href="#">Description of the Business</a>	1
Item 1A. <a href="#">Risk Factors</a>	7
Item 1B. <a href="#">Unresolved Staff Comments</a>	14
Item 2. <a href="#">Properties</a>	14
Item 3. <a href="#">Legal Proceedings</a>	14
Item 4. <a href="#">Mine Safety Disclosures</a>	15
<b>PART II</b>	
Item 5. <a href="#">Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	15
Item 6. <a href="#">Selected Financial Data</a>	17
Item 7. <a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	17
Item 7A. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	23
Item 8. <a href="#">Financial Statements and Supplementary Data</a>	23
Item 9. <a href="#">Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	23
Item 9A. <a href="#">Controls and Procedures</a>	23
Item 9B. <a href="#">Other Information</a>	24
<b>PART III</b>	
Item 10. <a href="#">Directors, Executive Officers and Corporate Governance</a>	24
Item 11. <a href="#">Executive Compensation</a>	28
Item 12. <a href="#">Security Ownership of Certain Beneficial Owners, Management and Related Stockholder Matters</a>	36
Item 13. <a href="#">Certain Relationships, Related Transactions and Director Independence</a>	38
Item 14. <a href="#">Principal Accounting Fees and Services</a>	39
<b>PART IV</b>	
Item 15. <a href="#">Exhibits, Financial Statement Schedules</a>	40
<a href="#">Exhibit Index</a>	40
Item 16. <a href="#">Form 10-K Summary</a>	41
<a href="#">Signatures</a>	42

### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K ("Annual Report") contains forward-looking statements within the meaning of the federal securities laws. All statements contained in this Annual Report, other than statements of historical fact, including statements regarding our future operating results and financial position, our business strategy and plans, potential growth or growth prospects, future research and development, sales and marketing and general and administrative expenses, and our objectives for future operations, are forward-looking statements. Words such as "believes," "may," "will," "estimates," "potential," "continues," "anticipates," "intends," "expects," "could," "would," "projects," "plans," "targets," and variations of such words and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in the "Risk Factors" in this Annual Report. Readers are urged to carefully review and consider the various disclosures made in this Annual Report and in other documents we file from time to time with the Securities and Exchange Commission (the "SEC") that disclose risks and uncertainties that may affect our business. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for us to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and circumstances discussed in this Annual Report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. In addition, the forward-looking statements in this Annual Report are made as of the date of this filing, and we do not undertake, and expressly disclaim any duty, to update such statements for any reason after the date of this Annual Report or to conform statements to actual results or revised expectations, except as required by law.

You should read this Annual Report and the documents that we reference herein and have filed with the SEC as exhibits to this Annual Report with the understanding that our actual future results, performance, and events and circumstances may be materially different from what we expect.

This Annual Report also contains or may contain estimates, projections and other information concerning our industry, our business and the markets for our products, including data regarding the estimated size of those markets and their projected growth rates. Information that is based on estimates, forecasts, projections or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained these industry, business, market and other data from reports, research surveys, studies and similar data prepared by third parties, industry and general publications, government data and similar sources. In some cases, we do not expressly refer to the sources from which these data are derived.

---

## PART I

### ITEM 1. BUSINESS

#### Business Overview

SurgePays, Inc ("SurgePays," "we" the "Company") was incorporated in Nevada on August 18, 2006, is a technology and telecom company focused on the underbanked and underserved communities. SurgePhone and Torch Wireless provide subsidized mobile broadband to over 250,000 low-income subscribers nationwide. SurgePays fintech platform empowers clerks at thousands of convenience stores to provide a suite of prepaid wireless and financial products to underbanked customers.

#### About SurgePays, Inc.

SurgePays, Inc. is a financial technology and telecom company focused on providing these essential services to the underbanked community. The Company's wireless subsidiaries provide mobile broadband, voice and SMS text messaging to both subsidized and direct retail prepaid customers. The Company's blockchain fintech platform utilizes a suite of financial and prepaid products to convert corner stores into tech-hubs for underbanked neighborhoods.

#### SurgePhone Wireless and Torch Wireless

SurgePhone and Torch, wholly owned subsidiaries of SurgePays, are mobile virtual network operators (MVNO) licensed by the Federal Communications Commission (the "FCC") to provide subsidized access to quality internet through mobile broadband services to consumers qualifying under the federal guidelines of the Affordable Connectivity Program (the "ACP"). The ACP (the successor program, as of March 1, 2022 to the Emergency Broadband Benefit program) provides SurgePhone and Torch up to a \$100 reimbursement for the cost of each tablet device distributed and a \$30 per customer, per month subsidy for mobile broadband (internet connectivity) services. SurgePhone and Torch combined are licensed to offer subsidized mobile broadband to all fifty states.

---

#### Surge Fintech (ECS Business)

We refer to the collective operations of ECS Prepaid, LLC, a Missouri limited liability company, Electronic Check Services, Inc., a Missouri corporation, and Central States Legal Services, Inc., a Missouri corporation, as "Surge Fintech." This was previously referred to as the "ECS Business."

Surge Fintech has been a financial technology tech and wireless top-up platform for over 15 years. Through a series of transactions between October 2019 and January 2020, we acquired the ECS Business primarily for the favorable ACH banking relationship and a fintech transactions platform processing over 20,000 transactions a day at approximately 8,000 independently owned convenience stores. The platform serves as the proven backbone for wireless top-up transactions and wireless product aggregation for the SurgePays nationwide network.

#### ShockWave CRM™

SurgePays acquired the Software as a Service (SaaS) Customer Relationship Management (CRM) and Billing System software platform "MVNO Cloud Services" on June 7, 2022. SurgePays is rebranding the software as ShockWave CRM. Payment for the software consisted of \$300,000 in cash, of which \$100,000 was paid in June 2022, and the remaining \$200,000 in July 2022. Additionally, the Company issued 85,000 shares of common stock having a fair value of \$411,400 (\$4.84/share), based upon the quoted closing trading price.

ShockWave is an end-to-end cloud-based SaaS offering an Omnichannel CRM, billing system and carrier integrations specific to the telecommunication and broadband industry. Some of these services include sales agent management, device and SIM inventory management, order processing and provisioning, retail Point of Service (POS) activations and payments, customer service management, retention tools, billing, and payments.

#### Surge Blockchain

Surge Blockchain Software is a back-office marketplace (accessed through the SurgePays fintech portal for convenience stores) offering wholesale consumable goods direct to convenience stores who are transacting on the SurgePays Fintech platform. The wholesale e-commerce platform is easily accessed through the secure app interface – similar to a website. We believe what makes this sales platform unique is that it also offers the merchant the ability to order wholesale consumable goods at a significant discount from traditional distributors with one touch ease. We are able to sell products at a significant discount by using on demand Direct Store Delivery (DSD). Our platform is connected directly to manufactures, who ship products direct to the store while cutting out the middleman. The goal of the SurgePays Portal is to leverage the competitive advantage and efficiencies of e-commerce to provide as many commonly sold consumable products as possible to convenience stores, corner markets, bodegas, and supermarkets while increasing profit margins for these stores.

#### LogicsIQ, Inc.

LogicsIQ, Inc. is a lead generation and case management solutions company primarily serving law firms in the mass tort industry. The company's CRM "Intake Logics" facilitates the entire life cycle of converting a lead into a signed retainer client integrated into the law firms case management software. Our proven strategy of delivering cost-effective retained cases to our attorney and law firm clients means those clients are better able to manage their media and advertising budgets and reach targeted audiences more quickly and effectively when utilizing our proprietary data driven analytics dashboards. Our ability to deliver transparent results through our integrated Business Intelligence (B.I.) dashboards has bolstered our reputation as an industry leader in the mass tort client acquisition field.

#### Centercom

Since 2019, we have owned a 40% equity interest in Centercom Global, S.A. de C.V. ("Centercom"). Centercom is a bilingual operations center (providing the Company with sales support, customer service, IT infrastructure design, graphic media, database programming, software development, revenue assurance, lead generation, and other various operational back-office services. Centercom is based in El Salvador.

## Experienced Leadership Team

Our management team consists of four executives with over 20 years in the wireless, underbanked and convenience store distribution industry while presiding over companies with a collective revenue run of over \$3 billion. Our finance team is led by a CFO with a background in private equity backed and publicly traded companies ranging from \$100 million to over \$1.3 billion in annual revenue.

## Growth Strategies

We have different strategies for each of our sales channels:

### SurgePhone and Torch Wireless

Federally Subsidized Mobile Broadband / Affordable Connectivity Program (ACP)

- Prioritize sales channels with lower cost per acquisition in conjunction with shipping devices direct fulfillment for enhanced inventory controls and logistics.
- Integrate Shockwave CRM into our SurgePays software to enable ACP enrollments initiated from convenience stores.
- Integrate Shockwave CRM into existing ATM machines and Point of Sale registers to initiate ACP enrollments.
- Partner with existing regional distribution companies already provide consumable goods to convenient stores.
- Analyze attrition/retention data to continually monitor and improve customer experience with the goal of industry best retention.
- Enhance our offering by adding a mix of smartphones.
- Increase the national sales team nationally.

### SurgePays Fintech

Prepaid Wireless Top-ups and Underbanked Financial Products at Convenience Stores

- Continue building a national sales team of in-house salespeople, Independent Sales Organizations, Chain Retail Stores, and Distributors, all incentivized to add store locations and drive increased sales per store.
- Strategically acquire other companies that offer prepaid products and other complimentary fintech products. Integrating these acquisitions to an existing base of convenience stores allows us to deploy our comprehensive fintech suite to maximize the value of the existing relationships.
- Continue to add value driven products such as payment processing and consumer retail hard goods via our marketplace to differentiate our competitive advantage over single product companies and diversify our revenue streams.
- Create and offer our own MVNO products to all new and existing distribution channels adding further branding and revenue streams for SurgePays.

### SurgePays Blockchain

Wholesale Marketplace in the SurgePays platform offering Consumables Shipped Direct

- Rollout a national sales team of in-house salespeople incentivized to add stores and sales per store.
- Acquire other companies offering prepaid products to an existing base of convenience stores to deploy our comprehensive fintech suite to maximize the value of the existing relationships.
- Integrate with more manufacturers of commonly sold consumable items to drive interest, sales and revenue.
- Increase efforts in rural America where many distributors do not have routes to deliver affordable wholesale goods.

### Branded Prepaid Wireless

Proprietary Mobile Network Virtual Operator (MVNO)

- Leverage the volume of buying power for wholesale carrier minutes/texts/data to build market low plans to offer customers using SIM kits in convenience stores transacting on the SurgePays network.
- Penetrate rural America where there is less competition and higher consumer pricing.
- Offer incentivized family plans to the rapidly growing base of subsidized customer households.

### LogicsIQ

Lead Generation and Signed Retainer Clients for Law Firms

- Hire national salespeople incentivized to add law firm clients and top-line revenue.
- Continue to develop a centralized software platform to maximize efforts and data collection
- Identify additional revenue streams to complement existing revenue streams such as SSI enrollments and other lead generation services.

## Competition

There are many competitors in the prepaid wireless and mobile broadband industry. We feel what makes SurgePhone different is we are a grassroots company with our products placed in convenience stores where the underbanked shop. We can offer prepaid wireless and financial services, through these stores, at a lower price to customers since we own the transaction software processing the activations and top-ups.

Many of our current and potential competitors are well established and have longer operating histories, significantly greater financial and operational resources, and name recognition than we have. Most traditional convenience store distributors are companies that have been in business for over 50 years and utilize the historical "manufacturing plant to truck to warehouse to truck to store" logistics model. However, we believe that with our diverse product line, better efficiencies resulting in lower wholesale cost of goods sold, we have the ability to obtain a large market share and continue to generate sales growth and compete in the industry. We believe, in some cases, we will be able to partner with our competition through integration and compensate them for helping us grow due to the uniqueness of the suite of products we offer and the additional revenue stores can unlock. The principal competitive factors in all our product markets are technical features, quality, availability, price, customer support, and distribution coverage. The relative importance of each of these factors varies depending on the region. We believe using our direct store distribution model nationwide will open significant opportunities for growth.

The markets in which we operate can be generally categorized as highly competitive. In order to maximize our competitive advantages, we continue to expand our product

portfolio to capitalize on market trends, changes in technology and new product releases. Based on available data for our served markets, we estimate that our market share of the convenience store sales business at this time is less than 1%. A substantial acquisition would be necessary to meaningfully and rapidly change our market share percentage.

Distributors generally do not have a broad set of product and service offerings or capabilities, and no single distributor currently provides all the top selling consumables while offering products and services to enhance the lifestyle of the underbanked such as prepaid wireless, gift cards, bill payment and reloadable debit cards. We believe this creates a significant opportunity for a dynamic paradigm shift to a nationwide wholesale e-commerce platform.

### **Nationwide Product Deployment**

The SurgePays Blockchain platform streamlines the process for bringing products directly to the retail store. Our sales protocols have been tested and proven transferable from one product offering to another while ultimately providing our network of stores with better pricing and a larger product selection.

### **Competitive Edge**

Our competitive edge is simple: we have the ability through our software platform, along with our relationships, capacity, efficiency, economies of scale and experience necessary to bring our financial services and prepaid products to the underbanked market in an effective and efficient manner to ensure success. Our sales protocols have been tested and proven transferable from one product offering to another while ultimately improving our target stores with better pricing and more product selection.

Our strategy for increasing revenues is based on developing, maintaining, and expanding our nationwide network of retail stores. Our relationship-driven approach to selling along with providing many of the top selling c-store products at a wholesale discount greater than traditional distributors gives management confidence of continued growth into the foreseeable future.

We have established relationships with distribution companies delivering significant sales per day for our subsidized mobile broadband product.

---

4

### **Research and Development Activities**

We conduct research and development on an ongoing basis, including new and existing products to offer and software product development to ensure we are delivering the most efficient, secure, and fast transactions at convenience stores. The SurgePays software platform is housed on the Amazon Web Service Cloud for redundancy, stability, and reliability. Traditionally, convenience stores are high volume and fast paced stores where space at the register is at a premium, thus leaving no room for a computer so wireless top-ups or cell phone activations are done over a Verifone terminal traditionally used for processing credit cards. We believe that our future success will depend in part upon our ability to continue the enhancement of our software platform through integrating with POS terminals, or more commonly referred to as "cash registers" while developing new products that meet or anticipate such changes in our served markets. Many of the stores we serve are now connected to the internet. This has allowed us to innovate our software to be more adaptive to equipment that is more compatible with the space constraints of the register area in a store. We're also closely watching the development of AI tools to see how they could help in support of our merchants and customers.

### **Seasonality**

We experience some seasonality whereby the peak tax season months show a higher level of sales and consumption. However, the structure of our business and range of products in our portfolio mitigate any major fluctuations. Our revenue during the peak tax season months in the spring have historically been approximately 5% greater than the peak other months, and as our product portfolio continues to expand, the level of seasonal peaks we expect to diminish.

### **Employees, Affiliates and Exclusive Partners**

As of March 30, 2023, our human capital resources consist of approximately twenty (20) SurgePays employees, a dedicated team of over forty (40) logistics, activation, and fulfillment personnel, and over two hundred (200) sales, customer service and back-office personnel in our near shore operations center.

We believe that our future success will depend in part on our continued ability to attract, hire and retain qualified personnel and work strategically utilizing exclusive partners and affiliates to maximize cash flow. Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

---

5

### **Reverse Stock Split**

On November 1, 2021, the Company filed a Certificate of Amendment to the Company's Articles of Incorporation, as amended, with the Secretary of State of the State of Nevada in connection with a 1-for-50 reverse stock split of the Company's issued and outstanding shares of Common Stock (the "Reverse Split"). The Reverse Split became effective on November 2, 2021.

All references in this Annual Report, including in our financial statements, to our Common Stock, share data, per share data and related information has been adjusted to reflect the Reverse Split.

### **Corporate Information**

We were previously known as North American Energy Resources, Inc. and KSIX Media Holdings, Inc. Prior to April 27, 2015, we operated solely as an independent oil and natural gas company engaged in the acquisition, exploration and development of oil and natural gas properties and the production of oil and natural gas through its wholly owned subsidiary, NAER. On April 27, 2015, NAER entered into a Share Exchange Agreement with KSIX Media whereby KSIX Media became a wholly-owned subsidiary of NAER and which resulted in the shareholders of KSIX Media owning approximately 90% of the voting stock of the surviving entity. While we continued the oil and gas operations of NAER following this transaction, on August 4, 2015, we changed its name to KSIX Media Holdings, Inc. On December 21, 2017, we changed its name to Surge Holdings, Inc. to better reflect the diversity of its business operations. We changed its name to SurgePays, Inc. on October 29, 2020.

Historically, we operated through these direct and indirect subsidiaries: (i) KSIX Media, Inc., incorporated in Nevada on November 5, 2014; (ii) KSIX, LLC, a Nevada limited liability company that was formed on September 14, 2011; (iii) Surge Blockchain, LLC, formerly Blvd. Media Group, LLC, a Nevada limited liability company that was formed on January 29, 2009; (iv) DigitizeIQ, LLC an Illinois limited liability company that was formed on July 23, 2014; (v) Surge Cryptocurrency Mining, Inc., formerly North American Exploration, Inc., a Nevada corporation that was incorporated on August 18, 2006 (this has been a dormant entity that does not own any assets since January 1, 2019); (vi) LogicsIQ, Inc., a Nevada corporation that was formed on October 2, 2018; (vii) True Wireless, Inc., an Oklahoma corporation (formerly True Wireless, LLC); (viii) Surge Payments, LLC, a Nevada limited liability company; (ix) Surgephone Wireless, LLC, a Nevada limited liability company; and (x) SurgePays Fintech, Inc., a Nevada limited liability company. On January 22, 2021, the issued and outstanding equity securities of DigitizeIQ, LLC and KSIX, LLC were transferred to LogicsIQ and became wholly-owned subsidiaries of LogicsIQ.

On May 7, 2021, the Company disposed of its subsidiary True Wireless, Inc., however we retained \$1,097,659 in liabilities which consisted of \$1,077,659 in accounts payable and accrued expenses as well as \$20,000 in related party loans. The balance at December 31, 2022 was \$668,649. In connection with the sale, the Company received an unsecured note receivable for \$176,851, bearing interest at 0.6%, with a default interest rate of 10%. The Company will receive 25 payments of principal and accrued interest totaling \$7,461 commencing in June 2023.

On January 30, 2020, the Company acquired ECS Prepaid, LLC, a Missouri limited liability company, Electronic Check Services, Inc., a Missouri corporation, and Central States Legal Services, Inc., a Missouri corporation.

On January 1, 2022, the Company acquired 100% of Torch Wireless, LLC resulting in Torch becoming a wholly-owned subsidiary, in a transaction accounted for as a business combination. The Company paid \$800,000 and agreed to pay the Sellers monthly residual payments for customers enrolled by the Company through December 31, 2022 of either \$2 or \$3 per customer totaling \$1,679,723.

Our executive offices are located at 3124 Brother Blvd, Suite 410, Bartlett, TN 38133, and our telephone number is (800) 760-9689. Our website is www.surgepays.com. Our website and the information contained in, or accessible through, our website will not be deemed to be incorporated by reference into this Annual Report and does not constitute part of this Annual Report.

6

## ITEM 1A. RISK FACTORS

*Investing in our securities involves a great deal of risk. Careful consideration should be made of the following factors as well as other information included in this Annual Report before deciding to purchase our securities. There are many risks that affect our business and results of operations, some of which are beyond our control. Our business, financial condition or operating results could be materially harmed by any of these risks. This could cause the trading price of our securities to decline, and you may lose all or part of your investment. Additional risks that we do not yet know of or that we currently think are immaterial may also affect our business and results of operations.*

### **Risks Related to Government Regulation and Legal Proceedings**

*Changes in the regulatory framework under which we operate could adversely affect our business prospects or results of operations.*

Our operations are subject to regulation by the FCC and other federal, state and local agencies. These regulatory regimes frequently restrict or impose conditions on our ability to operate in designated areas and provide specified products or services. We are frequently required to maintain licenses for our operations and conduct our operations in accordance with prescribed standards. We are often involved in regulatory and other governmental proceedings or inquiries related to the application of these requirements. It is impossible to predict with any certainty the outcome of pending federal and state regulatory proceedings relating to our operations, or the reviews by federal or state courts of regulatory rulings. Without relief, existing laws and regulations may inhibit our ability to expand our business and introduce new products and services. Similarly, we cannot guarantee that we will be successful in obtaining the licenses needed to carry out our business plan or in maintaining our existing licenses. For example, the FCC grants wireless licenses for terms generally lasting ten (10) years, subject to renewal. The loss of, or a material limitation on, certain of our licenses could have a material adverse effect on our business, results of operations and financial condition.

*New laws or regulations or changes to the existing regulatory framework at the federal, state and local level, such as those described below, could restrict the ways in which we manage our wireline and wireless networks and operate our business, impose additional costs, impair revenue opportunities and potentially impede our ability to provide services in a manner that would be attractive to us and our customers.*

- **Privacy and data protection** - we are subject to federal, state and international laws related to privacy and data protection.
- **Regulation of broadband Internet access services** - On June 11, 2018, the repeal of the FCC's "net neutrality" rules took effect and returned to a "light-touch" regulatory framework. The prior rules were designed to ensure that all online content is treated the same by internet service providers and other companies that provide broadband services. Additionally, California and a number of other states are considering or have enacted legislation or executive actions that would regulate the conduct of broadband providers. We cannot predict whether the FCC order or state initiatives will be modified, overturned, or vacated by legal action of the court, federal legislation, or the FCC. With the repeal of net neutrality rules in effect, we could incur greater operating expenses, which could harm our results of operations.
- **"Open Access"** - we hold certain wireless licenses that require us to comply with so-called "open access" FCC regulations, which generally require licensees of particular spectrum to allow customers to use devices and applications of their choice. Moreover, certain services could be subject to conflicting regulation by the FCC and/or various state and local authorities, which could significantly increase the cost of implementing and introducing new services.

The further regulation of broadband, wireless and our other activities and any related court decisions could restrict our ability to compete in the marketplace and limit the return we can expect to achieve on past and future investments in our networks.

7

*We could be impacted by unfavorable results of legal proceedings, and may, from time to time, be involved in future litigation in which substantial monetary damages are sought.*

We are currently subject to a number of litigations as described under the heading "Legal Proceedings." In connection with certain of these litigations, we may be required to pay significant monetary damages. Defending against the current litigations is or can be time-consuming, expensive and cause diversion of our management's attention.

In addition, we may from time to time be involved in future litigation in which substantial monetary damages are sought. Litigation claims may relate to intellectual property, contracts, employment, securities and other matters arising out of the conduct of our current and past business activities. Any claims, whether with or without merit, could be time-consuming, expensive to defend and could divert management's attention and resources. We may maintain insurance against some, but not all, of these potential claims, and the levels of insurance we do maintain may not be adequate to fully cover any and all losses.

With respect to any litigation, our insurance may not reimburse us, or may not be sufficient to reimburse us, for the expenses or losses we may suffer in contesting and concluding such lawsuit. The results of any future litigation or claims are inherently unpredictable and substantial litigation costs, including the substantial self-insured retention that we are required to satisfy before any insurance applies to a claim, unreimbursed legal fees or an adverse result in any litigation may have a material adverse effect on our results of operations, cash from operating activities or financial condition.

### **Risks Related to Our Business, Industry and Operations**

*If we are not able to adapt to changes and disruptions in technology and address changing consumer demand on a timely basis, we may experience a decline in the demand for our services, be unable to implement our business strategy and experience reduced profits.*

Our industries are rapidly changing as new technologies are developed that offer consumers an array of choices for their communications needs and allow new entrants into the markets we serve. In order to grow and remain competitive, we will need to adapt to future changes in technology, enhance our existing offerings and introduce new offerings to address our customers' changing demands. If we are unable to meet future challenges from competing technologies on a timely basis or at an acceptable cost, we could lose customers to our competitors. We may not be able to accurately predict technological trends or the success of new services in the market. In addition, there could be legal or regulatory restraints on our introduction of new services. If our services fail to gain acceptance in the marketplace, or if costs associated with the implementation and introduction of these services materially increase, our ability to retain and attract customers could be adversely affected. Additionally, we must phase out outdated and unprofitable technologies and services. If we are unable to do so on a cost-effective basis, we could experience reduced profits. In addition, there could be legal or regulatory restraints on our ability to phase out current services.

### ***Effects of the COVID-19 Pandemic on Our Business***

Since March 2020 there has been, and there continues to be, a significant and growing volatility and uncertainty in the global economy due to the worldwide COVID-19 pandemic affecting all business sectors and industries. Broadly, negative global and national economic trends, such as decreased consumer and business spending, high unemployment levels and declining consumer and business confidence, pose challenges to our business and could result in declining revenues, profitability and cash flow.

The main specific impact of the COVID-19 pandemic on our business was on SurgePays Fintech. Its revenues went down by \$8,309,490 in 2022 as compared to 2021. This was partly related to the continued impact of COVID-19 on SurgePays Fintech. During the economic lock-down of 2020 and 2021, the inability of our independent representatives to visit existing stores and seek out new stores, limited our revenue growth, both existing and new revenue. Combined with a shift of prepaid wireless payments at stores to subsidized wireless expansion at the federal level, resulted in the lower revenue in 2022.

At this time, we cannot accurately predict whether there will be further effects of the COVID-19 pandemic on our business.

### ***We may expand through investments in, acquisitions of, or the development of new products with assistance from, other companies, any of which may not be successful and may divert our management's attention.***

In the past, we completed several strategic acquisitions. We also may evaluate and enter into discussions regarding an array of potential strategic transactions, including acquiring complementary products, technologies or businesses. An acquisition, investment or business relationship may result in unforeseen operating difficulties and expenditures. In particular, we may encounter difficulties integrating the businesses, technologies, products, personnel or operations of the acquired companies, particularly if the key personnel of the acquired company choose not to be employed by us, and we may have difficulty retaining the customers of any acquired business due to changes in management and ownership. Acquisitions may also disrupt our ongoing business, divert our resources and require significant management attention that would otherwise be available for ongoing development of our business. Moreover, we cannot assure you that the anticipated benefits of any acquisition, investment or business relationship would be realized timely, if at all, or that we would not be exposed to unknown liabilities. In connection with any such transaction, we may:

- encounter difficulties retaining key employees of the acquired company or integrating diverse business cultures;
- incur large charges or substantial liabilities, including without limitation, liabilities associated with products or technologies accused or found to infringe on third-party intellectual property rights or violate existing or future privacy regulations;
- issue shares of our capital stock as part of the consideration, which may be dilutive to existing stockholders;
- become subject to adverse tax consequences, legal disputes, substantial depreciation or deferred compensation charges;
- use cash that we may otherwise need for ongoing or future operation of our business;
- enter new geographic markets that subject us to different laws and regulations that may have an adverse impact on our business;
- experience difficulties effectively utilizing acquired assets;
- encounter difficulties integrating the information and financial reporting systems of acquired businesses, particularly those that operated under accounting principles other than those generally accepted in the U.S. prior to the acquisition by us; and
- incur debt, which may be on terms unfavorable to us or that we are unable to repay.

### ***Our business could be adversely affected if we fail to implement and maintain effective disclosure controls and procedures and internal control over financial reporting.***

If we are unable to maintain effective disclosure controls and procedures, or if there are identified significant deficiencies or material weaknesses in the future, our ability to produce accurate and timely financial statements and public reports could be impaired, which could adversely affect our business and financial condition. In addition, investors may lose confidence in our reported information and the market price of our Common Stock may decline.

### ***Our success is substantially dependent on the continued service of our senior management.***

Our success is substantially dependent on the continued service of our Chief Executive Officer ("CEO"), Kevin Brian Cox and our Chief Financial Officer ("CFO"), Anthony Evers. We do not carry key person life insurance on any of its management, which would leave us uncompensated for the loss of any of its management. The loss of the services of any of our senior management could make it more difficult to successfully operate our business and achieve our business goals. In addition, competition in our industry for senior management and other key personnel is intense. If we are unable to retain our existing personnel, or attract and train additional qualified personnel, either because of competition in our industry for such personnel or because of insufficient financial resources, our product development capabilities and customer and employee relationships growth may be hampered and overall growth may be limited.

### ***We may not have sufficient resources to effectively introduce and market our services and products, which could materially harm our operating results.***

Continuation of market acceptance for our existing services and products require substantial marketing efforts and will require our sales account executives and contract partners to make significant expenditures of time and money. In some instances, we will be significantly or totally reliant on the marketing efforts and expenditures of our contract partners, outside sales agents and distributors.

Because we currently have very limited marketing resources and sales capabilities, commercialization of our products, some of which require regulatory clearance prior to market entrance, we must either expand our own marketing and sales capabilities or consider collaborating with additional third parties to perform these functions. We may, in some

instances, rely significantly on sales, marketing and distribution arrangements with collaborative partners and other third parties. In these instances, our future revenue will be materially dependent upon the success of the efforts of these third parties.

Should we determine that expanding our own marketing and sales capabilities is required, we may not be able to attract and retain qualified personnel to serve in our sales and marketing organization, to develop an effective distribution network or to otherwise effectively support our commercialization activities. The cost of establishing and maintaining a more comprehensive sales and marketing organization may exceed its cost effectiveness. If we fail to further develop our sales and marketing capabilities, if sales efforts are not effective or if costs of increasing sales and marketing capabilities exceed their cost effectiveness, our business, results of operations and financial condition would be materially adversely affected.

***Risks and uncertainties related to the Company's foreign operations could negatively impact the Company's operating results.***

Centercom, an entity that we own 40% of, operates in El Salvador. Doing business in El Salvador, and in Latin America generally, involves increased risks related to geopolitical events, political instability, corruption, economic volatility, property crime, drug cartel and gang-related violence, social and ethnic unrest including riots and looting, enforcement of property rights, governmental regulations, tax policies, banking policies or restrictions, foreign investment policies, public safety, health and security, anti-money laundering regulations, interest rate regulation and import/export regulations among others. As in many developing markets, there are also uncertainties as to how both local law and U.S. federal law is applied, including areas involving commercial transactions and foreign investment. As a result, actions or events could occur in El Salvador that are beyond the Company's control, which could restrict or eliminate the Company's ability to operate in El Salvador or significantly reduce customer traffic, product demand and the expected profitability of such operations.

***We operate in a highly competitive industry.***

We may encounter competition from local, regional or national entities, some of which have superior resources or other competitive advantages in the larger wireless services space. Intense competition may adversely affect our business, financial condition or results of operations. These competitors may be larger and more highly capitalized, with greater name recognition. We will compete with such companies on brand name, quality of services, level of expertise, advertising, product and service innovation and differentiation of product and services. As a result, our ability to secure significant market share may be impeded.

**Risks Related to Our Securities**

***Our CEO and Chairman, Kevin Brian Cox, has significant control over shareholder matters and the minority shareholders will have little or no control over our affairs.***

Mr. Cox currently owns approximately 39% of our outstanding voting equity. Subject to any fiduciary duties owed to our other stockholders under Nevada law, Mr. Cox is able to exercise significant influence over matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, and will have some control over our management and policies. Mr. Cox may have interests that are different from yours. For example, Mr. Cox may support proposals and actions with which you may disagree. The concentration of ownership could delay or prevent a change in control of our Company or otherwise discourage a potential acquirer from attempting to obtain control of our Company, which in turn could reduce the price of our stock. In addition, Mr. Cox could use his voting influence to maintain our existing management and directors in office, delay or prevent changes in control of our Company, or support or reject other management and proposals of the Board of Directors (the "Board") that are subject to stockholder approval, such as amendments to our employee stock plans and approvals of significant financing transactions.

***Sales of a significant number of shares of our Common Stock in the public market or the perception of such possible sales, could depress the market price of our Common Stock.***

Sales of a substantial number of shares of our Common Stock in the public markets, which include an offering of our preferred stock or Common Stock could depress the market price of our Common Stock and impair our ability to raise capital through the sale of additional equity or equity-related securities. We cannot predict the effect that future sales of our Common Stock or other equity-related securities would have on the market price of our Common Stock.

***Our share price could be volatile and our trading volume may fluctuate substantially.***

The price of our Common Stock has been and may in the future continue to be extremely volatile. Many factors could have a significant impact on the future price of our shares of Common Stock, including:

- our inability to raise additional capital to fund our operations, whether through the issuance of equity securities or debt;
- our failure to successfully implement our business objectives;
- compliance with ongoing regulatory requirements;
- market acceptance of our products;
- changes in government regulations;
- general economic conditions and other external factors including, as of March 30, 2023, the ongoing military conflict between Russia and Ukraine (which has resulted in various countries, including the U.S., Canada and the United Kingdom, as well as the European Union, issuing broad-ranging economic sanctions against Russia) may have adverse effects on regional and global economic markets and lead to instability and lack of liquidity in capital markets, potentially making it more difficult for us to obtain additional funds and increasing the volatility of our share price;
- actual or anticipated fluctuations in our quarterly financial and operating results; and
- the degree of trading liquidity in our shares of Common Stock.

***A decline in the price of our shares of Common Stock could affect our ability to raise further working capital and adversely impact our ability to continue operations.***

The relatively low price of our shares of Common Stock, and a decline in the price of our shares of Common Stock, could result in a reduction in the liquidity of our Common Stock and a reduction in our ability to raise capital. Because a significant portion of our operations has been and will continue to be financed through the sale of equity securities, a decline in the price of our shares of Common Stock could be especially detrimental to our liquidity and our operations. Such reductions and declines may force us to reallocate funds from other planned uses and may have a significant negative effect on our business plans and operations, including our ability to continue our current operations. If the price for our shares of Common Stock declines, it may be more difficult to raise additional capital. If we are unable to raise sufficient capital, and we are unable to generate funds from operations sufficient to meet our obligations, we will not have the resources to continue our operations.



The market price for our shares of Common Stock may also be affected by our ability to meet or exceed expectations of analysts or investors. Any failure to meet these expectations, even if minor, may have a material adverse effect on the market price of our shares of Common Stock.

***We currently do not intend to pay dividends on our Common Stock. As a result, your only opportunity to achieve a return on your investment is if the price of our Common Stock appreciates.***

We currently do not expect to declare or pay dividends on our Common Stock. In addition, in the future we may enter into agreements that prohibit or restrict our ability to declare or pay dividends on our Common Stock. As a result, your only opportunity to achieve a return on your investment will be if the market price of our Common Stock appreciates and you sell your shares at a profit.

---

12

***We could issue additional Common Stock, which might dilute the book value of our Common Stock.***

The Board has authority, without action or vote of our shareholders, to issue all or a part of our authorized but unissued shares. Such stock issuances could be made at a price that reflects a discount or a premium from the then-current trading price of our Common Stock. In addition, in order to raise capital, we may need to issue securities that are convertible into or exchangeable for our Common Stock. These issuances would dilute the percentage ownership interest, which would have the effect of reducing your influence on matters requiring shareholders vote and might dilute the book value of our Common Stock. You may incur additional dilution if holders of stock warrants or options, whether currently outstanding or subsequently granted, exercise their options, or if warrant holders exercise their warrants to purchase shares of our Common Stock.

***Future Issuance of Our Common Stock, Preferred Stock, Options and Warrants Could Dilute the Interests of Existing Stockholders.***

We may issue additional shares of our Common Stock, preferred stock, options and warrants in the future. These issuances may include substantial milestone-based issuances of securities to our executive officers as described in Item 11 of this Annual Report under the heading "Employment Agreements." The issuance of a substantial amount of Common Stock, options and warrants could have the effect of substantially diluting the interests of our current stockholders. In addition, the sale of a substantial amount of Common Stock or preferred stock in the public market, or the exercise of a substantial number of warrants and options either in the initial issuance or in a subsequent resale by the target company in an acquisition which received such Common Stock as consideration or by investors who acquired such Common Stock in a private placement could have an adverse effect on the market price of our Common Stock.

---

13

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 2. PROPERTIES**

We presently occupy space at 3 locations: 3124 Brother Blvd, Suite 410, Bartlett, TN 38133 (this building is owned by an entity owned by Mr. Cox, our CEO and Chairman), 1375 E Woodfield Road, Schaumburg IL 60173 and 1615 S Ingram Mill, Building B, Springfield, Missouri 65804.

See pages F-42 and F-43 for detail lease information.

We will acquire additional office space as needed.

#### **ITEM 3. LEGAL PROCEEDINGS**

- (1) Global Reconnect, LLC and Terracom, Inc. v. Jonathan Coffman, Jerry Carroll, True Wireless, & Surge Holdings: In the Chancery Court of Hamilton County, TN, Docket # 20-00058, Filed Jan 21, 2020. On January 21, 2020, a complaint was filed related to a noncompetition dispute. Terracom believed Mr. Coffman and Mr. Carroll were in violation of their non-compete agreements by working for us and True Wireless, Inc. Oklahoma and Tennessee state law does not recognize non-compete agreements and are not usually enforced in the state courts of these states, as such, we believed True Wireless had a strong case against Terracom. The matter is entering the discovery process. Both Mr. Carroll and Mr. Coffman are no longer working for True Wireless in sales. Mr. Carroll is off the payroll and Mr. Coffman works for SurgePays, Inc., but not in wireless sales. The case was dismissed without prejudice by the court on December 15, 2022.
- (2) Juno Financial v. AATAC and Surge Holdings Inc. AND Surge Holdings Inc. v. AATAC; Circuit Court of Hillsborough County, Florida, Case # 20-CA-2712 DIV A: Breach of Contract, Account Stated and Open Account claims against Surge by a factoring company. Surge has filed a cross-complaint against defendant AATAC for Breach of Contract, Account Stated, Open Account and Common Law Indemnity. Case is in discovery. Following analysis by our litigation counsel stating that there is a good defense, management has decided that a reserve is not necessary.
- (3) On December 17, 2021, Ambess Enterprises, Inc. v SurgePays, Inc., Blair County Pa. case number 2021 GN 3222. Plaintiff alleged breach of contract and prayed for damages of approximately \$73,000.00, plus fees, costs and interest. Litigation counsel is managing the motion practice and discovery process. The case was settled and a settlement agreement entered into on January 30, 2023. The following payments were made pursuant to the settlement agreement: February 3, 2023 for \$5,000, February 15, 2023 for \$25,000 and March 15, 2023 for \$30,000. The payments under the settlement agreement have been completed. Entry of a dismissal order is pending on the Court's docket.

---

14

- (4) *Blue Skies Connections, LLC, and True Wireless, Inc. v. SurgePays, Inc., et. al.*: In the District Court of Oklahoma County, OK, CJ-2021-5327, filed on December 13, 2021. Plaintiffs' petition alleges breach of a Stock Purchase Agreement by SurgePays, SurgePhone Wireless, LLC, and Kevin Brian Cox, and makes other allegations related to SurgePays' consulting work with Jonathan Coffman, a True Wireless employee. Blue Skies believes the Defendants are in violation of their non-competition and non-solicitation agreements related to the sale of True Wireless from SurgePays to Blue Skies. Oklahoma state law does not recognize non-compete agreements and non-solicitation agreements in the manner alleged by Plaintiffs, as such we believe SurgePays, SurgePhone, and Cox have a strong defense against the claims asserted by Blue Skies and True Wireless. The matter continues in the discovery process. Mr. Coffman is no longer working for True Wireless. An attempt at mediation in July, 2022 did not achieve a settlement. The petition requests injunctive relief, general damages, punitive damages, attorney fees and costs for alleged breach of contract, tortious interference with a business relationship, and fraud. Plaintiffs have made a written demand for damages and the parties continue to discuss a potential resolution. This matter is an anti-competitive attempt by Blue Skies and True Wireless to damage SurgePays, SurgePhone, and Cox. Written discovery is winding down and depositions are anticipated in the second and third quarters of 2023.
- (5) *Robert Aliotta and Steve Vasquez, on behalf of themselves and others similarly situated v. SurgePays, Inc. d/b/a Surge Logics*, filed January 4, 2023, in the U.S. District

Court for the Northern District of Illinois, Case No. 1:23-cv-00042. Plaintiffs' allege violations of the Telephone Consumer Protection Act (TCPA) and the Florida Telephone Solicitations Act (FTSA) based on telephone solicitations allegedly made by or on behalf of SurgePays, Inc. Plaintiffs' seek damages for themselves and seek certification of a class action on behalf of others similarly situated. Defendants intend to vigorously defend the action however most similar cases are eventually resolved by an out-of-court settlement. At this time, it is impossible to estimate the amount or range of potential loss, but similar matters are usually settled for \$100,000.00 or less. SurgePays, Inc has been removed from the case following a Motion to Dismiss and LogicsIQ, Inc. has been named as the defendant. The case remains in the pleadings stage.

- (6) *Meral Demiray v Surge Holdings, Inc. a/k/a SurgePays, Inc.*: In the United States District Court for the Northern District of Illinois, Case # 22-cv-6591, filed November 23, 2022. Plaintiff filed a claim against SurgePays following her dismissal from her position as an employee of the company. Following negotiations among and between SurgePays, SurgePays' insurance carrier and the Plaintiff, a settlement has been reached and has been completed and the case was dismissed by Stipulation of the Parties.
- (7) *SurgePays, Inc. et al. v. Fina et al.*, Case No. CJ-2022-2782, District Court of Oklahoma County, Oklahoma. Plaintiffs SurgePays, Inc. and Kevin Brian Cox initiated this case against its former officer Mike Fina, his companies Blue Skies Connections, LLC, True Wireless, Inc., Government Consulting Solutions, Inc., Mussell Communications LLC and others. This case also arises from the June 2021 transaction by which SurgePays sold True Wireless to Blue Skies. During the litigation of CJ-2021-5327 described above, SurgePays learned information that showed Mike Fina breached his duties owed to True Wireless during his employment and consulting work for True Wireless prior to SurgePays' sale of True Wireless to Blue Skies. SurgePays alleges that Mike Fina conspired with the other defendants to damage True Wireless thereby harming the value of the company and causing its eventual sale at a greatly reduced price. SurgePays asserts claims for (i) breach of contract; (ii) breach of fiduciary duty; (iii) fraud; (iv) tortious interference; and (v) unjust enrichment. At this stage no defendant has asserted a counter-claim against SurgePays.

The case is still at the early pleadings stage. SurgePays filed a Second Amended Petition on January 27, 2023. Defendants Fina, Blue Skies, True Wireless, and Government Consulting Solutions filed a Motion to Dismiss on March 10, 2023. It is SurgePays' present intent to vigorously prosecute this case. At this early stage, no attempts at settlement have been made.

#### ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable.

### PART II

#### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

##### Market Information

The Common Stock and the Warrants began trading on the Nasdaq Capital Market under the symbols SURG and SURGW, respectively, on November 2, 2021.

15

As of March 30, 2023, there were approximately 3,657 holders of record of our Common Stock. Since certain shares of our Common Stock are held by brokers and other institutions on behalf of stockholders, the foregoing number of holders of our Common Stock is not representative of the number of beneficial holders of our Common Stock.

The last reported sales price for our Common Stock as reported on the Nasdaq Capital Market on March 28, 2023 was \$4.45.

##### Dividends

We have not declared or paid any cash dividends on our Common Stock, and we do not anticipate declaring or paying cash dividends for the foreseeable future. We are not subject to any legal restrictions respecting the payment of dividends, except that we may not pay dividends if the payment would render us insolvent. Any future determination as to the payment of cash dividends on our Common Stock will be at the discretion of our Board and will depend on our financial condition, operating results, capital requirements and other factors that the Board considers to be relevant.

##### Securities Authorized for Issuance under Equity Compensation Plans

None.

##### Preferred Stock

As of December 31, 2022, the Company does not have any shares of preferred stock outstanding.

##### Transfer Agent

The transfer agent of our Common Stock is VStock Transfer, LLC. Their address is 18 Lafayette Place, Woodmere, NY 11598.

##### Unregistered Sales of Equity Securities

We have previously disclosed in our 10-Qs and 8-Ks filed in 2022 all 2022 sales of securities without registration under the Securities Act of 1933 other than the following:

In 2022, the Company issued 270,745 shares of common stock at \$4.01/share to settle \$1,086,413 of debt principal. These shares were issued pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended, afforded by Section 4(a)(2) thereof for the sale of securities not involving a public offering.

16

#### ITEM 6. SELECTED FINANCIAL DATA

Not applicable.

#### ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Annual Report. In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks, uncertainties, and assumptions. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including but not limited to those set forth in "Part I – Item 1A. Risk Factors."*

## Business Overview

We were incorporated in Nevada on August 18, 2006 and a technology and telecommunications company focused on the underbanked and underserved communities.

SurgePhone wireless companies provide mobile broadband (internet connectivity) to low-income consumers nationwide. SurgePays Fintech platform utilizes a suite of financial and prepaid products to convert corner stores and bodegas into tech-hubs for underbanked neighborhoods. We are aggressively cornering the underbanked market directly to the consumer and in the stores they shop.

Please see the description in Item 1 of this Annual Report for a description of our SurgePhone, Torch Wireless, and LocoRabbit Wireless, Surge Blockchain, Shockwave CRM™, Surge Fintech (ECS Business), LogicsIQ, and CenterCom operations.

17

## COMPARISON OF YEAR ENDED DECEMBER 31, 2022 AND 2021

Revenues during the years ended December 31, 2022 and 2021 consisted of the following:

	2022	2021
Revenue	\$ 121,544,190	\$ 51,060,589
Cost of revenue (exclusive of depreciation and amortization)	(108,074,782)	(44,890,610)
General and administrative	(12,835,623)	(12,162,547)
Income (Loss) from operations	\$ 633,785	\$ (5,992,568)

Revenue increased overall by \$70,483,601 (138%) from year ended December 31, 2021 to year ended December 31, 2022. The breakout was as follows:

	For the Years Ended December 31,	
	2022	2021
<b>Revenues</b>		
Surge Phone and Torch Wireless	\$ 88,351,547	\$ 7,289,239
Surge Blockchain, LLC	112,911	138,106
LogicsIQ, Inc.	16,760,656	17,846,698
Surge Fintech & ECS	16,319,076	24,628,566
True Wireless	-	1,157,980
Surge Pays, Inc.	-	-
<b>Total</b>	<b>\$ 121,544,190</b>	<b>\$ 51,060,589</b>

SurgePhone and Torch Wireless revenues (as detailed in Notes 2 and 11 of the financial statements) increased by \$81,062,308 related to the additional revenue stream generated by the increase in subscribers to over 200,000 at the end of 2022 from 30,000 at the end of 2021 for the Emergency Broadband Benefit and Affordable Connectivity programs (the "ACP") started in August of 2021. LogicsIQ revenues decreased by \$1,086,042 related to the maturity cycle of the various litigations we are delivering retained cases on. The overall case count went from 14,492 in 2021 to 9,362 in 2022. Surge Fintech (ECS) revenues decreased by \$8,309,490 due to Covid-19 impact and the shifting of customers to the ACP from wireless prepaid services at our stores. True Wireless revenues decreased by \$1,157,980 as a result of the May 7, 2021 disposition.

We expect revenues to grow for each segment of the Company in future periods, specifically our subscriber base and active store count.

	For the Years Ended December 31,	
	2022	2021
<b>Income (loss) from operations</b>		
Surge Phone and Torch Wireless	\$ 11,921,855	\$ 1,160,124
Surge Blockchain, LLC	56,823	124,704
LogicsIQ, Inc.	324,259	705,224
Surge Fintech & ECS	(1,974,773)	(546,665)
True Wireless	-	236,905
Surge Pays, Inc.	(9,694,379)	(7,672,860)
<b>Total</b>	<b>\$ 633,785</b>	<b>\$ (5,992,568)</b>

Operations income improved overall by \$6,626,353 from year ended December 31, 2021 to year ended December 31, 2022, primarily as a result of an increase in operating profit of \$10,761,731 in SurgePhone and Torch Wireless, a decrease in operating profit of \$380,965 in LogicsIQ, and a decrease in operating profit of \$1,428,108 in Surge Fintech. Most of these changes are directly related to the change in revenue for each stream. Overall margins remained consistent in 2021 and 2022.

### Cost of Revenue, Gross Profit and Gross Margin

Cost of revenue for services primarily consists of tablet, phone and SIM cards and associated freight, shipping and handling costs, marketing services, data plan expenses, royalties, and out-sourced call center expenses.

We expect that our cost of revenue will increase or decrease to the extent that our revenue increases and decreases and depending on our subscriber base and store count.

Gross profit is calculated as revenue less cost of revenue. Gross profit margin is gross profit expressed as a percentage of revenue. Our gross profit in future periods will depend on a variety of factors, including: market conditions that may impact our pricing, sales mix among devices, sales mix changes among consumables, excess and obsolete inventories, and our cost structure for manufacturing operations relative to volume. Our gross profit in future periods will vary based upon our revenue stream mix and may increase based upon our distribution channels.

We expect that our gross profit margin for product and service will increase over the long term as our sales and production volumes increase and our cost per unit decreases due to efficiencies of scale. We intend to use our design, information systems, and sales force capabilities to further advance and improve the efficiency of our revenue streams, which we believe will reduce costs and increase our gross margin.

General and administrative during the years ended December 31, 2022 and 2021 consisted of the following:

	2022	2021
Depreciation and amortization	\$ 931,593	\$ 759,383

Selling, general and administration	11,904,030	11,403,164
<b>Total</b>	<b>\$ 12,835,623</b>	<b>\$ 12,162,547</b>

The increase in depreciation and amortization costs for 2022 is the result of capitalizing costs associated with software enhancements to our various software platforms in 2022.

**Selling, general and administrative expenses during the years ended December 31, 2022 and 2021 consisted of the following:**

	<u>2022</u>	<u>2021</u>
Contractors and consultants	\$ 1,667,016	\$ 2,284,135
Professional services	1,204,133	1,758,055
Compensation	4,780,885	3,872,765
Computer and internet	403,583	552,455
Advertising and marketing	259,393	661,238
Bad debt expense (recovery)	(7,767)	24,841
Insurance	1,535,687	791,535
Other	2,061,100	1,458,140
<b>Total</b>	<b>\$ 11,904,030</b>	<b>\$ 11,403,164</b>

18

Selling, general and administrative costs (S, G & A) increased by \$500,866 (4.4%). The changes are discussed below:

- Contractors and consultants expense decreased by \$617,119 or 27% from \$2,284,135 in 2021 to \$1,667,016 in 2022.
- Professional services decreased \$553,922 in 2022 primarily due to a decrease in legal fees of \$395,989. Legal proceedings and fees related to the listing of our common stock on the Nasdaq Capital Market were the main reason for the higher spending on professional services in 2021.
- Compensation increased from \$3,872,765 in 2021 to \$4,780,885 in 2022 primarily as a result of one-time bonuses paid to various management personnel in 2022.
- Computer and internet costs decreased by 26.9% to \$403,583 in 2022 from \$552,455 in 2021.
- Advertising and marketing costs decreased to \$259,393 in 2022 from \$661,238 in 2021 primarily due to the normalization of advertising spending in 2022.
- Bad debt expense recovery decreased to \$(7,767) in 2022 from \$24,841 in 2021.
- Insurance expense increased to \$1,535,687 in 2022 from \$791,535 in 2021 primarily as a result of a full year of additional coverage amounts related to the listing of our common stock on the Nasdaq Capital Market.
- Other costs increased to \$2,061,100 in 2022 from \$1,458,140 in 2021 primarily due to an increase various administrative expenses such as office, building, travel and bank fees.

**Other (expense) income during the years ended December 31, 2022 and 2021 consisted of the following:**

	<u>2022</u>	<u>2021</u>
Interest, net	\$ (1,843,396)	\$ (3,840,616)
Change in fair value of derivative liabilities <sup>1</sup>	-	1,806,763
Derivative expense	-	(1,775,057)
Gain (loss) on equity investment in Centercom	(89,082)	28,676
Gain (loss) on settlement of liabilities	336,726	1,469,641
Amortization of debt discount	(115,404)	(3,677,121)
Gain on deconsolidation of True Wireless	-	1,895,871
Settlement expense	-	(3,750,000)
Warrant modification expense	-	(74,476)
Other income	524,143	377,743
<b>Total other (expense) income</b>	<b>\$ (1,187,013)</b>	<b>\$ (7,538,576)</b>

Interest expense decreased to \$1,843,396 in 2022 from \$3,840,616 in 2021 primarily due to the payoff of various debt instruments in 2021 as a result of the cash raised from the listing of our common stock on the Nasdaq Capital Market.

During the years ended December 31, 2022 and 2021, the Company recorded a change in fair value of derivative liabilities of \$0 and \$1,806,763, respectively. These amounts reflect a mark to market adjustment recorded to the accompanying consolidated statements of operations. During the year ended December 31, 2021, in connection with the repayment of convertible notes which contained embedded conversion features, the related derivative liabilities ceased to exist.

A reconciliation of the beginning and ending balances for the derivative liability measured at fair value on a recurring basis using significant unobservable inputs (Level 3) is as follows at December 31, 2022 and 2021:

Derivative liability - December 31, 2020	1,357,528
Fair value at commitment date	1,877,250
Fair value mark to market adjustment	(1,806,763)
Gain on derivative liability upon related debt settled	(1,428,015)
Derivative liability - December 31, 2021 and 2022	<u>\$ -</u>

Changes in fair value of derivative liabilities are included in other income (expense) in the accompanying consolidated statements of operations.

For the years ended December 31, 2022 and 2021, the Company recorded a derivative expense of \$0 and \$1,775,057, respectively.

During the years ended December 31, 2022 and 2021, the Company recorded a gain of \$0 and \$1,428,015, respectively, related to the settlement of convertible debt which contained an embedded conversion feature and was separately bifurcated and classified as a derivative liability. The Company has recorded these gains in the accompanying consolidated statements of operations as a component of gain on settlement of liabilities.

19

The equity investment in Centercom decreased by \$89,082 in 2022 compared to an increase of \$28,676 in 2021.

During 2022, the Company received a forgiveness on a PPP loan totaling \$524,143, of which \$518,167 was for principal and \$5,976 for accrued interest. The Company recorded this forgiveness as other income in the accompanying consolidated statements of operations.

In 2021, in connection with the listing of our common stock on the Nasdaq Capital Market, 433,017 warrants were repriced at a lower exercise price to better reflect the current market offering. No other terms had been modified. As a result, the Company recorded a warrant modification expense of \$74,476 in the accompanying consolidated statements of operations with an offsetting increase to additional paid in capital.

#### **Equity Transactions for the Year Ended December 31, 2022**

##### **Stock Issued as Direct Offering Costs**

The Company issued 200,000 shares of common stock for services rendered in connection with the listing of our common stock on the Nasdaq Capital Market 2021. As a result, the Company recorded the par value of the common stock issued with a corresponding charge to additional paid-in capital, resulting in a net effect of \$0 to stockholders' equity.

##### **Stock Issued for Acquisition of Software**

The Company acquired software having a fair value of \$711,400. Payment for the software consisted of \$300,000 in cash and the Company issued 85,000 shares of common stock having a fair value of \$411,400 (\$4.84/share), based upon the quoted closing trading price.

##### **Exercise of Warrants (Cashless)**

The Company issued 147,153 shares of common stock in connection with the cashless exercise of 498,750 warrants. These transactions had a net effect of \$0 on stockholders' equity.

##### **Exercise of Warrants**

The Company issued 100 shares of common stock in connection with an exercise of 100 warrants at an exercise price of \$4.73 per share for proceeds of \$473.

#### **Equity Transactions for the Year Ended December 31, 2021**

##### **Stock Issued for Services**

The Company issued 13,411 shares of common stock for services rendered, having a fair value of \$99,436 (\$5 - \$14.05/share), based upon the quoted closing trading price.

##### **Stock and Warrants Issued for Cash and Related Direct Offering Costs**

The Company issued an aggregate 4,862,247 shares of common stock for \$21,294,800 (\$4.30 - \$8/share). In connection with raising these funds, the Company paid \$2,222,952 in direct offering costs, resulting in net proceeds of \$19,071,848.

#### **LIQUIDITY and CAPITAL RESOURCES**

At December 31, 2022 and 2021, our current assets were \$27,563,785 and \$13,892,681, respectively, and our current liabilities were \$23,464,062 and \$9,998,194, respectively, which resulted in a working capital surplus of \$4,099,723 and of \$3,894,487, respectively. The increase in current assets is a result of expansion of the Affordable Connectivity Program, whereby inventory increased by \$6,826,946 for tablets and phones and accounts receivable increased by \$5,980,476.

Total assets at December 31, 2022 and 2021 amounted to \$34,003,506 and \$19,500,202, respectively. The increase in total assets is a result of the expansion of the Affordable Connectivity Program, whereby inventory increased by \$6,826,946 for tablets and phones and accounts receivable increased by \$5,980,476. Total assets increased by \$14,503,304 from December 31, 2021 to December 31, 2022. At December 31, 2022, assets consisted of current assets of \$27,563,785, net property and equipment of \$643,373, net intangible assets of \$2,779,977, goodwill of \$1,666,782, equity investment in Centercom of \$354,206, note receivable of \$176,851, internal use software of \$387,180, and operating lease right of use asset of \$431,352 compared to current assets of \$13,892,681, net property and equipment of \$200,448, net intangible assets of \$3,433,484, goodwill of \$866,782, equity investment in Centercom of \$443,288, note receivable of \$176,851, and operating lease right of use asset of \$486,668 at December 31, 2021.

At December 31, 2022, our total liabilities were \$28,885,253. This \$12,936,372 increase (from \$15,948,881 at December 31, 2021) was related to the installment sales liability increase of \$13,018,184 related to inventory purchases for the Affordable Connectivity Program.

At December 31, 2022, our total stockholders' surplus was \$5,118,253 as compared to \$3,551,321 at December 31, 2021.

We expect the positive operating income results of \$3,322,294 for the period October 1, 2022 to December 31, 2022 will continue to be positive for each reporting period of 2023. The gross margin for the period of October 1, 2022 to December 31, 2022 was approximately 18%. Revenue streams are expecting to increase quarter over quarter in 2023.

The following table sets forth the major sources and uses of cash for the years ended December 31, 2022 and 2021.

	<u>2022</u>	<u>2021</u>
Net cash provided by or (used in) operating activities	\$ 793,272	\$ (15,288,261)
Net cash used in investing activities	(1,498,582)	(376,724)
Net cash provided by financing activities	1,457,468	21,274,486
Net change in cash and cash equivalents	<u>\$ 752,158</u>	<u>\$ 5,609,501</u>

As a result of net positive cash provided by operating activities in 2022, the cash increased in 2022 by \$752,158, compared to cash used in operations of \$15,288,261 in 2021.

At December 31, 2022, the Company had the following material commitments and contingencies.

**Notes payable – related party** - See Note 6 to the Consolidated Financial Statements.

**Notes payable and long-term debt** - See Note 8 to the Consolidated Financial Statements.

**Convertible promissory notes** - See Note 9 to the Consolidated Financial Statements.

**Related party transactions** - See page F-29 and F-30 to the Consolidated Financial Statements.

**Cash requirements and capital expenditures** –At the current level of operations, the Company does not anticipate borrowing funds to meet basic operating costs. The Company may need to borrow funds to meet the hyper-growth expected to occur in the ACP in 2023.

**Known trends and uncertainties** – The Company is planning to acquire other businesses with similar business operations. The uncertainty of the economy may increase the difficulty of raising funds to support the planned business expansion.

### **Critical Accounting Policies and Estimates**

Management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which were prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions for the reported amounts of assets, liabilities, revenue and expenses. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions, and any such differences may be material.

While our significant accounting policies are more fully described in *Note 2—Summary of Significant Accounting Policies* of the Notes to Consolidated Financial Statements included in *Item 8, Financial Statements and Supplementary Data* of this Annual Report on Form 10-K, we believe the following discussion addresses our most critical accounting policies, which are those that are most important to our financial condition and results of operations and which require our most difficult, subjective and complex judgments.

#### **Use of Estimates**

Preparing financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses during the reported period. Actual results could differ from those estimates, and those estimates may be material.

Significant estimates during the years ended December 31, 2022 and 2021, respectively, include, allowance for doubtful accounts and other receivables, inventory reserves and classifications, valuation of loss contingencies, valuation of derivative liabilities, valuation of stock-based compensation, estimated useful lives related to intangible assets, capitalized internal-use software development costs, and property and equipment, implicit interest rate in right-of-use operating leases, uncertain tax positions, and the valuation allowance on deferred tax assets.

#### **Fair Value of Financial Instruments**

The Company accounts for financial instruments under Financial Accounting Standards Board ("FASB") ASC 820, *Fair Value Measurements*. ASC 820 provides a framework for measuring fair value and requires disclosures regarding fair value measurements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, based on the Company's principal or, in absence of a principal, most advantageous market for the specific asset or liability.

The Company uses a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The hierarchy requires the Company to use observable inputs when available, and to minimize the use of unobservable inputs, when determining fair value.

The three tiers are defined as follows:

- Level 1 - Observable inputs that reflect quoted market prices (unadjusted) for identical assets or liabilities in active markets;
- Level 2 - Observable inputs other than quoted prices in active markets that are observable either directly or indirectly in the marketplace for identical or similar assets and liabilities; and
- Level 3 - Unobservable inputs that are supported by little or no market data, which require the Company to develop its own assumptions.

The determination of fair value and the assessment of a measurement's placement within the hierarchy requires judgment. Level 3 valuations often involve a higher degree of judgment and complexity. Level 3 valuations may require the use of various cost, market, or income valuation methodologies applied to unobservable management estimates and assumptions. Management's assumptions could vary depending on the asset or liability valued and the valuation method used. Such assumptions could include estimates of prices, earnings, costs, actions of market participants, market factors, or the weighting of various valuation methods. The Company may also engage external advisors to assist us in determining fair value, as appropriate.

### **Impairment of Long-lived Assets including Internal Use Capitalized Software Costs**

Management evaluates the recoverability of the Company's identifiable intangible assets and other long-lived assets when events or circumstances indicate a potential impairment exists, in accordance with the provisions of ASC 360-10-35-15 "*Impairment or Disposal of Long-Lived Assets*." Events and circumstances considered by the Company in determining whether the carrying value of identifiable intangible assets and other long-lived assets may not be recoverable include but are not limited to significant changes in performance relative to expected operating results; significant changes in the use of the assets; significant negative industry or economic trends; and changes in the Company's business strategy. In determining if impairment exists, the Company estimates the undiscounted cash flows to be generated from the use and ultimate disposition of these assets.

If impairment is indicated based on a comparison of the assets' carrying values and the undiscounted cash flows, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets.

#### **Inventory Valuation**

Inventory is stated at the lower of cost or net realizable value (first-in, first-out method). For items manufactured by third parties, cost is determined using the weighted average cost method (WAC). We write-down inventory when it has been determined that conditions exist that may not allow the inventory to be sold for at the intended price or the inventory is determined to be obsolete based on assumption about future demand and market conditions. The charge related to inventory write-downs is recorded as cost of goods sold. We evaluate inventory at least annually and at other times during the year. We have incurred and may in the future incur charges to write-down inventory.

#### **Internal Use Software Development Costs**

We capitalize certain internal use software development costs associated with creating and enhancing internally developed software related to our technology infrastructure. These costs include personnel and related employee benefits expenses for employees who are directly associated with and who devote time to software projects, and external direct costs of materials and services consumed in developing or obtaining the software. Software development costs that do not meet the qualification for capitalization, as further discussed below, are expensed as incurred and recorded in general and administrative expenses in the consolidated results of operations.

## Revenue from Contracts with Customers

We account for revenue earned from contracts with customers under ASC 606, *Revenue from Contracts with Customers* ("ASC 606"), and ASC 842, *Leases* ("ASC 842"). The core principle of ASC 606 is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The following five steps are applied to achieve that core principle:

- Step 1: Identify the contract with the customer.
- Step 2: Identify the performance obligations in the contract.
- Step 3: Determine the transaction price.
- Step 4: Allocate the transaction price to the performance obligations in the contract.
- Step 5: Recognize revenue when, or as, the company satisfies a performance obligation.

## Stock-Based Compensation

The Company accounts for our stock-based compensation under ASC 718 "*Compensation – Stock Compensation*" using the fair value-based method. Under this method, compensation cost is measured at the grant date based on the value of the award and is recognized over the service period, which is usually the vesting period. This guidance establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services. It also addresses transactions in which an entity incurs liabilities in exchange for goods or services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments.

The Company uses the fair value method for equity instruments granted to non-employees and use the Black-Scholes model for measuring the fair value of options.

The fair value of stock-based compensation is determined as of the date of the grant or the date at which the performance of the services is completed (measurement date) and is recognized over the vesting periods.

## Stock Warrants

In connection with certain financing (debt or equity), consulting and collaboration arrangements, the Company may issue warrants to purchase shares of its common stock. The outstanding warrants are standalone instruments that are not puttable or mandatorily redeemable by the holder and are classified as equity awards. The Company measures the fair value of warrants issued for compensation using the Black-Scholes option pricing model as of the measurement date. However, for warrants issued that meet the definition of a derivative liability, fair value is determined based upon the use of a binomial pricing model.

Warrants issued in conjunction with the issuance of common stock are initially recorded at fair value as a reduction in additional paid-in capital of the common stock issued. All other warrants (for services) are recorded at fair value and expensed over the requisite service period or at the date of issuance if there is not a service period.

## Recent Accounting Pronouncements

In the normal course of business, we evaluate all new accounting pronouncements issued by the Financial Accounting Standards Board, SEC, or other authoritative accounting bodies to determine the potential impact they may have on our Consolidated Financial Statements. Refer to Note 2 - *Summary of Significant Accounting Policies* of the Notes to Consolidated Financial Statements.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See Index to Consolidated Financial Statements on page F-1 of this Annual Report.

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

## ITEM 9A. CONTROLS AND PROCEDURES

### a) Evaluation of Disclosure Controls and Procedures

As of December 31, 2022, our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as required by Exchange Act Rule 13a-15. Management identified no material weaknesses in our internal control over financial reporting. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report. Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and our Chief Financial Officer, to allow timely decisions regarding required disclosure.

### b) Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. Our internal control over financial reporting is a process designed by, or under the supervision of, our chief executive officer and chief financial officer, or persons performing similar functions, and effected by our board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America (GAAP). Our internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and that receipts and expenditures of the Company are being made only in accordance with authorization of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Management conducted an evaluation of the effectiveness of our control over financial reporting based on the 2013 framework in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2022. During the year ended December 31, 2022, management identified no weaknesses.

Pursuant to Regulation S-K Item 308(b), as the Company is not an accelerated filer nor a large accelerated filer, this Annual Report does not include an attestation report of our company's registered public accounting firm regarding internal control over financial reporting.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate. A control system, no matter how well designed and operated can provide only reasonable, but not absolute, assurance that the control system's objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their cost.

23

### c) Changes in Internal Control over Financial Reporting

During the year ended December 31, 2022, there were no changes in our internal controls over financial reporting, which were identified in connection with our management's evaluation required by paragraph (d) of rules 13a-15 and 15d-15 under the Exchange Act, that materially affected, or is reasonably likely to have a materially affect, on our internal control over financial reporting.

### ITEM 9B. OTHER INFORMATION

None.

### ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

### PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The following table and biographical summaries set forth information, including principal occupation and business experience, about our directors and executive officers as of March 30, 2023:

<u>Directors and Executive Officers</u>	<u>Position/Title</u>	<u>Age</u>
Kevin Brian Cox	Chief Executive Officer and Chairman	47
Anthony Evers	Chief Financial Officer and acting Chief Operating Officer	59
David C. Ansani	Chief Administrative Officer	58
David N. Keys	Independent Director	66
Laurie Weisberg	Independent Director	53
Richard Schurfeld	Independent Director	59
David May	Non-independent Director	54

**Kevin Brian Cox – Chief Executive Officer and Director.** Mr. Cox has been Chief Executive Officer and Director since July 2017. He also served as Chief Financial Officer of the Company from July 2017 to March 2018 and as President of the Company from July 2017 to February 2019. He was the majority owner of True Wireless from January 2011 through April 2018, when True Wireless became a wholly owned subsidiary of the Company. Mr. Cox is an accomplished technology entrepreneur growing best-in-class and profitable companies for nearly 20 years. Throughout most of his career, he has focused on delivering telecom, broadband and financial services to the unbanked and underserved segments of society. He began his career in telecom in 2004 when he founded his first prepaid telephone company (CLEC) which through organic growth and acquisition, became the largest prepaid home phone company in the country before being sold in 2009. Mr. Cox attended Murray State University majoring in Economics. We believe Mr. Cox is qualified to serve on our Board due to his experience as the Company's Chief Executive Officer and his telecom leadership experience.

24

**David C. Ansani – Chief Administrative Officer.** Mr. Ansani has been Chief Administrative Officer since August 2017, and was a Director until February 2021. He was also appointed Secretary of the Company in February 2019. From 2010 to the present date, he has served as Chief Compliance Officer/Human Resources Officer/In-House Counsel for Glass Mountain Capital, LLC, a start-up financial services company specializing in the recovery of distressed assets. In this capacity, he reviews and evaluates compliance issues and concerns within the organization. The position ensures that management and employees are in compliance with applicable laws, rules and regulations of regulatory agencies (FDCA, TCPA, GLB, CFPB, etc.); that company policies and procedures are being followed; and that behavior in the organization meets the company's standards of conduct. Ms. Ansani received his B.A. and MBA from the University of Chicago, and J.D. from the Chicago-Kent College of Law.

**Anthony Evers – Chief Financial Officer.** Mr. Evers has been the Chief Financial Officer of the Company since May 1, 2020. Mr. Evers has also served as Chief Financial Officer of LogicsIQ since August 2021. Prior to joining the Company, Mr. Evers served as Chief Financial Officer for Vista Health System from October 2019 to March 2020. Between June 2019 and October 2019, Mr. Evers served as CFO of Santa Cruz Valley Regional Hospital. Between 2015 and 2019, Mr. Evers served as CFO and CIO of KSB Hospital. Prior to that, he served as CFO of various organizations, including Norwegian American Hospital and Horizon Homecare and Hospice. During his career, Mr. Evers has been the financial lead in over 20 merger and divestiture transactions ranging from a single physician practice to multi-entity nursing homes. Throughout his career, Mr. Evers has served on numerous boards of directors, including Wheaton Franciscan Healthcare, Covenant Healthcare, All Saints Health System, Rogers Hospital, and the Animal Shelter in Beaver Dam WI. He has also served as a member of the Dixon Illinois Chamber of Commerce. Mr. Evers has also served as the audit and finance committee chair at several of these organizations. Mr. Evers obtained his Bachelor of Business Administration in Finance and Masters of Science in Accounting from the University of Wisconsin-Whitewater. Mr. Evers also successfully obtained his Certified Public Accountant and Certified Internal Auditor credentials.

25

**David N. Keys – Director.** Mr. Keys has been a director of the Company since July 2019. Mr. Keys began his career with Deloitte serving in the audit group in the Las Vegas and New York City executive offices. David was the Executive Vice President, CFO and member of the executive committee of the Board of Directors of American Pacific, a chemical company that was publicly traded on the NASDAQ for the entirety of the time he was a director and executive officer. Since 2004, Mr. Keys has been an independent financial and operations consultant. Mr. Keys currently serves on the Board of ARC Point, Inc. (TSXV: ARC), and on the Board of private companies, including Prosetta Biosciences Inc.,



Akonni Biosystems Inc. and Walker Digital Table Systems, LLC. He previously served on the Boards of Directors of RSC International Systems, Inc., AmFed Financial Inc., Norwest Bank of Nevada and Wells Fargo Bank of Nevada. Mr. Keys also served on the Advisory Board of Directors of FM Global, a leading provider of property and casualty insurance. Mr. Keys is a Certified Public Accountant (CPA), Certified Valuation Analyst (CVA), Certified Management Accountant (CMA), Chartered Global Management Accountant (CGMA), Certified Information Technology Professional (CITP), Certified in Financial Forensics (CFF), and Certified in Financial Management (CFM). He received a Bachelor of Science in accounting from Oklahoma State University. We believe Mr. Keys is qualified to serve on our Board due to his financial and governance experience.

**Laurie Weisberg – Director.** Ms. Laurie Weisberg was appointed to the Board in December 2022. Ms. Weisberg served as a member of the Board of Directors of Creatd, Inc. from July 2020 to September 2022 and served in a number of executive officer positions while Creatd was traded on the Nasdaq Capital Market. Ms. Weisberg began her executive tenure at Creatd as Chief Operating Officer from October 2020 until August 2021. Ms. Weisberg then held the position of Co-Chief Executive Officer from August 2021 to February 2022. Ms. Weisberg was sole Chief Executive Officer from February 2022 to September 2022. Ms. Weisberg, who has served as the Chief Sales Officer at Intent since February 2019, has spent over 25 years at the forefront of sales and marketing innovation in the technology space, having held leadership positions at various technology companies including Thrive Global, Curalate, and Oracle Data Cloud. From October 2010 to April 2015, Ms. Weisberg was a member of the executive leadership team at Datalogix, leading up to its acquisition by Oracle in 2015, at which point she assumed the role of VP of Oracle Data Cloud. Additionally, Ms. Weisberg has served on the Advisory Board at Crowdsmart, an intelligent data-driven investment prediction platform since April 2019. Ms. Weisberg was born and educated in England. We believe Ms. Weisberg is qualified to serve on our Board due to her leadership experience working within the technology space.

**Richard Schurfeld – Director.** Mr. Schurfeld was appointed to the Board in December 2022. Since 2001, Mr. Schurfeld has served as Chief Executive Officer of Redsson, Ltd., a B2B software and services company that develops custom solutions to help utility companies, healthcare providers and payer organizations accelerate and streamline complicated manual processes and improve efficiencies. Mr. Schurfeld is a graduate of the United States Air Force Academy. We believe Mr. Schurfeld is qualified to serve on our Board due to his leadership experience working within the technology space.

**David May – Director.** Mr. May has been a director of the Company since February 2021. Mr. May has been a banking professional since 1994. Throughout his career, he has established himself as one of the leading convenience store and convenience store wholesaler financiers in the Mid-South through his cultivation of personal relationships and service to members of this close-knit community. David has been Senior Vice President of Commercial Banking since 2007 with Landmark Community Bank, a Memphis based commercial bank with over a billion dollars in assets with offices in the Memphis and Nashville, Tennessee markets. He has been a bank officer for both community banks and large regional banks over his 27-year banking career. David is a graduate of the Southeastern School of Commercial Banking at Vanderbilt University and, in the past, served as Chairman of the Board for seven years for The Agency for Youth and Family Development, a residential treatment facility for adolescent males. He is also a founding owner of Global Defense Specialists, a military aircraft fleet sustainment company specializing in Lockheed F-16's and C-130's and Northrop F-5 jet fighters. We believe Mr. May is qualified to serve on our Board due to his banking experience in the convenience store sector.

None of the above directors and executive officers has been involved in any legal proceedings as listed in Regulation S-K, Section 401(f) material to an evaluation of the ability or integrity of any director or executive officer.

#### **Family Relationships**

There are no family relationships among any of our directors or executive officers.

#### **Board Meetings**

Our Board held one formal Board meetings during the year ended December 31, 2022 and no formal Board meetings during the year ended December 31, 2021.

For the years ended December 31, 2021 and 2022, each incumbent director attended at least 75% of all meetings held by the Board and the committees of the Board on which they served during each year.

To the extent reasonably practicable, we encourage each of our directors to attend annual meetings of shareholders. All of our incumbent directors attended the 2022 Annual Meeting of Shareholders held in March 2023 either in person or remotely.

#### **Board Composition, Committees, and Independence**

**Audit Committee.** Our audit committee consists of David N. Keys, Richard Schurfeld, and Laurie Weisberg. Mr. Keys is chairperson of the audit committee and he qualifies as an "audit committee financial expert" as defined in Item 407(d)(5) of Regulation S-K. Our Audit Committee held two formal meetings during the year ended December 31, 2022 and one formal meeting during the year ended December 31, 2021.

The audit committee's duties are to recommend to our board of directors the engagement of independent auditors to audit our financial statements and to review its accounting and auditing principles. The audit committee will review the scope, timing and fees for the annual audit and the results of audit examinations performed by the internal auditors and independent public accountants, including their recommendations to improve the system of accounting and internal controls. The audit committee will at all times be composed exclusively of directors who are, in the opinion of our board of directors, free from any relationship which would interfere with the exercise of independent judgment as a committee member and who possess an understanding of financial statements and generally accepted accounting principles.

**Compensation Committee.** Our compensation committee consists of David N. Keys, Richard Schurfeld, and Laurie Weisberg. Ms. Weisberg is chairperson of the compensation committee. Our compensation committee held one formal meeting during the year ended December 31, 2022 and no formal meeting during the year ended December 31, 2021.

In considering and determining executive and director compensation, the compensation committee reviews compensation that is paid by other similar public companies to its officers and takes that into consideration in determining the compensation to be paid to our officers. The compensation committee also determines and approves any non-cash compensation paid to any employee. We do not engage any compensation consultants to assist in determining or recommending compensation to our officers or employees.

**Nominating and Corporate Governance Committee.** Our nominating and corporate governance committee consists of David N. Keys, Richard Schurfeld, and Laurie Weisberg. Mr. Schurfeld is chairperson of the nominating and corporate governance committee. Our nominating and corporate governance committee held one formal meeting during the year ended December 31, 2022 and no formal meeting during the year ended December 31, 2021.

The responsibilities of the nominating and corporate governance committee include the identification of individuals qualified to become Board members, the selection of nominees to stand for election as directors, the oversight of the selection and composition of committees of the Board, establishing procedures for the nomination process, oversight of possible conflicts of interests involving the Board and its members, developing corporate governance principles, and the oversight of the evaluations of the Board and management. The nominating and corporate governance committee has not established a policy with regard to the consideration of any candidates recommended by stockholders. If we receive any stockholder recommended nominations, the nominating and corporate governance committee will carefully review the recommendation(s) and consider such recommendation(s) in good faith.

---

#### **Director Independence**

We have determined, after considering all the relevant facts and circumstances, that David N. Keys, Laurie Weisberg, and Richard Schurfeld are independent directors as defined by the listing standards of the Nasdaq Stock Exchange and by the SEC because they have no relationship with us that would interfere with their exercise of independent

judgment in carrying out their responsibilities as a director. Kevin Brian Cox and David May are not "independent" as defined by the listing standards as Mr. Cox is an executive officer of the Company and Mr. May was, in 2021, a controlling shareholder of an organization to which the Company made payments for services that exceeded the greater of \$200,000 or five percent (5%) of the organization's consolidated gross revenues for 2021.

### Compensation Committee Interlocks and Insider Participation

None of the Company's executive officers serves, or in the past has served, as a member of the Board of Directors or compensation committee, or other committee serving an equivalent function, of any entity that has one or more executive officers who serve as members of the Company's Board or its Compensation Committee. None of the members of the Company's Compensation Committee is, or has ever been, an officer or employee of the company.

### Code of Ethics

The Board adopted a Code of Business Conduct and Ethics applicable to each officer, director, and employee of the Company. The full text of our Code of Business Conduct and Ethics is posted on our website at [www.surgepays.com](http://www.surgepays.com). We intend to disclose on our website any future amendments of our Code of Business Conduct and Ethics or waivers that exempt any principal executive officer, principal financial officer, principal accounting officer or controller, persons performing similar functions or our directors from provisions in the Code of Business Conduct and Ethics.

### Term of Office

Our directors are appointed at the annual meeting of shareholders and hold office until the annual meeting of the shareholders next succeeding his or her election, or until his or her prior death, resignation or removal in accordance with our bylaws. Our officers are appointed by the Board and hold office until the annual meeting of the Board next succeeding his or her election, and until his or her successor shall have been duly elected and qualified, subject to earlier termination by his or her death, resignation or removal.

### Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires our directors, executive officers and persons who beneficially own 10% or more of a class of securities registered under Section 12 of the Exchange Act to file reports of beneficial ownership and changes in beneficial ownership with the SEC. Directors, executive officers and greater than 10% stockholders are required by the rules and regulations of the SEC to furnish us with copies of all reports filed by them in compliance with Section 16(a). To our knowledge, based solely on a review of reports furnished to it, our officers, directors and ten percent holders have made the required filings other than the following: (i) Mr. May did not timely file two Form 4S reporting acquisitions of shares; and (ii) Mr. Schurfeld did not timely file his Form 3 following his appointment as a director.

27

## ITEM 11. EXECUTIVE COMPENSATION

### Summary Compensation Table

The following table shows the compensation for the years ended December 31, 2022 and 2021 for our Chief Executive Officer and our two other executive officers whose total compensation exceeded \$100,000 in each year (the "Named Executive Officers"). In 2021, our Named Executive Officers were Kevin Brian Cox, Anthony Nuzzo, and David Ansani. In 2022, our Named Executive Officers were Kevin Brian Cox, Anthony Evers, and David Ansani.

Name and Principal Position	Year	Annual Compensation			Other Annual Compensation -3	Long-Term Compensation		
		Salary -1	Bonus -2	Restricted Stock Awards		Securities Underlying Options	Total Compensation	
Kevin Brian Cox CEO and Chairman	2022	\$ 548,139	\$ 375,250	\$ 160,491	\$ —	\$ —	\$ 1,083,880	
	2021	\$ 733,862	\$ —	\$ 38,231	\$ —	\$ —	\$ 772,093	
Anthony P. Nuzzo, Jr President and Director (through March 2022)	2022	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	
	2021	\$ 579,157	\$ —	\$ 65,629	\$ —	\$ —	\$ 644,786	
David C. Ansani Chief Administrative Officer	2022	\$ 231,626	\$ 116,250	\$ 18,374	\$ —	\$ —	\$ 366,250	
	2021	\$ 251,422	\$ —	\$ 16,125	\$ —	\$ —	\$ 267,547	
Anthony Evers CFO	2022	\$ 400,839	\$ 351,250	\$ 40,630	\$ —	\$ —	\$ 792,719	
	2021	\$ 386,573	\$ —	\$ 24,635	\$ —	\$ —	\$ 411,208	

- (1) Management base salaries can be increased by our Board of Directors based on the attainment of financial and other performance guidelines set by our management.
- (2) Salaries listed do not include annual bonuses to be paid based on profitability and performance. These bonuses will be set, from time to time, by a disinterested majority of our Board of Directors. No bonuses will be set until such time as the aforementioned occurs.
- (3) Other annual compensation consists of paid medical insurance, auto allowances, and housing allowances.

28

On March 23, 2022, the Compensation Committee and Board approved the following one-time cash bonus payments to the following executives and members of the Board: (i) \$375,000 to Mr. Cox (our CEO and Chairman); (ii) \$126,000 to Mr. Evers (our CFO); (iii) \$116,000 to David C. Ansani (our Chief Administrative Officer); (iv) \$20,000 to David N. Keys (a member of the Board); (v) \$10,000 to David May (a member of the Board); and (vi) \$10,000 to Jay Jones (formerly a member of the Board). These one-time cash bonus payments were paid prior to April 21, 2022.

In addition, on March 23, 2022, the Compensation Committee and Board approved the Company issuing the independent members of the Board on the first day of April each year that an independent director is then serving on the Board the number of options to purchase shares of Common Stock (the "Director Options") equivalent to \$60,000 with the number of Director Options to be determined in accordance with the provisions of the 2022 Plan. As of March 30 2023, no Director Options have been issued.

### Employment Agreements

On May 13, 2022, the Company entered into a new employment agreement with Mr. Cox (the "CEO Employment Agreement").

Below is a summary of the key provisions of the CEO Employment Agreement.

**Term of Employment:** The CEO Employment Agreement had an effective date of May 13, 2022 and continues for a period of five years. The CEO Employment Agreement will automatically renew and continue for successive one-year terms unless terminated pursuant to qualifying termination events. In addition, either party may terminate the CEO Employment Agreement by sending written notice to the other party, not more than 270 days and not less than 90 days before the end of the then-existing term of employment, of such party's desire to terminate the CEO Employment Agreement at the end of the then-existing term.

**Base Compensation:** During the term of the CEO Employment Agreement, Mr. Cox will receive a base salary of \$475,000 per year and, provided that the Company's EBITDA was positive in the prior calendar year, the base salary will be increased on January 1 of each year by six percent (6%) per annum. Mr. Cox's base salary did not increase on January 1, 2023 due to ongoing discussions between the Compensation Committee and Mr. Cox regarding the definition of EBITDA.

**Cash Bonus:** Mr. Cox will receive a cash bonus each year of the greater of (i) between 2.5% and 10% of the Company's calendar year EBITDA (with the marginal percentage decreasing as EBITDA increases from \$1 million to \$3 million). By way of example only, if EBITDA is \$1.5 million, Mr. Cox will receive \$137,500 ((10% of \$1 million = \$100,000) plus (7.5% of \$500,000 = \$37,500)) and (ii) between 30% and 150% of base salary determined by the relationship between the Company's annual performance and an annual target performance set each year by mutual agreement between the Board and Mr. Cox (with the percentage of base salary increasing as the percentage of target increases from 79% to over 150%).

As of March 30, 2023, no cash bonus has been paid to Mr. Cox as there are ongoing discussions between the Compensation Committee and Mr. Cox regarding the definition of EBITDA.

**Stock Bonus:** The Company will issue, out of the 2022 Plan and future equity incentive plans to be approved by the Company's shareholders, three different categories of stock bonuses and one category of options. As of March 30, 2023, no stock bonuses or options have been issued to Mr. Cox as there are ongoing discussions between the Compensation Committee and Mr. Cox regarding the definition of EBITDA and the measurement period and payment dates for the non-EBITDA milestone-based payments.

- (i) EBITDA based issuances - 500,000 shares of common stock upon the Company first reaching positive cash flow EBITDA for a quarter of any amount and then reaching positive cash flow EBITDA for a quarter of milestones of \$1 million, \$3 million, and \$5 million.
- (ii) Market Capitalization based issuances - 500,000 shares of common stock upon the Company reaching the following market capitalization milestones: \$250 million, \$500 million, \$1 billion, \$2 billion, \$3 billion, \$4 billion, and \$5 billion.
- (iii) Business Metrics Growth based issuances - award incentives for achieving 25,000, 50,000, 100,000 active stores on the SurgePays network and 250,000, 500,000, 1,000,000 Wireless MVNO/Mobile broadband or digital content customers - up to a total of 2.75 million shares of common stock. In addition, Mr. Cox will be issued 500,000 shares of common stock per increment of 500,000 total subscribers (Wireless MVNO, Mobile Broadband or digital content customers) of the Company beyond 1 million total subscribers.
- (iv) Options to purchase 250,000 shares of common stock on January 1<sup>st</sup> of each year from 2023 through 2026. In addition, the Company was to issue 250,000 options to Mr. Cox in 2022 following shareholder approval of the 2022 Plan.

**Benefits:** Mr. Cox will be eligible to participate in all health, medical, dental, and life insurance employee benefits as are available from time to time to other key executive employees and their families. Mr. Cox will be entitled to receive an annual car allowance of up to \$15,000 per year, home office expense reimbursement of up to \$5,000 per month, and a remote housing allowance of up to \$10,000 per month. Mr. Cox is also entitled to be reimbursed for up to \$10,000 per year in costs associated with income tax preparation and estate planning.

**Termination and Severance:** The Company or Mr. Cox may terminate the CEO Employment Agreement and Mr. Cox's employment in various circumstances and, depending on the circumstances, the benefits that may be due following such termination are described below.

For a termination by the Company with Cause (as defined in the CEO Employment Agreement), no severance benefits are payable.

For a termination due to death, disability, by Mr. Cox following a Change in Control, or by Mr. Cox due to Constructive Termination (both as defined in the CEO Employment Agreement), Mr. Cox will be entitled to (a) a payment equal to the greater of (i) two (2) years' worth of the then-existing Base and the last year's bonus and (ii) the Base payable through the remaining Initial Term (if applicable). Mr. Cox will also be entitled to retain his benefits for the remainder of the Initial Term or Renewal Term, as then applicable.

**Executive Covenants:** In consideration of Mr. Cox's continued employment with the Company and the benefits and payments described in the CEO Employment Agreement, Mr. Cox agrees to (i) nondisclosure of Company confidential information during his term of employment with the Company and for five years thereafter; (ii) not to compete with the Company during the term of his employment (owning up to 10% of a publicly traded company that competes with the Company is permitted); (iii) for 12 months following termination of his Employment, not to solicit customers and not to recruit or hire the Company's employees. The non-solicit and non-compete provisions are not applicable if termination of Employment was by Mr. Cox following a Change in Control or by Mr. Cox due to Constructive Termination; and (iv) not to disparage the Company or its officers, executives or Board members.

On August 8, 2022, the Company entered into a new employment agreement with Mr. Evers (the "CFO Employment Agreement").

Below is a summary of the key provisions of the CFO Employment Agreement.

**Term of Employment:** The CFO Employment Agreement had an effective date of August 8, 2022 and continues for a period of five years. The CFO Employment Agreement will automatically renew and continue for successive one-year terms unless terminated pursuant to qualifying termination events. In addition, either party may terminate the CFO Employment Agreement by sending written notice to the other party, not more than 270 days and not less than 90 days before the end of the then-existing term of employment, of such party's desire to terminate the CFO Employment Agreement at the end of the then-existing term.

**Base Compensation:** During the term of the CFO Employment Agreement, Mr. Evers will receive a base salary of \$450,000 per year and, provided that the Company's EBITDA was positive in the prior calendar year, the base will be increased on January 1 of each year by six percent (6%) per annum. Mr. Evers' base salary did not increase on January 1, 2023 due to ongoing discussions between the Compensation Committee and Mr. Evers regarding the definition of EBITDA.

**Signing Bonus:** The Company paid Mr. Evers a one-time signing bonus of Fifty percent (50%) of the base salary equivalent to \$225,000 (the "Signing Bonus") within thirty (30) days following August 8, 2022 less payroll deductions and all required withholdings. If Mr. Evers resigns from employment with the Company without Good Reason (as defined in the CFO Employment Agreement) or the Company terminates Mr. Evers' employment for Cause (as defined in the CFO Employment Agreement), in each case prior to August 8, 2023, Mr. Evers must repay to the Company a pro rata portion of the Signing Bonus representing the remainder of the period between the date of termination and August 8, 2023.

**Restricted Vesting Shares:** The Company shall grant to Mr. Evers under the 2022 Plan a restricted stock award for 500,000 shares (the "Restricted Shares") of common stock of the Company. Vesting of the Restricted Shares shall occur in bi-annual installments over five years commencing on December 31, 2022 on which date 50,000 shares of the Restricted Shares shall vest and continuing to vest thereafter on each of July 1 and December 31, for the years of 2023-2027. As of March 30, 2023, no securities have been issued to Mr. Evers as there are ongoing discussions between the Compensation Committee and Mr. Evers regarding the definition of EBITDA and the measurement period and payment dates for the non-EBITDA milestone-based payments.

**Restricted Signing Shares:** The Company shall grant to the Executive 100,000 shares of the Company's common stock within five (5) business days of stockholder approval of the 2022 Plan.

**Cash Bonus:** Mr. Evers will receive a cash bonus each year of the greater of (i) between 2.5% and 10% of the Company's calendar year EBITDA (with the marginal percentage decreasing as EBITDA increases from \$1 million to \$3 million). By way of example only, if EBITDA is \$1.5 million, Mr. Evers will receive \$137,500 ((10% of \$1 million = \$100,000) plus (7.5% of \$500,000 = \$37,500)) and (ii) between 9% and 45% of base salary determined by the relationship between the Company's annual performance and an annual target performance set each year by mutual agreement between the Board and Mr. Evers (with the percentage of base salary increasing as the percentage of target increases from 79% to over 150%). As of March 30, 2023, no cash bonus has been paid to Mr. Evers as there are ongoing discussions between the Compensation Committee and Mr. Evers regarding the definition of EBITDA.

**Stock Bonus:** The Company will issue, out of the 2022 Plan and future equity incentive plans to be approved by the Company's shareholders, three different categories of stock bonuses and one category of options:

- (i) EBITDA based issuances - 150,000 shares of common stock upon the Company first reaching positive cash flow EBITDA for a quarter of any amount and then reaching positive cash flow EBITDA for a quarter of milestones of \$1 million, \$3 million, and \$5 million.
- (ii) Market Capitalization based issuances - 150,000 shares of common stock upon the Company reaching the following market capitalization milestones: \$250 million, \$500 million, \$1 billion, \$2 billion, \$3 billion, \$4 billion, and \$5 billion.
- (iii) Business Metrics Growth based issuances - award incentives for achieving 25,000, 50,000, 100,000 active stores on the SurgePays network and 250,000, 500,000, 1,000,000 Wireless MVNO/Mobile broadband or digital content customers - up to a total of 825,000 shares of common stock. In addition, Executive will be issued 150,000 shares of common stock per increment of 500,000 total subscribers (Wireless MVNO, Mobile Broadband or digital content customers) of the Company beyond 1 million total subscribers.
- (iv) Options to purchase 75,000 shares of common stock on January 1 of each year from 2023 through 2026. In addition, the Company will issue 75,000 options to Executive in 2022 following shareholder approval of the 2022 Plan.

**Benefits:** The Executive will be eligible to participate in all health, medical, dental, and life insurance employee benefits as are available from time to time to other key executive employees and their families. The Executive will be entitled to receive an annual car allowance of up to \$3,750 per year and home office expense reimbursement of up to \$500 per month. The Executive is also entitled to be reimbursed for up to \$10,000 per year in costs associated with income tax preparation and estate planning.

**Termination and Severance:** The Company or the Executive may terminate the CFO Employment Agreement and the Executive's employment in various circumstances and, depending on the circumstances, the benefits that may be due following such termination are described below.

For a termination by the Company with Cause (as defined in the CFO Employment Agreement), no severance benefits are payable.

For a termination due to death, disability, by Executive following a Change in Control, or by Executive due to Constructive Termination (both as defined in the CFO Employment Agreement), the Executive will be entitled to (a) a payment equal to the greater of (i) two (2) years' worth of the then-existing Base and the last year's bonus and (ii) the Base payable through the remaining Initial Term (if applicable). The Executive will also be entitled to retain his benefits for the remainder of the Initial Term or Renewal Term, as then applicable.

**Executive Covenants:** In consideration of the Executive's continued employment with the Company and the benefits and payments described in the CFO Employment Agreement, the Executive agrees to (i) nondisclosure of Company confidential information during his term of employment with the Company and for five years thereafter; (ii) not to compete with the Company during the term of his employment (owning up to 10% of a publicly traded company that competes with the Company is permitted); (iii) for 12 months following termination of his Employment, not to solicit customers and not to recruit or hire the Company's employees. The non-solicit and non-compete provisions are not applicable if termination of Employment was by Executive following a Change in Control or by Executive due to Constructive Termination; and (iv) not to disparage the Company or its officers, executives or Board members.

## **2022 Plan**

On August 3, 2022, the Board approved, authorized and adopted, subject to stockholder approval, the 2022 Plan. The 2022 Plan provides for the issuance of up to 3,500,000 shares of Common Stock plus (ii) an annual increase on the first day of each calendar year beginning January 1, 2023 and ending on and including January 1, 2031 equal to the lesser of (A) ten percent (10%) of the Common Stock outstanding on the final day of the immediately preceding calendar year, and (B) such smaller number of Common Stock shares as determined by the Board. The issuance of the shares of Common Stock shall be through the grant of Distribution Equivalent Rights, may Share Options, Non-Qualified Share Options, Performance Unit Awards, Restricted Share Awards, Restricted Share Unit Awards, Share Appreciation Rights, Tandem Share Appreciation Rights, Unrestricted Share Awards and other equity-based awards to directors, officers, employees, and consultants.

The objective of the 2022 Plan is to encourage and enable directors, officers, employees, and consultants of the Company and its subsidiaries, upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business, to acquire a proprietary interest in the Company.

Our ability to provide long-term incentives in the form of equity compensation aligns management's interests with the interests of our stockholders and fosters an ownership mentality that drives optimal decision-making for the long-term health and profitability of our Company. Equally important, equity compensation is critical to our continuing ability to attract, retain and motivate qualified corporate executives and retain management. We expect our ability to grant equity compensation to be important in achieving our long-term growth.

In addition to our five directors (which includes our Chief Executive Officer), approximately 17 employees and approximately four consultants are eligible to participate in the 2022 Plan. The Board believes that adopting the 2022 Plan is consistent with the Company's compensation philosophy (and with responsible compensation policies generally) and will preserve the Company's ability to attract and retain capable directors, officers, employees, and consultants. The Board believes it is imperative, in view of our compensation structure and strategy that the 2022 Plan be approved.

## 2022 Plan Highlights

The essential features of the 2022 Plan are outlined below. The following description is not complete and is qualified by reference to the full text of the 2022 Plan, which is attached as Exhibit 10.18 to this Annual Report.

*Options are subject to the following conditions:*

- (i) The Committee (as defined below) determines the exercise price of Incentive Options at the time the Incentive Options are granted. The assigned exercise price must be no less than 100% of the Fair Market Value (as defined in the 2022 Plan) of the Common Stock. In the event that the recipient is a Ten Percent Shareholder (as defined in the 2022 Plan), the exercise price must be no less than 110% of the Fair Market Value of the Common Stock.
- (ii) The exercise price of each Non-qualified Option will be at least 100% of the Fair Market Value of such share of the Common Stock on the date the Non-qualified Option is granted, *unless* the Committee, in its sole and absolute discretion, elects to set the exercise price of such Non-qualified Option below Fair Market Value.
- (iii) The Committee fixes the term of Options, *provided* that Options may not be exercisable more than ten years from the date the Option is granted, and *provided further* that Incentive Options granted to a Ten Percent Shareholder may not be exercisable more than five years from the date the Incentive Option is granted.
- (iv) Incentive Options may not be issued in an amount or manner where the amount of Incentive Options exercisable in one year entitles the holder to Common Stock with an aggregate Fair Market value of greater than \$100,000.

Awards of Restricted Shares are subject to the following conditions:

- (i) The Committee determines the restrictions on each Restricted Share Award (as defined in the 2022 Plan). Upon the grant of a Restricted Share Award and the payment of any applicable purchase price, grantee is considered the record owner of the Restricted Shares and entitled to vote the Restricted Shares if such Restricted Shares are entitled to voting rights.
- (ii) Restricted Shares may not be delivered to the grantee until the Restricted Shares have vested.
- (iii) Restricted Shares may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as provided in the 2022 Plan or in the Restricted Share Award Agreement (as defined in the 2022 Plan).

## Grants

Although all employees and all of the employees of our subsidiaries are eligible to receive grants under our Plan, the grant to any particular employee is subject to the discretion of the Board, or at the discretion of the Board, or the Compensation Committee of the Board or such other committee designated by the Board to administer the 2022 Plan (such body that administers the 2022 Plan, the "Committee").

We have made and will make appropriate adjustments to outstanding grants and to the number or kind of shares subject to the 2022 Plan in the event of a stock split, reverse stock split, stock dividend, share combination or reclassification and certain other types of corporate transactions, including a merger or a sale of all or substantially all of our assets.

## Administration

The Committee shall have the sole authority, in its discretion, to make all determinations under the 2022 Plan, including, but not limited to, who receives an award, the time or times when an award shall be made (the date of grant of an award shall be the date on which the award is awarded by the Committee), what type of award shall be granted, the term of an award, the date or dates on which an award vests (including acceleration of vesting), the form of any payment to be made pursuant to an award, the terms and conditions of an award (including the forfeiture of the award (and/or any financial gain) if the holder of the award violates any applicable restrictive covenant thereof), the Restrictions under a Restricted Share Award and the number of Common Stock which may be issued under an Award, all as applicable. In making such determinations, the Committee may take into account the nature of the services rendered by the respective employees, directors and consultants, their present and potential contribution to the Company's (or the Affiliate's) success and such other factors as the Committee, in its discretion, shall deem relevant.

## Grant Instruments

All grants will be subject to the terms and conditions set forth in our Plan and to such other terms and conditions consistent with our Plan as the Committee deems appropriate and as are specified in writing by the Committee to the individual in a grant instrument or an amendment to the grant instrument. All grants will be made conditional upon the acknowledgement of the grantee in writing or by acceptance of the grant, that all decisions and determinations of the Compensation Committee will be final and binding on the grantee, his or her beneficiaries and any other person having or claiming an interest under such grant.

## Terms and Conditions of Grants

Under the 2022 Plan, the term "Fair Market Value" of the Common Stock on any given date means the fair market value of the Common Stock determined in good faith by the Committee based on the reasonable application of a reasonable valuation method that is consistent with Section 409A of the Code. If the Stock is admitted to trade on a national securities exchange, the determination shall be made by reference to the closing price reported on such exchange. If there is no closing price for such date, the determination shall be made by reference to the last date preceding such date for which there is a closing price.

## Transferability

No award under the 2022 Plan or any award agreement and no rights or interests therein, shall or may be assigned, transferred, sold, exchanged, encumbered, pledged or otherwise hypothecated or disposed of by a holder except (i) by will or by the laws of descent and distribution, or (ii) except for an Incentive Share Option, by gift to any family member of the holder. An award may be exercisable during the lifetime of the holder only by such holder or by the holder's guardian or legal representative unless it has been transferred by gift to a family member of the holder, in which case it shall be exercisable solely by such transferee.

## Amendment and Termination

The 2022 Plan shall continue in effect, unless sooner terminated, until the tenth (10th) anniversary of the date on which it is adopted by the Board (except as to awards outstanding on that date). The Board, in its discretion, may terminate the 2022 Plan at any time with respect to any shares for which awards have not theretofore been granted;

provided, however, that the 2022 Plan's termination shall not materially and adversely impair the rights of a holder with respect to any Award theretofore granted without the consent of the holder. The Board shall have the right to alter or amend the 2022 Plan or any part hereof from time to time; provided, however, stockholder approval shall be required for any modification of the 2022 Plan that (i) requires stockholder approval under the rules or regulations of the Securities and Exchange Commission or any securities exchange applicable to the Company, (ii) increases the number of shares authorized under the 2022 Plan, (iii) increases the dollar limitation specified in Section 5.4, or (iv) amends, modifies or suspends Section 7.8 (repricing prohibitions) or Article XV. In addition, unless otherwise permitted under the award agreement, no change in any award theretofore granted may be made which would materially and adversely impair the rights of a holder with respect to such award without the consent of the holder.

**Outstanding Equity Awards at Fiscal Year-End**

Name	Option Awards		Option Exercise Price	Option Expiration Date
	Number of Securities Underlying Unexercised Options			
	Exercisable	Unexercisable		
	Anthony Evers	6,801		

**Option Exercises and Stock Vested**

	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise	Value Realized on Exercise	Number of Shares Acquired on Vesting	Value Realized on Vesting

None.

**Employee Pension, Profit Sharing or other Retirement Plan**

The Company maintains a tax-qualified 401(k) savings plan which allows participants to defer eligible compensation up to the maximum permitted by the Internal Revenue Service and provides for discretionary matching contributions by the Company.

**Compensation of Directors**

We did not issue any equity to the members of the Board in 2022 but did make one-time cash bonus payments in April 2022 to the members of the Board as follows: \$20,000 to David N. Keys (a member of the Board); \$10,000 to David May (a member of the Board); and \$10,000 to Jay Jones (formerly a member of the Board).

On July 17, 2019, we entered into a Director Agreement with David N. Keys (the "Keys Director Agreement") whereby Mr. Keys is to be reimbursed for (i) all reasonable out-of-pocket expenses incurred in attending any in-person meetings; and (ii) any costs associated with filings required to be made by Mr. Keys in regards to any beneficial ownership of securities.

In conjunction with the Keys Director Agreement, we entered into an Indemnification Agreement (the "Keys Indemnification Agreement") with Mr. Keys. The Keys Indemnification Agreement indemnifies to the fullest extent permitted under Nevada law for any claims arising out of or resulting from, amongst other things, (i) any actual, alleged or suspected act or failure to act by Mr. Keys in his capacity as a director or agent of the Company and (ii) any actual, alleged or suspected act or failure to act by Mr. Keys in respect of any business, transaction, communication, filing, disclosure or other activity of the Company. Under the Keys Indemnification Agreement, Mr. Keys is indemnified for any losses pertaining to such claims, provided, however, that the losses shall not include expenses incurred by Mr. Keys in respect of any claim as which he shall have been adjudged liable to us, unless the court having jurisdiction rules otherwise. The Keys Indemnification Agreement provides for indemnification of Mr. Keys during his directorship and for a period of six (6) years thereafter.

On February 13, 2021, we entered into Director Agreements and Indemnification Agreements with each of David May and Jay Jones that are substantially similar to the Keys Director Agreement and the Keys Indemnification Agreement.

Mr. Jones resigned from the Board on December 19, 2022. Such resignation was not the result of any disagreement with the Company on any matter relating to the Company's operations, policies or practices. In connection with Mr. Jones' resignation, the Board entered into a Consulting Agreement with Mr. Jones dated December 19, 2022 (the "Consulting Agreement").

Pursuant to such Consulting Agreement, the Company agrees to engage Mr. Jones as a consultant ("the Consultant") to provide advice to the Board and senior management of the Company regarding general business matters. The Consultant has industry and Company knowledge that is valuable to the Company and its ongoing business ventures. The term of the Consultant Agreement is for a period of twelve (12) months, in which the Consultant's duties include reporting to the Board and senior management of the Company and advising them in respect to business matters. Following an annual or special meeting of the Company's stockholders at which stockholders approve the 2022 Plan, the Consultant's compensation will consist of stock options with a value of \$5,000 on the first trading day of each calendar month during the term. Each month's options will have an exercise price equal to the fair market value of the Company's common stock on the last trading day of the previous calendar month. All options granted on the first trading day of each calendar month shall vest immediately, and the options will be issued quarterly in accordance with the 2022 Plan. The Consultant is considered an independent contractor and will be reimbursed for (i) all reasonable out-of-pocket expenses and (ii) any costs associated with filing required to be made by him or any of the entities managed or controlled by the Consultant to report beneficial ownership or the acquisition or disposition of securities by the Company.

On December 19, 2022, David May notified the Company of his resignation, effectively immediately, as a member of the Board's Audit Committee, Compensation Committee, and the Nominating and Corporate Governance Committee. Such resignation from the Board committees is not the result of any disagreement with the Company on any matter relating to the Company's operations, policies or practices. Mr. May remains a member of the Board.

The Company and Ms. Weisberg entered into a Director Agreement, dated December 19, 2022 (the "Weisberg Director Agreement"). Pursuant to the Weisberg Director Agreement, Ms. Weisberg shall make reasonable business efforts to attend all Board meetings and fulfill her other responsibilities as well as use her best efforts to promote the interests of the Company. Following an annual or special meeting of the Company's stockholders at which stockholders approve the 2022 Plan, Ms. Weisberg will receive options with a value of \$5,000 on the first trading day of each calendar month. Each month's options will have an exercise price equal to the fair market value of the common stock on the last trading day of the previous calendar month. All options granted on the first trading day of each calendar month shall vest immediately and the options will be issued quarterly in accordance with the terms of the 2022 Plan.

Pursuant to the Weisberg Director Agreement, Ms. Weisberg shall be considered an independent contractor and shall be reimbursed for (i) all reasonable out-of-pocket expenses incurred by her in attending in-person meetings and (ii) any costs associated with filing required to be made by her or any of the entities managed or controlled by her to report beneficial ownership or the acquisition or disposition of securities of the Company. Ms. Weisberg's term, subject to nomination and election at each of the Company's annual stockholders meeting, will terminate at the earliest of her resignation, death, termination by mutual agreement of the Company and herself, or the removal of Ms. Weisberg by the majority of the stockholders of the Company.

The Company and Mr. Schurfeld entered into a Director Agreement, dated December 19, 2022 (the "Schurfeld Director Agreement"). The terms of the Schurfeld Director

Agreement are substantially the same as the terms of the Weisberg Director Agreement.

On December 19, 2022, the Company entered into an Indemnification Agreement with each of Ms. Weisberg and Mr. Schurfeld (the "December 2022 Indemnification Agreements").

The December 2022 Indemnification Agreements indemnifies to the fullest extent permitted under Nevada law for any claims arising out of or resulting from, amongst other things, (i) any actual, alleged or suspected act or failure to act by Ms. Weisberg and Mr. Schurfeld (together, the "Indemnitees") in their capacity as a director or agent of the Company and (ii) any actual, alleged or suspected act or failure to act by the Indemnitees in respect of any business, transaction, communication, filing, disclosure or other activity of the Company. Under the December 2022 Indemnification Agreements, the Indemnitees are indemnified for any losses pertaining to such claims, provided, however, that the losses shall not include expenses incurred by the Indemnitees in respect of any claim as which they shall have been adjudged liable to the Company, unless the court having jurisdiction rules otherwise.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The following sets forth information as of March 30, 2023, regarding the number of shares of our Common Stock beneficially owned by (i) each person that we know beneficially owns more than 5% of our outstanding Common Stock, (ii) each of our directors and executive officers and (iii) all of our directors and executive officers as a group.

36

The amounts and percentages of our Common Stock beneficially owned are reported on the basis of SEC rules governing the determination of beneficial ownership of securities. Under the SEC rules, a person is deemed to be a "beneficial owner" of a security if that person has or shares "voting power," which includes the power to vote or to direct the voting of such security, or "investment power," which includes the power to dispose of or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities of which that person has the right to acquire beneficial ownership within 60 days through the exercise of any stock option, warrant or other right, and the conversion of preferred stock. Under these rules, more than one person may be deemed a beneficial owner of the same securities and a person may be deemed to be a beneficial owner of securities as to which such person has no economic interest. Unless otherwise indicated, each of the shareholders named in the table below, or his or her family members, has sole voting and investment power with respect to such shares of our Common Stock. Except as otherwise indicated, the address of each of the shareholders listed below is: 3124 Brother Blvd, Suite 410, Bartlett, TN 38133.

Name of Beneficial Owner <sup>(1)</sup>	Total Common Stock Shares Beneficially Owned	% of Common Stock <sup>(2)</sup>
<b>Directors and Executive Officers:</b>		
Kevin Brian Cox	5,453,760 <sup>(3)</sup>	38.6%
Anthony Evers	10,672 <sup>(4)</sup>	*
David C. Ansani	140 <sup>(5)</sup>	*
David N. Keys	17,043 <sup>(6)</sup>	*
David May	140,944	1.0
Richard Schurfeld	42,201	*
<b>All Directors and Executive Officers as a Group (6 persons)</b>	<b>5,661,359</b>	<b>40.1%</b>
<b>5% Shareholders:</b>		

\* Less than one (1) percent

(1) The person named in this table has sole voting and investment power with respect to all shares of Common Stock reflected as beneficially owned.

(2) Based on 14,121,773 shares of Common Stock outstanding as of March 30, 2023.

37

(3) Includes (i) 4,569,384 shares owned by BLC Family Investments, (ii) 561,758 shares owned by SMDMM, LLC, a Tennessee liability company and (iii) 270,745 shares owned by BC Family Holdings. Mr. Cox is a beneficial owner of all three entities.

(4) Includes 7,271 shares of Common Stock (held in Mr. Evers' IRA) and 6,801 options that are currently exercisable.

(5) Shares are held in Mr. Ansani's IRA.

(6) Includes (i) 1,666 shares held in an IRA owned by Mr. Keys' wife, however, Mr. Keys shares investing and dispositive power over these holdings, (ii) 5,377 shares in total held by two different IRAs owned by Mr. Keys; and (iii) 10,000 shares are held by PCC Holdings LLC. Mr. Keys shares investing and dispositive power over these holdings.

There are no arrangements known to us, including any pledge by any person of our securities, the operation of which may at a subsequent date result in a change in control of us.

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

At December 31, 2022 and 2021, the Company had trade payables to Axia of \$163,583, respectively. Axia is owned by our Chief Executive Officer, Mr. Cox.

For the years ended December 31, 2022 and 2021, the Company rented space from Carddawg Investments, LLC in the amount of \$166,356 and \$64,488, respectively. These costs are included in the General and Administrative expenses in the consolidated statements of operations. Mr. Cox is sole owner of Carddawg Investments, LLC.

For the years ended December 31, 2022 and 2021, the Company purchased telecom services and access to wireless networks from 321 Communications in the amount of \$16,035,093 and \$690,398, respectively. These costs are included in Cost of Revenue in the consolidated statements of operations. Mr. Jones (formerly a Board member) is the majority owner of 321 Communications and Mr. Cox is a minority owner of 321 Communications.

For the years ended December 31, 2022 and 2021, the Company purchased telecom services and access to wireless networks from National Relief Telephone in the amount of \$1,163,941 and \$0, respectively. These costs are included in Cost of Revenue in the consolidated statements of operations. Mr. Jones (formerly a Board member) is the majority owner of National Relief Telephone.

At December 31, 2022 and 2021, the Company had trade payables to 321 Communications of \$279,380 and \$88,898, respectively.

At December 31, 2022 and 2021, the Company had trade payables to National Relief Telephone of \$0 and \$0, respectively.

For the year ended December 31, 2021, the Company paid \$1,217,790 in commissions on tablet sales to Galaxy Distribution, Inc., an entity that Mr. May (a Board member) was a controlling shareholder of in 2021.

38

The Company contracted with Centercom to provide customer service call center services, manage the sales process to include handling incoming orders, the collection and verification of all documents to comply with FCC regulations, monthly audit of all subscribers to file the USAC 497 form, yearly audit of all subscribers that have been active over one year to file the USAC 555 form (Recertification), information technology professionals to maintain company websites, sales portals and server maintenance. Billings for these services in the year ended December 31, 2022 and 2021 were \$3,115,651 and \$1,395,674, respectively, and are included in Cost of Revenue in the consolidated statements of operations. Mr. Nuzzo had a 50% interest in Centercom prior to his death in March 2022.

At December 31, 2022 and 2021, the Company had trade payables to Centercom of \$972,029 and \$555,069, respectively.

During 2021, Centercom forgave \$429,010 of accounts payable owed by SurgePays to Centercom.

See Note 6 long-term debt due to related parties.

#### Disclosure of SEC Position on Indemnification of Securities Act Liabilities

Our directors and officers are indemnified as provided by Nevada corporate law and our bylaws. We have agreed to indemnify each of our directors and certain officers against certain liabilities, including liabilities under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the provisions described above, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than our payment of expenses incurred or paid by our director, officer or controlling person in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

We have been advised that in the opinion of the SEC indemnification for liabilities arising under the Securities Act is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities is asserted by one of our directors, officers, or controlling persons in connection with the securities being registered, we will, unless in the opinion of our legal counsel the matter has been settled by controlling precedent, submit the question of whether such indemnification is against public policy to a court of appropriate jurisdiction. We will then be governed by the court's decision.

#### ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

##### Fees Billed for Audit and Non-Audit Services

The following table presents for each of the last two fiscal years the aggregate fees billed in connection with the audits of our financial statements and other professional services rendered by our independent registered public accounting firm Rodefer Moss & Co, PLLC.

	2022	2021
Audit Fees (1)	\$ 186,820	\$ 166,554

- (1) *Audit Fees.* These are fees for professional services for the audit of our annual financial statements, and for the review of the financial statements included in our filings on Form 10-K and Form 10-Q, and for services that are normally provided in connection with statutory and regulatory filings or engagements.

39

#### PART IV

#### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed or Furnished Herewith
		Form	Exhibit	Filing Date	
3.1	<a href="#">Articles of Incorporation filed August 22, 2006</a>	SB-2	3.1	03/14/2007	
3.2	<a href="#">Articles of Merger filed July 25, 2008</a>	S-1/A	3.2	10/21/2021	
3.3	<a href="#">Certificate of Amendment to Articles of Incorporation filed April 27, 2009</a>	10-K/A	3.1	05/14/2013	
3.4	<a href="#">Certificate of Amendment to Articles of Incorporation filed May 13, 2015</a>	8-K/A	3.1	12/11/2015	
3.5	<a href="#">Certificate of Amendment to Articles of Incorporation filed June 30, 2015</a>	S-1/A	3.5	10/21/2021	
3.6	<a href="#">Certificate of Amendment to Articles of Incorporation filed October 10, 2017</a>	S-1/A	3.6	10/21/2021	
3.7	<a href="#">Certificate of Amendment to Articles of Incorporation filed December 21, 2017</a>	S-1/A	3.7	10/21/2021	
3.8	<a href="#">Certificate of Amendment to Articles of Incorporation filed October 29, 2020</a>	8-K	3.1	11/5/2020	
3.9	<a href="#">Certificate of Amendment, filed November 1, 2021</a>	8-K	3.1	11/5/2021	
3.10	<a href="#">Bylaws</a>	SB-2	3.2	03/14/2007	
3.11	<a href="#">Amended Bylaws</a>	10-K/A	3.2	05/14/2013	
3.12	<a href="#">Amended Bylaws</a>	8-K/A	3.2	12/11/2015	
4.1	<a href="#">Warrant, dated March 8, 2021, issued to Evergreen Capital Management LLC</a>	8-K	4.2	03/16/2021	
4.2	<a href="#">Form of Underwriter's Warrants</a>	8-K	4.1	11/5/2021	
4.3	<a href="#">Warrant Agency Agreement between SurgePays, Inc. and VStock Transfer, LLC, dated November 4, 2021</a>	8-K	4.2	11/5/2021	



4.5	<a href="#">Form of Promissory Note Issued to Inventory Lenders in March 2022 to May 2022</a>	10-Q	4.1	08/11/2022	
4.6	<a href="#">Form of Warrant with \$4.73 Exercise Price Issued to Inventory Lenders in March 2022 to May 2022</a>	10-Q	4.2	08/11/2022	
4.7	<a href="#">Revolving Secured Promissory Note with Lender, dated April 8, 2022, as amended June 2, 2022</a>	10-Q	4.3	08/11/2022	
10.1+	<a href="#">Consulting Agreement, dated September 25, 2017, by and between KSIX MEDIA HOLDINGS, INC. and David C. Ansani</a>	S-1	10.2	09/12/2019	
10.2+	<a href="#">Director Agreement, dated July 17, 2019, by and between Surge Holdings, Inc. and David N. Keys</a>	8-K	10.1	07/24/2019	
10.3+	<a href="#">Director and Officer Indemnification Agreement, dated July 17, 2019, by and between Surge Holdings, Inc. and David N. Keys</a>	8-K	10.2	07/24/2019	
10.4	<a href="#">Promissory Note, issued by Surge Holdings, Inc. to AN Holdings, LLC on April 24, 2020</a>	10-K	10.22	05/12/2020	
10.5	<a href="#">Paycheck Protection Program Note, dated April 18, 2020, issued to Bank 3</a>	10-Q	10.4	08/14/2020	
10.6	<a href="#">Office Lease, dated May 5, 2020, by and between Woodfield Financial Center LLC and Surge Holdings Inc.</a>	S-1/A	10.31	02/16/2021	
10.7	<a href="#">Master Services Agreement by and between Surge Pays, Inc. and Glass Mountain BPO, dated January 1, 2021</a>	S-1/A	10.32	02/16/2021	
10.8	<a href="#">Commercial Lease Agreement, dated July 10, 2019, by and between CardDawg Investments, LLC and Surge Holdings, Inc.</a>	S-1/A	10.35	02/16/2021	
10.9	<a href="#">Form of On Demand Promissory Note issued by the Company in favor of SMDMM Funding, LLC</a>	S-1/A	10.36	09/22/2021	
10.10	<a href="#">Stock Purchase Agreement, by and among, SurgePays, Inc., Torch Wireless, and the Parties Listed Therein, dated April 6, 2022</a>	8-K	10.1	04/12/2022	
10.11	<a href="#">Installment Sale Agreement, by and among, SurgePays, Inc., SurgePhone Wireless LLC, Torch Wireless, and Affordable Connectivity Financing V Limited Liability Company, dated November 17, 2022</a>	8-K	10.1	11/23/2022	
10.12	<a href="#">Paying Agent Agreement, by and among, SurgePhone Wireless LLC, Torch Wireless, Affordable Connectivity Financing V Limited Liability Company, and Ivy Dallas Funding, LLC, dated November 17, 2022</a>	8-K	10.2	11/23/2022	
10.13	<a href="#">Consulting Agreement, by and between the Company and Jay Jones, dated December 19, 2022</a>	8-K	10.1	12/23/2022	
10.14+	<a href="#">Weisberg Director Agreement, by and between the Company and Ms. Weisberg, dated December 19, 2022</a>	8-K	10.2	12/23/2022	
10.15+	<a href="#">Form of Indemnification Agreement</a>	8-K	10.3	12/23/2022	
10.16+	<a href="#">Employment Agreement between SurgePays, Inc. and Kevin Brian Cox</a>	10-Q	10.1	05/16/2022	
10.17+	<a href="#">Employment Agreement between SurgePays, Inc. and Anthony Evers, dated August 8, 2022</a>	10-Q	10.3	08/11/2022	
10.18+	<a href="#">SurgePays, Inc. 2022 Omnibus Securities and Incentive Plan</a>				X
10.19	<a href="#">Loan Agreement between the Company and Lender, dated April 8, 2022, as amended June 2, 2022</a>	10-Q	10.1	08/11/2022	
10.20	<a href="#">Security Agreement between the Company and Lender, dated April 8, 2022</a>	10-Q	10.2	08/11/2022	
14.1	<a href="#">SurgePays, Inc. Code of Ethics and Business Conduct</a>	10-K	14.1	03/24/2022	
21.1	<a href="#">List of Subsidiaries</a>				X
31.1	<a href="#">Certification of Principal Executive Officer pursuant to Exchange Act Rule 13a-14(a), as adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				X
31.2	<a href="#">Certification of Principal Financial Officer pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				X
32.1*	<a href="#">Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act 2002</a>				X
32.2*	<a href="#">Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act 2002</a>				X
101.INS	Inline XBRL Instance Document				X
101.SCH	Inline XBRL Taxonomy Extension Schema				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase				X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase				X

+ Management contracts or compensation plans or arrangements in which directors or executive officers are eligible to participate.

\* Furnished herewith

#### ITEM 16. FORM 10-K SUMMARY

Not applicable.

#### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**SurgePays, Inc.**

Date: March 30, 2023

By: /s/ Kevin Brian Cox  
 Name: Kevin Brian Cox  
 Title: Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Kevin Brian Cox</u> Kevin Brian Cox	Chief Executive Officer and Director (Principal Executive Officer)	March 30, 2023
<u>/s/ Anthony Evers</u> Anthony Evers	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 30, 2023
<u>/s/ David N. Keys</u> David N. Keys	Director	March 30, 2023
<u>/s/ David May</u> David May	Director	March 30, 2023
<u>/s/ Laurie Weisberg</u> Laurie Weisberg	Director	March 30, 2023
<u>/s/ Richard Schurfeld</u> Richard Schurfeld	Director	March 30, 2023

42

**SurgePays, Inc. and Subsidiaries**

	<u>Page(s)</u>
<a href="#">Report of Independent Registered Public Accounting Firm (PCAOB ID No. 910)</a>	F-2
<a href="#">Consolidated Balance Sheets</a>	F-3
<a href="#">Consolidated Statements of Operations</a>	F-4
<a href="#">Consolidated Statements of Changes in Stockholders' Equity (Deficit)</a>	F-5 - F-6
<a href="#">Consolidated Statements of Cash Flows</a>	F-7
<a href="#">Notes to Consolidated Financial Statements</a>	F-8

F-1

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of  
 SurgePays, Inc. & Subsidiaries  
 Bartlett, Tennessee

**Opinion on the Consolidated Financial Statements**

We have audited the accompanying consolidated balance sheets of SurgePays, Inc. & Subsidiaries (the "Company") as of December 31, 2022 and 2021, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the years in the two-year period ended December 31, 2022 and the related notes (collectively referred to as the financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2022 and 2021, and the results of its consolidated operations and its consolidated cash flows for each of the years in the two-year period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

## Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

### Revenue Recognition Description of the matter

The Company generates revenue from the delivery of processing, service and product solutions. Revenue is measured based on consideration specified in a contract with a customer, and the Company recognizes revenue when it satisfies a performance obligation by processing the transaction, which is at a point in time.

The Company's revenue consists of a significant volume of transactions sourced from systems and applications. The processing of such transactions and recording of the majority of revenue is system-driven and based on contractual terms with customers. The Company also has significant revenue in lead and case delivery to customers. Revenue is recognized when the services and products are delivered to the customers and control is transferred, which is at a point in time. The Company also has significant revenue from providing services and products under the Emergency Broadband Benefit program. Revenue is recognized after services and products have been delivered to a eligible customer based on contracts with the customer.

### How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to revenue recognition included the following, among others:

We obtained and understanding and evaluated management's significant accounting policies around revenue recognition for each of the company significant segments including management's assessment of when control of goods and services is transferred to customers.

For a sample of revenue transactions, we tested selected transactions by agreeing the amounts of revenue recognized to source documents and testing the mathematical accuracy of the recorded revenue. We also evaluated the source documents to determine whether terms that may impact revenue recognition were identified and properly considered by management.

/s/ Rodefer Moss & Co, PLLC

We have served as the Company's auditor since 2017

Brentwood, Tennessee

March 30, 2023

F-2

## SURGEPAYS, INC. AND SUBSIDIARIES Consolidated Balance Sheets

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
<b>Assets</b>		
<b>Current Assets</b>		
Cash	\$ 7,035,654	\$ 6,283,496
Accounts receivable - net	9,230,365	3,249,889
Inventory	11,186,242	4,359,296
Prepays	111,524	-
<b>Total Current Assets</b>	<b>27,563,785</b>	<b>13,892,681</b>
<b>Property and equipment - net</b>	<b>643,373</b>	<b>200,448</b>
<b>Other Assets</b>		
Note receivable	176,851	176,851
Intangibles - net	2,779,977	3,433,484
Internal use software development costs - net	387,180	-
Goodwill	1,666,782	866,782
Investment in CenterCom	354,206	443,288
Operating lease - right of use asset - net	431,352	486,668
<b>Total Other Assets</b>	<b>5,796,348</b>	<b>5,407,073</b>
<b>Total Assets</b>	<b>\$ 34,003,506</b>	<b>\$ 19,500,202</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued expenses	\$ 5,784,374	\$ 6,602,577
Accounts payable and accrued expenses - related party	1,728,721	1,389,798
Installment sale liability	13,018,184	-
Deferred revenue	243,110	276,250
Operating lease liability	39,490	49,352
Notes payable - related parties	1,108,150	1,553,799
Notes payable - SBA government	-	126,418
Notes payable - net	1,542,033	-
<b>Total Current Liabilities</b>	<b>23,464,062</b>	<b>9,998,194</b>
<b>Long Term Liabilities</b>		
Note payable	53,134	-
Loans payable - related parties	4,493,798	4,507,017
Notes payable - SBA government	474,846	1,004,767

Operating lease liability	399,413	438,903
<b>Total Long-Term Liabilities</b>	<b>5,421,191</b>	<b>5,950,687</b>
<b>Total Liabilities</b>	<b>28,885,253</b>	<b>15,948,881</b>
<b>Commitments and Contingencies (Note 9)</b>		
<b>Stockholders' Equity</b>		
Series A, Convertible Preferred stock, \$0.001 par value, 100,000,000 shares authorized, 0 and 13,000,000 shares issued and outstanding, respectively	-	260
Series C, Convertible Preferred stock, \$0.001 par value, 1,000,000 shares authorized, 0 and 0 shares issued and outstanding, respectively	-	-
Common stock, \$0.001 par value, 500,000,000 shares authorized 14,116,832 and 12,063,834 shares issued and outstanding, respectively	14,117	12,064
Additional paid-in capital	40,780,707	38,662,340
Accumulated deficit	(35,804,106)	(35,123,343)
Stockholders' equity	4,990,718	3,551,321
Non-controlling interest	127,535	-
<b>Total Stockholders' Equity</b>	<b>5,118,253</b>	<b>3,551,321</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 34,003,506</b>	<b>\$ 19,500,202</b>

F-3

**SURGEPAYS, INC. AND SUBSIDIARIES**  
Consolidated Statements of Operations

	For the Year Ended December 31,	
	2022	2021
<b>Revenues</b>	\$ 121,544,190	\$ 51,060,589
<b>Costs and expenses</b>		
Cost of revenue	108,074,782	44,890,610
General and administrative expenses	12,835,623	12,162,547
<b>Total costs and expenses</b>	<b>120,910,405</b>	<b>57,053,157</b>
<b>Income (loss) from operations</b>	<b>633,785</b>	<b>(5,992,568)</b>
<b>Other income (expense)</b>		
Interest expense	(1,843,396)	(3,840,616)
Derivative expense	-	(1,775,057)
Change in fair value of derivative liabilities	-	1,806,763
Gain (loss) on investment in CenterCom	(89,082)	28,676
Gain on settlement of liabilities	-	1,469,641
Amortization of debt discount	(115,404)	(3,677,121)
Gain on deconsolidation of True Wireless	-	1,895,871
Settlement expense	-	(3,750,000)
Warrant modification expense	-	(74,476)
Gain on forgiveness of PPP loan - government	524,143	-
Other income	336,726	377,743
<b>Total other income (expense) - net</b>	<b>(1,187,013)</b>	<b>(7,538,576)</b>
<b>Net loss including non-controlling interest</b>	<b>(553,228)</b>	<b>(13,531,144)</b>
<b>Non-controlling interest</b>	<b>127,535</b>	<b>-</b>
<b>Net loss available to common stockholders</b>	<b>\$ (680,763)</b>	<b>\$ (13,531,144)</b>
<b>Loss per share - basic and diluted</b>	<b>\$ (0.05)</b>	<b>\$ (3.09)</b>
<b>Weighted average number of shares - basic and diluted</b>	<b>12,395,364</b>	<b>4,381,709</b>

F-4

**SURGEPAYS, INC. AND SUBSIDIARIES**  
Consolidated Statements of Changes in Stockholders' Equity  
For the Year Ended December 31, 2022

	Series A Preferred Stock		Series C Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Non-Controlling Interest	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount				
<b>December 31, 2021</b>	<b>260,000</b>	<b>\$ 260</b>	<b>-</b>	<b>\$ -</b>	<b>12,063,834</b>	<b>\$ 12,064</b>	<b>\$ 38,662,340</b>	<b>\$ (35,123,343)</b>	<b>\$ -</b>	<b>\$ 3,551,321</b>
Conversion of preferred stock to common stock - related parties	(260,000)	(260)	-	-	1,300,000	1,300	(1,040)	-	-	-

Conversion of debt into common stock - related party	-	-	-	-	270,745	271	1,086,142	-	-	1,086,413
Stock issued for services	-	-	-	-	50,000	50	103,450	-	-	103,500
Recognition of stock-based compensation - stock options	-	-	-	-	-	-	37,176	-	-	37,176
Stock issued as direct offering costs	-	-	-	-	200,000	200	(200)	-	-	-
Stock issued to purchase software	-	-	-	-	85,000	85	411,315	-	-	411,400
Warrants issued as debt issue costs	-	-	-	-	-	-	115,404	-	-	115,404
Warrants issued as interest expense	-	-	-	-	-	-	365,794	-	-	365,794
Exercise of warrants (cashless)	-	-	-	-	147,153	147	(147)	-	-	-
Exercise of warrants	-	-	-	-	100	-	473	-	-	473
Non-controlling interest	-	-	-	-	-	-	-	-	127,535	127,535
Net loss	-	-	-	-	-	-	-	(680,763)	-	(680,763)
<b>December 31, 2022</b>	<b>-</b>	<b>\$ -</b>	<b>-</b>	<b>\$ -</b>	<b>14,116,832</b>	<b>\$ 14,117</b>	<b>\$ 40,780,707</b>	<b>\$ (35,804,105)</b>	<b>\$ 127,535</b>	<b>\$ 5,118,253</b>

F-5

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Changes in Stockholders' Equity (Deficit)**  
**For the Year Ended December 31, 2021**

	Series A Preferred Stock		Series C Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount			
<b>December 31, 2020</b>	<b>260,000</b>	<b>\$ 260</b>	<b>721,598</b>	<b>\$ 722</b>	<b>2,542,624</b>	<b>\$ 2,543</b>	<b>\$ 10,862,708</b>	<b>\$ (21,592,199)</b>	<b>(10,725,966)</b>
Stock issued for services rendered and recognition of share-based compensation (\$5 - \$14.05/share)	-	-	-	-	13,411	13	3,562	-	3,575
Conversion of Series C, preferred stock into common stock	-	-	(721,598)	(722)	3,607,980	3,608	(2,886)	-	-
Stock issued for cash (\$4.30 - \$8/share)	-	-	-	-	4,862,247	4,862	21,294,800	-	21,299,662
Direct offering costs paid in connection with stock issued for cash	-	-	-	-	-	-	(2,222,952)	-	(2,222,952)
Stock and warrants issued with debt recorded as a debt discount	-	-	-	-	18,000	18	2,645,872	-	2,645,890
Conversion of debt (\$.05 - \$10.38/share)	-	-	-	-	709,674	710	3,362,851	-	3,363,561
Stock issued under make-whole arrangement (\$5.60 - \$6/share)	-	-	-	-	15,147	15	90,386	-	90,401
Stock issued in connection with debt modification (\$5.60 - \$8/share)	-	-	-	-	13,916	14	108,917	-	108,931
Stock issued in settlement of liabilities (\$4.50 - \$15.99/share)	-	-	-	-	276,702	277	1,997,700	-	1,997,977
Stock issued for acquisition of membership interest in ECS (\$8.95/share)	-	-	-	-	2,000	2	17,898	-	17,900
Exercise of warrants (\$0.001/share)	-	-	-	-	2,133	2	(2)	-	-
Warrant modification expense	-	-	-	-	-	-	74,476	-	74,476
Forgiveness of accounts payable - CenterCom-related party	-	-	-	-	-	-	429,010	-	429,010
Net loss	-	-	-	-	-	-	-	(13,531,144)	(13,531,144)
<b>December 31, 2021</b>	<b>260,000</b>	<b>\$ 260</b>	<b>-</b>	<b>\$ -</b>	<b>12,063,834</b>	<b>\$ 12,064</b>	<b>\$ 38,662,340</b>	<b>\$ (35,123,343)</b>	<b>3,551,321</b>

F-6

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Cash Flows**

For the Year Ended December 31,

	2022	2021
<b>Operating activities</b>		
Net loss - including non-controlling interest	\$ (553,228)	\$ (13,531,144)
Adjustments to reconcile net loss to net cash provided by (used in) operations		
Bad debt expense (recovery)	(59,485)	24,841
Provision for inventory obsolescence	51,718	-
Depreciation and amortization	933,384	759,383
Amortization of right-of-use assets	55,316	158,085
Amortization of debt discount/debt issue costs	115,404	3,677,121
Recognition of share-based compensation	140,676	3,575
Warrants issued for interest expense	365,794	-
Change in fair value of derivative liabilities	-	(1,806,763)
Derivative expense	-	1,775,057
Gain on settlement of liabilities	-	(1,443,016)
(Gain) loss on equity method investment - CenterCom	89,082	(28,676)
Gain on forgiveness of PPP loan	(524,143)	(371,664)
Gain on deconsolidation of subsidiary (True Wireless)	-	(1,895,871)
Warrant modification expense	-	74,476
Changes in operating assets and liabilities		
(Increase) decrease in		
Accounts receivable	(5,920,991)	(3,094,231)
Lifeline revenue - due from USAC	-	105,532
Inventory	(6,878,664)	(4,255,637)
Prepays	(111,524)	5,605
Other	-	61,458
Increase (decrease) in		
Accounts payable and accrued expenses	(812,227)	4,056,812
Accounts payable and accrued expenses - related party	966,468	757,429
Installment sale liability - net	(13,018,184)	-
Deferred revenue	(33,140)	(167,050)
Operating lease liability	(49,352)	(153,583)
<b>Net cash provided by (used in) operating activities</b>	<b>793,272</b>	<b>(15,288,261)</b>
<b>Investing activities</b>		
Purchase of property and equipment	(11,402)	(51,408)
Capitalized internal use software development costs	(387,180)	-
Purchase of software	(300,000)	-
Acquisition of Torch, Inc.	(800,000)	-
Cash disposed in deconsolidation of subsidiary (True Wireless)	-	(325,316)
<b>Net cash used in investing activities</b>	<b>(1,498,582)</b>	<b>(376,724)</b>
<b>Financing activities</b>		
Proceeds from stock and warrants issued for cash	473	21,299,662
Cash paid for direct offering costs	-	(2,222,952)
Proceeds from loans - related party	-	4,355,386
Repayments of loans - related party	-	(2,476,468)
Proceeds from notes payable	6,700,000	1,101,000
Repayments on notes payable	(5,231,251)	(1,377,257)
Proceeds from SBA notes	-	518,167
Repayments on SBA notes	(11,754)	-
Proceeds from convertible notes	-	2,550,000
Repayments on convertible notes - net of overpayment	-	(2,473,052)
<b>Net cash provided by financing activities</b>	<b>1,457,468</b>	<b>21,274,486</b>
<b>Net increase in cash</b>	<b>752,158</b>	<b>5,609,501</b>
<b>Cash - beginning of year</b>	<b>6,283,496</b>	<b>673,995</b>
<b>Cash - end of year</b>	<b>\$ 7,035,654</b>	<b>\$ 6,283,496</b>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid for interest	\$ 523,005	\$ 866,684
Cash paid for income tax	\$ -	\$ -
<b>Supplemental disclosure of non-cash investing and financing activities</b>		
Debt issue costs recorded in connection with notes payable	\$ 115,404	\$ -
Stock issued to acquire software	\$ 411,400	\$ -
Debt discount/issue costs recorded in connection with debt/derivative liabilities	\$ -	\$ 2,748,084
Conversion of Series C, preferred stock into common stock	\$ -	\$ 722
Gain on forgiveness of CenterCom AP - Related Party	\$ -	\$ 429,010
Stock issued in settlement of liabilities	\$ -	\$ 1,997,977
Conversion of debt into equity	\$ -	\$ 3,363,561

Conversion of debt into equity - related party	\$ 1,086,413	\$ -
Right-of-use asset obtained in exchange for new operating lease liability	\$ -	\$ 515,848
Termination of ECS ROU lease	\$ -	\$ 228,752
Stock issued in connection with debt modification	\$ -	\$ 108,931
Stock issued under make-whole arrangement	\$ -	\$ 90,401
Stock issued for acquisition of membership interest in ECS	\$ -	\$ 17,900
Reclassification of SBA note payable - government to note payable	\$ 126,418	\$ -
Reclassification of accrued interest - related party to note payable - related party	\$ 627,545	\$ 692,458
Deconsolidation of subsidiary (True Wireless)	\$ -	\$ 2,434,552

F-7

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Note 1 - Organization and Nature of Operations**

**Organization and Nature of Operations**

SurgePays, Inc. ("SurgePays," "SP," "we," "our" or "the Company"), and its operating subsidiaries, is a technology-driven company building a next generation supply chain software platform that can offer wholesale goods and services more cost efficiently than traditional and existing wholesale distribution models.

The parent (SurgePays, Inc.) and subsidiaries are organized as follows:

Company Name	Incorporation Date	State of Incorporation
SurgePays, Inc.	August 18, 2006	Tennessee
KSIX Media, Inc.	November 5, 2014	Nevada
KSIX, LLC	September 14, 2011	Nevada
Surge Blockchain, LLC	January 29, 2009	Nevada
Injury Survey, LLC	July 28, 2020	Nevada
DigitizeIQ, LLC	July 23, 2014	Illinois
LogicsIQ, Inc.	October 2, 2018	Nevada
Surge Payments, LLC	December 17, 2018	Nevada
Surgephone Wireless, LLC	August 29, 2019	Nevada
SurgePays Fintech, Inc.	August 22, 2019	Nevada
True Wireless, Inc. *	October 29, 2020	Oklahoma
ECS Prepaid, LLC	June 9, 2009	Missouri
Central States Legal Services, Inc.	August 1, 2003	Missouri
Electronic Check Services, Inc.	May 19, 1999	Missouri
Torch Wireless **	January 29, 2019	Wyoming

\* Entity was disposed of on May 7, 2021.

\*\* Effective January 1, 2022, the Company acquired Torch Wireless

**Basis of Presentation**

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

F-8

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Liquidity and Management's Plans**

As reflected in the accompanying consolidated financial statements, for the year ended December 31, 2022, the Company had:

- Net loss available to common stockholders of \$680,763; and
- Net cash used in operations was \$793,272

Additionally, at December 31, 2022, the Company had:

- Accumulated deficit of \$35,804,106
- Stockholders' equity of \$5,118,253; and
- Working capital of \$4,099,723

We manage liquidity risk by reviewing, on an ongoing basis, our sources of liquidity and capital requirements. The Company has cash on hand of \$7,035,654 at December 31, 2022.

The Company has incurred significant losses since its inception and has not demonstrated an ability to generate sufficient revenues from the sales of its products and services to achieve profitable operations. There can be no assurance that profitable operations will ever be achieved, or if achieved, could be sustained on a continuing basis. In making this assessment we performed a comprehensive analysis of our current circumstances including: our financial position, our cash flows and cash usage forecasts for the twelve months ended December 31, 2023, and our current capital structure including equity-based instruments and our obligations and debts.

The Company believes it has sufficient cash resources on hand along with access to additional debt and/or equity-based capital from third parties and related parties as needed to meet its current obligations for a period that is one year from the issuance date of these financial statements.

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Management's strategic plans include the following:

- Continue the growth of the Affordable Connectivity Program revenue stream,
- Execution of business plan and significant revenue growth from prior period,
- Expand product and services offerings to a larger surrounding geographic area.
- Continuing to explore and execute prospective partnering or distribution opportunities; and
- Identifying unique market opportunities that represent potential positive short-term cash flow.

**Note 2 - Summary of Significant Accounting Policies**

**Principles of Consolidation and Non-Controlling Interest**

These consolidated financial statements have been prepared in accordance with U.S. GAAP and include the accounts of the Company and its wholly owned subsidiaries. All intercompany transactions and balances have been eliminated.

For entities that are consolidated, but not 100% owned, a portion of the income or loss and corresponding equity is allocated to owners other than the Company. The aggregate of the income or loss and corresponding equity that is not owned by us is included in Non-controlling Interests in the consolidated financial statements.

**Business Combinations**

The Company accounts for business acquisitions using the acquisition method of accounting, in accordance with which assets acquired and liabilities assumed are recorded at their respective fair values at the acquisition date.

The fair value of the consideration paid, including contingent consideration, is assigned to the assets acquired and liabilities assumed based on their respective fair values. Goodwill represents the excess of the purchase price over the estimated fair values of the assets acquired and liabilities assumed.

F-10

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Significant judgments are used in determining fair values of assets acquired and liabilities assumed, as well as intangibles. Fair value and useful life determinations are based on, among other factors, estimates of future expected cash flows, and appropriate discount rates used in computing present values. These judgments may materially impact the estimates used in allocating acquisition date fair values to assets acquired and liabilities assumed, as well as the Company's current and future operating results. Actual results may vary from these estimates which may result in adjustments to goodwill and acquisition date fair values of assets and liabilities during a measurement period or upon a final determination of asset and liability fair values, whichever occurs first. Adjustments to fair values of assets and liabilities made after the end of the measurement period are recorded within the Company's operating results.

Effective January 1, 2022, the Company executed a management agreement with Torch Wireless ("Torch"). Generally, the Company was engaged to handle the following services:

- Oversee management of the business being conducted by Torch,
- Involved in the performance of Torch's obligations under contracts regarding its business operations and maintenance of Torch's customer relationships,
- Assist Torch with regulatory compliance,
- Manage all billing and collection functions, including the right to collect revenues related to Torch's business operations, as part of the agreement, Torch may not participate in this function; and
- Manage all payment functions related to the business, including the right to disburse funds, as part of the agreement, Torch may not participate in this function

Torch is a provider of subsidized mobile broadband services to consumers qualifying under the federal guidelines of the U.S. Federal Communication Commission's Affordable Connectivity Program ("ACP"). The ACP provides the Company up to a \$100 reimbursement for the cost of each tablet device distributed and a \$30 per customer, per month subsidy for mobile broadband (internet connectivity) services. With the purchase of Torch, the Company now has approval to offer subsidized mobile broadband in all fifty states.

It was determined that the Company had acquired 100% of Torch, effective January 1, 2022, resulting in Torch becoming a wholly-owned subsidiary, in a transaction accounted for as a business combination. Pursuant to ASC 805-10-25-7, the Company determined that the acquisition date preceded the closing date as it was managing Torch and in full control of all operational decision making. At this time, the Company had obtained control of Torch through its management contract.

At the time of acquisition, Torch had no significant assets or liabilities. The Company paid \$800,000. As a result of the acquisition, the Company recorded goodwill of \$800,000.

F-11

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

At the time of acquisition, Torch had nominal revenues and losses. As a result, and given the immaterial nature of this acquisition, the Company has elected not to present any pro-forma financial information.

In addition, the Company will pay the Sellers monthly residual payments for customers enrolled by the Company through December 31, 2022 of either \$2 or \$3 per customer (depending on the category of customer).

For the year ended December 31, 2022, the Company incurred expenses of \$1,679,723 related to the residual payments. All expenses are included as a component of cost of goods sold.



This transaction does not involve the purchase of a "significant amount of assets" as defined in the Instructions to Item 2.01 of Form 8-K. Additionally, the acquisition of Torch was not deemed to be significant at any level under SEC Regulation S-X 3.05 and does not require the presentation of any additional historical audits.

For financial reporting purposes, at December 31, 2022, Torch has been consolidated into the Company's consolidated statements of financial position, results of operations, and cash flows.

At December 31, 2022 and 2021 goodwill was \$1,666,782 and \$866,782, respectively.

There were no impairment losses for the years ended December 31, 2022 or 2021, respectively.

#### Deconsolidation of Subsidiary

In accordance with ASC Topic 810-10-40, a parent company must deconsolidate a subsidiary as of the date the parent ceases to have a controlling interest in that subsidiary and recognize a gain or loss in net income at that time.

On May 7, 2021, the Company disposed of its subsidiary True Wireless, Inc. ("TW"), however we retained \$1,097,659 in liabilities which consisted of \$1,077,659 in accounts payable and accrued expenses as well as \$20,000 in related party loans. During 2021, the \$20,000 in related party loans was forgiven.

In connection with the sale, the Company received an unsecured note receivable for \$176,851, bearing interest at 0.6%, with a default interest rate of 10%. The Company will receive twenty-five (25) payments of principal and accrued interest totaling \$7,461 commencing in June 2023.

F-12

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Payments are scheduled as follows:

For the Year Ended December 31, 2022:

	2023	\$	52,227
	2024		89,532
	2025		44,766
			186,525
Less: amount representing interest			(9,674)
Total		\$	176,851

As a result of the sale, we deconsolidated our entire ownership interest in TW from our consolidated financial statements on May 7, 2021, (the effective date of the sale agreement), and recognized a gain on deconsolidation of \$1,895,871 as follows:

<b>Consideration</b>	
Note receivable	\$ 176,851
Fair value of consideration received	176,851
<b>Recognized amounts of identifiable assets sold and liabilities assumed by buyer:</b>	
Cash	325,316
Lifeline revenue due from USAC	74,650
Inventory	107,089
Property and equipment - net	20,645
Operating lease - right of use asset - net	10,981
Total assets sold	538,681
Accounts payable and accrued expenses	1,183,850
Line of credit	912,870
Note payable - SBA government	150,000
Operating lease liability	10,981
Total liabilities assumed by buyer	2,257,701
Total net liabilities assumed by buyer	1,719,020
Gain on deconsolidation of True Wireless	1,895,871

F-13

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

#### Business Segments and Concentrations

The Company uses the "management approach" to identify its reportable segments. The management approach requires companies to report segment financial information consistent with information used by management for making operating decisions and assessing performance as the basis for identifying the Company's reportable segments. The Company manages its business as multiple reportable segments. See Note 11 regarding segment disclosure.

The SurgePhone and Torch Wireless business segment made up approximately 73% of total consolidated revenue in 2022. Revenues related to this business segment are 100% derived from programs administered by the Federal Communications Commission (FCC), and all funds related to these programs are received directly from organizations under the

direction of the FCC. Accounts receivable related to these programs was made up 96% of accounts receivable at December 31, 2022.

The SurgePhone and Torch Wireless business segment made up approximately 17% of total consolidated revenue in 2021. Revenues related to this business segment are 100% derived from programs administered by the Federal Communications Commission (FCC), and all funds related to these programs are received directly from organizations under the direction of the FCC. Accounts receivable related to these programs was made up 89% of accounts receivable at December 31, 2021.

Customers in the United States accounted for 100% of our revenues. We do not have any property or equipment outside of the United States.

See Note 11 regarding segment disclosure.

#### Use of Estimates

Preparing financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses during the reported period. Actual results could differ from those estimates, and those estimates may be material.

Significant estimates during the years ended December 31, 2022 and 2021, respectively, include, allowance for doubtful accounts and other receivables, inventory reserves and classifications, valuation of loss contingencies, valuation of derivative liabilities, valuation of stock-based compensation, estimated useful lives related to intangible assets, capitalized internal-use software development costs, and property and equipment, implicit interest rate in right-of-use operating leases, uncertain tax positions, and the valuation allowance on deferred tax assets.

#### Risks and Uncertainties

The Company operates in an industry that is subject to intense competition and change in consumer demand. The Company's operations are subject to significant risk and uncertainties including financial and operational risks including the potential risk of business failure.

F-14

---

### SURGEPAYS, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS DECEMBER 31, 2022 AND 2021

The Company has experienced, and in the future may experience, variability in sales and earnings. The factors expected to contribute to this variability include, among others, (i) the cyclical nature of the industry, (ii) general economic conditions in the various local markets in which the Company competes, including a potential general downturn in the economy, and (iii) the volatility of prices in connection with the Company's distribution of the product. These factors, among others, make it difficult to project the Company's operating results on a consistent basis.

#### Fair Value of Financial Instruments

The Company accounts for financial instruments under Financial Accounting Standards Board ("FASB") ASC 820, *Fair Value Measurements*. ASC 820 provides a framework for measuring fair value and requires disclosures regarding fair value measurements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, based on the Company's principal or, in absence of a principal, most advantageous market for the specific asset or liability.

The Company uses a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The hierarchy requires the Company to use observable inputs when available, and to minimize the use of unobservable inputs, when determining fair value.

The three tiers are defined as follows:

- Level 1 - Observable inputs that reflect quoted market prices (unadjusted) for identical assets or liabilities in active markets;
- Level 2 - Observable inputs other than quoted prices in active markets that are observable either directly or indirectly in the marketplace for identical or similar assets and liabilities; and
- Level 3 - Unobservable inputs that are supported by little or no market data, which require the Company to develop its own assumptions.

The determination of fair value and the assessment of a measurement's placement within the hierarchy requires judgment. Level 3 valuations often involve a higher degree of judgment and complexity. Level 3 valuations may require the use of various cost, market, or income valuation methodologies applied to unobservable management estimates and assumptions. Management's assumptions could vary depending on the asset or liability valued and the valuation method used. Such assumptions could include estimates of prices, earnings, costs, actions of market participants, market factors, or the weighting of various valuation methods. The Company may also engage external advisors to assist us in determining fair value, as appropriate.

F-15

---

### SURGEPAYS, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS DECEMBER 31, 2022 AND 2021

Although the Company believes that the recorded fair value of our financial instruments is appropriate, these fair values may not be indicative of net realizable value or reflective of future fair values.

The Company's financial instruments, including cash, accounts receivable, accounts payable and accrued expenses, and accounts payable and accrued expenses – related party, are carried at historical cost. At December 31, 2022 and 2021, respectively, the carrying amounts of these instruments approximated their fair values because of the short-term nature of these instruments.

ASC 825-10 *Financial Instruments* allows entities to voluntarily choose to measure certain financial assets and liabilities at fair value ("fair value option"). The fair value option may be elected on an instrument-by-instrument basis and is irrevocable unless a new election date occurs. If the fair value option is elected for an instrument, unrealized gains and losses for that instrument should be reported in earnings at each subsequent reporting date. The Company did not elect to apply the fair value option to any outstanding financial instruments.

#### Cash and Cash Equivalents and Concentration of Credit Risk

For purposes of the consolidated statements of cash flows, the Company considers all highly liquid instruments with a maturity of three months or less at the purchase date and money market accounts to be cash equivalents.

At December 31, 2022 and 2021, respectively, the Company did not have any cash equivalents.

The Company is exposed to credit risk on its cash and cash equivalents in the event of default by the financial institutions to the extent account balances exceed the amount insured by the FDIC, which is \$250,000. At December 31, 2022 and 2021, the Company did not experience any losses on cash balances in excess of FDIC insured limits.

### Accounts Receivable

Accounts receivable are stated at the amount management expects to collect from outstanding customer balances. Credit is extended to customers based on an evaluation of their financial condition and other factors. Interest is not accrued on overdue accounts receivable. The Company does not require collateral.

F-16

---

## SURGEPAYS, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS DECEMBER 31, 2022 AND 2021

Management periodically assesses the Company's accounts receivable and, if necessary, establishes an allowance for estimated uncollectible amounts. The Company provides an allowance for doubtful accounts based upon a review of the outstanding accounts receivable, historical collection information and existing economic conditions. Accounts determined to be uncollectible are charged to operations when that determination is made.

Allowance for doubtful accounts was \$17,525 and \$137,218 at December 31, 2022 and 2021, respectively.

There was a bad debt recovery of \$59,485 for the year ended December 31, 2022.

There was bad debt expense of \$24,841 for the year ended December 31, 2021.

Bad debt expense (recovery) is recorded as a component of general and administrative expenses in the accompanying consolidated statements of operations.

### Inventory

Inventory primarily consists of tablets, cell phones and sim cards. Inventories are stated at the lower of cost or net realizable value using the average cost valuation method.

During the years ended December 31, 2022 and 2021, the Company recorded a provision for inventory obsolescence of \$51,718 and \$0, respectively.

At December 31, 2022 and 2021, the Company had inventory of \$11,186,242 and \$4,359,296, respectively.

### Impairment of Long-lived Assets including Internal Use Capitalized Software Costs

Management evaluates the recoverability of the Company's identifiable intangible assets and other long-lived assets when events or circumstances indicate a potential impairment exists, in accordance with the provisions of ASC 360-10-35-15 "Impairment or Disposal of Long-Lived Assets." Events and circumstances considered by the Company in determining whether the carrying value of identifiable intangible assets and other long-lived assets may not be recoverable include but are not limited to significant changes in performance relative to expected operating results; significant changes in the use of the assets; significant negative industry or economic trends; and changes in the Company's business strategy. In determining if impairment exists, the Company estimates the undiscounted cash flows to be generated from the use and ultimate disposition of these assets.

If impairment is indicated based on a comparison of the assets' carrying values and the undiscounted cash flows, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets.

F-17

---

## SURGEPAYS, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS DECEMBER 31, 2022 AND 2021

There were no impairment losses for the years ended December 31, 2022 and 2021, respectively.

### Property and Equipment

Property and equipment is stated at cost less accumulated depreciation. Depreciation is provided on the straight-line basis over the estimated useful lives of the assets.

Expenditures for repair and maintenance which do not materially extend the useful lives of property and equipment are charged to operations. When property or equipment is sold or otherwise disposed of, the cost and related accumulated depreciation are removed from the respective accounts with the resulting gain or loss reflected in operations.

Management reviews the carrying value of its property and equipment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable.

There were no impairment losses for the years ended December 31, 2022 and 2021, respectively.

### Internal Use Software Development Costs

We capitalize certain internal use software development costs associated with creating and enhancing internally developed software related to our technology infrastructure. These costs include personnel and related employee benefits expenses for employees who are directly associated with and who devote time to software projects, and external direct costs of materials and services consumed in developing or obtaining the software. Software development costs that do not meet the qualification for capitalization, as further discussed below, are expensed as incurred and recorded in general and administrative expenses in the consolidated results of operations.

Software development activities generally consist of three stages:

- (i) planning stage,
- (ii) application and infrastructure development stage, and

(iii) post implementation stage.

Costs incurred in the planning and post implementation stages of software development, including costs associated with the post-configuration training and repairs and maintenance of the developed technologies, are expensed as incurred.

F-18

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

We capitalize costs associated with software developed for internal use when the planning stage is completed, management has authorized further funding for the completion of the project, and it is probable that the project will be completed and perform as intended. Costs incurred in the application and infrastructure development stages, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete, and the software and technologies are ready for their intended purpose. There is judgment involved in estimating the stage of development as well as estimating time allocated to a particular project. A significant change in the time spent on each project could have a material impact on the amount capitalized and related amortization expense in subsequent periods.

We amortize internal use software development costs using a straight-line method over a three-year estimated useful life, commencing when the software is ready for its intended use. The straight-line recognition method approximates the manner in which the expected benefit will be derived. We determined the life of internal use software based on historical software upgrades and replacement.

On an ongoing basis, we assess if the estimated remaining useful lives of capitalized projects continue to be reasonable based on the remaining expected benefit and usage. If the remaining useful life of a capitalized project is revised, it is accounted for as a change in estimate and the remaining unamortized cost of the underlying asset is amortized prospectively over the updated remaining useful life.

We also evaluate internal use software for abandonment and use that as a significant indicator for impairment on a quarterly basis.

**Right of Use Assets and Lease Obligations**

The Right of Use Asset and Lease Liability reflect the present value of the Company's estimated future minimum lease payments over the lease term, which may include options that are reasonably assured of being exercised, discounted using a collateralized incremental borrowing rate.

F-19

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Typically, renewal options are considered reasonably assured of being exercised if the associated asset lives of the building or leasehold improvements exceed that of the initial lease term, and the performance of the business remains strong. Therefore, the Right of Use Asset and Lease Liability may include an assumption on renewal options that have not yet been exercised by the Company. The Company's operating leases contained renewal options that expire at various dates with no residual value guarantees. Future obligations relating to the exercise of renewal options is included in the measurement if, based on the judgment of management, the renewal option is reasonably certain to be exercised. Factors in determining whether an option is reasonably certain of exercise include, but are not limited to, the value of leasehold improvements, the value of the renewal rate compared to market rates, and the presence of factors that would cause a significant economic penalty to the Company if the option is not exercised. Management reasonably plans to exercise all options, and as such, all renewal options are included in the measurement of the right-of-use assets and operating lease liabilities.

As the rate implicit in leases are not readily determinable, the Company uses an incremental borrowing rate to calculate the lease liability that represents an estimate of the interest rate the Company would incur to borrow on a collateralized basis over the term of a lease within a particular currency environment. See Note 9.

**Derivative Liabilities**

The Company analyzes all financial instruments with features of both liabilities and equity under FASB ASC Topic No. 480, ("ASC 480"), "*Distinguishing Liabilities from Equity*" and FASB ASC Topic No. 815, ("ASC 815") "*Derivatives and Hedging*". Derivative liabilities are adjusted to reflect fair value at each period end, with any increase or decrease in the fair value being recorded in results of operations as adjustments to fair value of derivatives. The Company uses a binomial model to determine fair value.

Upon conversion of a note for shares of common stock where the embedded conversion option has been bifurcated and accounted for as a derivative liability, the Company records the shares at fair value, relieves all related notes, derivatives, and debt discounts, and recognizes a net gain or loss on debt extinguishment. Equity instruments that are initially classified as equity that become subject to reclassification under ASC Topic 815 are reclassified to liabilities at the fair value of the instrument on the reclassification date.

**Debt Issue Cost**

Debt issuance cost paid to lenders, or third parties are amortized to interest expense in the consolidated statements of operations, over the life of the underlying debt instrument.

F-20

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Revenue Recognition**

The Company recognizes revenue in accordance with ASC 606 to align revenue recognition more closely with the delivery of the Company's services and will provide financial statement readers with enhanced disclosures. In accordance with ASC 606, revenue is recognized when a customer obtains control of promised services. The amount of revenue recognized reflects the consideration to which the Company expects to be entitled to receive in exchange for these services. To achieve this core principle, the Company applies the following five steps:

Identify the contract with a customer

A contract with a customer exists when (i) the Company enters into an enforceable contract with a customer that defines each party's rights regarding the services to be transferred

and identifies the payment terms related to these services, (ii) the contract has commercial substance and, (iii) the Company determines that collection of substantially all consideration for services that are transferred is probable based on the customer's intent and ability to pay the promised consideration. The Company applies judgment in determining the customer's ability and intention to pay, which is based on a variety of factors including the customer's historical payment experience or, in the case of a new customer, published credit and financial information pertaining to the customer.

#### Identify the performance obligations in the contract

Performance obligations promised in a contract are identified based on the services that will be transferred to the customer that are both capable of being distinct, whereby the customer can benefit from the service either on its own or together with other resources that are readily available from third parties or from the Company, and are distinct in the context of the contract, whereby the transfer of the services is separately identifiable from other promises in the contract. To the extent a contract includes multiple promised services, the Company must apply judgment to determine whether promised services are capable of being distinct and distinct in the context of the contract. If these criteria are not met the promised services are accounted for as a combined performance obligation.

F-21

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

#### Determine the transaction price

The transaction price is determined based on the consideration to which the Company will be entitled in exchange for transferring services to the customer. To the extent the transaction price includes variable consideration, the Company estimates the amount of variable consideration that should be included in the transaction price utilizing either the expected value method or the most likely amount method depending on the nature of the variable consideration. Variable consideration is included in the transaction price if, in the Company's judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur. None of the Company's contracts as of December 31, 2022 and December 31, 2021, respectively, contained a significant financing component.

#### Allocate the transaction price to performance obligations in the contract

If the contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. However, if a series of distinct services that are substantially the same qualifies as a single performance obligation in a contract with variable consideration, the Company must determine if the variable consideration is attributable to the entire contract or to a specific part of the contract. For example, a bonus or penalty may be associated with one or more, but not all, distinct services promised in a series of distinct services that forms part of a single performance obligation. Contracts that contain multiple performance obligations require an allocation of the transaction price to each performance obligation based on a relative standalone selling price basis unless the transaction price is variable and meets the criteria to be allocated entirely to a performance obligation or to a distinct service that forms part of a single performance obligation. The Company determines standalone selling price based on the price at which the performance obligation is sold separately. If the standalone selling price is not observable through past transactions, the Company estimates the standalone selling price taking into account available information such as market conditions and internally approved pricing guidelines related to the performance obligations.

F-22

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

#### Recognize revenue when or as the Company satisfies a performance obligation

The Company satisfies performance obligations either over time or at a point in time. Revenue is recognized at the time the related performance obligation is satisfied by transferring a promised service to a customer.

The following reflects additional discussion regarding our revenue recognition policies for each of our material revenue streams. For each revenue stream we do not offer any returns, refunds or warranties, and no arrangements are cancellable. Additionally, all contract consideration is fixed and determinable at the initiation of the contract. Performance obligations for Torch, TW and LogicsIQ are satisfied when services are performed. Performance obligations for ECS and SB are satisfied at point of sale.

For each revenue stream we only have a single performance obligation.

#### Surge Phone Wireless (SPW) and Torch Wireless

SPW and Torch Wireless are licensed to provide subsidized mobile broadband services through the FCC's Affordable Connectivity Program (ACP) to qualifying low-income customers in all fifty states. Revenues are recognized when an ACP application is completed and accepted. Each month we reconcile subscriber usage to ensure the service was utilized. A monthly file is submitted to the Universal Service Administrative Company for review and approval, at which time we have completed our performance obligation and recognize accounts receivable and revenue. Revenues are recorded in the month when services were rendered, with payment typically received on the 28th of the following month.

#### Surge Blockchain

Revenues are generated through the sale of various products such as energy drinks, CBD products, and other top selling products in convenience store and bodega nationwide. At the time in which our products are sold at the store our performance obligation is considered complete. At point of sale, our web portal platform initiates an automated clearing house transaction (ACH) resulting in the recording revenue.

F-23

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

#### LogicsIQ

LogicsIQ is an enterprise software development company providing marketing business intelligence ("BI"), plaintiff generation and case load management solutions for law firms representing plaintiffs in Mass Tort legal cases. Revenues are earned from our lead generation and retained services offerings.

Lead generation consist of sourcing leads, which requires us to drive traffic to our landing pages for a specific marketing campaign. We also achieve this in certain marketing campaigns by using third-party preferred vendors to meet the needs of our clients. Revenues are recognized at the time the lead is delivered to the client. If payment is received in advance of the delivery of services, it is included in deferred revenue, and subsequently recognized once the performance obligation has been completed.

Retained service offerings consist of turning leads into a retained legal case. To provide this service to our customers, we qualify leads through verification of information collected during the lead generation process. Additionally, we further qualify these leads using a client questionnaire which assists in determining the services to be provided. The qualification process is completed using our call center operations.

If payment is received in advance of the delivery of services, it is included in deferred revenue, and subsequently recognized once the performance obligation has been completed. At the time of delivery of leads and the creation of retained cases (customers are qualified at this point), our performance obligation has been completed and revenues are recognized. Arrangements with customers do not provide the customer with the right to take possession of our software or platform at any time. Once the advertising is delivered, it is non-refundable.

#### **Surge Fintech and ECS**

Revenues are generated through the sale of telecommunication products such as mobile phones, wireless top-up refills, and other mobile related products. At the time in which our products are sold through our online web portal (point of sale), our performance obligation is considered complete. At point of sale, our web portal platform initiates an automated clearing house transaction (ACH) resulting in the recording revenue.

F-24

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

#### **True Wireless (TW) (Former Subsidiary)**

TW was licensed to provide wireless services to qualifying low-income customers in five states. Revenues were recognized when a lifeline application was completed and accepted. Each month we reconciled subscriber usage to ensure the service was utilized. A monthly file was submitted to the Universal Service Administrative Company for review and approval, at which time we completed our performance obligation and recognized accounts receivable and revenue. Revenues were recorded in the month when services were rendered, with payment typically received on the 15<sup>th</sup> of the following month. If the subscriber did not utilize the Lifeline service during the month, we had 15-days to cure usage. If not cured, the subscriber was de-enrolled from the lifeline program at day 45. This process to verify usage and de-enrollment had been temporarily suspended due to the COVID-19 pandemic. Historically, we had had an insignificant amount of subscribers de-enrolled.

TW was sold in May 2021 and was deconsolidated at the disposal date.

#### **Contract Liabilities (Deferred Revenue)**

Contract liabilities represent deposits made by customers before the satisfaction of performance obligation and recognition of revenue. Upon completion of the performance obligation(s) that the Company has with the customer based on the terms of the contract, the liability for the customer deposit is relieved and revenue is recognized.

At December 31, 2022 and 2021, the Company had deferred revenue of \$243,110 and \$276,250, respectively.

F-25

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

The following represents the Company's disaggregation of revenues for the years ended December 31, 2022 and 2021:

Revenue	For the Year Ended December 31,			
	2022		2021	
	Revenue	% of Revenues	Revenue	% of Revenues
Surge Phone and Torch Wireless	\$ 88,351,547	72.69%	\$ 7,289,239	14.28%
Surge Blockchain, LLC	112,911	0.09%	138,106	0.27%
LogicsIQ, Inc.	16,760,656	13.79%	17,846,698	34.95%
Surge Fintech & ECS	16,319,076	13.43%	24,628,566	48.23%
True Wireless	-	0.00%	1,157,980	2.27%
Total Revenues	<u>\$ 121,544,190</u>	<u>100%</u>	<u>\$ 51,060,589</u>	<u>100%</u>

#### **Cost of Revenues**

Cost of revenues consists of purchased telecom services including data usage and access to wireless networks. Additionally, prepaid phone cards, marketing services and advertising costs.

#### **Income Taxes**

The Company accounts for income tax using the asset and liability method prescribed by ASC 740, "Income Taxes". Under this method, deferred tax assets and liabilities are determined based on the difference between the financial reporting and tax bases of assets and liabilities using enacted tax rates that will be in effect in the year in which the differences are expected to reverse. The Company records a valuation allowance to offset deferred tax assets if based on the weight of available evidence, it is more-likely-than-not that some portion, or all, of the deferred tax assets will not be realized. The effect on deferred taxes of a change in tax rates is recognized as income or loss in the period that includes the enactment date.

The Company follows the accounting guidance for uncertainty in income taxes using the provisions of ASC 740 "Income Taxes". Using that guidance, tax positions initially need to be recognized in the financial statements when it is more likely than not the position will be sustained upon examination by the tax authorities. As of December 31, 2022 and 2021, respectively, the Company had no uncertain tax positions that qualify for either recognition or disclosure in the financial statements.

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Investment – Former Related Party**

On January 17, 2019, we announced the completion of an agreement to acquire a 40% equity ownership of CenterCom Global, S.A. de C.V. ("CenterCom"). CenterCom is a dynamic operations center currently providing sales support, customer service, IT infrastructure design, graphic media, database programming, software development, revenue assurance, lead generation, and other various operational support services. Our CenterCom team is based in El Salvador. CenterCom also provides call center support for various third-party clients.

Anthony N. Nuzzo, a director and officer and the holder of approximately 10% of our voting equity had a controlling interest in CenterCom Global. During 2022, Mr. Nuzzo passed away. See Form 8-K filed on March 24, 2022.

The strategic partnership with CenterCom as a bilingual operations hub has powered our growth and revenue. CenterCom has been built to support the infrastructure required to rapidly scale in synergy and efficiency to support our sales growth, customer service and development.

We account for this investment under the equity method. Investments accounted for under the equity method are recorded based upon the amount of our investment and adjusted each period for our share of the investee's income or loss. All investments are reviewed for changes in circumstance or the occurrence of events that suggest an other than temporary event where our investment may not be recoverable.

At December 31, 2022 and 2021, our investment in CenterCom was \$354,206 and \$443,288, respectively.

During the years ended December 31, 2022 and 2021, we recognized a loss of \$89,082 and gain of \$28,676, respectively.

During 2021, CenterCom forgave \$429,010 of accounts payable owed by SurgePays to CenterCom. As a result of this debt forgiveness, occurring with a related party, accordingly, there was no gain recorded, the Company increased additional paid in capital.

**Advertising Costs**

Advertising costs are expensed as incurred. Advertising costs are included as a component of general and administrative expense in the consolidated statements of operations.

The Company recognized \$259,393 and \$661,238 in marketing and advertising costs during the years ended December 31, 2022 and 2021, respectively.

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Stock-Based Compensation**

The Company accounts for our stock-based compensation under ASC 718 "*Compensation – Stock Compensation*" using the fair value-based method. Under this method, compensation cost is measured at the grant date based on the value of the award and is recognized over the service period, which is usually the vesting period. This guidance establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services. It also addresses transactions in which an entity incurs liabilities in exchange for goods or services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments.

The Company uses the fair value method for equity instruments granted to non-employees and use the Black-Scholes model for measuring the fair value of options.

The fair value of stock-based compensation is determined as of the date of the grant or the date at which the performance of the services is completed (measurement date) and is recognized over the vesting periods.

When determining fair value of stock-based compensation, the Company considers the following assumptions in the Black-Scholes model:

- Exercise price,
- Expected dividends,
- Expected volatility,
- Risk-free interest rate; and
- Expected life of option

**Stock Warrants**

In connection with certain financing (debt or equity), consulting and collaboration arrangements, the Company may issue warrants to purchase shares of its common stock. The outstanding warrants are standalone instruments that are not puttable or mandatorily redeemable by the holder and are classified as equity awards. The Company measures the fair value of warrants issued for compensation using the Black-Scholes option pricing model as of the measurement date. However, for warrants issued that meet the definition of a derivative liability, fair value is determined based upon the use of a binomial pricing model.

Warrants issued in conjunction with the issuance of common stock are initially recorded at fair value as a reduction in additional paid-in capital of the common stock issued. All other warrants (for services) are recorded at fair value and expensed over the requisite service period or at the date of issuance if there is not a service period.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Basic and Diluted Earnings (Loss) per Share and Reverse Stock Split**

Pursuant to ASC 260-10-45, basic earnings (loss) per common share is computed by dividing net income (loss) by the weighted average number of shares of common stock outstanding for the periods presented.

Diluted earnings per share is computed by dividing net income by the weighted average number of shares of common stock, common stock equivalents and potentially dilutive securities outstanding during the period. Potentially dilutive common shares may consist of common stock issuable for stock options and warrants (using the treasury stock method), convertible notes and common stock issuable. These common stock equivalents may be dilutive in the future. In the event of a net loss, diluted loss per share is the same as basic loss per share since the effect of the potential common stock equivalents upon conversion would be anti-dilutive.

The following potentially dilutive equity securities outstanding as of December 31, 2022 and 2021 were as follows:

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Warrants	5,681,392	5,852,984
Stock options	6,801	3,401
Series A, convertible preferred stock (1)	-	26,000
Total common stock equivalents	<u>5,688,193</u>	<u>5,882,385</u>

1- each share converts to 1/10 of a share of common stock

Warrants and stock options included as common stock equivalents represent those that are vested and exercisable. See Note 10.

Based on the potential common stock equivalents noted above at December 31, 2022 and December 31, 2021, respectively, the Company has sufficient authorized shares of common stock (500,000,000) to settle any potential exercises of common stock equivalents.

**Related Parties**

Parties are considered to be related to the Company if the parties, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with the Company. Related parties also include principal owners of the Company, its management, members of the immediate families of principal owners of the Company and its management and other parties with which the Company may deal with if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

During the years ended December 31, 2022 and 2021, the Company incurred expenses with related parties in the normal course of business totaling \$20,125,153 and \$4,157,192, respectively.

	<b>For the Years Ended</b>	
	<b>December 31,</b>	
	<u>2022</u>	<u>2021</u>
<b>Related party expenses</b>		
321 Communications, Inc	\$ 16,035,093	\$ 690,398
Axia Management, LLC	-	95,415
Carddawg Investments, Inc.	166,356	64,488
CenterCom USA, Inc	2,759,763	2,089,101
Galaxy	-	1,217,790
National Relief Telecom	1,163,941	-
Total	<u>\$ 20,125,153</u>	<u>\$ 4,157,192</u>

F-29

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

The Company uses certain credit cards to pay expenses, these credit cards are in the names of certain of the Company's officers and directors.

**Recent Accounting Standards**

Changes to accounting principles are established by the FASB in the form of Accounting Standards Updates ("ASU's") to the FASB's Codification. We consider the applicability and impact of all ASU's on our consolidated financial position, results of operations, stockholders' equity, cash flows, or presentation thereof. Management has evaluated all recent accounting pronouncements issued through the date these financial statements were available to be issued and found no recent accounting pronouncements issued, but not yet effective accounting pronouncements, when adopted, will have a material impact on the consolidated financial statements of the Company.

**Reclassifications**

Certain prior year amounts have been reclassified for consistency with the current year presentation. These reclassifications had no material effect on the consolidated results of operations, stockholders' equity, or cash flows.

**Note 3 – Property and Equipment**

Property and equipment consisted of the following:

<u>Type</u>	<u>December 31, 2022</u>	<u>December 31, 2021</u>	<u>Estimated Useful Lives (Years)</u>
Computer equipment and software	\$ 1,006,286	\$ 283,484	3 - 5
Furniture and fixtures	82,752	82,752	5 - 7
	<u>1,089,038</u>	<u>366,236</u>	



Less: accumulated depreciation/amortization		(445,665)	(165,788)
Property and equipment - net	\$	643,373	\$ 200,448

In June 2022, the Company acquired software having a fair value of \$711,400. Payment for the software consisted of \$300,000 as well as the issuance of 85,000 shares of common stock having a fair value of \$411,400 (\$4.84/share), based upon the quoted closing trading price.

F-30

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Depreciation and amortization expense for the years ended December 31, 2022 and 2021 was \$279,877 and \$67,125 (including \$5,019 of depreciation from TW prior to deconsolidation), respectively.

These amounts are included as a component of general and administrative expenses in the accompanying consolidated statements of operations.

**Note 4 – Intangibles**

Intangibles consisted of the following:

Type	December 31, 2022	December 31, 2021	Estimated Useful Lives (Years)
Proprietary Software	\$ 4,286,402	\$ 4,286,402	7
Tradenames/trademarks	617,474	617,474	15
ECS membership agreement	465,000	465,000	1
Noncompetition agreement	201,389	201,389	2
Customer Relationships	183,255	183,255	5
	5,753,520	5,753,520	
Less: accumulated amortization	(2,973,543)	(2,320,036)	
Intangibles - net	\$ 2,779,977	\$ 3,433,484	

Amortization expense for the years ended December 31, 2022 and 2021 was \$653,507 and \$692,258, respectively.

F-31

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Estimated amortization expense for each of the five (5) succeeding years is as follows:

For the Year Ended December 31:

2023	653,507
2024	653,507
2025	653,507
2026	653,507
2027	165,949
Total	\$ 2,779,977

**Note 5 – Internal Use Software Development Costs**

Internal Use Software Development Costs consisted of the following:

Type	December 31, 2022	December 31, 2021	Estimated Useful Life (Years)
Internal Use Software Development Costs	\$ 387,180	\$ -	3
Less: accumulated amortization	-	-	
Property and equipment - net	\$ 387,180	\$ -	

Management has determined that all costs incurred in 2022 related to internal use software development costs related to the application and infrastructure development stage were completed at December 31, 2022. Amortization of these costs will begin in 2023.

Based on the Company's internal use software development costs at December 31, 2022, excluding projects that are not ready for their intended use with a value of \$387,180, estimated amortization expense is as follows for the years ended December 31:

2023	129,060
2024	129,060
2025	129,060
Total	\$ 387,180

F-32



Terms	Related Party	Related Party	Related Party	Total
Issuance dates of notes	Various	May 2020/January 2021	August 2021	
Maturity date	January 1, 2023/January 1, 2024	March 2021	August 2031	
Interest rate	10%	15%	10%	
Collateral	Unsecured	Unsecured	Unsecured	
Conversion price	N/A	N/A	N/A	
Balance - December 31, 2020	\$ 3,341,940	\$ 147,500	\$ -	\$ 3,489,440
Gross proceeds	3,825,000	63,000	467,385	4,355,385
Accrued interest included in note balance	692,458	-	-	692,458
Conversion of debt into common stock	(2,265,967)	-	-	(2,265,967)
Repayments	-	(210,500)	-	(210,500)
Balance - December 31, 2021	5,593,431	-	467,385	6,060,816
Less: short term	1,553,799	-	-	1,553,799
Long term	\$ 4,039,632	\$ -	\$ 467,385	\$ 4,507,017
Balance - December 31, 2021	\$ 5,593,431	\$ -	\$ 467,385	6,060,816
Conversion of debt into common stock	(1,086,413)	-	-	(1,086,413)
Reclass of accrued interest to note payable	627,545	-	-	627,545
Balance - December 31, 2022	5,134,563	-	467,385	5,601,948
Less: short term	1,108,150	-	-	1,108,150
Long term	\$ 4,026,413	\$ -	\$ 467,385	\$ 4,493,798

1 Activity is with the Company's Chief Executive Officer and Board Member (Kevin Brian Cox). Prior to September 30, 2021, these notes were either due on demand or had a specific due date. Additionally, these advances had interest rates from 6% - 15%. On September 30, 2021, all notes and related accrued interest were combined into two (2) new notes. The new notes had due dates of June 30, 2022 or January 1, 2023. In April 2022, the notes were extended to January 1, 2023 and January 1, 2024, respectively. All notes bear interest at 10%.

F-35

**SURGE PAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

In 2021, the Company included \$692,458 of accrued interest in the new note balance. In 2021, the Company issued 561,758 shares of common stock at \$4.30/share to settle \$2,415,560 of debt including principal of \$2,265,967 and accrued interest of \$149,593. As a result of the debt conversion with a related party, accordingly gains/losses are not recognized, however, the Company increased stockholders' equity for \$2,415,560.

In 2022, the Company included \$627,545 of accrued interest in the new note balance. In 2022, the Company issued 270,745 shares of common stock at \$4.01/share to settle \$1,086,413 of debt principal. As a result of the debt conversion with a related party, accordingly gains/losses are not recognized, however, the Company increased stockholders' equity for \$1,086,413.

2 Activity is with the Company's former President, Chief Operating Officer and Board Member (Anthony Nuzzo). Mr. Nuzzo passed away in March 2022.

3 Activity is with David May, who is a Board Member. In January 2023, the Company repaid principal of \$467,385 and related accrued interest of \$63,258 for a total payment of \$530,643.

**Notes Payable**

Terms	1 Notes Payable	2 Notes Payable	3 Notes Payable	Note Payable	4 Notes Payable	5 Note Payable	Total
Issuance dates of notes	April/May 2022	April/June 2022	March 2022	2019	2021	2022	
Maturity date	October/November 2022	January/February 2023	March 2023	2020	2022	2025	
Interest rate	19%	24%	19%	18%	10%	1.00%	
Default interest rate	26%	N/A	26%	0%	0%	0%	
Collateral	Unsecured	All assets	Unsecured	Unsecured	Unsecured	Unsecured	
Warrants issued as debt discount/issue costs	36,000	N/A	15,000	N/A	2,406,250	N/A	
Balance - December 31, 2020	\$ -	\$ -	\$ -	\$ 250,000	\$ -	\$ -	\$ 250,000
Gross proceeds	-	-	-	-	1,101,000	-	1,101,000
Debt discount	-	-	-	-	(672,254)	-	(672,254)
Amortization of debt discount	-	-	-	-	698,511	-	698,511
Repayments	-	-	-	(250,000)	(1,127,257)	-	(1,377,257)
Balance - December 31, 2021	-	-	-	-	-	-	-
Gross proceeds	1,200,000	5,000,000	500,000	-	-	-	6,700,000
Reclassification from SBA - PPP note payable	-	-	-	-	-	126,418	126,418
Repayments	(100,000)	(5,000,000)	(100,000)	-	-	(31,251)	(5,231,251)
Debt issue costs	(76,451)	-	(38,953)	-	-	-	(115,404)
Amortization of debt issue costs	76,451	-	38,953	-	-	-	115,404
Balance - December 31, 2022	\$ 1,100,000	\$ -	\$ 400,000	\$ -	\$ -	\$ 95,167	\$ 1,595,167

F-36

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

- 1 - These notes were issued with 36,000, three (3) year warrants, which have been reflected as debt issue costs and are amortized over the life of the debt.
- 2 - The Company executed a \$5,000,000, secured, revolving promissory note with a third party. The Company may draw down on the note at 80% of eligible accounts receivable. The note was repaid in full in November 2022. See below secured revolving debt.
- 3 - These notes were issued with 15,000, three (3) year warrants, which have been reflected as debt issue costs and were amortized over the life of the debt. Additionally, in 2022, the Company issued an additional 12,000, three (3) year warrants, which have been treated as interest expense in connection with extending the maturity date for notes totaling \$400,000 to March 2023. In October 2022, the Company repaid \$100,000. In March 2023, the remaining \$400,000 plus all related accrued interest was repaid.
- 4 - In the event of default, these notes were convertible at 75% of the market price based upon the VWAP in the preceding 10 days. Debt discount on notes totaling \$1,101,000 in principle included original issue discounts of \$101,000 and debt discounts associated with warrants totaling \$229,268. Additionally, the Company computed a beneficial conversion feature of \$341,986.
- 5 - See Notes Payable – SBA government note summary 1.

**Secured Revolving Debt**

In April 2022, a maximum of \$3,000,000 was made available to the Company, issued pursuant to a series of 270-day (9 months) revolving notes for purposes of purchasing inventory. In June 2022, this amount was increased to \$5,000,000.

The notes accrued interest at a monthly rate of 2% (24% annualized). The Company took drawdowns based upon eligible accounts receivable. In the event that eligible accounts receivable were less than 80% of the loan amount, within four (4) business days, the Company would have been required to make a payment to the lender so that the loan amount was no greater than 80% of the then current eligible accounts receivable.

The maximum amount outstanding under the loan was the lesser of \$5,000,000 or 80% of eligible accounts receivable. Additionally, any related accrued interest associated with this mandatory payment was also due. These advances were secured by all assets of the Company.

In 2022, the Company repaid the \$5,000,000 plus accrued interest of \$46,027 and the line was terminated.

F-37

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Convertible Notes Payable – Net**

<u>Terms</u>	<u>Convertible Notes Payable</u>	<u>Convertible Notes Payable</u>	<u>Total</u>
Issuance dates of notes	February 2020 - December 2020	January 2021 - March 2021	
Maturity date	February 2021 - September 2021	May 2021 - March 2022	
Interest rate	10% - 14%	5% - 12%	
Collateral	Unsecured	Unsecured	
Conversion price	<b>A</b>	<b>B</b>	
Balance - December 31, 2020	\$ 1,516,170	\$ -	\$ 1,516,170
Gross proceeds	-	2,550,000	2,550,000
Debt discount	-	(2,460,829)	(2,460,829)
Amortization of debt discount	517,781	2,460,829	2,978,610
Repayments - cash	-	(2,550,000) <sup>D</sup>	(2,550,000)
Conversion to equity/debt modification	(2,110,898)	-	(2,110,898)
Reclassified to receivable	76,947 <sup>C</sup>	-	76,947
Balance - December 31, 2021	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

**A** - Convertible at 65% multiplied by the lowest one (1) day volume weighted average price ("VWAP") of the Company's common stock during the ten (10) trading days prior to conversion.

**B** - Convertible at 70% - 75% multiplied by the lowest one (1) day volume weighted average price ("VWAP") of the Company's common stock during the ten (10) trading days prior to conversion.

**C** - During 2021, the Company overpaid a note holder by \$76,947 when settling the outstanding balance. This overpayment had been recorded as a receivable and was repaid in full in April 2021.

**D** - During 2021, the Company repaid the \$2,550,000 of convertible notes in full, however, one of the notes, having a principal of \$2,300,000 was prepaid early. As a result, the Company paid an additional prepayment penalty equal to 120% of the outstanding amount due at the time of prepayment, resulting in additional interest expense of \$465,239. Also, at the time of repayment, the embedded derivative liability ceased to exist.

F-38

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Line of Credit**

The Company had a \$1,000,000 line of credit with a bank, bearing interest at 6%, which was due in April 2021. The line of credit was secured by all of the Company's assets and was personally guaranteed by the owner of the majority of the Company's voting shares. The balance at December 31, 2021 was \$0. In connection with the deconsolidation of TW in May 2021, the buyer assumed the line of credit.

**Debt Maturities**

The following represents the maturities of the Company's various debt arrangements for each of the five (5) succeeding years and thereafter as follows:

<u>For the Year Ended December 31,</u>	<u>Loans Payable - Related Parties</u>	<u>Notes Payable - SBA government</u>	<u>Note Payable</u>	<u>Total</u>
2023	\$ 1,108,150	\$ -	\$ 1,542,033	\$ 2,650,183
2024	4,493,798	-	42,455	4,536,253
2025	-	-	10,679	10,679
2026	-	-	-	-
2027	-	-	-	-
Thereafter	-	474,846	-	474,846
Total	<u>\$ 5,601,948</u>	<u>\$ 474,846</u>	<u>\$ 1,595,167</u>	<u>\$ 7,671,961</u>

**Note 7 – Derivative Liabilities**

During 2021, the above convertible notes contained embedded conversion options with a conversion price that could result in issuing an undeterminable amount of future common stock to settle the host contract. Accordingly, the embedded conversion option is required to be bifurcated from the host instrument (convertible note) and treated as a liability, which is calculated at fair value, and marked to market at each reporting period.

The Company used the binomial pricing model to estimate the fair value of its embedded conversion option liabilities with the following inputs:

	<u>December 31, 2021</u>
Expected term (years)	0.20 - 1 year
Expected volatility	143% - 291%
Expected dividends	0%
Risk free interest rate	0.03% - 0.09%

F-39

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

A reconciliation of the beginning and ending balances for the derivative liability measured at fair value on a recurring basis using significant unobservable inputs (Level 3) is as follows at December 31, 2021:

Derivative liability - December 31, 2020	\$ 1,357,528
Fair value at commitment date	1,877,250
Fair value mark to market adjustment	(1,806,763)
Gain on derivative liability upon related debt settled	(1,428,015)
Derivative liability - December 31, 2021	<u>\$ -</u>

Changes in fair value of derivative liabilities are included in other income (expense) in the accompanying consolidated statements of operations.

During the years ended December 31, 2022 and 2021, the Company recorded a change in fair value of derivative liabilities of \$0 and \$1,806,763, respectively. These amounts reflect a mark to market adjustment recorded to the accompanying consolidated statements of operations.

In connection with bifurcating the embedded conversion option and accounting for this instrument at fair value, the Company computed a fair value on the commitment date, and upon the initial valuation of this instrument, determined that the fair value of the liability exceeded the proceeds of the debt host instrument. As a result, the Company recorded a debt discount at the maximum amount allowed (the face amount of the debt), which required the overage to be recorded as a derivative expense.

For the years ended December 31, 2022 and 2021, the Company recorded a derivative expense of \$0 and \$1,775,057, respectively.

During the year ended December 31, 2021, in connection with the repayment of convertible notes which contained embedded conversion features, the related derivative liabilities ceased to exist.

During the years ended December 31, 2022 and 2021, the Company recorded a gain of \$0 and \$136,487, respectively, related to the settlement of convertible debt which contained an embedded conversion feature and was separately bifurcated and classified as a derivative liability. The Company has recorded these gains in the accompanying consolidated statements of operations as a component of gain on settlement of liabilities.

During the years ended December 31, 2022 and 2021, the Company recorded a gain of \$0 and \$1,469,641, respectively.

F-40

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Note 8 – Fair Value of Financial Instruments**

The Company evaluates its financial assets and liabilities subject to fair value measurements on a recurring basis to determine the appropriate level in which to classify them for each reporting period. This determination requires significant judgments to be made.

The Company did not have any assets or liabilities measured at fair value on a recurring basis at December 31, 2022 and 2021, respectively.

**Note 9 – Commitments and Contingencies**

**Operating Lease**

We have entered into various operating lease agreements, including our corporate headquarters. We account for leases in accordance with ASC Topic 842: *Leases*, which requires a lessee to utilize the right-of-use model and to record a right-of-use asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases are classified as either financing or operating, with classification affecting the pattern of expense recognition in the statement of operations. In addition, a lessor is required to classify leases as either sales-type, financing or operating. A lease will be treated as a sale if it transfers all of the risks and rewards, as well as control of the underlying asset, to the lessee. If risks and rewards are conveyed without the transfer of control, the lease is treated as financing. If the lessor does not convey risk and rewards or control, the lease is treated as operating. We determine if an arrangement is a lease, or contains a lease, at inception and record the lease in our financial statements upon lease commencement, which is the date when the underlying asset is made available for use by the lessor.

Right-of-use assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments over the lease term. Lease right-of-use assets and liabilities at commencement are initially measured at the present value of lease payments over the lease term. We generally use our incremental borrowing rate based on the information available at commencement to determine the present value of lease payments except when an implicit interest rate is readily determinable. We determine our incremental borrowing rate based on market sources including relevant industry data.

We have lease agreements with lease and non-lease components and have elected to utilize the practical expedient to account for lease and non-lease components together as a single combined lease component, from both a lessee and lessor perspective with the exception of direct sales-type leases and production equipment classes embedded in supply agreements. From a lessor perspective, the timing and pattern of transfer are the same for the non-lease components and associated lease component and, the lease component, if accounted for separately, would be classified as an operating lease.

F-41

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

We have elected not to present short-term leases on the balance sheet as these leases have a lease term of 12 months or less at lease inception and do not contain purchase options or renewal terms that we are reasonably certain to exercise. All other lease assets and lease liabilities are recognized based on the present value of lease payments over the lease term at commencement date. Because most of our leases do not provide an implicit rate of return, we used our incremental borrowing rate based on the information available at lease commencement date in determining the present value of lease payments.

Our leases, where we are the lessee, do not include an option to extend the lease term. For purposes of calculating lease liabilities, lease term would include options to extend or terminate the lease when it is reasonably certain that we will exercise such options.

Lease expense for operating leases is recognized on a straight-line basis over the lease term as an operating expense, included as a component of general and administrative expenses, in the accompanying consolidated statements of operations.

Certain operating leases provide for annual increases to lease payments based on an index or rate, our lease has no stated increase, payments were fixed at lease inception. We calculate the present value of future lease payments based on the index or rate at the lease commencement date. Differences between the calculated lease payment and actual payment are expensed as incurred.

At December 31, 2022 and 2021, respectively, the Company has no financing leases as defined in ASC 842, "Leases."

The tables below present information regarding the Company's operating lease assets and liabilities at December 31, 2022 and 2021, respectively:

	<b>For the Year Ended December 31, 2022</b>	<b>For the Year Ended December 31, 2021</b>
Operating Leases	\$ 55,316	\$ 170,962
Interest on lease liabilities	22,718	38,093
Total net lease cost	<u>\$ 78,034</u>	<u>\$ 209,055</u>

F-42

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Supplemental balance sheet information related to leases was as follows:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Operating leases		
Operating lease ROU assets - net	\$ 431,352	\$ 486,668
Operating lease liabilities - current	39,490	49,352
Operating lease liabilities - non-current	399,413	438,903
Total operating lease liabilities	<u>\$ 438,903</u>	<u>\$ 488,255</u>

Supplemental cash flow and other information related to leases was as follows:

	For the Year Ended December 31, 2022	For the Year Ended December 31, 2021
Cash paid for amounts included in measurement of lease liabilities		
Operating cash flows from operating leases	\$ 49,352	\$ 145,684
ROU assets obtained in exchange for lease liabilities		
Operating leases	\$ -	\$ 515,848
Weighted average remaining lease term (in years)		
Operating leases	7.49	8.25
Weighted average discount rate		
Operating leases	5%	5%

Future minimum lease payments at December 31:

2023	60,294
2024	61,876
2025	63,460
Thereafter	353,485
Total lease payments	539,115
Less: amount representing interest	(100,212)
Total lease obligations	\$ 438,903

F-43

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

In May 2021, the Company and its landlord mutually agreed to terminate the outstanding lease for ECS. The Company had an outstanding ROU liability of \$228,752 at the date of termination. There was no gain or loss on lease termination.

**Contingencies – Legal Matters**

True Wireless and Surge Holdings - Terracom Litigation

Global Reconnect, LLC and Terracom, Inc. v. Jonathan Coffman, Jerry Carroll, True Wireless, & Surge Holdings: In the Chancery Court of Hamilton County, TN, Docket # 20-00058, Filed Jan 21, 2020. On January 21, 2020, a complaint was filed related to a noncompetition dispute. Terracom believes Mr. Coffman and Mr. Carroll are in violation of their non-compete agreements by working for us and True Wireless, Inc. Oklahoma and Tennessee state law does not recognize non-compete agreements and are not usually enforced in the state courts of these states, as such we believe True Wireless has a strong case against Terracom. The matter is entering the discovery process. Both Mr. Carroll and Mr. Coffman are no longer working for True Wireless in sales. Mr. Carroll is off the payroll and Mr. Coffman works for SurgePays, Inc., but not in wireless sales. The complaint requests general damages plus fees and costs for tortious interference with a business relationship in their prayer for relief. They have made no written demand for damages at this point in time. The Company believes this matter is simply an anti-competitive attempt by Terracom to cause distress to True Wireless. The case was dismissed without prejudice by the Court on December 15, 2022.

Surge Holdings – Juno Litigation

Juno Financial v. AATAC and Surge Holdings Inc. AND Surge Holdings Inc. v. AATAC; Circuit Court of Hillsborough County, Florida, Case # 20-CA-2712 DIV A: Breach of Contract, Account Stated and Open Account claims against Surge by a factoring company. Surge has filed a cross-complaint against defendant AATAC for Breach of Contract, Account Stated, Open Account and Common Law Indemnity. Case is in discovery. Following analysis by our litigation counsel stating that there is a good defense, management has decided that a reserve is not necessary.

SurgePays – Ambess Litigation

On December 17, 2021, Ambess Enterprises, Inc. v SurgePays, Inc., Blair County Pa. case number 2021 GN 3222. Plaintiff alleges breach of contract and prays for damages of approximately \$73,000.00, plus fees, costs and interest. Litigation counsel is managing the motion practice and discovery process. The case was settled and dismissed on January 30, 2023.

F-44

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

True Wireless and SurgePays – Litigation

Blue Skies Connections, LLC, and True Wireless, Inc. v. SurgePays, Inc., et. al.: In the District Court of Oklahoma County, OK, CJ-2021-5327, filed on December 13, 2021. Plaintiffs' petition alleges breach of a Stock Purchase Agreement by SurgePays, SurgePhone Wireless, LLC, and Kevin Brian Cox, and makes other allegations related to SurgePays' consulting work with Jonathan Coffman, a True Wireless employee. Blue Skies believes the Defendants are in violation of their non-competition and non-solicitation agreements related to the sale of True Wireless from SurgePays to Blue Skies. Oklahoma state law does not recognize non-compete agreements and non-solicitation agreements in the manner alleged by Plaintiffs, as such we believe SurgePays, SurgePhone, and Cox have a strong defense against the claims asserted by Blue Skies and True Wireless. The matter continues in the discovery process. Mr. Coffman is no longer working for True Wireless. An attempt at mediation in July, 2022 did not achieve a settlement. The petition requests injunctive relief, general damages, punitive damages, attorney fees and costs for alleged breach of contract, tortious interference with a business relationship, and fraud. Plaintiffs have made a written demand for damages and the parties continue to discuss a potential resolution. This matter is an anti-competitive attempt by Blue Skies and True Wireless to damage SurgePays, SurgePhone, and Cox. Written discovery is winding down and depositions are anticipated in the 2<sup>nd</sup> and 3<sup>rd</sup> Q of 2023.

## Aliotta and Vasquez v SurgePays – Litigation

*Robert Aliotta and Steve Vasquez, on behalf of themselves and others similarly situated v. SurgePays, Inc. d/b/a Surge Logics*, filed January 4, 2023, in the U.S. District Court for the Northern District of Illinois, Case No. 1:23-cv-00042. Plaintiffs' allege violations of the Telephone Consumer Protection Act (TCPA) and the Florida Telephone Solicitations Act (FTSA) based on telephone solicitations allegedly made by or on behalf of SurgePays, Inc. Plaintiffs' seek damages for themselves and seek certification of a class action on behalf of others similarly situated. Defendants intend to vigorously defend the action however most similar cases are eventually resolved by an out-of-court settlement. At this time, it is impossible to estimate the amount or range of potential loss, but similar matters are usually settled for \$100,000.00 or less. SurgePays, Inc has been removed from the case following a Motion to Dismiss and LogicsIQ, Inc. has been named as the defendant. The case remains in the pleadings stage.

## Demiray v. SurgePays, Inc.

Meral Demiray v Surge Holdings, Inc. a/k/a SurgePays, Inc.: In the United States District Court for the Northern District of Illinois, Case # 22-cv-6591, filed November 23, 2022. Plaintiff filed a claim against SurgePays following her dismissal from her position as an employee of the company. Following negotiations among and between SurgePays, SurgePays' insurance carrier and the Plaintiff, a settlement has been reached and documentation is currently being drafted for full settlement, release, and dismissal of the claim.

## Note 10 – Stockholders' Equity

### **Reverse Stock Split**

On November 2, 2021, the Company effected a 1 for 50 reverse stock split of all classes of its stock. All share and per share amounts have been retroactively restated to the earliest period presented.

At December 31, 2022, the Company had three (3) classes of stock:

### **Common Stock**

- 500,000,000 shares authorized
- Par value - \$0.001
- Voting at 1 vote per share

F-45

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

### **Series A, Convertible Preferred Stock**

- 13,000,000 shares authorized
- none issued and outstanding
- Par value - \$0.001
- Voting at 10 votes per share
- Ranks senior to any other class of preferred stock
- Dividends - none
- Liquidation preference – none
- Rights of redemption - none
- Conversion into 1/10 of a share of common stock for each share held

In 2022, all Series A, Preferred stockholders, representing 260,000 shares issued and outstanding, agreed to convert their holdings into 1,300,000 shares of common stock. The transaction had a net effect of \$0 on stockholders' equity.

### **Series C, Convertible Preferred Stock**

- 1,000,000 shares authorized
- None issued and outstanding
- Par value - \$0.001
- Voting at 250 votes per share
- Ranks junior to any other class of preferred stock
- Dividends – equal to the per share amount (as converted basis) as the common stockholders should the Board of Directors declare a dividend
- Liquidation preference – original issue price plus any declared yet unpaid accrued dividends
- Rights of redemption - none
- Conversion into 250 shares of common stock for each share held

In 2021, all Series C, Preferred stockholders, representing 721,598 shares issued and outstanding, agreed to convert their holdings into 3,607,980 shares of common stock. The transaction had a net effect of \$0 on stockholders' equity.

F-46

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

## Equity Transactions for the Year Ended December 31, 2022

### **Stock Issued as Direct Offering Costs**

The Company issued 200,000 shares of common stock for services rendered in connection with the listing of our common stock on the Nasdaq Capital Market in 2021. As a result, the Company recorded the par value of the common stock issued with a corresponding charge to additional paid-in capital, resulting in a net effect of \$0 to stockholders' equity.

### **Stock Issued for Acquisition of Software**



The Company acquired software having a fair value of \$711,400. Payment for the software consisted of \$300,000 in cash and the Company issued 85,000 shares of common stock having a fair value of \$411,400 (\$4.84/share), based upon the quoted closing trading price.

#### Exercise of Warrants (Cashless)

The Company issued 147,153 shares of common stock in connection with the cashless exercise of 498,750 warrants. These transactions had a net effect of \$0 on stockholders' equity.

#### Exercise of Warrants

The Company issued 100 shares of common stock in connection with an exercise of 100 warrants at an exercise price of \$4.73 per share for proceeds of \$473.

#### Equity Transactions for the Year Ended December 31, 2021

##### NASDAQ Listing

On November 2, 2021, the Company was approved to be uplisted to NASDAQ. The common stock and warrants are traded on the Nasdaq Capital Market under the symbols SURG and SURGW, respectively.

##### Stock Issued for Services

The Company issued 13,411 shares of common stock for services rendered, having a fair value of \$99,436 (\$5 - \$14.05/share), based upon the quoted closing trading price.

##### Stock and Warrants Issued for Cash and Related Direct Offering Costs

The Company issued an aggregate 4,862,247 shares of common stock for \$21,294,800 (\$4.30 - \$8/share). In connection with raising these funds, the Company paid \$2,222,952 in direct offering costs, resulting in net proceeds of \$19,076,710.

F-47

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Of the 4,862,247 shares issued in 2021, 4,600,000 shares and 690,000 were sold in connection with the Company's uplist to NASDAQ as follows:

On November 4, 2021, the Company issued 4,600,000 units consisting of one share of common stock and one warrant and 690,000 over-allotment warrants. The units were sold at \$4.30 per unit for gross proceeds of \$19,786,900 (\$19,780,000 from the sale of 4,600,000 units at \$4.30 and \$6,900 from the sale of 690,000 over-allotment warrants at \$0.01). The warrants are exercisable immediately at \$4.73/share and expire three (3) years from the issuance date.

In connection with the Company's sale of common stock, the Company incurred direct offering costs of \$2,222,952 which were charged to additional paid-in capital. Net proceeds were \$19,076,710.

On November 4, 2021, the Company issued 230,000 five (5) year warrants to the underwriters. These warrants are exercisable beginning May 1, 2022 until November 1, 2026. The exercise price is \$4.73/share. The fair value of these warrants was \$647,897 based upon the following assumptions:

Expected term (years)	3
Expected volatility	118%
Expected dividends	0%
Risk free interest rate	0.53%

Since these warrants were issued as direct offering costs associated with the offering, the Company has accounted for these warrants as both a charge and increase to additional paid-in capital, resulting in a net effect on stockholders' equity of \$0.

These 230,000 warrants were exchanged for 68,161 shares of common stock in July 2022 in a cashless exchange. The net effect on stockholders' equity was \$0.

##### Exercise of Warrants

The Company issued 2,133 shares of common stock in connection with a cashless exercise of warrants. The transaction had a net effect of \$0 on stockholders' equity.

F-48

---

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

##### Stock and Warrants Issued as Debt Discount

During 2021, the Company issued stock and warrants in connection with the issuance of debt and derivative liabilities totaling \$3,562,829, which were recorded as debt discounts to be amortized over the life of the debt. The Company issued 18,000 shares of common stock along with 137,500 three (3) year warrants, having an exercise price of \$8/share. The aggregate discount recorded was \$2,645,890 for the stock and warrants which are reflected in the accompanying consolidated statements of stockholders' equity. An additional discount of \$102,194 was recorded in connection with the commitment date fair value of derivative liabilities for an aggregate discount of \$2,748,084.

Fair value of the warrants was determined using a Black-Scholes option pricing model with the following inputs:

Expected term (years)	3
Expected volatility	118%
Expected dividends	0%
Risk free interest rate	0.53%

## Conversion of Debt

The Company issued 709,674 shares of common stock in connection with the conversion of convertible debt, having a fair value of \$3,363,561 (\$0.05 - \$10.38/share), based upon the quoted closing trading price.

## Make-whole Arrangement

The Company issued 15,147 shares of common stock to debt holders that were entitled to shares upon the settlement of debt and related accrued interest. The shares had a fair value of \$90,401 (\$5.60 - \$6/share), based upon the quoted closing trading price.

## Stock Issued for Debt Modification

The Company issued 13,916 shares of common stock in connection with the modification of debt arrangements. The shares had a fair value of \$108,931 (\$5.60 - \$8/share), based upon the quoted closing trading price.

## Stock Issued in Settlement of Liabilities

The Company issued 276,702 shares of common stock to various vendors and debt holders to settle accounts payable, debt and derivative liabilities. The shares had a fair value of \$1,997,977 (\$4.50 - \$15.99/share), based upon the quoted closing trading price. In connection with these debt settlements, the Company recorded a gain of \$1,469,641.

F-49

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

## Stock Issued in Acquisition of Membership Interest in ECS

On January 30, 2020, the Company entered into a Membership Interest Purchase Agreement and Stock Purchase Agreement with ECS Prepaid, ECS, CSLS and the Winfrey's. Pursuant to the agreements, the Company acquired all the membership interests of ECS Prepaid and all of the issued and outstanding stock of each ECS and CSLS. The agreements provide that the consideration is to be paid by the Company through the issuance of 10,000 shares of the Company's Common Stock. In addition, the agreements called for 500 shares of Common Stock to be issued to the Winfrey's on a monthly basis over a 12-month period. During 2021, the Company issued 2,000 shares of common stock in full settlement of the agreements. The shares had a fair value of \$17,900 (\$8.95/share), based upon the quoted closing trading price. During 2020, the Company issued 5,500 shares.

## Stock Options

Stock option transactions for the years ended December 31, 2022 and 2021 are summarized as follows:

<b>Stock Options</b>	<b>Number of Options</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Remaining Contractual Term (Years)</b>	<b>Aggregate Intrinsic Value</b>	<b>Weighted Average Grant Date Fair Value</b>
Outstanding - December 31, 2020	17,004	\$ 16.00	6.16	\$ -	\$ -
Vested and Exercisable - December 31, 2020	-	\$ -	-	\$ -	\$ -
Unvested and non-exercisable - December 31, 2020	17,004	\$ 16.00	6.16	\$ -	\$ -
Granted	-	-	-	-	\$ -
Exercised	-	-	-	-	-
Cancelled/Forfeited	-	-	-	-	-
Outstanding - December 31, 2021	17,004	\$ 16.00	5.16	\$ -	\$ -
Vested and Exercisable - December 31, 2021	3,401	\$ 16.00	5.16	\$ -	\$ -
Unvested and non-exercisable - December 31, 2021	13,603	\$ 16.00	5.16	\$ -	\$ -
Granted	-	-	-	-	\$ -
Exercised	-	-	-	-	-
Cancelled/Forfeited	-	-	-	-	-
Outstanding - December 31, 2022	17,004	\$ 16.00	1.16	\$ -	\$ -
Vested and Exercisable - December 31, 2022	6,801	\$ 16.00	1.16	\$ -	\$ -
Unvested and non-exercisable - December 31, 2022	10,203	\$ 16.00	1.16	\$ -	\$ -

F-50

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

During 2022 and 2021, 3,400 stock options vested each year (6,801 in total), which were held by the Company's Chief Financial Officer.

Compensation expense recorded for stock-based compensation is as follows for the years ended December 31, 2022 and 2021, was \$37,176 and \$37,176, respectively.

As of December 31, 2022, compensation cost related to the unvested options not yet recognized was \$43,370.

Weighted average period in which compensation will vest (years) 1.16 years. The unvested stock option expense is expected to be recognized through March 2024.

## Warrants

Warrant activity for the years ended December 31, 2022 and 2021 are summarized as follows:

**Weighted  
Average**

Warrants	Number of Warrants	Weighted Average Exercise Price	Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding - December 31, 2020	194,317	\$ 32.50	1.52	\$ -
Vested and Exercisable - December 31, 2020	194,317	\$ 32.50	1.52	\$ -
Granted	5,935,450	\$ 8.01	-	-
Exercised	(2,133)	\$ 12.50	-	-
Cancelled/Forfeited	(44,650)	\$ 23.49	-	-
Outstanding - December 31, 2021	6,082,984	\$ 8.68	2.93	\$ -
Vested and Exercisable - December 31, 2021	5,852,984	\$ 8.70	2.85	\$ -
Unvested - December 31, 2021	230,000	\$ 8.00	4.85	\$ -
Granted	189,000	\$ 4.73	-	-
Exercised	(498,850)	\$ 6.49	-	-
Cancelled/Forfeited	(91,743)	\$ 40.02	-	-
Outstanding - December 31, 2022	5,681,392	\$ 5.05	1.85	\$ 10,026,387
Vested and Exercisable - December 31, 2022	5,681,392	\$ 5.05	1.85	\$ 10,026,387
Unvested - December 31, 2022	-	\$ -	-	\$ -

F-51

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

**Warrant Transactions for the Year Ended December 31, 2022**

**Warrants Issued as Debt Issue Costs**

In connection with \$1,700,000 in notes payable (See Note 6), the Company issued 51,000 warrants, which are accounted for as debt issue costs, having a fair value of \$115,404. These debt issue costs were amortized in full as of December 31, 2022.

The fair value of these warrants was determined using a Black-Scholes option pricing model with the following inputs:

Expected term (years)	3 years
Expected volatility	119% - 120%
Expected dividends	0%
Risk free interest rate	2.45% - 2.80%

**Warrants Issued as Interest Expense**

A vendor increased the amount of credit the Company had for making purchases. In consideration of the increase, the Company issued 90,000 warrants, which are accounted for as interest expense, having a fair value of \$212,608.

The fair value of these warrants was determined using a Black-Scholes option pricing model with the following inputs:

Expected term (years)	3 years
Expected volatility	120%
Expected dividends	0%
Risk free interest rate	2.71%

In 2022, the Company extended the due dates of certain notes payable totaling \$1,600,000 for an additional 6 months. In consideration for the extension of the maturity date, the Company issued 48,000 warrants, which are accounted for as additional interest expense, having a fair value of \$153,186. The Company also determined that these transactions were classified as debt modifications and that extinguishment accounting did not apply.

F-52

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

The fair value of these warrants was determined using a Black-Scholes option pricing model with the following inputs:

Expected term (years)	3 years
Expected volatility	116% - 119%
Expected dividends	0%
Risk free interest rate	4.13% - 4.25%

**Warrant Transactions for the Year Ended December 31, 2021**

During 2021, the Company granted 277,950 warrants to convertible note holders and an additional 137,500 warrants to note holders. These warrants were exercisable upon the grant date, had expiration dates ranging from 3 – 5 years, and exercise prices of \$8 - \$12/share.

Additionally, in connection with the listing of our common stock on the Nasdaq Capital Market., 5,290,000 warrants were sold for cash and an additional 230,000 warrants were issued as an underwriters' discount. The 230,000 warrants are exercisable six (6) months from the grant date in May 2022. See above for additional discussion, including the cashless exercise of these warrants for 68,161 shares of common stock.

In connection with the listing of our common stock on the Nasdaq Capital Market. 433,017 warrants were repriced at a lower exercise price to better reflect the current market offering. No other terms had been modified. As a result, for the year ended December 31, 2021, the Company recorded a warrant modification expense of \$74,476 in the accompanying consolidated statements of operations with an offsetting increase to additional paid in capital.

The fair value of these warrants was determined using a Black-Scholes option pricing model with the following inputs:

Expected term (years)	3 - 5
Expected volatility	119% - 146%
Expected dividends	0%
Risk free interest rate	0.07% - 1.15%

**Note 11 – Segment Information**

Operating segments are defined as components of an enterprise about which separate financial information is available and evaluated regularly by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company’s chief operating decision maker is its Chief Executive Officer.

The Company evaluated the performance of its operating segments based on revenue and operating loss. All data below is prior to intercompany eliminations.

Segment information for the years ended December 31, 2022 and 2021, are as follows:

F-53

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

	For the Years Ended December 31,	
	2022	2021
<b>Revenues</b>		
Surge Phone and Torch Wireless	\$ 88,351,547	\$ 7,289,239
Surge Blockchain, LLC	112,911	138,106
LogicsIQ, Inc.	16,760,656	17,846,698
Surge Fintech & ECS	16,319,076	24,628,566
True Wireless	-	1,157,980
Surge Pays, Inc.	-	-
<b>Total</b>	<b>\$ 121,544,190</b>	<b>\$ 51,060,589</b>
<b>Cost of revenues</b>		
Surge Phone and Torch Wireless	\$ 76,130,286	\$ 6,082,121
Surge Blockchain, LLC	2,517	1,377
LogicsIQ, Inc.	14,975,647	14,715,499
Surge Fintech & ECS	16,966,332	23,785,551
True Wireless	-	306,062
Surge Pays, Inc.	-	-
<b>Total</b>	<b>\$ 108,074,782</b>	<b>\$ 44,890,610</b>
<b>Operating expenses</b>		
Surge Phone and Torch Wireless	\$ 299,406	\$ 46,994
Surge Blockchain, LLC	53,571	12,025
LogicsIQ, Inc.	1,460,750	2,425,975
Surge Fintech & ECS	1,327,517	1,389,680
True Wireless	-	615,013
Surge Pays, Inc.	9,694,379	7,672,860
<b>Total</b>	<b>\$ 12,835,623</b>	<b>\$ 12,162,547</b>
<b>Income (loss) from operations</b>		
Surge Phone and Torch Wireless	\$ 11,921,855	\$ 1,160,124
Surge Blockchain, LLC	56,823	124,704
LogicsIQ, Inc.	324,259	705,224
Surge Fintech & ECS	(1,974,773)	(546,665)
True Wireless	-	236,905
Surge Pays, Inc.	(9,694,379)	(7,672,860)
<b>Total</b>	<b>\$ 633,785</b>	<b>\$ (5,992,568)</b>

F-54

**SURGEPAYS, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

Segment information for the Company’s assets and liabilities at December 31, 2022 and 2021, are as follows:

	December 31, 2022	December 31, 2021
<b>Total Assets</b>		
Surge Phone and Torch Wireless	\$ 27,239,365	\$ (161,110)
Surge Blockchain, LLC	(550,782)	(608,188)
LogicsIQ, Inc.	2,500,499	1,284,562
Surge Fintech & ECS	1,906,212	3,870,409
True Wireless	-	-

Surge Pays, Inc.		2,908,212	15,114,529
Total		\$ 34,003,506	\$ 19,500,202
<b>Total Liabilities</b>			
Surge Phone and Torch Wireless	\$	15,484,392	\$ 5,773
Surge Blockchain, LLC		198,197	197,614
LogicsIQ, Inc.		2,619,521	2,056,886
Surge Fintech & ECS		58,919	48,346
True Wireless		-	-
Surge Pays, Inc.		10,524,224	13,640,262
Total	\$	28,885,253	\$ 15,948,881

**Note 12 – Installment Sale Liability**

**Agreement**

In 2022, the Company executed a two-year (2) financing arrangement with Affordable Connectivity Financing ("ACF", "Seller") to receive up to \$25,000,000 to purchase devices for sale.

This agreement is based upon the Company submitting a purchase order and ACF approving the request. The Company may cancel the purchase order prior to ACF paying for the devices. The agreement may be extended by a period of one (1) year upon mutual consent.

Under the terms of the agreement, ACF is directly purchasing products and reselling to the Company at a markup. At December 31, 2022, the markup was 9.85%. Effective April 1, 2023 and each quarter thereafter, this amount is subject to increase based upon the secured overnight financing rate.

F-55

**SURGE PAYS, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2022 AND 2021**

**Repayment Period**

Each installment sale contract shall be repaid over a period of nine (9) months.

**Security**

This arrangement is fully secured by all assets of the Company.

**Minimum Outstanding Balance**

3 month rolling average of 70% of the installment sale credit amount.

**Prepayment Penalty**

The Company is subject to a cancellation fee of 3% during the first year and 2% during the second year.

**Administrative Fee**

The Company is required to pay \$2,000 per month.

**Default Rate**

For any unpaid amounts under this agreement, the Company is subject to a fee of 1.35% per month (16.2% annualized).

**Commitment Fee**

ACF charged a 2% commitment fee on the initial installment sale, and 2% for each incremental increase of \$5,000,000 in the installment sale credit amount.

For example, if the initial installment sale credit amount is \$15,000,000, the credit availability fee would be \$300,000 (2%). Any subsequent increase of \$5,000,000 or more would result in an additional fee of \$100,000 (2%). Commitment fees are paid over a period of 12 months as part of the Seller's monthly invoicing.

F-56

**SURGE PAYS, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2022 AND 2021**

**Covenants**

At December 31, 2022, the Company was in compliance with all of the following ratios:

1. Company adjusted EBITDA,
2. Total Leverage Ratio,
3. Fixed Charge Coverage Ratio,
4. Minimum Subscriber Base; and
5. Minimum Liquidity

Additionally, the Company is required to provide various data to the vendor on a periodic basis. The Company has not received notice from the vendor regarding any instances of non-compliance.

## Lockbox

The Company will maintain a lockbox for the benefit of the Seller.

## Accounts Payable and Accrued Expenses

At December 31, 2022 and 2021, the Company has recorded an installment sale liability of \$13,018,184 and \$0, respectively.

During the years ended December 31, 2022 and 2021, the Company paid fees of \$1,499,007 and \$0, respectively. These amounts have been included as a component of cost of goods sold in the accompanying consolidated statements of operations.

F-57

### SURGEPAYS, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS DECEMBER 31, 2022 AND 2021

#### Note 13 – Income Taxes

The Company's tax expense differs from the "expected" tax expense for the period (computed by applying the blended corporate rate and state tax rates of 26.14% to loss before taxes), are approximately as follows:

	December 31, 2022	December 31, 2021
Federal income tax benefit - 19.64%	\$ (134,000)	\$ (2,657,000)
State income tax - 6.5%	(44,000)	(880,000)
Non-deductible items	1,000	(495,000)
Subtotal	(177,000)	(4,032,000)
Change in valuation allowance	177,000	4,032,000
Income tax benefit	\$ -	\$ -

The tax effects of temporary differences that give rise to significant portions of deferred tax assets and liabilities at December 31, 2022 and 2021, respectively, are approximately as follows:

	December 31, 2022	December 31, 2021
Bad debt	\$ 22,000	\$ 6,000
(Gain) loss on investment in Centercom - related party	25,000	48,000
Amortization of ROU Assets	(14,000)	-
Amortization of debt discount	404,000	434,000
Share based payments/option compensation	(84,000)	(47,000)
Change in fair value of derivative liabilities	(321,000)	(321,000)
Other	-	(2,000)
Net operating loss carryforwards	(8,869,000)	(7,824,000)
Total deferred tax assets	(8,837,000)	(7,706,000)
Less: valuation allowance	8,837,000	7,706,000
Net deferred tax asset recorded	\$ -	\$ -

Deferred tax assets and liabilities are computed by applying the federal and state income tax rates in effect to the gross amounts of temporary differences and other tax attributes, such as net operating loss carryforwards. In assessing if the deferred tax assets will be realized, the Company considers whether it is more likely than not that some or all of these deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the period in which these deductible temporary differences reverse.

F-58

### SURGEPAYS, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS DECEMBER 31, 2022 AND 2021

During the year ended December 31, 2022, the valuation allowance increased by approximately \$1,131,000. The total valuation allowance results from the Company's estimate of its uncertainty in being unable to recover its net deferred tax assets.

At December 31, 2022, the Company has federal and state net operating loss carryforwards, which are available to offset future taxable income, of approximately 33,935,000 (approximately \$8,869,000 at the blended tax rate). The Company is in the process of analyzing their NOL and has not determined if the Company has had any change of control issues that could limit the future use of these NOLs. NOL carryforwards that were generated after 2017 may only be used to offset 80% of taxable income and are carried forward indefinitely. NOLs generated prior to December 31, 2017 expire through 2037.

These carryforwards may be subject to an annual limitation under Section 382 and 383 of the Internal Revenue Code of 1986, and similar state provisions if the Company experienced one or more ownership changes which would limit the amount of NOL and tax credit carryforwards that can be utilized to offset future taxable income and tax, respectively. In general, an ownership change, as defined by Section 382 and 383, results from transactions increasing ownership of certain stockholders or public groups in the stock of the corporation by more than fifty percentage points over a three-year period. The Company has not completed an IRC Section 382/383 analysis. If a change in ownership were to have occurred, NOL and tax credit carryforwards could be eliminated or restricted.

If eliminated, the related asset would be removed from the deferred tax asset schedule with a corresponding reduction in the valuation allowance. Due to the existence of the valuation allowance, limitations created by future ownership changes, if any, will not impact the Company's effective tax rate.

The Company files corporate income tax returns in the United States and State of Tennessee jurisdictions. Due to the Company's net operating loss posture, all tax years are open and subject to income tax examination by tax authorities. The Company's policy is to recognize interest expense and penalties related to income tax matters as tax expense. At

December 31, 2022 and 2021, respectively, there are no unrecognized tax benefits, and there were no significant accruals for interest related to unrecognized tax benefits or tax penalties.

#### **Note 14 - Subsequent Events**

##### **Employment Agreements**

The Company is currently finalizing amendments to the terms of its executive employment agreements with its Chief Executive Officer and Chief Financial Officer. Both agreements have been approved by the Board of Directors. These agreements are expected to be completed during the second quarter of 2023.

##### **Securities and Incentive Plan**

In March 2023, the Company's shareholders approved the 2022 Plan (the "Plan") initially approved, authorized and adopted by the Board of Directors in August 2022.

The Plan provides for the following:

1. 3,500,000 shares of common stock
2. An annual increase on the first day of each calendar year beginning January 1, 2023 and ending on January 31, 2031 equal to the lesser of:
  - a. 10% of the common stock outstanding on the final day of the immediately preceding calendar year, or
  - b. Such smaller amount of common stock as determined by the Board of Directors.
3. The shares may be issued as follows to directors, officers, employees and consultants:
  - a. Distribution equivalent rights
  - b. Incentive share options
  - c. Non-qualified share options
  - d. Performance unit awards
  - e. Restricted share awards
  - f. Restricted share unit awards
  - g. Share appreciation rights
  - h. Tandem share appreciation rights
  - i. Unrestricted share awards

See Schedule 14A Information filed with the US Securities and Exchange Commission on January 19, 2023 for a complete detail of the Plan.

##### **Stock Issued For Services**

The Company issued 20,000 shares of common stock for services rendered, having a fair value of \$119,200 (\$5.96/share), based upon the quoted closing trading price.

**DESCRIPTION OF THE REGISTRANT'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

As of December 31, 2022, SurgePays, Inc. (“the Company”) had two classes of security registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), our common stock, par value \$0.001 per share (“Common Stock”), and a registered class of warrants, each to purchase one share of Common Stock (the “Warrants”).

**Description of Common Stock**

The Company is authorized to issue 600,000,000 shares of capital stock, par value \$0.001 per share, of which 500,000,000 are shares of common stock and 100,000,000 are shares of “blank check” preferred stock. As of March 30, 2023, there were 14,116,832 shares of Common Stock issued and outstanding. There were no shares of Preferred Stock issued and outstanding as of March 30, 2023.

Each share of our Common Stock entitles its holder to one vote in the election of each director and on all other matters voted on generally by our stockholders, other than any matter that (1) solely relates to the terms of any outstanding series of preferred stock or the number of shares of that series and (2) does not affect the number of authorized shares of preferred stock or the powers, privileges and rights pertaining to the Common Stock. No share of our Common Stock affords any cumulative voting rights. This means that the holders of a majority of the voting power of the shares voting for the election of directors can elect all directors to be elected if they choose to do so.

Holders of our Common Stock will be entitled to dividends in such amounts and at such times as our Board of Directors in its discretion may declare out of funds legally available for the payment of dividends. We currently intend to retain our entire available discretionary cash flow to finance the growth, development and expansion of our business and do not anticipate paying any cash dividends on the Common Stock in the foreseeable future. Any future dividends will be paid at the discretion of our Board of Directors.

If we liquidate or dissolve our business, the holders of our Common Stock will share ratably in all our assets that are available for distribution to our stockholders after our creditors are paid in full and the holders of all series of our outstanding preferred stock, if any, receive their liquidation preferences in full.

Our Common Stock has no preemptive rights and is not convertible or redeemable or entitled to the benefits of any sinking or repurchase fund.

The Common Stock is listed on the Nasdaq Capital Market under the trading symbol “SURG.”

The Company’s transfer agent is VStock Transfer, LLC.

**Description of Common Stock Purchase Warrants**

*Overview.* The following summary of certain terms and provisions of the Warrants offered hereby is not complete and is subject to, and qualified in its entirety by, the provisions of the warrant agency agreement between us and VStock Transfer, LLC (the “Warrant Agent”), and the form of warrant, incorporated by reference as Exhibit 4.3 to the Annual Report on Form 10-K of which this Exhibit 4.4 is a part.

As of March 30, 2023, there were 5,681,392 warrants that were outstanding, vested and exercisable.

The Warrants entitle the registered holder to purchase Common Stock at a price equal to \$4.73 per share, subject to adjustment as discussed below, immediately following the issuance of such Warrant and terminating at 5:00 p.m., New York City time, on November 4, 2024.

The exercise price and number of shares of Common Stock issuable upon exercise of the Warrants may be adjusted in certain circumstances, including in the event of a stock dividend or recapitalization, reorganization, merger or consolidation. However, the Warrants will not be adjusted for issuances of Common Stock at prices below its exercise price.

*Exercisability.* The Warrants are exercisable at any time after their original issuance and at any time up to the date that is three (3) years after their original issuance. The Warrants may be exercised upon surrender of the Warrant certificate on or prior to the expiration date at the offices of the Warrant Agent, with the exercise form on the reverse side of the warrant certificate completed and executed as indicated, accompanied by full payment of the exercise price, by certified or official bank check payable to us, for the number of Warrants being exercised. Under the terms of the Warrant Agreement, we must use our best efforts to maintain the effectiveness of the registration statement and current prospectus relating to the Common Stock issuable upon exercise of the Warrants until the expiration of the Warrants. If we fail to maintain the effectiveness of the registration statement and current prospectus relating to the Common Stock issuable upon exercise of the Warrants, the holders of the Warrants shall have the right to exercise the Warrants solely via a cashless exercise feature provided for in the Warrants, until such time as there is an effective registration statement and current prospectus.

*Exercise Limitation.* A holder may not exercise any portion of a Warrant to the extent that the holder, together with its affiliates and any other person or entity acting as a group, would own more than 4.99% of the outstanding Common Stock after exercise, as such percentage ownership is determined in accordance with the terms of the Warrant, except that upon prior notice from the holder to us, the holder may waive such limitation up to a percentage not in excess of 9.99%.

*Exercise Price.* The exercise price per whole share of Common Stock purchasable upon exercise of the Warrants is \$4.73. The exercise price is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our Common Stock and also upon any distributions of assets, including cash, stock, or other property to our stockholders.

*Fractional Shares.* No fractional shares of Common Stock will be issued upon exercise of the Warrants. As to any fraction of a share of Common Stock which the holder would otherwise be entitled to purchase upon such exercise, the Company will round up or down, as applicable, to the nearest whole share of Common Stock.

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

*Warrant Agent; Global Certificate.* The Warrants were issued in registered form under a warrant agency agreement between the Warrant Agent and us. The Warrants shall initially be represented only by one or more global warrants deposited with the Warrant Agent, as custodian on behalf of The Depository Trust Company (DTC) and registered in the name of Cede & Co., a nominee of DTC, or as otherwise directed by DTC.

*Fundamental Transactions.* In the event of a fundamental transaction, as described in the Warrants and generally including any reorganization, recapitalization or reclassification of our Common Stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding Common Stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding Common Stock, the holders of the Warrants will be entitled to receive the kind and amount of securities, cash or other property that the holders would have received had they exercised the Warrants immediately prior to such fundamental transaction.

*Rights as a Stockholder.* The Warrant holders do not have the rights or privileges of holders of Common Stock or any voting rights until they exercise their Warrants and receive



**Common Stock.** After the issuance of Common Stock upon exercise of the Warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by stockholders.

**Governing Law.** The Warrants and the warrant agency agreement are governed by New York law.

**Exchange.** The Warrants are listed on the Nasdaq Capital Market under the trading symbol "SURGW."

---

**SURGEPAYS, INC.**  
**2022 OMNIBUS SECURITIES AND INCENTIVE PLAN**  
**3.5 MILLION SHARES OF COMMON STOCK**

**ARTICLE I**  
**PURPOSE**

The purpose of this SurgePays, Inc. 2022 Omnibus Securities and Incentive Plan (the "Plan") is to benefit the stockholders of SurgePays, Inc., a Nevada corporation (the "Company"), by assisting the Company to attract, retain and provide incentives to key management employees and non-employee directors of, and non-employee consultants to, the Company and its Affiliates, and to align the interests of such employees, non-employee directors and non-employee consultants with those of the Company's stockholders. Accordingly, the Plan provides for the granting of Distribution Equivalent Rights, Incentive Share Options, Non-Qualified Share Options, Performance Unit Awards, Restricted Share Awards, Restricted Share Unit Awards, Share Appreciation Rights, Tandem Share Appreciation Rights, Unrestricted Share Awards or any combination of the foregoing, as may be best suited to the circumstances of the particular Employee, Director or Consultant as provided herein.

**ARTICLE II**  
**DEFINITIONS**

The following definitions shall be applicable throughout the Plan unless the context otherwise requires:

"Affiliate" shall mean any corporation which, with respect to the Company, is a "subsidiary corporation" within the meaning of Section 424(f) of the Code.

"Award" shall mean, individually or collectively, any Distribution Equivalent Right, Option, Performance Unit Award, Restricted Share Award, Restricted Share Unit Award, Share Appreciation Right or Unrestricted Share Award.

"Award Agreement" shall mean a written agreement between the Company and the Holder with respect to an Award, setting forth the terms and conditions of the Award, and each of which shall constitute a part of the Plan.

"Board" shall mean the Board of Directors of the Company.

"Change of Control" shall mean (i) for a Holder who is a party to an employment or consulting agreement with the Company or an Affiliate which agreement defines "Change of Control" (or a similar term) therein, "Change of Control" shall have the same meaning as provided for in such agreement, or (ii) for a Holder who is not a party to such an agreement, "Change of Control" shall mean the satisfaction of any one or more of the following conditions (and the "Change of Control" shall be deemed to have occurred as of the first day that any one or more of the following conditions shall have been satisfied):

(a) Any person (as such term is used in paragraphs 13(d) and 14(d)(2) of the Exchange Act, hereinafter in this definition, "Person"), other than the Company or an Affiliate or an employee benefit plan of the Company or an Affiliate, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities;

(b) The closing of a merger, consolidation or other business combination (a "Business Combination") other than a Business Combination in which holders of the Common Stock immediately prior to the Business Combination have substantially the same proportionate ownership of the Company or surviving corporation immediately after the Business Combination as immediately before;

(c) The closing of an agreement for the sale or disposition of all or substantially all of the Company's assets to any entity that is not an Affiliate;

1

(d) The approval by the holders of shares of Common Stock of a Plan of complete liquidation of the Company other than a liquidation of the Company into any subsidiary or a liquidation a result of which Persons who were stockholders of the Company immediately prior to such liquidation have substantially the same proportionate ownership of shares of the surviving corporation immediately after such liquidation as immediately before;

(e) Within any twenty-four (24)-month period, the Incumbent Directors shall cease to constitute at least a majority of the Board or the board of directors of any successor to the Company; provided, however, that any director elected to the Board, or nominated for election, by a majority of the Incumbent Directors then still in office, shall be deemed to be an Incumbent Director for purposes of this paragraph (e), but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of an individual, entity or "group" other than the Board (including, but not limited to, any such assumption that results from paragraph (a), (b), (c) or (d) of this definition).

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to occur if the Company files for bankruptcy, liquidation or reorganization under the United States Bankruptcy Code.

"Code" shall mean the Internal Revenue Code of 1986, as amended. Reference in the Plan to any section of the Code shall be deemed to include any amendments or successor provisions to any section and any regulation under such section.

"Committee" shall mean the Compensation Committee of the Board or such other committee designated by the Board to administer the Plan.

"Common Share" shall mean a share of Common Stock.

"Common Stock" shall mean the common stock, par value \$0.001 per share, of the Company.

"Company" shall mean SurgePays, Inc., a Nevada corporation, and any successor thereto.

"Consultant" shall mean any non-Employee advisor to the Company or an Affiliate who or which has contracted directly with the Company or an Affiliate to render bona fide consulting or advisory services thereto.

"Director" shall mean a member of the Board or a member of the board of directors of an Affiliate, in either case, who is not an Employee.

"Distribution Equivalent Right" shall mean an Award granted under Article XII of the Plan which entitles the Holder to receive bookkeeping credits, cash payments and/or Common Share distributions equal in amount to the distributions that would have been made to the Holder had the Holder held a specified number of Common Stock during the period the Holder held the Distribution Equivalent Right.

“Distribution Equivalent Right Award Agreement” shall mean a written agreement between the Company and a Holder with respect to a Distribution Equivalent Right Award.

“Employee” shall mean any employee, including officers, of the Company or an Affiliate.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Fair Market Value” shall mean, as determined consistent with the applicable requirements of Sections 409A and 422 of the Code, as of any specified date, the closing sales price of the Common Stock for such date (or, in the event that the Common Stock are not traded on such date, on the immediately preceding trading date) as reported in *The Wall Street Journal* or a comparable reporting service. If the Common Stock are not listed on a national securities exchange, but are quoted on the OTC Markets OTC Link, the Fair Market Value of the Common Stock shall be the mean of the bid and asked prices per Common Share for such date. If the Common Stock are not quoted or listed as set forth above, Fair Market Value shall be determined by the Committee in good faith by any fair and reasonable means (which means, with respect to a particular Award grant, may be set forth with greater specificity in the applicable Award Agreement). The Fair Market Value of property other than Common Stock shall be determined by the Committee in good faith by any fair and reasonable means, and consistent with the applicable requirements of Sections 409A and 422 of the Code.

---

2

---

“Family Member” shall mean any child, stepchild, grandchild, parent, stepparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the Holder’s household (other than a tenant or employee of the Holder), a trust in which such persons have more than fifty percent (50%) of the beneficial interest, a foundation in which such persons (or the Holder) control the management of assets and any other entity in which such persons (or the Holder) own more than fifty percent (50%) of the voting interests.

“Holder” shall mean an Employee, Director or Consultant who has been granted an Award or any such individual’s beneficiary, estate or representative, to the extent applicable.

“Incentive Share Option” shall mean an Option which is intended by the Committee to constitute an “incentive stock option” under Section 422 of the Code.

“Incumbent Director” shall mean, with respect to any period of time specified under the Plan for purposes of determining whether or not a Change of Control has occurred, the individuals who were members of the Board at the beginning of such period.

“Non-Qualified Share Option” shall mean an Option which is not an Incentive Share Option.

“Option” shall mean an Award granted under Article VII of the Plan of an option to purchase Common Stock and includes both Incentive Share Options and Non-Qualified Share Options.

“Option Agreement” shall mean a written agreement between the Company and a Holder with respect to an Option.

“Performance Unit” shall mean a Unit awarded to a Holder pursuant to a Performance Unit Award.

“Performance Unit Award” shall mean an Award granted under Article XI of the Plan under which, upon the satisfaction of predetermined individual and/or Company (and/or Affiliate) performance goals and/or objectives, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder.

“Performance Unit Award Agreement” shall mean a written agreement between the Company and a Holder with respect to a Performance Unit Award.

“Plan” shall mean this SurgePays, Inc. 2022 Omnibus Securities and Incentive Plan, as amended from time to time, together with each of the Award Agreements utilized hereunder.

“Restricted Share Award” shall mean an Award granted under Article VIII of the Plan of Common Stock, the transferability of which by the Holder shall be subject to Restrictions.

“Restricted Share Award Agreement” shall mean a written agreement between the Company and a Holder with respect to a Restricted Share Award.

“Restricted Share Unit Award” shall mean an Award granted under Article X of the Plan under which, upon the satisfaction of predetermined individual service-related vesting requirements, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder.

“Restricted Share Unit Award Agreement” shall mean a written agreement between the Company and a Holder with respect to a Restricted Share Unit Award.

---

3

---

“Restriction Period” shall mean the period of time for which Common Stock subject to a Restricted Share Award shall be subject to Restrictions, as set forth in the applicable Restricted Share Award Agreement.

“Restrictions” shall mean forfeiture, transfer and/or other restrictions applicable to Common Stock awarded to an Employee, Director or Consultant under the Plan pursuant to a Restricted Share Award and set forth in a Restricted Share Award Agreement.

“Rule 16b-3” shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Exchange Act, as such may be amended from time to time, and any successor rule, regulation or statute fulfilling the same or a substantially similar function.

“Share Appreciation Right” shall mean an Award granted under Article XIII of the Plan of a right, granted alone or in connection with a related Option, to receive a payment on the date of exercise.

“Share Appreciation Right Award Agreement” shall mean a written agreement between the Company and a Holder with respect to a Share Appreciation Right.

“Tandem Share Appreciation Right” shall mean a Share Appreciation Right granted in connection with a related Option, the exercise of which shall result in termination of the otherwise entitlement to purchase some or all of the Common Stock under the related Option, all as set forth in Section 13.2.

“Ten Percent Shareholder” shall mean an Employee who, at the time an Option is granted to him or her, owns shares possessing more than ten percent (10%) of the total combined voting power of all classes of shares of the Company or of any parent corporation or subsidiary corporation thereof (both as defined in Section 424 of the Code), within the meaning of Section 422(b)(6) of the Code.

“Units” shall mean bookkeeping units, each of which represents such monetary amount as shall be designated by the Committee in each Performance Unit Award Agreement, or represents one (1) Common Share for purposes of each Restricted Share Unit Award.

“Unrestricted Share Award” shall mean an Award granted under Article IX of the Plan of Common Stock which are not subject to Restrictions.

“Unrestricted Share Award Agreement” shall mean a written agreement between the Company and a Holder with respect to an Unrestricted Share Award.

### ARTICLE III EFFECTIVE DATE OF PLAN

The Plan shall be effective as of the date in 2022 that the Board approves the Plan, subject, however, to approval by the stockholders of the Company.

### ARTICLE IV ADMINISTRATION

Section 4.1. **Administration.** The Plan shall be administered by the Committee.

Section 4.2. **Powers.** Subject to the provisions of the Plan, the Committee shall have the sole authority, in its discretion, to make all determinations under the Plan, including, but not limited to, determining which Employees, Directors or Consultants shall receive an Award, the time or times when an Award shall be made (the date of grant of an Award shall be the date on which the Award is awarded by the Committee), what type of Award shall be granted, the term of an Award, the date or dates on which an Award vests (including acceleration of vesting), the form of any payment to be made pursuant to an Award, the terms and conditions of an Award (including the forfeiture of the Award (and/or any financial gain) if the Holder of the Award violates any applicable restrictive covenant thereof), the Restrictions under a Restricted Share Award and the number of Common Stock which may be issued under an Award, all as applicable. In making such determinations, the Committee may take into account the nature of the services rendered by the respective Employees, Directors and Consultants, their present and potential contribution to the Company’s (or the Affiliate’s) success and such other factors as the Committee, in its discretion, shall deem relevant.

4

---

Section 4.3. **Additional Powers.** The Committee shall have such additional powers as are delegated to it under the other provisions of the Plan. Subject to the express provisions of the Plan, the Committee is authorized to construe the Plan and the respective Award Agreements executed hereunder, to prescribe such rules and regulations relating to the Plan as it may deem advisable to carry out the intent of the Plan, and to determine the terms, restrictions and provisions of each Award, including such terms, restrictions and provisions as shall be requisite in the judgment of the Committee to cause designated Options to qualify as Incentive Share Options, and to make all other determinations necessary or advisable for administering the Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in any Award Agreement in the manner and to the extent it shall deem expedient to carry it into effect. The determinations of the Committee on the matters referred to in this Article IV shall be conclusive and binding on the Company and all Holders.

Section 4.4. **Delegation.** The Committee may delegate to one or more officers or Directors of the Company, subject to such terms, conditions and limitations as the Committee may establish, in its sole discretion, the authority to grant Awards; provided, however, that the Committee shall not delegate such authority (i) with regard to grants of Awards to be made to officers of the Company or any Affiliate who are subject to Section 16 of the Exchange Act, or (ii) in such a manner as would cause the Plan not to comply with the requirements of applicable law or applicable exchange rules.

Section 4.5. **Power and Authority of the Board.** Notwithstanding anything to the contrary contained herein, (i) the Board may, at any time and from time to time, without any further action of the Committee, exercise the powers and duties of the Committee under the Plan, unless the exercise of such powers and duties by the Board would cause the Plan not to comply with the requirements of Rule 16b-3, other applicable law or applicable exchange rules, and (ii) only the Committee (or another committee of the Board comprised of directors who qualify as independent directors within the meaning of the independence rules of any applicable securities exchange where the shares of Common Stock are then listed) may grant Awards to Directors who are not also Employees.

### ARTICLE V SHARES SUBJECT TO PLAN AND LIMITATIONS THEREON

Section 5.1. **Shares Grant and Award Limits.** The Committee may from time to time grant Awards to one or more Employees, Directors and/or Consultants determined by it to be eligible for participation in the Plan in accordance with the provisions of Article VI. Subject to Article XIV, the aggregate number of Common Shares (including Common Shares underlying Options designated as Incentive Share Options) that may be issued under the Plan shall not exceed the sum of (i) three million five hundred thousand (3,500,000) Common Shares plus (ii) an annual increase on the first day of each calendar year beginning January 1, 2023 and ending on and including January 1, 2031 equal to the lesser of (A) ten percent (10%) of the Common Shares outstanding on the final day of the immediately preceding calendar year, and (B) such smaller number of Common Shares as determined by the Board. The Common Stock shall be deemed to have been issued under the Plan solely to the extent actually issued and delivered pursuant to an Award. To the extent that an Award lapses, expires, is canceled, is terminated unexercised or ceases to be exercisable for any reason, or the rights of its Holder terminate, any Common Stock subject to such Award shall again be available for the grant of a new Award.

Section 5.2. **Common Stock Offered.** The Common Stock to be offered pursuant to the grant of an Award may be authorized but unissued Common Stock or Common Stock previously issued and outstanding and reacquired by the Company.

Section 5.3. **Limitations on Awards for Directors.** Notwithstanding any provision to the contrary in the Plan, the sum of the grant date fair value of equity-based Awards (such value computed as of the date of grant in accordance with applicable financial accounting rules) and the amount of any cash-based compensation granted to a Director during any calendar year shall not exceed Three Hundred Thousand Dollars (\$300,000). The independent members of the Board may make exceptions to this limit for a non-executive chair of the Board, provided that the non-employee Director receiving such additional compensation may not participate in the decision to award such compensation.

5

---

### ARTICLE VI ELIGIBILITY FOR AWARDS

Awards made under the Plan may be granted solely to persons who, at the time of grant, are Employees, Directors or Consultants (or any such person to whom an offer of employment or engagement with the Company or any Affiliate is extended). An eligible person must be a natural person and may only be granted an Award in connection with the provision of services not related to capital raising or promoting or maintaining a market for the Common Stock. An Award may be granted on more than one occasion to the same Employee, Director or Consultant, and, subject to the limitations set forth in the Plan, such Award may include a Non-Qualified Share Option, a Restricted Share Award, an Unrestricted Share Award, a Distribution Equivalent Right Award, a Performance Unit Award, a Share Appreciation Right, a Tandem Share Appreciation Right, any combination thereof or, solely for Employees, an Incentive Share Option.

### ARTICLE VII OPTIONS

Section 7.1. **Option Period.** The term of each Option shall be as specified in the Option Agreement; provided, however, that except as set forth in Section 7.3, no Option shall be exercisable after the expiration of ten (10) years from the date of its grant.

Section 7.2. **Limitations on Exercise of Option.** An Option shall be exercisable in whole or in such installments and at such times as specified in the Option Agreement.

Section 7.3. **Special Limitations on Incentive Share Options.** To the extent that the aggregate Fair Market Value (determined at the time the respective Incentive Share Option is granted) of Common Stock with respect to which Incentive Share Options are exercisable for the first time by an individual during any calendar year under all plans of the Company and any parent corporation or subsidiary corporation thereof (both as defined in Section 424 of the Code) which provide for the grant of Incentive Share Options exceeds One Hundred Thousand Dollars (\$100,000) (or such other individual limit as may be in effect under the Code on the date of grant), the portion of such Incentive Share Options that exceeds such threshold shall be treated as Non-Qualified Share Options. Incentive Share Options shall be granted to Employees only. The Committee shall determine, in accordance with applicable provisions of the Code, Treasury Regulations and other administrative pronouncements, which of a Holder's Options, which were intended by the Committee to be Incentive Share Options when granted to the Holder, will not constitute Incentive Share Options because of such limitation, and shall notify the Holder of such determination as soon as practicable after such determination. No Incentive Share Option shall be granted to an Employee if, at the time the Incentive Share Option is granted, such Employee is a Ten Percent Shareholder, unless (i) at the time such Incentive Share Option is granted the Option price is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock subject to the Incentive Share Option, and (ii) such Incentive Share Option by its terms is not exercisable after the expiration of five (5) years from the date of grant. No Incentive Share Option shall be granted more than ten (10) years from the date on which the Plan is approved by the Company's stockholders. The designation by the Committee of an Option as an Incentive Share Option shall not guarantee the Holder that the Option will satisfy the applicable requirements for "incentive stock option" status under Section 422 of the Code.

Section 7.4. **Option Agreement.** Each Option shall be evidenced by an Option Agreement in such form and containing such provisions not inconsistent with the provisions of the Plan as the Committee from time to time shall approve, including, but not limited to, provisions intended to qualify an Option as an Incentive Share Option. An Option Agreement may provide for the payment of the Option price, in whole or in part, by the delivery of a number of Common Stock (plus cash if necessary) that have been owned by the Holder for at least six (6) months and having a Fair Market Value equal to such Option price, or such other forms or methods as the Committee may determine from time to time, in each case, subject to such rules and regulations as may be adopted by the Committee. Each Option Agreement shall specify the effect of termination of employment, Director status or Consultant status on the exercisability of the Option. Moreover, without limiting the generality of the foregoing, an Option Agreement may provide for a "cashless exercise" of the Option, in whole or in part, by (a) establishing procedures whereby the Holder, by a properly-executed written notice, directs (i) an immediate market sale or margin loan as to all or a part of Common Stock to which he is entitled to receive upon exercise of the Option, pursuant to an extension of credit by the Company to the Holder of the Option price, (ii) the delivery of the Common Stock from the Company directly to a brokerage firm, and (iii) the delivery of the Option price from sale or margin loan proceeds from the brokerage firm directly to the Company, or (b) reducing the number of Common Stock to be issued upon exercise of the Option by the number of such Shares having an aggregate Fair Market Value equal to the Option price (or portion thereof to be so paid) as of the date of the Option's exercise. Each Option Agreement shall specify the effect of the termination of the Holder's employment, Director status or Consultant status on the exercisability of the Option. An Option Agreement may also include provisions relating to (i) subject to the provisions hereof, accelerated vesting of Options, including, but not limited to, upon the occurrence of a Change of Control, (ii) tax matters (including provisions covering any applicable Employee wage withholding requirements), and (iii) any other matters not inconsistent with the terms and provisions of the Plan that the Committee shall, in its sole discretion, determine. The terms and conditions of the respective Option Agreements need not be identical.

6

Section 7.5. **Option Price and Payment.** The price at which a Common Share may be purchased upon exercise of an Option shall be determined by the Committee and shall not be less than the Fair Market Value of a Common Share on the date of grant of such Option; provided, however, that such Option price as determined by the Committee shall be subject to adjustment as provided in Article XIV. The Option price or portion thereof shall be paid in full in the manner prescribed by the Committee as set forth in the Plan and the applicable Option Agreement, which manner, with the consent of the Committee, may include the withholding of Common Stock otherwise issuable in connection with the exercise of the Option, for purposes of Section 7.4(b). Separate share certificates shall be issued by the Company for those Common Stock acquired pursuant to the exercise of an Incentive Share Option and for those Common Stock acquired pursuant to the exercise of a Non-Qualified Share Option.

Section 7.6. **Stockholder Rights and Privileges.** The Holder of an Option shall be entitled to all the privileges and rights of a stockholder of the Company solely with respect to such Common Stock as have been purchased under the Option and for which share certificates have been registered in the Holder's name.

Section 7.7. **Options and Rights in Substitution for Stock or Share Options Granted by Other Corporations.** Options may be granted under the Plan from time to time in substitution for stock or share options held by individuals employed by entities who become Employees as a result of a merger or consolidation of the employing entity with the Company or any Affiliate, or the acquisition by the Company or an Affiliate of the assets of the employing entity or the acquisition by the Company or an Affiliate of stock or shares of the employing entity with the result that such employing entity becomes an Affiliate. Notwithstanding Section 7.5, the Committee may designate a purchase price below Fair Market Value on the date of grant if the Option is granted in substitution for a stock option previously granted by an entity that is acquired by or merged with the Company or an Affiliate.

Section 7.8. **Prohibition Against Repricing.** Except to the extent (i) approved in advance by holders of a majority of the shares of the Company entitled to vote generally in the election of directors, or (ii) as a result of any Change of Control or any adjustment as provided in Article XIV, the Committee shall not have the power or authority to reduce, whether through amendment or otherwise, the exercise price under any outstanding Option or Share Appreciation Right, or to grant any new Award or make any payment of cash in substitution for or upon the cancellation of Options and/or Share Appreciation Rights previously granted.

## ARTICLE VIII RESTRICTED SHARE AWARDS

Section 8.1. **Restriction Period.** At the time a Restricted Share Award is made, the Committee shall establish the Restriction Period applicable to such Award. Each Restricted Share Award may have a different Restriction Period, in the discretion of the Committee. The Restriction Period applicable to a particular Restricted Share Award shall not be changed except as permitted by Section 8.2.

Section 8.2. **Other Terms and Conditions.** Common Stock awarded pursuant to a Restricted Share Award shall be represented by a share certificate registered in the name of the Holder of such Restricted Share Award. If provided for under the Restricted Share Award Agreement, the Holder shall have the right to vote Common Stock subject thereto and to enjoy all other stockholder rights, including the entitlement to receive dividends on the Common Stock during the Restriction Period, except that (i) the Holder shall not be entitled to delivery of the share certificate until the Restriction Period shall have expired, (ii) the Company shall retain custody of the share certificate during the Restriction Period (with a share power endorsed by the Holder in blank), (iii) the Holder may not sell, transfer, pledge, exchange, hypothecate or otherwise dispose of the Common Stock during the Restriction Period, and (iv) a breach of the terms and conditions established by the Committee pursuant to the Restricted Share Award Agreement shall cause a forfeiture of the Restricted Share Award. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Restricted Share Awards, including, but not limited to, rules pertaining to the effect of termination of employment, Director status or Consultant status prior to expiration of the Restriction Period. Such additional terms, conditions or restrictions shall be set forth in a Restricted Share Award Agreement made in conjunction with the Award. Such Restricted Share Award Agreement may also include provisions relating to (i) subject to the provisions hereof, accelerated vesting of Awards, including, but not limited to, accelerated vesting upon the occurrence of a Change of Control, (ii) tax matters (including provisions covering any applicable Employee wage withholding requirements), and (iii) any other matters not inconsistent with the terms and provisions of the Plan that the Committee shall, in its sole discretion, determine. The terms and conditions of the respective Restricted Share Agreements need not be identical.

7

Section 8.3. **Payment for Restricted Shares.** The Committee shall determine the amount and form of any payment from a Holder for Common Stock received pursuant to a Restricted Share Award, if any, provided that in the absence of such a determination, a Holder shall not be required to make any payment for Common Stock received pursuant to a Restricted Share Award, except to the extent otherwise required by law.

Section 8.4. **Restricted Share Award Agreements.** At the time any Award is made under this Article VIII, the Company and the Holder shall enter into a Restricted Share Award Agreement setting forth each of the matters contemplated hereby and such other matters as the Committee may determine to be appropriate.

#### ARTICLE IX UNRESTRICTED SHARE AWARDS

Pursuant to the terms of the applicable Unrestricted Share Award Agreement, a Holder may be awarded (or sold) Common Stock which are not subject to Restrictions, in consideration for past services rendered thereby to the Company or an Affiliate or for other valid consideration.

#### ARTICLE X RESTRICTED SHARE UNIT AWARDS

Section 10.1. **Terms and Conditions.** The Committee shall set forth in the applicable Restricted Share Unit Award Agreement the individual service-based vesting requirement which the Holder would be required to satisfy before the Holder would become entitled to payment pursuant to Section 10.2 and the number of Units awarded to the Holder. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Restricted Share Unit Awards, including, but not limited to, rules pertaining to the effect of termination of employment, Director status or Consultant status prior to expiration of the applicable vesting period. The terms and conditions of the respective Restricted Share Unit Award Agreements need not be identical.

Section 10.2. **Payments.** The Holder of a Restricted Share Unit shall be entitled to receive a cash payment equal to the Fair Market Value of an Common Share, or one (1) Common Share, as determined, in the sole discretion, of the Committee and as set forth in the Restricted Share Unit Award Agreement, for each Restricted Share Unit subject to such Restricted Share Unit Award, if the Holder satisfies the applicable vesting requirement.

#### ARTICLE XI PERFORMANCE UNIT AWARDS

Section 11.1. **Terms and Conditions.** The Committee shall set forth in the applicable Performance Unit Award Agreement the performance goals and objectives (and the period of time to which such goals and objectives shall apply) which the Holder and/or the Company would be required to satisfy before the Holder would become entitled to payment pursuant to Section 11.2, the number of Units awarded to the Holder and the dollar value assigned to each such Unit. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Performance Unit Awards, including, but not limited to, rules pertaining to the effect of termination of employment, Director status or Consultant status prior to expiration of the applicable performance period. The terms and conditions of the respective Performance Unit Award Agreements need not be identical.

8

---

Section 11.2. **Payments.** The Holder of a Performance Unit shall be entitled to receive a cash payment equal to the dollar value or number of Common Shares assigned to such Unit under the applicable Performance Unit Award Agreement if the Holder and/or the Company satisfy (or partially satisfy, if applicable under the applicable Performance Unit Award Agreement) the performance goals and objectives set forth in such Performance Unit Award Agreement.

#### ARTICLE XII DISTRIBUTION EQUIVALENT RIGHTS

Section 12.1. **Terms and Conditions.** The Committee shall set forth in the applicable Distribution Equivalent Rights Award Agreement the terms and conditions applicable to such Award, including whether the Holder is to receive credits currently in cash, is to have such credits reinvested (at Fair Market Value determined as of the date of reinvestment) in additional Common Stock or is to be entitled to choose among such alternatives. Distribution Equivalent Rights Awards may be settled in cash or in Common Stock, as set forth in the applicable Distribution Equivalent Rights Award Agreement. A Distribution Equivalent Rights Award may, but need not, be awarded in tandem with another Award, whereby, if so awarded, such Distribution Equivalent Rights Award shall expire, terminate or be forfeited by the Holder, as applicable, under the same conditions as under such other Award.

Section 12.2. **Interest Equivalents.** The Distribution Equivalent Rights Award Agreement for a Distribution Equivalent Rights Award may provide for the crediting of interest on a Distribution Rights Award to be settled in cash at a future date, at a rate set forth in the applicable Distribution Equivalent Rights Award Agreement, on the amount of cash payable thereunder.

#### ARTICLE XIII SHARE APPRECIATION RIGHTS

Section 13.1. **Terms and Conditions.** The Committee shall set forth in the applicable Share Appreciation Right Award Agreement the terms and conditions of the Share Appreciation Right, including (i) the base value (the "Base Value") for the Share Appreciation Right, which for purposes of a Share Appreciation Right which is not a Tandem Share Appreciation Right, shall be not less than the Fair Market Value of a Common Share on the date of grant of the Share Appreciation Right (unless granted in substitution for an appreciation right previously granted by an entity that is acquired by or merged with the Company or an Affiliate), (ii) the number of Common Stock subject to the Share Appreciation Right, (iii) the period during which the Share Appreciation Right may be exercised; provided, however, that no Share Appreciation Right shall be exercisable after the expiration of ten (10) years from the date of its grant, and (iv) any other special rules and/or requirements which the Committee imposes upon the Share Appreciation Right. Upon the exercise of some or all of the portion of a Share Appreciation Right, the Holder shall receive a payment from the Company, in cash or in the form of Common Stock having an equivalent Fair Market Value or in a combination of both, as determined, in the sole discretion of the Committee, equal to the product of:

- (a) The excess of (i) the Fair Market Value of a Common Share on the date of exercise, over (ii) the Base Value, multiplied by;
- (b) The number of Common Stock with respect to which the Share Appreciation Right is exercised.

Section 13.2. **Tandem Share Appreciation Rights.** If the Committee grants a Share Appreciation Right which is intended to be a Tandem Share Appreciation Right, the Tandem Share Appreciation Right shall be granted at the same time as the related Option, and the following special rules shall apply:

- (a) The Base Value shall be equal to or greater than the per Common Share exercise price under the related Option;
- (b) The Tandem Share Appreciation Right may be exercised for all or part of the Common Stock which are subject to the related Option, but solely upon the surrender by the Holder of the Holder's right to exercise the equivalent portion of the related Option (and when an Common Share is purchased under the related Option, an equivalent portion of the related Tandem Share Appreciation Right shall be cancelled);

(c) The Tandem Share Appreciation Right shall expire no later than the date of the expiration of the related Option;

(d) The value of the payment with respect to the Tandem Share Appreciation Right may be no more than one hundred percent (100%) of the difference between the per Common Share exercise price under the related Option and the Fair Market Value of the Common Stock subject to the related Option at the time the Tandem Share Appreciation Right is exercised, multiplied by the number of the Common Stock with respect to which the Tandem Share Appreciation Right is exercised; and

(e) The Tandem Share Appreciation Right may be exercised solely when the Fair Market Value of the Common Stock subject to the related Option exceeds the per Common Share exercise price under the related Option.

#### ARTICLE XIV RECAPITALIZATION OR REORGANIZATION

Section 14.1. **Adjustments to Common Stock.** The shares with respect to which Awards may be granted under the Plan are Common Stock as presently constituted; provided, however, that if, and whenever, prior to the expiration or distribution to the Holder of Common Stock underlying an Award theretofore granted, the Company shall effect a subdivision or consolidation of the Common Stock or the payment of a Common Share dividend on Common Stock without receipt of consideration by the Company, the number of Common Stock with respect to which such Award may thereafter be exercised or satisfied, as applicable, (i) in the event of an increase in the number of outstanding Common Stock, shall be proportionately increased, and the purchase price per Common Share shall be proportionately reduced, and (ii) in the event of a reduction in the number of outstanding Common Stock, shall be proportionately reduced, and the purchase price per Common Share shall be proportionately increased. Notwithstanding the foregoing or any other provision of this Article XIV, any adjustment made with respect to an Award (x) which is an Incentive Share Option, shall comply with the requirements of Section 424(a) of the Code, and in no event shall any adjustment be made which would render any Incentive Share Option granted under the Plan to be other than an "incentive stock option" for purposes of Section 422 of the Code, and (y) which is a Non-Qualified Share Option, shall comply with the requirements of Section 409A of the Code, and in no event shall any adjustment be made which would render any Non-Qualified Share Option granted under the Plan to become subject to Section 409A of the Code.

Section 14.2. **Recapitalization.** If the Company recapitalizes or otherwise changes its capital structure, thereafter upon any exercise or satisfaction, as applicable, of a previously granted Award, the Holder shall be entitled to receive (or entitled to purchase, if applicable) under such Award, in lieu of the number of Common Stock then covered by such Award, the number and class of shares and securities to which the Holder would have been entitled pursuant to the terms of the recapitalization if, immediately prior to such recapitalization, the Holder had been the holder of record of the number of Common Stock then covered by such Award.

Section 14.3. **Other Events.** In the event of changes to the outstanding Common Stock by reason of extraordinary cash dividend, reorganization, mergers, consolidations, combinations, split-ups, spin-offs, exchanges, stock split, reverse stock split or other relevant changes in capitalization occurring after the date of the grant of any Award and not otherwise provided for under this Article XIV, any outstanding Awards and any Award Agreements evidencing such Awards shall be adjusted by the Committee, in such manner as the Committee shall deem equitable or appropriate taking into consideration the applicable accounting and tax consequences, as to the number and price of Common Stock or other consideration subject to such Awards. In the event of any adjustment pursuant to Sections 14.1, 14.2 or this Section 14.3, the aggregate number of Common Stock available under the Plan pursuant to Section 5.1 may be appropriately adjusted by the Committee, the determination of which shall be conclusive. In addition, the Committee may make provision for a cash payment to a Holder or a person who has an outstanding Award. The number of Common Stock subject to any Award shall be rounded to the nearest whole number.

Section 14.4. **Powers Not Affected.** The existence of the Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or of the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change of the Company's capital structure or business, any merger or consolidation of the Company, any issue of debt or equity securities ahead of or affecting Common Stock or the rights thereof, the dissolution or liquidation of the Company or any sale, lease, exchange or other disposition of all or any part of its assets or business or any other corporate act or proceeding.

Section 14.5. **No Adjustment for Certain Awards.** Except as hereinabove expressly provided, the issuance by the Company of shares of any class or securities convertible into shares of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor or upon conversion of shares or obligations of the Company convertible into such shares or other securities, and in any case whether or not for fair value, shall not affect previously granted Awards, and no adjustment by reason thereof shall be made with respect to the number of Common Stock subject to Awards theretofore granted or the purchase price per Common Share, if applicable.

#### ARTICLE XV AMENDMENT AND TERMINATION OF PLAN

The Plan shall continue in effect, unless sooner terminated pursuant to this Article XV, until the tenth (10th) anniversary of the date on which it is adopted by the Board (except as to Awards outstanding on that date). The Board, in its discretion, may terminate the Plan at any time with respect to any shares for which Awards have not theretofore been granted; provided, however, that the Plan's termination shall not materially and adversely impair the rights of a Holder with respect to any Award theretofore granted without the consent of the Holder. The Board shall have the right to alter or amend the Plan or any part hereof from time to time; provided, however, stockholder approval shall be required for any modification of the Plan that (i) requires stockholder approval under the rules or regulations of the Securities and Exchange Commission or any securities exchange applicable to the Company, (ii) increases the number of shares authorized under the Plan as specified in Section 5.1, (iii) increases the dollar limitation specified in Section 5.4, or (iv) amends, modifies or suspends Section 7.8 (repricing prohibitions) or this Article XV. In addition, unless otherwise permitted under the Award Agreement, no change in any Award theretofore granted may be made which would materially and adversely impair the rights of a Holder with respect to such Award without the consent of the Holder.

#### ARTICLE XVI MISCELLANEOUS

Section 16.1. **No Right to Award.** Neither the adoption of the Plan by the Company nor any action of the Board or the Committee shall be deemed to give an Employee, Director or Consultant any right to an Award except as may be evidenced by an Award Agreement duly executed on behalf of the Company, and then solely to the extent and on the terms and conditions expressly set forth therein.

Section 16.2. **No Rights Conferred.** Nothing contained in the Plan shall (i) confer upon any Employee any right with respect to continuation of employment with the Company or any Affiliate, (ii) interfere in any way with any right of the Company or any Affiliate to terminate the employment of an Employee at any time, (iii) confer upon any Director any right with respect to continuation of such Director's membership on the Board, (iv) interfere in any way with any right of the Company or an Affiliate to terminate a Director's membership on the Board at any time, (v) confer upon any Consultant any right with respect to continuation of such Consultant's consulting engagement with the Company or any Affiliate, or (vi) interfere in any way with any right of the Company or an Affiliate to terminate a Consultant's consulting engagement with the Company or an Affiliate at any time.

Section 16.3. **Other Laws; No Fractional Shares; Withholding.** The Company shall not be obligated by virtue of any provision of the Plan to recognize the exercise of any Award or to otherwise sell or issue Common Stock in violation of any laws, rules or regulations, and any postponement of the exercise or settlement of any Award under this provision shall not extend the term of such Award. Neither the Company nor its directors or officers shall have any obligation or liability to a Holder with respect to any Award (or Common Stock issuable thereunder) (i) that shall lapse because of such postponement, or (ii) for any failure to comply with the requirements of any applicable law, rules or regulations,

including, but not limited to, any failure to comply with the requirements of Section 409A of this Code. No fractional Common Stock shall be delivered, nor shall any cash in lieu of fractional Common Stock be paid. The Company shall have the right to deduct in cash (whether under this Plan or otherwise) in connection with all Awards any taxes required by law to be withheld and to require any payments required to enable it to satisfy its withholding obligations. In the case of any Award satisfied in the form of Common Stock, no Common Stock shall be issued unless and until arrangements satisfactory to the Company shall have been made to satisfy any tax withholding obligations applicable with respect to such Award. Subject to such terms and conditions as the Committee may impose, the Company shall have the right to retain, or the Committee may, subject to such terms and conditions as it may establish from time to time, permit Holders to elect to tender Common Stock (including Common Stock issuable in respect of an Award) to satisfy, in whole or in part, the amount required to be withheld.

**Section 16.4. No Restriction on Corporate Action.** Nothing contained in the Plan shall be construed to prevent the Company or any Affiliate from taking any corporate action which is deemed by the Company or such Affiliate to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Plan or any Award made under the Plan. No Employee, Director, Consultant, beneficiary or other person shall have any claim against the Company or any Affiliate as a result of any such action.

**Section 16.5. Restrictions on Transfer.** No Award under the Plan or any Award Agreement and no rights or interests herein or therein, shall or may be assigned, transferred, sold, exchanged, encumbered, pledged or otherwise hypothecated or disposed of by a Holder except (i) by will or by the laws of descent and distribution, or (ii) except for an Incentive Share Option, by gift to any Family Member of the Holder. An Award may be exercisable during the lifetime of the Holder only by such Holder or by the Holder's guardian or legal representative unless it has been transferred by gift to a Family Member of the Holder, in which case it shall be exercisable solely by such transferee. Notwithstanding any such transfer, the Holder shall continue to be subject to the withholding requirements provided for under Section 16.3 hereof.

**Section 16.6. Beneficiary Designations.** The Committee may also establish procedures as it deems appropriate for a Holder to designate a person or persons, as beneficiary or beneficiaries, to exercise the rights of the Holder and receive any property distributable with respect to any Award in the event of the Holder's death. In the absence of any such written beneficiary designation, for purposes of the Plan, a Holder's beneficiary shall be the Holder's estate.

**Section 16.7. Rule 16b-3.** It is intended that the Plan and any Award made to a person subject to Section 16 of the Exchange Act shall meet all of the requirements of Rule 16b-3. If any provision of the Plan or of any such Award would disqualify the Plan or such Award under, or would otherwise not comply with the requirements of, Rule 16b-3, such provision or Award shall be construed or deemed to have been amended as necessary to conform to the requirements of Rule 16b-3.

**Section 16.8. Section 409A.** Notwithstanding anything in the Plan or any Award to the contrary, to the extent that any amount or benefit that constitutes "deferred compensation" to a Holder under Section 409A of the Code and applicable guidance thereunder is otherwise payable or distributable to a Holder under the Plan or any Award solely by reason of the occurrence of a change in control event or due to the Holder's disability or "separation from service" (as such term is defined under Section 409A of the Code), such amount or benefit will not be payable or distributable to the Holder by reason of such circumstance unless the Committee determines in good faith that (i) the circumstances giving rise to such change in control event, disability or separation from service meet the definition of a change in control event, disability or separation from service, as the case may be, in Section 409A of the Code and applicable proposed or final regulations, or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. Any payment or distribution that otherwise would be made to a Holder who is a "specified employee" (as defined under Section 409A of the Code) on account of separation from service may not be made before the date which is six (6) months after the date of the specified employee's separation from service (or if earlier, upon the specified employee's death) unless the payment or distribution is exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise.

**Section 16.9. Indemnification.** Each person who is or shall have been a member of the Board or of the Committee shall be indemnified and held harmless by the Company against and from any loss, cost, liability or expense that may be imposed upon or reasonably incurred thereby in connection with or resulting from any claim, action, suit or proceeding to which such person may be made a party or may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid thereby in settlement thereof, with the Company's approval, or paid thereby in satisfaction of any judgment in any such action, suit or proceeding against such person; provided, however, that such person shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive and shall be independent of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or By-laws, by contract, as a matter of law, or otherwise.

**Section 16.10. Other Plans.** No Award, payment or amount received hereunder shall be taken into account in computing an Employee's salary or compensation for the purposes of determining any benefits under any pension, retirement, life insurance or other benefit plan of the Company or any Affiliate, unless such other plan specifically provides for the inclusion of such Award, payment or amount received. Nothing in the Plan shall be construed to limit the right of the Company to establish other plans or to pay compensation to its employees, directors and other service providers, in cash or property, in a manner which is not expressly authorized under the Plan.

**Section 16.11. Limits of Liability.** Any liability of the Company with respect to an Award shall be based solely upon the contractual obligations created under the Plan and the Award Agreement. None of the Company, any member of the Board nor any member of the Committee shall have any liability to any party for any action taken or not taken, in good faith, in connection with or under the Plan.

**Section 16.12. Governing Law.** Except as otherwise provided herein, the Plan shall be construed in accordance with Delaware law, without regard to principles of conflicts of law.

**Section 16.13. Severability of Provisions.** If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Plan, and the Plan shall be construed and enforced as if such invalid or unenforceable provision had not been included in the Plan.

**Section 16.14. No Funding.** The Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of funds or assets to ensure the payment of any Award.

**Section 16.15. Headings.** Headings used throughout the Plan are for convenience only and shall not be given legal significance.

**Section 16.16. Terms of Award Agreements.** Each Award shall be evidenced by an Award Agreement. The terms of the Award Agreements utilized under the Plan need not be the same.



Subsidiaries	State of Incorporation
KSIX Media, Inc.	Nevada
KSIX, LLC	Nevada
Surge Blockchain, LLC	Nevada
DigitizeIQ, LLC	Illinois
Surge Cryptocurrency Mining, Inc.,	Nevada
LogicsIQ Inc.	Nevada
Torch Wireless	Wyoming
Surge Payments, LLC	Nevada
Surgephone Wireless, LLC	Nevada
SurgePays Fintech, Inc.	Nevada
ECS Prepaid, LLC	Missouri
Central States Legal Services, Inc.	Missouri
Electronic Check Services, Inc.	Missouri
Injury Survey, LLC	Nevada

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO  
EXCHANGE ACT RULE 13A-14(A),  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kevin Brian Cox, certify that:

1. I have reviewed this annual report on Form 10-K of SurgePays, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly for the period in which this annual report is being prepared;
- b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
- d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

- a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
- b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: March 30, 2023

*/s/ Kevin Brian Cox*

---

Kevin Brian Cox  
Chief Executive Officer  
(Principal Executive Officer)

---

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO  
EXCHANGE ACT RULE 13A-14(A),  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Anthony Evers, certify that:

1. I have reviewed this annual report on Form 10-K of SurgePays, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly for the period in which this annual report is being prepared;
- b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
- d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

- a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
- b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: March 30, 2023

*/s/ Anthony Evers*

---

Anthony Evers  
Chief Financial Officer  
(Principal Financial Officer)

---

**CERTIFICATION PURSUANT TO**

**18 U.S.C. SECTION 1350,**

**AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of SurgePays, Inc. (the "Company") on Form 10-K for the year ended December 31, 2022, as filed with the U.S. Securities and Exchange Commission on the date hereof, I, Kevin Brian Cox, Chief Executive Officer of the Company, certify to the best of my knowledge, pursuant to 18 U.S.C. Sec. 1350, as adopted pursuant to Sec. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) Such Annual Report on Form 10-K for the year ended December 31, 2022, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in such Annual Report on Form 10-K for the year ended December 31, 2022, fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 30, 2023

By: */s/ Kevin Brian Cox*

---

Kevin Brian Cox  
Chief Executive Officer  
(Principal Executive Officer)

---

## CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350,

## AS ADOPTED PURSUANT TO

## SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of SurgePays, Inc. (the "Company") on Form 10-K for the year ended December 31, 2022, as filed with the U.S. Securities and Exchange Commission on the date hereof, I, Anthony Evers, Chief Financial Officer of the Company, certify to the best of my knowledge, pursuant to 18 U.S.C. Sec. 1350, as adopted pursuant to Sec. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) Such Annual Report on Form 10-K for the year ended December 31, 2022, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in such Annual Report on Form 10-K for the year ended December 31, 2022, fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 30, 2023

By: */s/ Anthony Evers*

---

Anthony Evers  
Chief Financial Officer  
(Principal Financial Officer)

---