

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-K

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

For the fiscal year ended December 31, 2023

or

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

For the transition period from _____ to _____

Commission file number: 001-41033

EIGHTCO HOLDINGS INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

**101 Larry Holmes Dr., Suite 313
Easton, PA**
(Address of Principal Executive Offices)

87-2755739
(I.R.S. Employer
Identification No.)

18042
(Zip Code)

(888) 765-8933

(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	OCTO	Nasdaq Capital Market

Securities registered pursuant to Section 12(g) of the 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 Section 15(d) of the Exchange Act.

Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 pursuant to Section 13(a) of the Exchange Act.

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.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

Yes No

The aggregate market value on June 30, 2023 (the last business day of the Company's most recently completed second quarter) of the voting common stock held by non-affiliates of the registrant, computed by reference to the closing price of the stock on that date, was approximately \$4,093,446. The registrant does not have non-voting common stock outstanding.

As of April 1, 2024, there were 8,537,310 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None

EIGHTCO HOLDINGS INC.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS AND SUMMARY RISK FACTORS

This Annual Report on Form 10-K for the period ended December 31, 2023 (the “Annual Report”) contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements relate to future events including, without limitation, our ability to raise capital, our operational and strategic initiatives or our future financial performance. We have attempted to identify forward-looking statements by using terminology such as “anticipates,” “believes,” “expects,” “can,” “continue,” “could,” “estimates,” “expects,” “intends,” “may,” “plans,” “potential,” “predict,” “should” or “will” or the negative of these terms or other comparable terminology. These statements are only predictions; uncertainties and other factors may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels or activity, performance or achievements expressed or implied by these forward-looking statements. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Our expectations are as of the date this Annual Report is filed, and we do not intend to update any of the forward-looking statements after the date this Annual Report is filed to confirm these statements to actual results, unless required by law.

You should not place undue reliance on forward-looking statements. The cautionary statements set forth in this Annual Report identify important factors which you should consider in evaluating our forward-looking statements. These factors include, among other things:

- Our ability to effectively execute our business plans including transitioning from being focused on end-to-end consumer product innovation, development, and commercialization to being focused on inventory financing, digital media, advertising and content technologies innovation, development, and commercialization;
- Our ability to operate as a going concern;
- Our ability to manage our expansion, growth and operating expenses;
- Our ability to protect our brands, reputation and intellectual property rights;
- Our ability to obtain adequate financing to support our development plans;
- Our ability to repay our debts;
- Our ability to rely on third-party suppliers, content contributors, developers, and other business partners;
- Our ability to evaluate and measure our business, prospects and performance metrics;
- Our ability to compete and succeed in a highly competitive and evolving industry;
- Our ability to respond and adapt to changes in technology and consumer behavior;
- Our dependence on information technology, and being subject to potential cyberattacks, security problems, network disruptions, and other incidents;
- Our ability to comply with complex and evolving laws and regulations including those relating to privacy, data use and data protection, content, competition, safety and consumer protection, e-commerce, digital assets and other matters, many of which are subject to change and uncertain interpretation;
- Our ability to enhance disclosure and financial reporting controls and procedures and remedy the existing weakness;
- Risks in connection with completed or potential acquisitions, dispositions and other strategic growth opportunities and initiatives;
- Changes in tax laws and regulations;
- The stability of the governments and political and business conditions in certain foreign countries in which we or certain of our business partners may operate now or in the future;
- Costs and results of potential litigation;
- Changes in accounting standards or inaccurate estimates or assumptions in the application of accounting policies;
- The use of social or digital media to disseminate false, misleading and/or unreliable or inaccurate information regarding our products, services or the industry in which we operate;
- Our ongoing businesses may be adversely affected and subject to certain risks and consequences as a result of the spin-off transaction;
- Our ability to realize the benefits of our acquisition of Forever 8 Fund, LLC; and
- Our ability to regain and maintain compliance with the listing standards of the Nasdaq Capital Market.

These and other factors discussed above could cause results to differ materially from those expressed in the estimates made by any independent parties and by us.

TRADEMARKS, SERVICE MARKS AND TRADE NAMES

Solely for convenience, we refer to trademarks in this Annual Report without the ® or the ™ or symbols, but such references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights to our own trademarks. Other service marks, trademarks and trade names referred to in this Annual Report, if any, are the property of their respective owners, although for presentational convenience we may not use the ® or the ™ symbols to identify such trademarks.

OTHER PERTINENT INFORMATION

Unless the context otherwise indicates, when used in this Annual Report, the terms “Eightco,” “OCTO,” “we,” “us,” “our,” the “Company” and similar terms refer to Eightco Holdings Inc., a Delaware corporation, and all of our consolidated subsidiaries and variable interest entities.

USE OF MARKET AND INDUSTRY DATA

This Annual Report includes market and industry data that we have obtained from third-party sources, including industry publications, as well as industry data prepared by our management on the basis of its knowledge of and experience in the industries in which we operate (including our management’s estimates and assumptions relating to such industries based on that knowledge). Management has developed its knowledge of such industries through its experience and participation in these industries. While our management believes the third-party sources referred to in this Annual Report are reliable, neither we nor our management have independently verified any of the data from such sources referred to in this Annual Report or ascertained the underlying economic assumptions relied upon by such sources. Furthermore, internally prepared and third-party market prospective information, in particular, are estimates only and there will usually be differences between the prospective and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. Also, references in this Annual Report to any publications, reports, surveys or articles prepared by third parties should not be construed as depicting the complete findings of the entire publication, report, survey or article. The information in any such publication, report, survey or article is not incorporated by reference in this Annual Report.

PART I

ITEM 1. BUSINESS

Our company was established in 2021, initially composed of three businesses - the Web3 business, the BTC Mining Hardware Business and the Packaging Business, which we acquired from our former parent company, Vinco Ventures, Inc. These businesses had a more extended operating history than ours, and we include information related to their operations before our existence and acquisition in our discussions.

On October 1, 2022, the Company completed the acquisition of Forever 8 Fund, LLC (“Forever 8”), an e-commerce fintech company that provides funding solutions for e-commerce businesses. The Company’s business has since been focused primarily on the Packaging Business and the business of Forever 8.

Our corporate headquarters are located in Easton, Pennsylvania, and our common stock is listed on the Nasdaq Capital Market under the symbol “OCTO.”

Forever 8

On October 1, 2022, the Company completed the acquisition of Forever 8, an e-commerce fintech company. Forever 8 provides funding solutions for e-commerce businesses which sell on Amazon, Shopify and other leading online platforms. Forever 8 uses proprietary technology to review product sales data and determine funding potential for online retail entrepreneurs around the world. Forever 8’s process is automated and does not require a personal guarantee, credit check or traditional lending requirements. Forever 8’s unique approach directly purchases inventory on its customers’ behalf, applies a mark-up and collects the revenue as the products are sold.

In the fiscal years ended December 31, 2023 and 2022, Forever 8 had revenue of \$67,568,353 and \$23,785,070, respectively.

Packaging Business

The Packaging Business, through Ferguson Containers, manufactures and sells custom packaging for a wide variety of products. In our experience, packaging has the capability to “tell” the products story, generating increased product awareness, promote brand image, and drive unit growth. Senior management has more than 100 years of combined experience marketing, producing and delivering packaging materials. A hallmark of our operation is our quick production cycle. We can often begin a production run within minutes of receipt of an order. Many of our products are manufactured from 100% post-consumer recycled material. When production is complete, we typically ship the product using our own trucks rather than relying on a common carrier. Ferguson Containers does not have long-term agreements with its customers, and instead manufactures and sells its packaging products subject to purchase orders from its customers.

In the fiscal years ended December 31, 2023 and 2022, the Packaging Business had revenue of \$7,729,131 and \$8,035,709, respectively.

Web3 Business

BlockHiro, LLC was formed in November 2021 to do business as a Web3 company. We had planned to launch a character driven virtual ecosystem, Freescape, comprised of themed interactive environments in 2022. Due to the current entertainment and gaming NFT market, we have decided to halt work on the Freescape project.

BTC Mining Hardware Business

CW Machines, LLC, a Nevada limited liability company formed on October 2, 2021, was formed to hold the BTC Mining Hardware Business. The BTC Mining Hardware Business, CW Machines, LLC, through a joint venture with Wattum Management Inc. and BBA Technology Inc., is focused on bringing Bitcoin mining to the consumer level by offering Bitcoin mining equipment and co-location services. Eightco holds a 51% interest in CW Machines, LLC.

CW Machines, LLC is a reseller of Bitcoin mining equipment and services. The equipment sales primarily focus on Bitcoin mining equipment including Antminer S19s, Antminer S19 Pros, Whatsminer, and Canaan. Our Bitcoin mining services include reselling co-location services, which offer a physical location and ancillary services allowing Bitcoin miners to mine for Bitcoin. These services are provided by third-parties.

The BTC Mining Hardware Business does not currently have any material commitments for capital expenditures. As of the date of this Annual Report, the Company is not anticipating any future BTC mining equipment sales.

Business Strategy

Eightco Holdings Inc. is committed to driving revenue growth through its existing subsidiaries, Forever 8 and Ferguson Containers. The Company intends to expand Forever 8's market reach through strategic expansion while continuing to focus on revenue growth. Forever 8 generates revenue through the purchase and sale of products while the Packaging Business earns revenue from the sale of goods and related services.

The Company plans to continually assess its businesses to allocate resources efficiently and maximize growth opportunities. With a diverse range of industries and revenue sources, management believes they are well-positioned to navigate changing economic conditions and customer preferences.

Eightco Holdings Inc. plans to expand through a combination of organic growth and strategic acquisitions. While strategic acquisitions may be considered for the Packaging Business and Forever 8 Business, management believes that organic growth is the key to success through continued sales efforts.

The company is dedicated to maintaining a close partnership with customers, which will enable them to effectively focus their efforts and respond to changing demands. Management believes that by listening to customers and adapting to their needs and preferences, they can remain relevant in constantly evolving industries.

Competition

We operate and plan to operate in a competitive market and encounter competition from both domestic and foreign participants. We believe we can effectively compete with our present competitors. We compete, and plan to compete, primarily based upon innovation, performance, price, quality, reliability, durability, consumer brand awareness, and customer service and support. Our competitors include a large number of private companies that directly compete with a number of our brands. Certain of our competitors may have more established brand names and stronger distribution channels than we do and have, or have through their owners, access to financial and marketing resources that are greater than we possess that may afford them the ability to invest more than we can in product development, intellectual property and marketing.

Competitors to our Packaging Business include Sutherland Packaging, based in Andover, New Jersey, Acme Corrugated Box Company, based in Hatboro Pennsylvania, and Trenton Corrugated Products, Inc., based in Ewing, Pennsylvania. Competitors to our Inventory Solutions Business include Clearco and Payoneer. Competitors for our BTC Mining Hardware Business include Compass Mining, Miners Dep, and Alliance Miners. Our competitors in the Web3 business will depend on what Web3 products we develop or acquire.

Patents, Trademarks, and Copyrights

We recognize the importance of innovation and protecting our intellectual property. We will apply for patents whenever we develop innovative new products, unique designs, or processes of commercial importance and seek trademark protection when we believe they provide a marketing advantage. We do not believe that our business is materially dependent on any single patent or trademark.

We rely on a combination of trade secrets, trademarks, trade dress, customer records, monitoring, brand protection services, confidentiality agreements, and other contractual provisions to protect our intellectual property.

We intend to vigorously pursue and challenge infringements of our patents, trademarks, service marks, trade dress, and copyrights, as we believe the goodwill associated with them is a cornerstone of our branding strategy.

Information Systems

Our information systems use software enterprise resource platforms, including procurement, inventory management, receivables management, and accounting. We utilize QuickBooks Enterprise and Xero Accounting as our ERP systems.

Seasonality

Our business is not seasonal and there are not large fluctuations with our operations between quarterly revenues based on the time of year.

Government Regulations

Packaging and Inventory Solutions Businesses

Like other manufacturers and distributors of consumer products, we are required to comply with a wide variety of federal, state, and international laws, rules, and regulations, including those related to consumer products and consumer protection, advertising and marketing, labor and employment, data protection and privacy, intellectual property, workplace health and safety, the environment, the import and export of products, and tax matters. Our failure to comply with applicable federal, state, and international laws, rules, and regulations may result in our being subject to claims, lawsuits, fines, and adverse publicity that could have a material adverse effect on our business, operating results, and financial condition. These laws, rules, and regulations currently impose significant compliance requirements on our business, and more restrictive laws rules and regulations may be adopted in the future.

Web3 Business and BTC Mining Hardware Business

The laws and regulations applicable to digital assets, including those we intend to produce under our Web3 Business and the Bitcoins mined by our BTC Mining Hardware Business customers, are evolving and subject to interpretation and change. Governments around the world have reacted differently to digital assets; certain governments have deemed them illegal, and others have allowed their use and trade without restriction, while in some jurisdictions, such as in the U.S., digital assets are subject to extensive, and in some cases overlapping, unclear and evolving regulatory requirements. As digital assets have grown in both popularity and market size, the U.S. Congress and a number of U.S. federal and state agencies, including FinCEN, the CFTC, the SEC, FINRA, the CFPB, the Department of Justice, the Department of Homeland Security, the Federal Bureau of Investigation, the IRS and state financial regulators, have been examining the operations of digital assets networks, digital assets users and digital assets exchange markets. Ongoing and future regulatory actions may alter, perhaps to a materially adverse extent, the nature of digital assets markets and our digital assets operations. Additionally, U.S. state and federal and foreign regulators and legislatures have taken responsive action against digital assets businesses or enacted restrictive regimes in response to hacks, consumer harm, or criminal activity stemming from digital assets activity. There is also increasing attention being paid by U.S. federal, state, and local energy regulatory authorities as the total electricity consumption of cryptocurrency-mining grows and potentially alters the supply and dispatch functionality of the wholesale grid and retail distribution systems. Many state legislative bodies are also actively reviewing the impact of cryptocurrency-mining in their respective states.

Due to the relatively short history of Bitcoin and digital assets, and their emergence as a new asset class, government regulation of blockchain and digital assets is constantly evolving, with increased interest expressed by U.S. and international regulators.

Government regulation of blockchains and digital assets is under active consideration by the United States federal government via its agencies and regulatory bodies, as well as by similar entities in other countries and transnational organizations. State and local regulations also may impact our activities and other activities in which we may participate in the future. Other governmental regulatory bodies have shown an interest in regulating or investigating companies engaged in blockchain or digital asset businesses.

The effect of any regulatory change, either by the federal, state, local or foreign governments or any self-regulatory agencies on us is impossible to predict, but such change could be substantial and may have a material adverse effect on our business, financial condition, and results of operations. While we are unaware of significant adverse governmental or regulatory action adverse to Bitcoin mining in the United States, there is no guarantee that future regulation or adverse action will not take place and interpretation of existing regulations in a manner adverse to our business is possible.

In addition, various foreign jurisdictions either have adopted, or may adopt, laws, regulations or directives that affect digital assets, digital asset networks, and their users and participants. Such laws, regulations or directives may conflict with those of the United States, may negatively impact the acceptance of digital assets by users, merchants, and service providers outside of the United States, and may therefore impede the growth of digital assets. Several Eastern European and Asian countries have a more restrictive posture toward digital assets and, thereby, have reduced the rate of expansion of digital asset use, as well as mining, in each of those countries. Presently, we do not believe any U.S. federal or state regulatory body has taken any action or position adverse to Bitcoin, with respect to its production, sale, and use as a medium of exchange; however, future changes to existing regulations or entirely new regulations may affect our business in ways it is not presently possible for us to predict with any reasonable degree of reliability.

We are unable to predict the effect that any future regulatory change, or any overlapping or unclear regulations, may have on us, but such change, overlap or lack of clarity could be substantial and make it difficult for us to operate our business or materially impact the market for digital assets that we mine or may mine in the future. FinCEN has issued guidance stating its position that it does not differentiate between fiat currency (which FinCEN calls “real currency”) and digital assets that are convertible into fiat currency or other forms of convertible virtual currencies (which FinCEN calls “virtual currency”) for purposes of determining whether a person or entity is engaging in “money transmission services”. Persons and entities engaging in virtual currency activities that amount to “money transmission services,” or otherwise cause them to be deemed a “money services business” under FinCEN’s regulations, must register with FinCEN as a money services business, implement an “effective” anti-money laundering program and comply with FinCEN’s reporting and recordkeeping requirements.

In May 2019, FinCEN issued guidance relating to how the Bank Secrecy Act (“BSA”) and its implementing regulations relating to money services businesses apply to certain businesses that transact in convertible virtual currencies. Although the guidance generally indicates that certain mining and mining pool operations will not be treated as money transmission services, the guidance also addresses when certain activities, including certain services offered in connection with operating mining pools such as hosting convertible virtual currency wallets on behalf of pool members or purchasers of computer mining power, may be subject to regulation. Although we believe that our activities under the Web3 Business and the BTC Mining Hardware Business do not presently trigger FinCEN registration requirements under the BSA, if our activities cause us to be deemed a “money transmitter,” “money services business” or equivalent designation, under federal law, we may be required to cease certain of our operations. Ceasing such operations could have a material adverse effect on our financial position, results of operations and cash flows.

For additional information about government regulation applicable to our business, see Part I, Item 1A, “Risk Factors” in this Annual Report on Form 10-K.

Human Capital Resources

As of April 1, 2024, the companies that comprise Eightco had 22 employees that perform various administrative, finance and accounting, technology, and corporate management functions. Of the 22 employees, 15 employees were employed by Ferguson Containers and 7 were employed by Forever 8. None of our employees are represented by a union in collective bargaining with us. We consider relations with our employees to be good.

We are committed to creating a diverse, equitable and inclusive space for all our employees, customers and retail partners. The core values of our Company include integrity, caring and inclusivity that affirms every individual. Our leadership team is committed to fostering an environment where everyone is welcomed, respected, listened to and valued for their unique contributions to the organization, and to providing a work environment that is free from all forms of harassment, discrimination and inequality. We recruit, employ, train, promote and compensate our employees without regard to race, ethnicity, age, gender, gender identity, religion, national origin, citizenship, marital status, veteran’s status or disability. All facilities have established human resource departments with formal hiring processes and controls in place to ensure ethical and fair hiring practices. We compensate employees competitively relative to the industry and local labor market, and in accordance with all applicable federal, state and local wage, work hour, overtime and benefit laws.

Legal Proceedings

During the normal course of its business, the Company may be subject to occasional legal proceedings and claims. There are currently no legal proceedings or claims asserted against the Company or its subsidiaries.

Supply Chain and Production

Our Packaging Business does not have long-term contractual arrangements with any of our suppliers that guarantee us production capacity, prices, lead times, or delivery schedules. Our reliance on independent party suppliers exposes us to vulnerability because of our dependence on a few sources of supply. We believe, however, that other sources of supply are available. In addition, we continually strive to develop relationships with other sources of supply in order to reduce our dependence on any one source of supply. As a result, we believe that our current and other available suppliers will ensure that we obtain a sufficient supply of goods built to our specifications in a timely manner and on satisfactory economic terms. The main raw material used by our Packaging Business is corrugated cardboard. Our main suppliers of corrugated cardboard are Corrugated Supplies Company, Georgia Pacific, and Freedom Corrugated. We also purchased certain finished products from Delta Packaging for resale to end users.

Our Inventory Solutions Business purchases finished products from its suppliers and does not have long-term contractual arrangements that guarantee production capacity, prices, lead times, or delivery schedules. Our reliance on independent party suppliers exposes us to vulnerability because of our dependence on a few sources of supply. We believe, however, that other sources of supply are available. In addition, we continually strive to develop relationships with other sources of supply in order to reduce our dependence on any one source of supply. As a result, we believe that our current and other available suppliers will ensure that we obtain a sufficient supply of goods built to our specifications in a timely manner and on satisfactory economic terms.

Our BTC Mining Hardware Business is reliant on third-party suppliers. We are a reseller and require the availability of the products we purchase, at wholesale, then distribute to final customers. We do not have long-term contractual arrangements with any of our suppliers that guarantee us adequate supply of Bitcoin mining equipment to satisfy the needs of our BTC Mining Hardware Business. Our main suppliers of Bitcoin mining equipment sold under the BTC Mining Hardware Business is Wattum Management, Inc.

Backlog

We currently do not have a material backlog of orders through our Packaging Business. A backlog consists of orders for which purchase orders have been received and which are generally scheduled for shipment within six months or subject to capacity constraints, including lack of available products. We allow orders received that have not yet shipped to be cancelled; therefore, our backlog may not be indicative of future sales.

Segment Information

The Company uses “the management approach” in determining reportable operating segments. The management approach considers the internal organization and reporting used by the Company’s chief operating decision maker for making operating decisions and assessing performance as the source for determining the Company’s reportable segments. The Company’s chief operating decision maker is the Chairman and Chief Executive Officer (“CEO”) of the Company, who reviews operating results to make decisions about allocating resources and assessing performance for the entire Company. The Company’s primary revenue streams include the sale of corrugated packaging materials and therefore the Company only identifies one reportable operating segment.

Corporate Information

Eightco Holdings Inc. was incorporated in the State of Nevada on September 21, 2021, and is currently listed on the Nasdaq Capital Market under the symbol “OCTO.” On March 9, 2022, we changed our state of domicile to the State of Delaware. On April 3, 2023, we changed our corporate name from Cryptyde, Inc. to Eightco Holdings Inc. Our principal executive office is located at 101 Larry Holmes Dr., Suite 313, Easton, PA 18042, and our telephone number is (866) 980-2818. Our website is www.8co.holdings, and the information included in, or linked to our website is not part of this Annual Report. We have included our website address in this Annual Report solely as a textual reference.

Available Information

Our website, www.8co.holdings, provides access, without charge, to our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with the Securities and Exchange Commission (“SEC”). The information provided on our website is not part of this Annual Report and is therefore not incorporated by reference unless such information is otherwise specifically referenced elsewhere in this Annual Report. The SEC also maintains a website at www.sec.gov that contains reports, proxy and information statements, and other information regarding our company that we file electronically with the SEC.

ITEM 1A. RISK FACTORS

RISK FACTORS

An investment in our securities involves certain risks. Before deciding to invest in our common stock, you should consider carefully the following discussion of risks and uncertainties affecting us and our securities, together with other information in this Annual Report. Our business, business prospects, financial condition or results of operations could be seriously harmed as a result of these risks. This could cause the trading price of our common stock to decline, resulting in a loss of all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial, also may materially and adversely affect our business, financial condition and results of operations. Please also read carefully the section below entitled “Special Note Regarding Forward-Looking Statements.”

Summary of our Risk Factors

Risks Related to Our Business Generally

- We are a recently formed entity, led by management that has limited experience operating a public company, with little track record and limited historical financial information available;
- The Company has limited financial resources. Our auditors have expressed in the report of independent registered public accounting firm that there is substantial doubt about our ability to continue as a going concern;
- Loss of any or all of our key management personnel may present challenges;
- We could be adversely affected by declines in discretionary consumer spending, consumer confidence and general and regional economic conditions;
- We operate in highly competitive industries and our revenues, profits or market share could be harmed if we are unable to compete effectively;
- We may not be able to fund capital expenditures and investment in projects and offerings;
- A deterioration in the domestic and international economic environment, whether by way of current inflationary conditions or potential recessionary conditions, could adversely affect our operating results, cash flow and financial condition;
- Geopolitical risks, such as those associated with Russia’s invasion of Ukraine, could result in a decline in the outlook for the U.S. and global economies;
- Cyber security risks and the failure to maintain the integrity of internal, partner, and consumer data could result in damages to our reputation, the disruption of operations and/or subject us to costs, fines or lawsuits;
- Our insurance coverage may not be adequate to cover all possible losses that we could suffer and our insurance costs may increase;
- Our management has limited experience in operating a public company;
- The requirements of being a public company may strain our resources and distract management; and
- Our business plan may require additional liquidity and capital resources that might not be available on terms that are favorable to us, or at all.

Risks Related to Our Packaging Business

- We are subject to the costs and availability of raw materials, and we rely on a limited number of third-party suppliers of raw materials; and
- We may be affected by interruptions in the transportation of the materials we require to produce packaging.

Risks Related to Forever 8 and its Operations

- Our stockholders may experience substantial dilution from the issuance of equity consideration in the Forever 8 acquisition and may not realize a benefit from the Forever 8 acquisition commensurate with the ownership dilution they may experience in connection with the acquisition;
- Our business depends on our strong and trusted brand, and failure to maintain and protect our brand, or any damage to our reputation, or the reputation of our partners, could adversely affect our business, financial condition or results of operations;
- We are dependent upon consumers continued and unimpeded access to the internet, and upon their willingness to use the internet for commerce; and
- Our results of operations may be adversely affected by changes in foreign currency exchange rates.

Risks Related to Our Securities

- We do not expect to issue dividends;
- An active trading market for our securities may never develop, and the price of our securities may be volatile;
- We may issue shares of preferred or common stock in the future, which could dilute your percentage ownership of the Company; and
- In the event that we fail to satisfy any of the listing requirements of Nasdaq, our common stock may be delisted, which could affect our market price and liquidity.

Risks Related to Our Business Generally

We are a recently formed entity with little track record and limited historical financial information available.

Eightco Holdings Inc. was formed on September 21, 2021, in the State of Nevada and converted to a Delaware corporation on March 9, 2022. Our Packaging Business was formed in 1966, however the rest of our businesses were recently started. Because we are in the early stages of executing our business strategy, we cannot provide assurance that, or when, we will be profitable. We will need to make significant investments to develop and operate the Company and expect to incur significant expenses in connection with operating components, including costs for developing technology, talent fees, marketing, and salaries. We expect to incur significant capital, operational and marketing expenses for a few years in connection with our strategy and growth plan. Any failure to achieve or sustain profitability may have a material adverse impact on the value of the shares of our common stock.

The Company has limited financial resources. Our auditors have expressed in the report of independent registered public accounting firm that there is substantial doubt about our ability to continue as a going concern.

The report of our independent registered accounting firm expresses substantial doubt about our ability to continue as a going concern based on the absence of our significant losses from operations and our need for additional financing to fund all of our operations. It is not possible at this time for us to predict with assurance the potential success of our business. The revenue and income potential of our proposed business and operations are unknown. If we cannot continue as a viable entity, we may be unable to continue our operations and you may lose some or all of your investment in our common stock.

Loss of any or all of our key management personnel may present challenges.

We aim to recruit the most qualified candidates and strive for a diverse and well-balanced workforce. While we expect to reward and support employees through competitive pay, benefits, and perquisite programs that allow employees to thrive, due to our size we may not be able to provide compensation equal to our more established competitors and may not be able to attract qualified management personnel. If we are unable to retain the key management personnel at our Company, the underlying business could suffer.

We could be adversely affected by declines in discretionary consumer spending, consumer confidence and general and regional economic conditions.

Our success depends to a significant extent on discretionary consumer spending, which is heavily influenced by general economic conditions and the availability of discretionary income. We believe the markets that all of the Eightco Businesses depend on are heavily reliant on discretionary consumer spending. The current economic environment, coupled with high volatility and uncertainty as to the future global economic landscape, may have an adverse effect on consumers' discretionary income and consumer confidence. Future volatile, negative, or uncertain economic conditions and recessionary periods or periods of significant inflation may adversely impact consumer spending on our products and services, which would materially adversely affect our business, financial condition and results of operations. Such effects can be especially pronounced during periods of economic contraction or slow economic growth.

We operate in highly competitive industries and our revenues, profits or market share could be harmed if we are unable to compete effectively.

Each of the Eightco Businesses will face competition from existing competitors. Our competitors in the Inventory Management Solutions business include Clearco. With respect to the Packaging Business, our competitors include Sutherland Packaging, Acme Corrugated Box Company, and Trenton Corrugated Products, Inc.

Competition in each of these areas may increase as a result of technological developments, changes in consumer preferences, economic conditions, changes in market structure, and other factors. Increased competition may divert consumers from our products, which could reduce our revenue or increase our marketing costs. Our competitors may have substantially greater financial resources than we do, and they may be able to adapt more quickly to changes in consumer preferences or devote greater resources to promotion of their offerings and services or to development or acquisition of offerings and services that are perceived to be of a higher quality or value than our offerings and services. As a result, we may not be able to compete successfully against such competitors.

We may not be able to fund capital expenditures and investment in projects and offerings.

A principal competitive factor for a large portion of the Eightco Businesses is the originality and perceived quality of our products and offerings. We will need to make continued capital investments to adapt to constantly changing consumer preferences. Our ability to fund capital expenditures will depend on our ability to generate sufficient cash flow from operations and to raise capital from third parties. We cannot assure you that our operations will be able to generate sufficient cash flow to fund such costs, or that we will be able to obtain sufficient financing on adequate terms, or at all, which could cause us to delay or abandon certain projects or plans.

A deterioration in the domestic and international economic environment, whether by way of current inflationary conditions or potential recessionary conditions, could adversely affect our operating results, cash flow and financial condition.

Current inflationary conditions in the United States and other parts of the world have increased some of our costs, including our cost of materials and labor. While we thus far have been largely successful in mitigating the impact of current inflationary conditions, we may need to increase our own prices on goods and services sufficiently to offset cost increases, we may not be able to maintain acceptable operating margins and achieve profitability. Additionally, competitors operating in regions with less inflationary pressure may be able to compete more effectively, which could further impact our ability to increase prices and/or result in lost sales.

Recessionary economic conditions could lower discretionary spending of our consumers, which could result in a loss of sales. Recessionary economic conditions may cause difficulty in collecting accounts receivable and reduce the availability of credit and spending power for our customers, both of which may negatively impact our business.

Geopolitical risks, such as those associated with Russia's invasion of Ukraine, could result in a decline in the outlook for the U.S. and global economies.

The uncertain nature, magnitude, and duration of hostilities stemming from Russia's recent military invasion of Ukraine, and the ongoing conflict between Israel and Hamas, including the potential effects of sanctions and retaliatory cyber-attacks on the world economy and markets, have contributed to increased market volatility and uncertainty, and such geopolitical risks could have an adverse impact on macroeconomic factors which affect our businesses, as well as our access to capital.

Cyber security risks and the failure to maintain the integrity of internal, partner, and consumer data could result in damages to our reputation, the disruption of operations and/or subject us to costs, fines or lawsuits.

We have and will continue to collect and retain large volumes of internal, partner and consumer data, including credit card numbers and other personally identifiable information, for business purposes, including for transactional or target marketing and promotional purposes, and our various information technology systems enter, process, summarize and report such data. We also maintain personally identifiable information about our employees. The integrity and protection of our customer, employee, and company data is critical to our business and our customers and employees are likely to have a high expectation that we will adequately protect their personal information. The regulatory environment, as well as the requirements imposed on us by the credit card industry, governing information, security and privacy laws is increasingly demanding and continues to evolve. Maintaining compliance with applicable security and privacy regulations may increase our operating costs and/or adversely impact our ability to market our products and services.

We also rely on accounting, financial and operational management information technology systems to conduct our operations. If these information technology systems suffer severe damage, disruption or shutdown and our business continuity plans do not effectively resolve the issues in a timely manner, our business, financial condition and results of operations could be materially adversely affected.

We may face various security threats, including cyber security attacks on our data (including our vendors' and customers' data) and/or information technology infrastructure. Although we utilize various procedures and controls to monitor and mitigate these threats, there can be no assurance that these procedures and controls will be sufficient to prevent penetrations or disruptions to our systems. Furthermore, a penetrated or compromised data system or the intentional, inadvertent or negligent release or disclosure of data could result in theft, loss, fraudulent or unlawful use of customer, employee, or company data which could harm our reputation or result in remedial and other costs, fines or lawsuits and require significant management attention and resources to be spent. In addition, our insurance coverage and indemnification arrangements that we enter into, if any, may not be adequate to cover all the costs related to cyber security attacks or disruptions resulting from such events.

Our insurance coverage may not be adequate to cover all possible losses that we could suffer and our insurance costs may increase.

We seek to maintain comprehensive insurance coverage at commercially reasonable rates. There can be no assurance that our insurance will be sufficient to cover the full extent of all losses or liabilities for which we are insured, and we cannot guarantee that we will be able to obtain insurance policies on favorable terms, or at all.

Our management has limited experience in operating a public company.

Our executive officers have limited experience in the management of a publicly traded company. Our management team may not successfully or effectively manage its transition to a public company that will be subject to significant regulatory oversight and reporting obligations under federal securities laws. Their limited experience in dealing with the increasingly complex laws pertaining to public companies could be a significant disadvantage in that it is likely that an increasing amount of their time may be devoted to these activities, which will result in less time being devoted to the management and growth of our business. We may not have adequate personnel with the appropriate level of knowledge, experience and training in the accounting policies, practices or internal controls over financial reporting required of public companies in the U.S. The development and implementation of the standards and controls necessary for us to achieve the level of accounting standards required of a public company in the U.S. may require costs greater than expected. It is possible that we will be required to expand our employee base and hire additional employees to support our operations as a public company, which will increase our operating costs in future periods.

The requirements of being a public company may strain our resources and distract management.

We incur significant costs associated with our public company reporting requirements and costs associated with applicable corporate governance requirements. These applicable rules and regulations are expected to significantly increase our legal and financial compliance costs and to make some activities more time consuming and costly than those for privately owned companies that are not registrants with the SEC. Compliance with these rules and regulations may divert management's attention from other business concerns.

Our business plan may require additional liquidity and capital resources that might not be available on terms that are favorable to us, or at all.

We currently obtain a portion of the capital required for the development and operations of the Company from various forms of public and private financing. We may require additional capital and/or cash flow from future operations to fund the Company, our debt service obligations and our ongoing business. There is no assurance that we will be able to raise sufficient additional capital or generate sufficient future cash flow from our future operations to fund our ongoing business. If the amount of capital we are able to raise, together with any income from future operations, is not sufficient to satisfy our liquidity and capital needs, including funding our current debt obligations, we may be required to abandon or alter our plans for the Company. The Company may also have to raise additional capital through the equity market, which could result in substantial dilution to existing stockholders.

Our ability to obtain necessary financing may be impaired by factors such as the health of and access to capital markets, our limited track record and the limited historical financial information available, or the substantial doubt about our ability to continue as a going concern. Any additional capital raised through the sale of additional shares of our capital stock, convertible debt or other equity may dilute the ownership percentage of our stockholders.

Risks Related to Our Packaging Business

An increase in the cost or a reduction in the availability of wood fiber, other raw materials, energy and transportation may have an adverse effect on our profitability and results of operations.

Wood fiber, including old corrugated containers (“OCC”), is the principal raw material in many parts of the paper and packaging industry, including the corrugated cardboard on which our Packaging Business relies. Wood fiber is a commodity, and prices historically have been cyclical and have varied on a regional basis. Environmental litigation and regulatory developments have caused, and may cause in the future, significant reductions in the amount of timber available for commercial harvest in the United States. In addition, future domestic or foreign legislation and litigation concerning the use of timberlands, the protection of endangered species, the promotion of forest health and the response to and prevention of catastrophic wildfires could also affect timber supplies. Availability of harvested timber may further be limited by fire, insect infestation, disease, ice storms, windstorms, flooding and other causes, thereby reducing supply and increasing prices. Demand for OCC, especially from China, could result in shortages or spikes in the cost of OCC.

Industry supply of commodity paper and wood products is also subject to fluctuation, as changing industry conditions can influence producers to idle or permanently close individual machines or entire mills. Oversupply in these markets can also result from producers introducing new capacity in response to favorable short-term pricing trends. Industry supply of commodity papers and wood products is also influenced by overseas production capacity, which has grown in recent years and is expected to continue to grow. Wood fiber pricing is subject to regional market influences, and the cost of wood fiber may increase in particular regions due to market shifts in those regions. In addition, the ability to obtain wood fiber from foreign countries may be impacted by economic, legal and political conditions in those countries as well as transportation difficulties.

Energy is a significant input cost for the paper and packaging industry. Increases in energy prices can be expected to adversely impact businesses.

Because we rely on a supply of corrugated sheets of cardboard to produce packaging, these uncertainties in the supply and cost of raw materials used to produce paper products could affect the availability of the corrugated sheets of cardboard we rely on. Increases in costs may need to be passed on to our customers, and ultimately may negatively affect our business.

Disruptions in transportation could adversely affect our supply of raw materials and could have an adverse effect on our results of operations, profitability, and liquidity.

Since we receive our supply of raw material from suppliers that use third-party shippers that rely on truck, rail, and other forms of transportation, the reduced availability of those modes of transportation could limit our ability to promptly produce products for our customers, which could have an adverse effect on our operations, financial condition, and liquidity. In addition, the increased cost of transportation of raw material from our suppliers may reduce our profitability if we are not able to recover those costs through price increases for our products.

Paper and packaging companies face strong competition.

We face competition from numerous competitors, domestic as well as foreign. Some of our competitors are larger, more vertically integrated companies that have greater financial and other resources, greater manufacturing economies of scale, greater energy self-sufficiency, and/or lower operating costs.

Certain paper and wood products are vulnerable to long-term declines in demand due to competing technologies or materials.

Companies in the paper and packaging industry are subject to possible declines in demand for their products as the use of alternative materials and technologies grows and the prices of such alternatives become more competitive. Any substantial shift in demand from wood and paper products to competing technologies or materials could result in a material decrease in sales of our products and could adversely affect our results of operations, cash flows, and financial position. We cannot ensure that any efforts we might undertake to adapt our product offerings to such changes would be successful or sufficient.

Because we service customers in a variety of industries, we may be particularly impacted by general economic downturns.

Our Packaging Business provides packaging for third-party customers in a variety of industries, including pharmaceutical and e-commerce companies. Certain of our Packaging Business customers provide goods that are discretionary items for consumers. Therefore, their business, and in turn our Packaging Business, depends on the strength of the retail, commercial, and industrial sectors of the economy in various parts of the world, and trends therein. During a downturn in the economy, consumer purchases of discretionary items are affected, which could materially lower our customers' demand for our packaging products, and negatively affect our profitability and financial condition.

We incur significant expenses to maintain our manufacturing equipment and any interruption in the operations of our facilities may harm our operating performance.

We regularly incur significant expenses to maintain our manufacturing equipment and facilities. The machines and equipment that we use to produce our products are complex, interdependent, and have many parts. We must perform routine maintenance on our equipment and will have to periodically replace a variety of parts.

Disruptions to our Packaging Business could occur due to any number of circumstances, including prolonged power outages, mechanical or process failures, shortages of raw materials, natural catastrophes, disruptions in the availability of transportation, labor disputes, terrorism, changes in or non-compliance with environmental or safety laws, and the lack of availability of services from any of our facilities' key suppliers. Any facility shutdowns may be followed by prolonged startup periods, regardless of the reason for the shutdown. Any prolonged disruption in operations at any of our facilities could cause significant lost production, which would have a material adverse effect on our results of operations.

We rely on a limited number of third-party suppliers for certain raw materials required for the production of our products.

Our dependence on a limited number of third-party suppliers, and the challenges we may face in obtaining adequate supplies of raw materials, involve several risks, including limited control over pricing, availability, quality and delivery schedules. We cannot be certain that our current suppliers will continue to provide us with the quantities of these raw materials that we require or will continue to satisfy our anticipated specifications and quality requirements. Any supply interruption in limited raw materials could materially harm our ability to manufacture our products until a new source of supply, if any, could be identified and qualified. Although we believe there are other suppliers of these raw materials, we may be unable to find a sufficient alternative supply channel in a reasonable time or on commercially reasonable terms. Any performance failure on the part of our suppliers could interrupt production of our products, which would have a material adverse effect on our business.

Risks Related to Forever 8 and its Operations

Our stockholders may experience substantial dilution from the issuance of equity consideration in the Forever 8 acquisition and may not realize a benefit from the Forever 8 acquisition commensurate with the ownership dilution they will experience in connection with the Acquisition.

In connection with the acquisition, we may issue shares of our common stock as consideration to Forever 8's former owners, including the issuance of shares of our common stock upon the exercise of a put right on certain preferred membership interests of Forever 8 and upon the achievement of certain earnout targets. Our stockholders may experience substantial dilution from the issuance of such shares of our common stock.

Our business depends on our strong and trusted brand, and failure to maintain and protect our brand, or any damage to our reputation, or the reputation of our partners, could adversely affect our business, financial condition or results of operations.

We have developed a strong and trusted brand that has contributed significantly to the success of our business. We believe that maintaining and promoting our brand in a cost-effective manner is critical to achieving widespread acceptance of our products and services and expanding our base of customers.

Maintaining and promoting our brand will depend largely on our ability to continue to provide useful, reliable, secure, and innovative products and services, as well as our ability to maintain trust and remain a global payments leader. We may introduce, or make changes to, features, products, services, privacy practices, or terms of service that customers do not like, which may materially and adversely affect our brand. Our brand promotion activities may not generate customer awareness or increase revenue, and even if they do, any increase in revenue may not offset the expenses we incur in building our brand. If we fail to successfully promote and maintain our brand or if we incur excessive expenses in this effort, our business could be materially and adversely affected.

We rely on relationships with marketplaces and enterprises to obtain and maintain customers. Our ability to acquire new customers could be materially harmed if we are unable to enter into or maintain these relationships on terms that are commercially reasonable to us, or at all.

Harm to our brand can arise from many sources, including failure by us or our partners and service providers to satisfy expectations of service and quality, inadequate protection or misuse of personally identifiable information (“PII”), compliance failures and claims, litigation and other claims, and misconduct by our partners or other counterparties.

We are dependent upon consumers’ continued and unimpeded access to the internet, and upon their willingness to use the internet for commerce.

Our success depends upon the general public’s ability to access the internet and its continued willingness to use the internet as a means to pay for purchases, communicate, research and conduct commercial transactions, including through mobile devices. The adoption of any laws or regulations that adversely affect the growth, popularity or use of the internet, including changes to laws or regulations impacting internet neutrality, could decrease the demand for our products, increase our operating costs, or otherwise adversely affect our business. Given uncertainty around these rules, we could experience discriminatory or anticompetitive practices that could impede both our and our merchants’ growth, increase our costs or adversely affect our business. If consumers or merchants become unable, unwilling or less willing to use the internet for commerce for any reason, including lack of access to high-speed communications equipment, congestion of traffic on the internet, internet outages or delays, disruptions or other damage to merchants’ and consumers’ computers, increases in the cost of accessing the internet and security and privacy risks or the perception of such risks, our business could be adversely affected.

If we do not successfully maintain a strong and trusted brand, our business could be materially and adversely affected.

Our results of operations may be adversely affected by changes in foreign currency exchange rates.

We are subject to risks related to changes in currency rates as a result of our investments in international operations and from revenues generated in currencies other than the United States dollar. Our results of operations may be affected by such international operations as a result of changes in foreign currency exchange rates.

From time to time, we may utilize foreign currency forward contracts and other hedging instruments to mitigate the market value risks associated with foreign currency-denominated transactions and investments. These hedging strategies may not, however, eliminate all of the risks related to foreign currency translation, and we may forgo the benefits we would otherwise experience if currency exchange rates were to change in our favor.

In addition, our ability to optimize foreign exchange revenues as part of the payment delivery process may be adversely affected due to foreign exchange market and regulatory conditions outside of our control, as a result of which revenue and profit may decrease as compared to prior periods. In addition, we may become subject to exchange control regulations that restrict or prohibit the conversion of our foreign revenue currencies into United States dollars. Any of these factors could decrease the value of revenues and earnings we derive from our international operations and have a material adverse effect on our business.

Climate change and environmental issues could adversely affect our operations, business, customers and partners.

Concerns over the risks associated with climate change and environmental matters have been growing in recent years and are at the center of rapidly evolving rule-making in the United States and abroad. Customers, investors, partners, and other stakeholders are increasingly focused on environmental, social and governance (“ESG”) practices. While we have not yet identified a material impact on our results and operations, we acknowledge that physical events, such as extreme weather and natural disasters, could disrupt our operations or those of our customers, partners, or third parties on which we rely, and may result in market volatility, shift in customer purchasing behaviors and travel patterns, and subsequently adversely impact our business. In addition, current and emerging ESG-related regulation, such as mandated disclosures or requirements to reduce carbon footprint, may result in increased compliance requirements, which may increase our costs.

Risks Related to Our Securities

We currently do not intend to pay dividends on our common stock. Consequently, our stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.

We do not expect to pay cash dividends on our common stock. Any future dividend payments are within the absolute discretion of our board of directors and will depend on, among other things, our results of operations, working capital requirements, capital expenditure requirements, financial condition, level of indebtedness, contractual restrictions with respect to payment of dividends, business opportunities, anticipated cash needs, provisions of applicable law and other factors that our board of directors may deem relevant.

As a result of being a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting in order to comply with Section 404 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"). We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may adversely affect investor confidence in us and, as a result, the value of our common stock.

As a result of being a public company we are subject to SEC reporting and other regulatory requirements. We will incur expenses and diversion of our management's time in its efforts to comply with Section 404 of the Sarbanes-Oxley Act regarding internal controls over financial reporting. Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404 of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm when required, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses or that may require prospective or retrospective changes to our consolidated financial statements or identify other areas for further attention or improvement. If we are unable to assert that our internal controls over financial reporting are effective, we could lose investor confidence in the accuracy and completeness of our financial reports, which would cause the price of our common stock to decline, and we may be subject to investigation or sanctions by the SEC.

One of our companies, Ferguson Containers, has material weaknesses in its controls over financial reporting, which could negatively impact investor confidence in the accuracy and completeness of our financial reports, and cause the price of our common stock to decline.

For Ferguson Containers' fiscal years ended December 31, 2023 and 2022, respectively, Ferguson Containers had the following material weakness in internal controls over financial reporting:

- Primarily due to the small size of Ferguson Containers, it does not maintain sufficient segregation of duties to ensure the processing, review and authorization of all transactions including non-routine transactions.
- Ferguson Containers' processes lacked timely and complete reviews and analysis of information used to prepare its financial statements and disclosures in accordance with accounting principles generally accepted in the United States of America.

The material weaknesses of Ferguson Containers' internal control over financial reporting could negatively impact investor confidence in the accuracy and completeness of our financial reports, which could cause the price of our common stock to decline.

An active, liquid trading market for our common stock may not develop, which may limit your ability to sell your shares.

Although our common stock is listed on the Nasdaq under the trading symbol "OCTO," an active trading market for our common stock may never develop or be sustained. A public trading market having the desirable characteristics of depth, liquidity and orderliness depends upon the existence of willing buyers and sellers at any given time, such existence being dependent upon the individual decisions of buyers and sellers over which neither we nor any market maker has control. The failure of an active and liquid trading market to develop and continue would likely have a material adverse effect on the value of our common stock, and you may not be able to sell your shares of our common stock.

We may issue shares of preferred stock in the future, which could make it difficult for another company to acquire us or could otherwise adversely affect holders of our common stock, which could depress the price of our common stock.

Our Certificate of Incorporation authorizes us to issue one or more series of preferred stock. Our board of directors has the authority to determine the preferences, limitations and relative rights of the shares of preferred stock and to fix the number of shares constituting any series and the designation of such series, without any further vote or action by our stockholders. Our preferred stock could be issued with voting, liquidation, dividend and other rights superior to the rights of our common stock. The potential issuance of preferred stock may delay or prevent a change in control of us, discouraging bids for our common stock at a premium to the market price, and materially adversely affect the market price and the voting and other rights of the holders of our common stock.

On January 19, 2023, the Company filed a Certificate of Designation with the Delaware Secretary of State for its Series A Preferred Stock. The number of shares designated is three hundred thousand (300,000).

The trading price of our securities will likely be, and continue to be, volatile and you could lose all or part of your investment.

The trading price of our securities could be volatile and subject to wide fluctuations in response to various factors, some of which are beyond our control, including but not limited to our general business condition, the release of our financial reports and general economic conditions and forecasts. Broad market and industry factors may materially harm the market price of our securities irrespective of our operating performance. The stock market in general, and Nasdaq, have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the particular companies affected. The trading prices and valuations of these stocks, and of our securities, may not be predictable. A loss of investor confidence in the market for the stocks of other companies which investors perceive to be similar to us could depress our stock price regardless of our business, prospects, financial conditions or results of operations. A decline in the market price of our securities also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future. Any of these factors could have a material adverse effect on our stockholders' investment in our securities, and our securities may trade at prices significantly below the price they paid for them. In such circumstances, the trading price of our securities may not recover and may experience a further decline.

A reverse stock split may decrease the liquidity of the shares of our common stock.

On October 5, 2022, we received a letter from the Listing Qualifications Department of Nasdaq indicating that, based upon the closing bid price of the Company's common stock for the 31 consecutive business day period between August 22, 2022, through October 4, 2022, the Company did not meet the minimum bid price of \$1.00 per share required for continued listing on The Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2). In order to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A), the Company may effect a reverse stock split.

The liquidity of the shares of our common stock may be affected adversely by our reverse stock split given the reduced number of shares that are outstanding following the reverse stock split, especially if the market price of our common stock does not increase proportionately as a result of the reverse stock split.

On March 15, 2023, a Special Meeting of Security Holders was held to vote upon the proposal to approve an amendment to the Certificate of Incorporation to effect, at the discretion of the Board but prior to the one-year anniversary of the date on which the reverse stock split is approved by the Company's stockholders, a reverse stock split of all of the outstanding shares of Common Stock at a ratio in the range of 1-for-2 to 1-for-50, with such ratio to be determined by the Board in its discretion and included in a public announcement (the "Reverse Stock Split Proposal"). The proposal was approved by Security Holders.

On April 3, 2023, the Company filed a Certificate of Amendment to the Company's Certificate of Incorporation with the Secretary of State of Delaware (1) to effect a 1-for-50 reverse stock split of the shares of the Company's common stock, par value \$0.001 per share, either issued and outstanding or held by the Company as treasury stock (the "Reverse Stock Split") and (2) to change the name of the Company from "Cryptyde, Inc." to "Eightco Holdings Inc." (the "Name Change"). Both the Reverse Stock Split and the Name Change were effective as of 4:05 p.m., New York time, on April 3, 2023. The Common Stock began trading on a reverse stock split-adjusted basis on the Nasdaq Capital Market on April 4, 2023. The trading symbol for the Common Stock following the Reverse Stock Split and the Name Change is "OCTO." The new CUSIP number for the Common Stock following the Reverse Stock Split and the Name Change is 22890A203.

Following a reverse stock split, the resulting market price of our common stock may not attract new investors, including institutional investors, and may not satisfy the investing requirements of those investors. Consequently, the trading liquidity of our common stock may not improve.

Following our reverse stock split, we believe that a higher market price of our common stock will result and may help generate greater or broader investor interest. However, we cannot assure you that our reverse stock split will result in a share price that will attract new investors.

Anti-takeover provisions contained in our Certificate of Incorporation and Bylaws, as well as provisions of Delaware law, could impair a takeover attempt.

Eightco's Certificate of Incorporation, Bylaws, and Delaware law contain provisions that are intended to deter coercive takeover practices and inadequate takeover bids by making such practices or bids unacceptably expensive to the bidder and to encourage prospective acquirers to negotiate with Eightco's board of directors rather than to attempt a hostile takeover. These provisions are expected to include, among others:

- rules regarding how stockholders may present proposals or nominate directors for election at stockholder meetings;
- the right of Eightco's board of directors to issue preferred stock without stockholder approval;
- the ability of Eightco's directors, and not stockholders, to fill vacancies (including those resulting from an enlargement of the board of directors) on Eightco's board of directors;
- the division of Eightco's board of directors into three classes of directors, with each class serving a staggered term; and
- a provision that directors serving on a classified board may be removed by stockholders only for cause.

In addition, Eightco is subject to Section 203 of the Delaware General Corporation Law (the “DGCL”). Section 203 provides that, subject to limited exceptions, persons that (without prior board approval) acquire, or are affiliated with a person that acquires, more than 15 percent of the outstanding voting stock of a Delaware corporation shall not engage in any business combination with that corporation, including by merger, consolidation or acquisitions of additional shares, for a three-year period following the date on which that person or its affiliate becomes the holder of more than 15 percent of the corporation’s outstanding voting stock.

Eightco believes these provisions will protect its stockholders from coercive or otherwise unfair takeover tactics by requiring potential acquirers to negotiate with Eightco's board of directors and by providing Eightco's board of directors with more time to assess any acquisition proposal. These provisions are not intended to make Eightco immune from takeovers. However, these provisions will apply even if the offer may be considered beneficial by some stockholders and could delay or prevent an acquisition that Eightco's board of directors determines is not in the best interests of Eightco and its stockholders. These provisions may also prevent or discourage attempts to remove and replace incumbent directors.

In addition, an acquisition or further issuance of Eightco's stock could trigger the application of Section 355(e) of the Code. For a discussion of Section 355(e), see the section entitled "Material United States Federal Income Tax Consequences of the Distribution".

These anti-takeover provisions may also limit the opportunity for our stockholders to receive a premium for their shares of our common stock and could also affect the price that some investors are willing to pay for our common stock. For a discussion of the anti-takeover provisions, See "Description of Capital Stock – Anti-Takeover Provisions."

Our Certificate of Incorporation provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees.

Our Certificate of Incorporation provides that, unless we consent in writing to the selection of an alternative forum, the (i) Court of Chancery (the "Chancery Court") of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for: (A) any derivative action or proceeding brought on behalf of Eightco, (B) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder, employee or agent of Eightco to Eightco or Eightco's stockholders, (C) any action asserting a claim against the Eightco or any director, officer, stockholder, employee or agent of the Eightco arising out of or relating to any provision of the DGCL, Eightco's Certificate of Incorporation or Eightco's Bylaws, or (D) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of Eightco governed by the internal affairs doctrine of the State of Delaware. Notwithstanding the foregoing, in the event that the Chancery Court lacks subject matter jurisdiction over any such action or proceeding, including in the event claims are brought under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware.

The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and other employees. Alternatively, if a court were to find the choice of forum provision contained in the proposed charter to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations, and financial condition.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our securities will depend in part on the research and reports that securities or industry analysts publish about us or our business. If only a limited number of securities or industry analysts commence coverage of our Company, the trading price for our securities would likely be negatively impacted. In the event securities or industry analysts initiate coverage, if one or more of the analysts who covers us downgrades our stock or publishes unfavorable research about our business, our stock price may decline. If one or more of these analysts ceases coverage of our Company or fails to publish reports on us regularly, demand for our securities could decrease, which might cause our stock price and trading volume to decline.

We are an emerging growth company and a smaller reporting company within the meaning of the Securities Act, and we are taking advantage of certain exemptions from disclosure requirements available to emerging growth companies or smaller reporting companies, this could make our securities less attractive to investors and may make it more difficult to compare our performance with other public companies.

We are an “emerging growth company,” as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), and are taking advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a registration statement under the Securities Act declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such an election to opt out is irrevocable. We have elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company, which is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period, difficult or impossible because of the potential differences in accounting standards used.

We will remain an emerging growth company until the earlier of: (1) the last day of the fiscal year (a) following the fifth anniversary of the closing of the Company’s initial public offering, (b) in which we have total annual revenue of at least \$1.07 billion, or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common equity that is held by non-affiliates exceeds \$700 million as of the end of the prior fiscal year’s second fiscal quarter; and (2) the date on which we have issued more than \$1.00 billion in non-convertible debt securities during the prior three-year period. References herein to “emerging growth company” have the meaning associated with it in the JOBS Act.

Additionally, we are a “smaller reporting company” as defined in Item 10(f)(1) of Regulation S-K. Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited financial statements. We will remain a smaller reporting company until the last day of any fiscal year for so long as either (1) the market value of our shares of common stock held by non-affiliates did not equal or exceed \$250 million as of the prior June 30, or (2) our annual revenues did not equal or exceed \$100 million during such completed fiscal year and the market value of our shares of common stock held by non-affiliates did not equal or exceed \$700 million as of the prior December 31.

Because we subject the above listed reduced reporting requirements, investors may not be able to compare us to other companies, this could make our securities less attractive to investors and may make it more difficult to compare our performance with other public companies.

Your percentage ownership in our company may be diluted in the future.

In the future, your percentage ownership in our company may be diluted because of equity issuances for warrant exercises, acquisitions, strategic investments, capital market transactions, or otherwise, including equity compensation awards that we grant to our directors, officers and employees. Our Compensation Committee can be expected to grant additional equity compensation awards to our employees after the Separation. These awards would have a dilutive effect on our earnings per share, which could adversely affect the market price of our common stock. From time to time, we may issue additional equity compensation awards to our employees under our employee benefits plans.

In addition, our Certificate of Incorporation authorizes our board of directors to create and issue, without the approval of our stockholders, one or more series of preferred stock having such powers, preferences, and rights, if any, and such qualifications, limitations, and restrictions, if any, as established by our board of directors. The terms of one or more series of preferred stock that is created and issued by our board of directors may dilute the voting power or reduce the value of our common stock. For example, our board of directors could create and issue one or more series of preferred stock having the right to elect one or more of our directors (in all events or on the happening of specified events) and/or the right to veto specified transactions. Similarly, the repurchase or redemption rights or dividend, distribution, or liquidation rights of a series of preferred stock created and issued by our board of directors could affect the residual value of the common stock. See “Description of Capital Stock—Preferred Stock.”

Our common stock will be subordinate to all of our future indebtedness and any series of preferred stock, and effectively subordinated to all indebtedness and preferred equity claims against our subsidiaries.

Shares of our common stock will rank junior to all of our future indebtedness and other liabilities. Additionally, holders of our common stock may become subject to the prior dividend and liquidation rights of holders of any series of preferred stock that our board of directors may designate and issue without any action on the part of the holders of our common stock. Furthermore, our right to participate in a distribution of assets upon any of our subsidiaries' liquidation or reorganization is subject to the prior claims of that subsidiary's creditors.

Investors are subject to litigation risk and their respective investments in the shares of our common stock may be lost as a result of our legal liabilities or the legal liabilities of our affiliates.

We or our affiliates may from time to time be subject to claims by third parties and may be plaintiffs or defendants in civil proceedings. There can be no assurance that claims will not be brought in the future if we cannot generate the revenue that we forecast or raise sufficient capital to pay our liabilities. The expense of prosecuting claims, for which there is no guarantee of success, and/or the expense of defending against claims by third parties and paying any amounts pursuant to settlements or judgments, would generally be borne by the Company and could result in the reduction or complete loss of all of the assets of the Company, and investors in our common stock could lose all or a part of their investment.

In the event that we fail to satisfy any of the listing requirements of Nasdaq, our common stock may be delisted, which could affect our market price and liquidity.

Our common stock is listed on Nasdaq. For continued listing on Nasdaq, we will be required to comply with the continued listing requirements, including the minimum market capitalization standard, the corporate governance requirements and the minimum closing bid price requirement, among other requirements. On September 29, 2023, we received a letter from the Listing Qualifications Department of Nasdaq indicating that, based upon the closing bid price of the Company's common stock for the 31 consecutive business day period between August 16, 2023, through September 28, 2023, the Company did not meet the minimum bid price of \$1.00 per share required for continued listing on The Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2). The letter also indicated that the Company has a compliance period of 180 calendar days, or until March 27, 2024 (the "Compliance Period"), in which to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A).

In the event that we fail to satisfy any of the listing requirements of Nasdaq or fail to regain compliance with Nasdaq's minimum bid price requirement within the Compliance Period, our common stock may be delisted. If we are unable to list on Nasdaq, we would likely be more difficult to trade in or obtain accurate quotations as to the market price of our common stock. If our common stock is delisted from trading on Nasdaq, and we are not able to list our common stock on another exchange or to have it quoted on Nasdaq, our securities could be quoted on the OTC Bulletin Board or on the "pink sheets." As a result, we could face significant adverse consequences including, without limitation:

- a limited availability of market quotations for our securities;
- a determination that our common stock is a "penny stock" which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our securities;
- a limited amount of news and analyst coverage for our Company; and
- a decreased ability to issue additional securities (including pursuant to short-form registration statements on Form S-3 or obtain additional financing in the future).

On March 28, 2024, we received a letter from the Listing Qualifications Department of Nasdaq indicating that the Company has not regained compliance with Nasdaq Listing Rule 5810(c)(3)(A) and is not eligible for a second 180 day period. The Company has not regained compliance with the Rule and is not eligible for a second 180 day period. Specifically, the Company does not comply with the \$5,000,000 minimum stockholders' equity initial listing requirement for The Nasdaq Capital Market.

Accordingly, unless the Company requests an appeal of this determination as described in further detail below, we have determined that the Company's securities will be scheduled for delisting from The Nasdaq Capital Market and will be suspended at the opening of business on April 8, 2024, and a Form 25-NSE will be filed with the Securities and Exchange Commission (the "SEC"), which will remove the Company's securities from listing and registration on The Nasdaq Stock Market.

We intend on appealing the Staff's determination to a Hearings Panel (the "Panel"), pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series. A hearing request will stay the suspension of the Company's securities and the filing of the Form 25-NSE pending the Panel's decision.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 1C. CYBERSECURITY

Cyber Risk Management and Strategy

We recognize the importance of assessing, identifying, and managing risks from cybersecurity threats. Our approach to cybersecurity risk management is aligned with our risk profile and business.

We have leveraged the support of third-party information technology and security providers, including to perform a risk assessment designed to identify, assess, and manage cybersecurity risks. Further, we follow a formal, documented process to assess the data protection practices of certain third-party vendors that handle sensitive information on our behalf.

Although risks from cybersecurity threats have to date not materially affected, and we do not believe they are reasonably likely to materially affect, us or our business strategy, results of operations or financial condition, we could, from time to time, experience threats and security incidents relating to our and our third-party vendors' information systems. For more information, please see the section entitled "Risk Factors" in this Annual Report on Form 10-K.

Governance Related to Cybersecurity Risks

Our Senior Director of Information Technology (IT) is responsible for the strategic leadership and direction of our cybersecurity program. The Senior Director of IT has nearly 15 years of experience as an information technology professional.

Our audit committee has oversight over cybersecurity risks. Our management provides periodic presentations to the audit committee on our cybersecurity program, including updates on cybersecurity risks and related cybersecurity strategy, as applicable. The audit committee provides updates regarding our cybersecurity program to the board of directors when material.

ITEM 2. PROPERTIES

The following table summarizes pertinent details of our properties as of December 31, 2023:

Location	Owned or Leased	Lease Expiration	Primary Function
909 New Brunswick Avenue Phillipsburg, NJ 08865	Leased	Month-to-Month	Principal Executive Office
20 Industrial Road Alpha, NJ 08865	Leased	Month-to-Month	Packaging and Logistics Center
234 5th Ave, Suite 511 New York, NY 10001	Leased	Month-to-Month	Office space
Keizersgracht 482, 1017 EG Amsterdam, Netherlands	Leased	Month-to-Month	Office space

ITEM 3. LEGAL PROCEEDINGS

During the normal course of its business, the Company may be subject to occasional legal proceedings and claims. There are currently no legal proceedings or claims asserted against the Company or its subsidiaries.

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

On June 30, 2022, our common stock began trading on the Nasdaq under the symbol of "TYDE." On April 4, 2023, we changed the symbol of our common stock to "OCTO" in conjunction with our name change.

Holders of Record

The Company had approximately 336 holders of record of our common stock as of April 1, 2024.

Dividends

We have not historically declared dividends on our common stock, and we do not currently intend to pay dividends on our common stock. The declaration, amount and payment of any future dividends on shares of our common stock, if any, will be at the sole discretion of our board of directors.

On January 17, 2023, the Company declared a dividend of one one-thousandth of a share of Series A Preferred Stock, par value \$0.001 per share, for each outstanding share of the Company's common stock, to stockholders of record at 5:00 p.m. Eastern Time on January 27, 2023 (the "Record Date").

Securities Authorized for Issuance under Equity Compensation Plans

The Company's executive compensation program consists of stock-based awards issued under an equity incentive plan. The Company determines the appropriate level for compensation under the equity incentive plan based in part, but not exclusively, on its view of internal equity and consistency, individual performance, the Company's performance, and other information deemed relevant and timely.

Recent Sales of Unregistered Securities, Uses of Proceeds and Issuer Purchases of Equity Securities

Except as set forth below, during the period covered by this Annual Report, we have not sold any equity securities that were not registered under the Securities Act that were not previously reported in a quarterly report on Form 10-Q or in a current report on Form 8-K.

On November 10, 2023, the Company issued 25,000 shares of its common stock to a consultant for services rendered on behalf of the Company.

ITEM 6. [RESERVED]

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

The following discussion and analysis of our financial condition and results of operations should be read together with our consolidated financial statements and related notes thereto included elsewhere in this Annual Report. This discussion and analysis contain forward-looking statements that are based upon current expectations and involve risks, assumptions and uncertainties.

Overview

As used herein, "Eightco" and the "Company" refer to Eightco Holdings Inc. and subsidiaries and/or where applicable, its management, a Delaware corporation originally incorporated on September 21, 2021 (date of inception) under the laws of the State of Nevada. On March 9, 2022, the Company converted to a Delaware corporation pursuant to a plan of conversion entered into with the Former Parent. On April 3, 2023, the Company changed its name to Eightco Holdings Inc. from Cryptyde, Inc. and its stock symbol to "OCTO." The Company is comprised of two main businesses, Forever 8 Inventory Cash Flow Solution and our Packaging Business. Our Inventory Cash Flow Solution Business, Forever 8 Fund, LLC, a Delaware limited liability company is focused on purchasing inventory and becoming the supplier for e-commerce retailers, which we acquired on October 1, 2022 ("Forever 8"). We no longer intend to generate revenue from our Web 3 Business. Our Packaging Business manufactures and sells custom packaging for a wide variety of products and through packaging helps customers generate brand awareness and promote brand image.

On June 29, 2022, the Company separated from its former parent company, Vinco Ventures Inc. ("Vinco"). As previously announced, we concluded a spin-off from Vinco (the "Separation") and continue operating our BTC Mining Hardware Business and our Packaging Business. The Separation occurred concurrently with the distribution (the "Distribution") of our common stock to stockholders of Vinco as of May 18, 2022 (the "Record Date") at a ratio of one share of our common stock for every ten shares of Vinco common stock held by the Vinco stockholders. Following the Separation, we are an independent, publicly traded company, and Vinco retains no ownership interest in our Company.

In connection with the Separation, we entered into a Separation and Distribution Agreement and other agreements with Vinco to effect the Separation and provide a framework for our relationship with Vinco after the Separation. These agreements provide for the allocation between us and our subsidiaries, on the one hand, and Vinco and its subsidiaries, on the other hand, of the assets, liabilities, legal entities, and obligations associated with the Eightco Businesses, on the one hand, and Vinco's other current businesses, on the other hand, and govern the relationship between our Company and our subsidiaries, on the one hand, and Vinco and its subsidiaries, on the other hand, following the Separation. In addition to the Separation and Distribution Agreement, the other principal agreements entered into with Vinco include a Tax Matters Agreement and certain commercial agreements.

Name Change, Symbol Change and Recapitalization

On March 15, 2023, a Special Meeting of Security Holders was held to vote upon the proposal to approve an amendment to the Certificate of Incorporation to effect, at the discretion of the Board but prior to the one-year anniversary of the date on which the reverse stock split is approved by the Company's stockholders, a reverse stock split of all of the outstanding shares of Common Stock at a ratio in the range of 1-for-2 to 1-for-50, with such ratio to be determined by the Board in its discretion and included in a public announcement (the "Reverse Stock Split Proposal"). The proposal was approved by Security Holders.

On April 3, 2023, the Company filed a Certificate of Amendment (the "Certificate of Amendment") to the Company's Certificate of Incorporation (the "Certificate of Incorporation") with the Secretary of State of Delaware (1) to effect a 1-for-50 reverse stock split of the shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), either issued and outstanding or held by the Company as treasury stock (the "Reverse Stock Split") and (2) to change the name of the Company from "Cryptyde, Inc." to "Eightco Holdings Inc." (the "Name Change"). Both the Reverse Stock Split and the Name Change were effective as of 4:05 p.m., New York time, on April 3, 2023. The Common Stock began trading on a reverse stock split-adjusted basis on the Nasdaq Capital Market on April 4, 2023. The trading symbol for the Common Stock following the Reverse Stock Split and the Name Change is "OCTO." The new CUSIP number for the Common Stock following the Reverse Stock Split and the Name Change is 22890A203.

Recent Financings and Forever 8 Acquisition

Recent Financings

February 2024 Private Placement

On February 26, 2024, Eightco Holdings Inc. (the "Company") entered into a Securities Purchase Agreement (the "Purchase Agreement") with certain investors (the "Investors"), pursuant to which the Company sold to the Investors an aggregate of 865,856 shares (the "Shares") of the Company's common stock at a purchase price of \$0.82 per Share (the "Private Placement"). The Company received aggregate gross proceeds from the Private Placement of approximately \$0.71 million. The Shares are being offered and sold in reliance on the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(a)(2) and Regulation D promulgated thereunder for transactions not involving a public offering.

The Purchase Agreement contains representations and warranties of the Company and the Investors that are typical for transactions of this type. The Purchase Agreement also contains covenants on the part of the Company that are typical for transactions of this type.

Series A Financing

On May 30, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower"), entered into a Loan and Security Agreement (the "Agreement") with several individuals, financial institutions and entities (collectively, the "Lenders"). Under the terms of the Agreement, each Lender will severally (and not jointly) make available to Borrower, in an amount not to exceed its respective Commitment, a Loan Advance amount to be determined by the Lender (as such amount may be increased, the "Aggregate Commitment") in the aggregate, of which (x) a certain amount will be deposited into an account of the Borrower in accordance with its written instructions (the "Initial Loan Advance") and (y) the remaining balance of the Aggregate Commitment after deducting the Initial Loan Advance shall be deposited into the Escrow Account (the "Escrow Funds"). The Borrower may, at any time, request an advance for all or a portion of the Escrow Funds (each such advance, a "Subsequent Draw").

The Borrower issued a Promissory Note (the "Note") to each of the Lenders in the amount of the Lender's respective Initial Loan Advance. The principal balance of the Initial Loan Advance and each Subsequent Draw shall bear interest thereon from the Closing Date and applicable Advance Date, respectively, at 15.00% per annum. The Borrower shall pay each Lender, according to its Applicable Percentage, an unused commitment fee on the actual daily amount of the Unused Commitment Amount during the immediately preceding calendar quarter at the rate of five percent (5.00%) *per annum* (the "Unused Commitment Fee"). In the event any payment is not paid on or within five (5) Business Days of the scheduled payment date, an amount equal to two percent (2.00%) of the past due amount shall be payable on demand, in addition to interest accruing. In addition, upon the occurrence and during the continuation of an Event of Default hereunder, the Initial Loan Advance and all Subsequent Draws, including principal, interest, compounded interest, and professional fees thereupon, shall upon the election of the Lenders, bear interest at the Interest Rate, plus five (5) percentage points. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded.

As security for the prompt and complete payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, Borrower grants to Lenders a security interest in all of Borrower's right, title, and interest in and to all Inventory or Equipment and machinery, in each case, purchased (or refinanced) with the proceeds of the Initial Loan Advance and any Subsequent Draw, and, to the extent not otherwise included, all Proceeds of each of the foregoing and all products, additions, increases and accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing (collectively, the "Collateral").

As of the date of this filing, \$3,425,000 has been committed by the Lenders.

Series B Financing

On October 6, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower"), entered into a Series B Loan and Security Agreement (the "Series B Agreement") with an individual (the "Lender"). Under the terms of the Series B Agreement, the Lender will make available to Borrower, in an amount not to exceed its respective Commitment, a Loan Advance amount to be determined by the Lender (as such amount may be increased, the "Aggregate Commitment") in the aggregate, of which (x) a certain amount will be deposited into an account of the Borrower in accordance with its written instructions (the "Initial Loan Advance") and (y) the remaining balance of the Aggregate Commitment after deducting the Initial Loan Advance shall be deposited into the Escrow Account (the "Escrow Funds"). The Borrower may, at any time, request an advance for all or a portion of the Escrow Funds (each such advance, a "Subsequent Draw").

The Borrower issued a Promissory Note (the "Note") to the Lender in the amount of the Lender's respective Initial Loan Advance. The principal balance of the Initial Loan Advance and each Subsequent Draw shall bear interest thereon from the Closing Date and applicable Advance Date, respectively, at 15.00% per annum. The Borrower shall pay each Lender, according to its Applicable Percentage, an unused commitment fee on the actual daily amount of the Unused Commitment Amount during the immediately preceding calendar quarter at the rate of five percent (5.00%) *per annum* (the "Unused Commitment Fee"). In the event any payment is not paid on or within five (5) Business Days of the scheduled payment date, an amount equal to two percent (2.00%) of the past due amount shall be payable on demand, in addition to interest accruing. In addition, upon the occurrence and during the continuation of an Event of Default hereunder, the Initial Loan Advance and all Subsequent Draws, including principal, interest, compounded interest, and professional fees thereupon, shall upon the election of the Lender, bear interest at the Interest Rate, plus five (5) percentage points. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded.

As security for the prompt and complete payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, Borrower grants to Lender a security interest in all of Borrower's right, title, and interest in and to all Inventory or Equipment and machinery, in each case, purchased (or refinanced) with the proceeds of the Initial Loan Advance and any Subsequent Draw, and, to the extent not otherwise included, all Proceeds of each of the foregoing and all products, additions, increases and accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing (collectively, the "Collateral").

From October 12, 2023, through February 26, 2024, the Borrower entered into Lender Joinder Agreements (the "Joinder Agreement") with several individuals and entities (the "Subsequent Lenders"). Under the terms of the Joinder Agreement, the Subsequent Lenders agreed to become a Lender and be bound by the terms of the Series B Agreement as a Lender pursuant to Section 2.6 of the Series B Agreement.

As of the date of this filing, \$275,000 has been committed by the Lenders.

Series C Financing

On October 19, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower"), entered into a Series C Loan and Security Agreement (the "Series C Agreement") with an individual (the "Lender"). Under the terms of the Series C Agreement, the Lender will make available to Borrower, in an amount not to exceed its respective Commitment, a Loan Advance amount to be determined by the Lender (as such amount may be increased, the "Aggregate Commitment") in the aggregate, of which (x) a certain amount will be deposited into an account of the Borrower in accordance with its written instructions (the "Initial Loan Advance") and (y) the remaining balance of the Aggregate Commitment after deducting the Initial Loan Advance shall be deposited into the Escrow Account (the "Escrow Funds"). The Borrower may, at any time, request an advance for all or a portion of the Escrow Funds (each such advance, a "Subsequent Draw").

The Borrower issued a Promissory Note (the "Note") to the Lender in the amount of the Lender's respective Initial Loan Advance. The principal balance of the Initial Loan Advance and each Subsequent Draw shall bear interest thereon from the Closing Date and applicable Advance Date, respectively, at 18.00% per annum. The Borrower shall pay the Lender, according to its Applicable Percentage, an unused commitment fee on the actual daily amount of the Unused Commitment Amount during the immediately preceding calendar quarter at the rate of five percent (5.00%) *per annum* (the "Unused Commitment Fee"). In the event any payment is not paid on or within five (5) Business Days of the scheduled payment date, an amount equal to two percent (2.00%) of the past due amount shall be payable on demand, in addition to interest accruing. In addition, upon the occurrence and during the continuation of an Event of Default hereunder, the Initial Loan Advance and all Subsequent Draws, including principal, interest, compounded interest, and professional fees thereupon, shall upon the election of the Lenders, bear interest at the Interest Rate, plus five (5) percentage points. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded.

As security for the prompt and complete payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, Borrower grants to Lender a security interest in all of Borrower's right, title, and interest in and to all Inventory or Equipment and machinery, in each case, purchased (or refinanced) with the proceeds of the Initial Loan Advance and any Subsequent Draw, and, to the extent not otherwise included, all Proceeds of each of the foregoing and all products, additions, increases and accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing (collectively, the "Collateral").

As of the date of this filing, \$2,900,000 has been committed by the Lenders.

Series D Financing

On March 15, 2024, Forever 8 Fund, LLC ("Forever 8"), a wholly owned subsidiary of Eightco Holdings Inc. (the "**Company**"), entered into the Series D Loan and Security Agreement (the "Series D Agreement"), with the lenders party thereto from to time (collectively, the "Lenders") for an amount of up to \$5,000,000.

In connection with the Series D Agreement, on March 15, 2024, Forever 8 also entered into a Subordination Agreement (the "Subordination Agreement") with each of the Lenders, the several individuals, financial institutions or entities from time to time party thereto (collectively, the "Senior Lenders") and the collateral agent for the Senior Lenders. Forever 8 additionally entered into an Intercreditor Agreement (the "Intercreditor Agreement") with the lenders party thereto and the collateral agent for such lenders. As of the date of this filing, a total of \$250,000 has been committed by a Lender.

As of the date of this filing, \$600,000 has been committed by the Lenders.

May 2023 Debt Exchange

On May 30, 2023, the Forever 8 Fund, LLC (the "Borrower") entered into a Debt Exchange Agreement (the "Debt Agreement") with two Lenders for funds advanced to the Borrower pursuant to secured promissory notes (the "Old Notes"), executed by the Borrower in favor of the Lenders during 2021. Under the terms of the Debt Agreement, the Old Notes shall be exchanged for new Notes ("New Notes") as per the terms of the Loan and Security Agreement dated May 30, 2023. The principal of the New Notes issued under the Debt Agreement is \$1,650,000.

March 2023 Offering

On March 15, 2023, Eightco Holdings Inc. (the "Company") entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with Hudson Bay (the "Investor") for the issuance and sale of a Senior Secured Convertible Note with an initial principal amount of \$5,555,000 (the "Note") at a conversion price of \$6.245 per share of the Company's common stock, par value \$0.001 (the "Common Stock"), and a warrant (the "Warrant") to purchase up to 889,512 shares of Common Stock with an initial exercise price of \$6.245 per share of Common Stock (the "Private Placement"). The purchase price of the Note and the Warrant is \$5 million.

In connection with the Private Placement, the Company entered into a Registration Rights Agreement (the “Registration Rights Agreement”), a Security and Pledge Agreement (the “Pledge Agreement”), and various ancillary certificates, disclosure schedules and exhibits in support thereof prior to the closing of the Securities Purchase Agreement.

Securities Purchase Agreement

The Securities Purchase Agreement provides for the purchase by the Investor and the sale by the Company of the Note and the Warrant. The Securities Purchase Agreement contains representations and warranties of the Company and the Investor that are typical for transactions of this type. The representations and warranties made by the Company in the Securities Purchase Agreement are qualified by reference to certain exceptions contained in disclosure schedules delivered to the Investor. Accordingly, the representations and warranties contained in the Securities Purchase Agreement should not be relied upon by third parties who have not reviewed those disclosure schedules and the documentation surrounding the transaction as a whole.

The Securities Purchase Agreement closed upon the satisfaction of certain conditions of the Investor and the Company that are typical for transactions of this type, as well certain other condition including the following:

- the Company delivered to the Investor a lock up agreement (the “Lock-Up Agreement”), executed by each of the parties identified in the Securities Purchase Agreement;
- the Company received stockholder approval of a resolution to increase the amount of authorized shares of the Company, and filed with the Delaware Secretary of State a Certificate of Amendment to the Company’s Certificate of Incorporation causing the increase in the amount of authorized shares of the Company; and
- the Company, the Investor and the certain creditors of the Company amended that certain Subordination Agreement, dated as of September 13, 2022, by and among the Company, the Investor and certain persons identified in that Subordination Agreement (the “Subordination Agreement Amendment”).

The Securities Purchase Agreement also obligates the Company to indemnify the Investor for certain losses resulting from (1) any misrepresentation or breach of any representation or warranty made by the Company or any subsidiary of the Company, (2) any breach of any obligation of the Company or, any subsidiary of the Company, of the Securities Purchase Agreement or any agreements and instruments entered into or connection with the Securities Purchase Agreement and (3) certain third party claims.

Senior Secured Convertible Note

The Company issued the Note upon the closing. The entire outstanding principal balance and any outstanding fees or interest is due and payable in full on January 15, 2024 (“Maturity Date”). The Note does not bear interest, provided, however, that the Note will bear interest at 18% per annum upon the occurrence of an event of default (as described below).

The Maturity Date may be extended at the sole option of the Investor for so long as certain events of default is continuing or for so long as an event is continuing that if not cured and with the passage of time would result in an event of default.

The Note is convertible at the option of the Investor into shares of Common Stock at a conversion price of \$6.245 per share, subject to adjustment for stock splits, combinations or similar events (each a “Stock Combination Event”). If on the fifth trading day immediately following a Stock Combination Event, the conversion price then in effect on such fifth trading day (after giving effect to a proportional adjustment of the conversion price), is greater than the lowest weighted average price of the Common Stock during the twenty consecutive trading day period ending and including the trading day immediately preceding the fifth trading day after such Stock Combination Event (the “Event Market Price”), then the conversion price shall be adjusted to the Event Market Price.

The Note contains certain limitations on conversion. It provides that no conversion may be made if, after giving effect to the conversion, the Investor would own in excess of 9.99% of the Company’s outstanding shares of Common Stock. This percentage may be increased or decreased to a percentage not to exceed 9.99%, at the option of the Investor, except any increase will not be effective until 61-days’ prior notice to the Company.

The conversion price of the Note will be subject to adjustments for stock splits, combinations or similar events. In addition, the conversion price of the Note will also subject to anti-dilution adjustment which, subject to specified exceptions, in the event that the Company issues or is deemed to have issued certain securities at a price lower than the then applicable conversion price, immediately reduces the conversion price of the Note to equal the price at which the Company issues or is deemed to have issued its Common Stock.

The Note imposes penalties on the Company for any failure to timely deliver any shares of its Common Stock issuable upon conversion.

The Note contains events of default that are typical for transactions of this type, as well as the following events:

- the failure of any registration statement required by the Registration Rights Agreement to be filed within five trading days after the date required by the Registration Rights Agreement or the failure of any such registration statement to become effective within five trading days after the date required by the Registration Rights Agreement;
- the lapse or unavailability of any registration statement required by the Registration Rights Agreement for more than 5 consecutive trading days or more than an aggregate of 10 trading days in any 365-day period (other than certain allowable grace periods);
- the suspension from trading or failure of the Common Stock to be listed for trading on an eligible market for more than 2 consecutive trading days or more than an aggregate of 5 trading days in any 365-day period;
- the failure of the Company to issue shares upon conversion of the Note for more than 2 trading days after the relevant conversion date or a notice of the Company’s intention not to comply with a request for conversion;
- the failure for 2 consecutive trading days to have reserved for issuance 250% of the full number of shares issuable upon conversion in accordance to the terms of the Note;
- the failure for 2 trading days to pay the Investor principal, interest, late charges or other amounts when and as due under the Note;
- the occurrence of any default under, redemption of or acceleration prior to maturity of any indebtedness of the Company or a subsidiary;
- the invalidity of any material provision of the Security Documents (defined below) or if the enforceability of validity of any material provision of the Security Documents is contested by the Company;
- the failure of the Security Documents to perfect or maintain the Investor’s first priority security interest; and
- the failure to comply with certain covenants of the Note.

If there is an event of default, then the Investor has the right to request redemption of all or any portion of the Note, at 130% of the sum of the outstanding principal, interest and late fees to be redeemed, provided that if certain conditions specified in the Note are not satisfied, then the Investor has the right to request redemption of all or any portion of the Note, at 130% of the greater of (i) the sum of the outstanding principal, interest and late fees to be redeemed and (ii) the product of (a) the number of shares into which the Note (including all principal, interest and late fees) subject to redemption may be converted and (b) the greatest closing sale price for the Common Stock beginning on the date immediately preceding the event of default and ending on the date the Company makes the entire payment required to be made upon the redemption provided, however, that if no Cash Release Event (as defined in the Note) has occurred on or prior to the applicable of default redemption date, the principal amount used in calculating the applicable event of default redemption price on such event of default redemption date shall be decreased by the holder's pro rata portion of \$222,000.

The Note prohibits the Company from entering into certain transactions involving a change of control, unless the successor entity assumes in writing all of the obligations of the Company under the Note and the other transaction documents. In the event of such a transaction, the Investor will have the right to request redemption of the Note, at Redemption Variable Premium (as defined in the Note) of the greater of (i) of the sum of the amount of principal, interest and late fees to be redeemed; and (ii) the product of (x) the sum of the amount of principal, interest and late fees to be redeemed and (y) the quotient determined by dividing (1) the greatest closing sale price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (A) the consummation of the applicable change of control and (B) the public announcement of such change of control and ending on the date the Note Investor delivers a change of control redemption notice, by (2) the Conversion Price; or, (iii) Redemption Variable Premium of the product of (x) the number of shares into which the Note (including all principal, interest and late fees) subject to such redemption may be converted multiplied by (y) the greatest closing sale price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (x) the consummation of the change of control and (y) the public announcement of such change of control and ending on the date the Investor delivers the change of control redemption notice; provided, however, that if no Cash Release Event has occurred on or prior to the applicable change of control redemption date, the principal amount used in calculating the applicable change of control redemption price on such change of control redemption date shall be decreased by the holder's pro rata portion of \$222,000.

If the Company issues options, convertible securities, warrants, stock, or similar securities to holders of its Common Stock, the holder of the Note shall have the right to acquire the same as if it had converted its Note.

The Investor is entitled to receive any dividends paid or distributions made to the holders of the Common Stock on an "as if converted" to Common Stock basis.

The Note contains a variety of covenants on the part of Company that are typical for transactions of this type, as well as the following covenants:

- the Note ranks senior to all other indebtedness of the Company, except that certain permitted indebtedness ranks *pari passu* with the Note;
- the Company will not incur other indebtedness, except for certain permitted indebtedness;
- the Company will not incur any liens, except for certain permitted liens;
- the Company will not, directly or indirectly, redeem or repay all or any portion of any permitted indebtedness if at the time such payment is due or is made or, after giving effect to such payment, an event constituting, or that with the passage of time and without being cured would constitute, an event of default has occurred and is continuing; and
- the Company will not redeem, repurchase or pay any dividend or distribution on its Common Stock or any other capital stock.

Warrant to Purchase Shares of Common Stock

The Warrant was issued upon closing and is immediately exercisable and, in the aggregate, entitles the Investor to timely purchase up to 889,512 shares of Common Stock. The Warrant has an initial exercise price of \$6.245 per share payable in cash, or while each share of Common Stock issuable upon exercise of the Warrants is not registered for resale with the SEC or such prospectus is not available for resale, by way of a “cashless exercise” or an “alternative cashless exercise,” at the option of the Investor. An “alternative cashless exercise” will provide the investor with 0.7 shares of Common Stock for each share that would have been issuable to the Investor upon such exercise had the Holder elected to pay the exercise price in cash. The Warrants will expire on the fifth anniversary of its date of issuance. The exercise price of the Warrant is subject to adjustment for a Stock Combination Event. If on the on the fifth trading day immediately following a Stock Combination Event, the exercise price then in effect on such fifth trading day (after giving effect to a proportional adjustment of the exercise price), is greater than the Event Market Price, then the conversion price shall be adjusted to the Event Market Price. Upon each such adjustment of the exercise price hereunder, the number of underlying shares of Common Stock shall, subject to specified exceptions, be increased (but in no event decreased) to the number of shares of Common Stock determined by multiplying the exercise price in effect immediately prior to such adjustment by the number of underlying shares of Common Stock acquirable upon exercise of the Warrant immediately prior to such adjustment and dividing the product thereof by the exercise price resulting from such adjustment.

The Warrant requires payments to be made by the Company for failure to deliver the shares of Common Stock issuable upon exercise. The Warrant also contains limitations on exercise, including the limitation that the Investor may not exercise its Warrant to the extent that upon exercise the Investor, together with its affiliates, would own in excess of 9.99% of the Company’s outstanding shares of Common Stock (subject to an increase or decrease, upon at least 61-days’ notice by the Investor to the Company, of up to 9.99%).

The exercise price of the Warrant and the number of shares issuable upon exercise of the Warrant will be subject to adjustments for stock splits, combinations or similar events. In addition, the exercise price of the Warrant will also be subject to anti-dilution adjustment which, subject to specified exceptions, in the event that the Company issues or is deemed to have issued certain securities at a price lower than the then applicable exercise price, immediately reduces the exercise price of the Warrant to equal the price at which the Company issues or is deemed to have issued its Common Stock.

The Company may not enter into a fundamental transaction unless the successor entity assumes the obligations of the Company under the Warrant. Upon the occurrence of a fundamental transaction involving a change of control, the holder of the Warrant will have the right to have the Warrant repurchased for a purchase price in cash equal to the Black-Scholes value (as calculated pursuant to the Warrants) of the then unexercised portion of the Warrant.

If the Company issues options, convertible securities, warrants, stock, or similar securities to holders of its Common Stock, the holder of the Warrant shall have the right to acquire the same as if it had exercised its Warrant.

The Investor is entitled to receive any dividends paid or distributions made to the holders of the Common Stock on an “as if exercised” to Common Stock basis.

The Company redeemed all of the Warrants related to the Investor for \$660,000 on October 23, 2023.

Registration Rights Agreement

Pursuant to the Registration Rights Agreement, the Company agreed to file a registration statement with the SEC covering the resale of 250% of the maximum number of shares of Common Stock underlying the Note and 150% of the maximum number of shares of Common Stock underlying the Warrant on or before the 45th calendar day following the closing of the Securities Purchase Agreement (the “Filing Deadline”) and cause such registration statement to be declared effective by the SEC by the earlier to occur of (x) ninety (90) calendar days after the closing date and (y) the fifth business day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such the registration statement will not be reviewed or will not be subject to further review (the “Effectiveness Deadline”). If (i) the registration statement is not filed by the Filing Deadline or declared effective by the Effectiveness Deadline, (ii) the sales of all of the securities required be included on such registration statement cannot be made pursuant to such registration statement, or (iii) the registration statement is not effective for any reason and either (x) the Company fails for any reason to satisfy the requirements of Rule 144(c)(1), or (y) the Company has ever been an issuer described in Rule 144(i)(1)(i) or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2), then the Company shall pay to the Investor in an amount equal to 2% of the aggregate purchase price paid by the Investor on the day of delinquency and each 30th day (pro-rated for periods of less than 30 days) of delinquency thereafter.

Pursuant to the Registration Rights Agreement, the Company must maintain the effectiveness of the registration statement from the effective date until the date on which all securities registered under the registration statement have been sold, or are otherwise able to be sold pursuant to Rule 144 without the requirement to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, subject to the Company's right to suspend or defer the use of the registration statement in certain events.

In connection with the full payoff of the Hudson Bay Notes the Registration Rights Agreement is no longer effective.

Security Documents

Pursuant to the Securities Purchase Agreement, the Company, and its subsidiaries, as applicable, provided guarantee agreements, a pledge agreement, a control agreement and all financing statements, pledges, assignments, opinions of counsel, and all other documents requested by the collateral agent to create, perfect, and continue perfected or to better perfect the collateral agent's security interest in and liens on all assets of the Company, and in order to fully consummate all of the transactions contemplated hereby and under the other transaction documents.

Placement Agent

Palladium Capital Group, LLC (the "Placement Agent") acted as placement agent for the Private Placement. For the acting as placement agent in the Private Placement, the Placement Agent is to receive (i) upon closing cash compensation of \$400,000 (8% of the gross proceeds to the Company) (ii) upon closing a warrant to purchase up to 71,161 shares of Common Stock (8% of the shares of Common Stock underlying the Note).

Forever 8 Acquisition

On September 14, 2022, the Company entered into a Membership Interest Purchase Agreement (the "Purchase Agreement") by and among the Company, Forever 8 and the Sellers pursuant to which Eightco was to acquire 100% of the issued and outstanding membership interests of Forever 8 (the "Membership Interests") from the Sellers (the "Acquisition"). On October 1, 2022, the closing of the acquisition occurred (the "Closing").

Pursuant to the Purchase Agreement, the Sellers received consideration consisting of (i) the Initial Base Preferred Units, subject to adjustments discussed below, (ii) the Promissory Notes, and (iii) the right to receive potential earnout amounts. In addition, \$4.6 million in cash was transferred to the Company in consideration for the Company's payment of certain of its obligations.

In the event that the VWAP of the Eightco Shares the later of (i) the 15 trading days immediately prior to the date the put right pursuant to Section 7(b) of the Amended Operating Agreement (as defined below) is exercisable and (ii) the 15 trading days following the Company's filing of its Annual Report on Form 10-K for the fiscal year ending December 31, 2022 is less than \$3.07, then Sellers shall be entitled to receive an additional number of Preferred Units ("Additional Base Preferred Units" and together with the Initial Base Preferred Units, the "Total Base Preferred Unit Consideration") such that the Total Base Preferred Unit Consideration multiplied by the Additional Base Preferred Unit VWAP equals \$21.5 million; provided that in no event shall more than 3,750,000 Additional Base Preferred Units be issued.

As indicated below, the Purchase Agreement provides that the Sellers are entitled to receive three potential earnout payments (the "Earnout Consideration"). The Earnout Consideration is payable to the Sellers in cash or, at Eightco's election, in up to 7,000,000 additional Preferred Units, upon the achievement of certain performance thresholds relating to cumulative collected revenues (each, an "Earn-Out Target").

If Eightco elects to issue additional Preferred Units upon the achievement of any Earn-Out Target and the VWAP of Eightco's common stock for the 15 trading days preceding the date that any Earn-Out Target is achieved (the "Earn-Out VWAP") is (A) with respect to the first Earn-Out Target, less than \$5.00, (B) with respect to the second Earn-Out Target, less than \$6.00 or (C) with respect to the third Earn-Out Target, less than \$5.00, then Sellers shall be entitled to receive an additional number of additional Preferred Units (the "True-up Units" and together with the additional Preferred Units, the "Total Additional Preferred Units") such that the Total Additional Preferred Units multiplied by the Earn-Out VWAP equals (x) \$15 million for the first Earn-Out Target, (y) \$12 million for the second Earn-Out Target and (z) \$10 million for the third Earn-Out Target; provided that in no event shall more than 4.5 million True-up Units be issued for the first Earn-Out Target, in no event shall more than 4.0 million True-up Units be issued for the Second Earn-Out Target and in no event shall more than 3.0 million True-up Units be issued for the Third Earn-Out Target.

In accordance with the Purchase Agreement, the Company's existing operating agreement was amended and restated. The amended and restated operating agreement (the "Operating Agreement") provides for, among other things, a put right for designated members (the "Preferred Members"). The Preferred Members (who are the Sellers) have a put right to cause Eightco to redeem certain Preferred Units, from time to time on or after the six-month anniversary following the Closing. Upon exercise of the put right, each Initial Base Preferred Unit (as defined in the Purchase Agreement) shall be exchanged for one Eightco share.

The Preferred Members have a put right, on terms and conditions set forth in Section 7.01 of the Operating Agreement, to cause Eightco to redeem the Preferred Units as follows:

(a) starting on the later of (i) six (6) months following the Closing and (ii) the Threshold Date (as defined in the Subordination Agreement), one (1) Eightco Share per Initial Base Preferred Unit being redeemed up to a maximum of 6,281,949 Initial Base Preferred Units;

(b) upon the satisfaction of (i) the receipt of Shareholder Approval on or prior to June 30, 2023, (ii) six (6) months following the Closing and (iii) the occurrence of the Threshold Date, one (1) Eightco Share per Initial Base Preferred Units that could not be converted due to the 6,281,949 unit limit in Section 7.01(a) of the Operating Agreement (such shares being an aggregate of 718,051 Initial Base Preferred Units being defined as the "Extra Initial Base Preferred Units") being redeemed, and one (1) OCTO Share per Additional Base Preferred Unit being redeemed;

(c) if Shareholder Approval is not obtained on or before June 30, 2023, subject to both (i) six (6) months following the Closing and (ii) the terms of the Subordination Agreement, a cash payment equal to the difference between \$3.07 minus the Additional Base Preferred Unit VWAP (as defined in the Purchase Agreement with it being subject to a \$2.00 floor) (such difference being the "Additional Base Preferred Unit Cash Catch Up Amount") with the Additional Base Preferred Unit Cash Catch Up Amount being multiplied by each Extra Initial Base Preferred Unit and each Additional Base Preferred Unit being redeemed;

(d) upon the satisfaction of (i) the receipt of Shareholder Approval on or prior to June 30, 2023, (ii) six (6) months following the time a Preferred Unit issued in connection with the first Earn-Out Target is earned under Section 1.04 of the Purchase Agreement and (iii) the occurrence of the Threshold Date, one (1) OCTO Share per Earnout One Unit being redeemed;

(e) if Shareholder Approval has not been obtained on or before June 30 2023, subject to both (i) six (6) months following the time an Earnout One Unit is earned under Section 1.04 of Purchase Agreement and (ii) the terms of the Subordination Agreement, a cash payment equal to the amount of \$15,000,000 divided by the number of Earnout One Units (the "Earnout One Unit Redemption Amount") with such Earnout One Unit Redemption Amount then being multiplied by each Earnout One Unit being redeemed;

(f) upon the satisfaction of (i) the receipt of Shareholder Approval on or prior to June 30, 2023, (ii) six (6) months following the time a Preferred Unit issued in connection with the second Earn-Out Target is earned under Section 1.04 of the Purchase Agreement and (iii) the occurrence of the Threshold Date, one (1) OCTO Share per Earnout Two Unit being redeemed;

(g) if Shareholder Approval has not been obtained on or before June 30 2023, subject to both (i) six (6) months following the time an Earnout Two Unit is earned under Section 1.04 of the Purchase Agreement and (ii) the terms of the Subordination Agreement, a cash payment equal to the amount of \$12,000,000 divided by the number of Earnout Two Units (the "Earnout Two Unit Redemption Amount") with such Earnout Two Unit Redemption Amount then being multiplied by each Earnout Two Unit being redeemed;

(h) upon the satisfaction of (i) the receipt of Shareholder Approval on or prior to June 30, 2023, (ii) six (6) months following the time a Preferred Unit issued in connection with the third Earn-Out Target is earned under Section 1.04 of the Purchase Agreement and (iii) the occurrence of the Threshold Date, one (1) OCTO Share per Earnout Three Unit being redeemed;

(i) if Shareholder Approval has not been obtained on or before June 30 2023, subject to both (i) six (6) months following the time an Earnout Three Unit is earned under Section 1.04 of the Purchase Agreement and (ii) the terms of the Subordination Agreement, a cash payment equal to the amount of \$10,000,000 divided by the number of Earnout Three Units (the “Earnout Three Unit Redemption Amount”) with such Earnout Three Unit Redemption Amount then being multiplied by each Earnout Three Unit being redeemed.

Pursuant to the Operating Agreement, Eightco unconditionally guaranteed the payment, when due, of obligations pursuant to the put right. Eightco shall satisfy these obligations to the Preferred Members either in cash or, if Shareholder Approval has been obtained, through the issuance and delivery to each Preferred Member of one OCTO Share per Preferred Unit held by each Preferred Member.

Upon the Closing, Eightco issued the Promissory Notes. The Promissory Notes bear interest at the rate per annum equal to (i) ten (10%) for the first twelve (12) months of the Promissory Notes and (ii) twelve percent (12%) thereafter until the maturity date of the Promissory Notes (the “Note Maturity Date”). The Note Maturity Date is the date that is the later of (i) 91 days after the Maturity Date (as defined in the Investor Note (as defined below)) of the Senior Secured Convertible Note issued by Eightco in favor of the Investor on May 5, 2022 (the “Investor Note”) and (ii) three years following the Closing. Subject to the terms of the Subordination Agreement, the Promissory Notes may be prepaid in full or in part at any time without premium or penalty, provided, however, that Eightco agrees that, subject to the terms of the Subordination Agreement which specifically permit such prepayments in accordance therewith, it will make prepayments on the Promissory Notes and all other Seller Notes (as defined in the Promissory Notes) in amounts equal to the pro rata amount of the outstanding principal amount of the Seller Notes as a whole, as follows: (i) after Section 4(d) of the Amendment Agreement is satisfied such that excess cash may be removed from the Control Account, 50% of the cash proceeds of warrants exercised for common stock of the Eightco until an aggregate amount of \$10 million in prepayments is made on the Seller Notes from such warrant exercises, (ii) 25% of all gross proceeds received by Eightco in any and all debt and equity capital raises by the Eightco (excluding warrant exercises) from and after the date of the Purchase Agreement and (iii) at least an aggregate of \$11.5 million (including any prepayments made pursuant to clauses (i-ii) above) within the first twelve (12) months of the issuance of the Promissory Notes.

So long as the Eightco has received Shareholder Approval and the Threshold Date has been reached, at any time commencing after the 12-month anniversary of the date of the Promissory Notes, the holder of the Promissory Notes may, in its sole and absolute discretion, convert all or part of the Promissory Notes into shares of common stock of the Eightco (the “Conversion Shares”) at a per share conversion price equal to the VWAP of a OCTO Share for the ten trading days immediately preceding the conversion notice being provided to the Eightco by the holder of the Promissory Notes (the “Conversion Price”), with the Conversion Price being subject to a conversion price floor of \$2.00 per share of common stock. If the VWAP is less than \$2.00 and the holder converts all or part of the Note at \$2.00 per share, then the holder shall be entitled to receive an additional Promissory Note with the same economic terms as the original Promissory Note in a principal amount equal to (A) \$2.00 minus the VWAP multiplied by (B) the number of Conversion Shares issued upon the conversion.

On March 27, 2024, the Company issued 120,974 shares of common stock which retired a portion of the Promissory Notes.

Series A Preferred Stock Designation and Dividend

On January 17, 2023, the board of directors of the Company declared a dividend of one one-thousandth of a share of Series A Preferred Stock, par value \$0.001 per share, for each outstanding share of the Company’s common stock, par value \$0.001 per share to stockholders of record at 5:00 p.m. Eastern Time on January 27, 2023 (the “Record Date”).

On January 19, 2023, the Company filed a Certificate of Designation with the Delaware Secretary of State for its Series A Preferred Stock. The number of shares designated is three hundred thousand (300,000). All shares of Series A Preferred Stock issued have been since redeemed.

Nasdaq Deficiency Notice

On September 29, 2023, the Company received a written notice (the “Notice”) from The Nasdaq Stock Market LLC (“Nasdaq”) that the Company is not in compliance with the minimum bid price requirement of \$1.00 per share set forth in Nasdaq Rules for continued listing on Nasdaq.

Based on the closing bid price of the Company’s listed securities for the 31 consecutive business days from August 16, 2023 to September 28, 2023, the Company no longer meets the minimum bid price requirement set forth in Listing Rule 5550(a)(2). The Notice is only a notification of deficiency, not of imminent delisting, and has no current effect on the listing or trading of the Company’s securities on the Nasdaq Capital Market.

In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company has been provided 180 calendar days, or until March 27, 2024, to regain compliance with Nasdaq Listing Rule 5550(a)(2). To regain compliance, the Company’s common shares must have a closing bid price of at least \$1.00 for a minimum of 10 consecutive business days.

On March 28, 2024, we received a letter from the Listing Qualifications Department of Nasdaq indicating that the Company has not regained compliance with Nasdaq Listing Rule 5810(c)(3)(A) and is not eligible for a second 180 day period. The Company has not regained compliance with the Rule and is not eligible for a second 180 day period. Specifically, the Company does not comply with the \$5,000,000 minimum stockholders’ equity initial listing requirement for The Nasdaq Capital Market.

Accordingly, unless the Company requests an appeal of this determination as described in further detail below, we have determined that the Company’s securities will be scheduled for delisting from The Nasdaq Capital Market and will be suspended at the opening of business on April 8, 2024, and a Form 25-NSE will be filed with the Securities and Exchange Commission (the “SEC”), which will remove the Company’s securities from listing and registration on The Nasdaq Stock Market.

We intend on appealing the Staff’s determination to a Hearings Panel (the “Panel”), pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series. A hearing request will stay the suspension of the Company’s securities and the filing of the Form 25-NSE pending the Panel’s decision.

Critical Accounting Policies and Significant Judgments and Estimates

Our management’s discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the consolidated financial statements as well as the reported expenses during the reporting periods. The accounting estimates that require our most significant, difficult and subjective judgments have an impact on revenue recognition, the determination of share-based compensation and financial instruments. We evaluate our estimates and judgments on an ongoing basis. Actual results may differ materially from these estimates under different assumptions or conditions.

Our significant accounting policies are more fully described in Note 2 to our consolidated financial statements included elsewhere in this Annual Report.

Principles of Consolidation

The consolidated financial statements include the accounts of Eightco Holdings Inc. and its wholly-owned, majority owned subsidiaries and consolidated variable interest entities.

Use of Estimates

Preparation of financial statements in conformity with U.S. GAAP requires management to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, together with amounts disclosed in the related notes to the financial statements.

The Company's significant estimates used in these financial statements include, but are not limited to, accounts receivable reserves, the valuation allowance related to the Company's deferred tax assets, the recoverability and useful lives of long-lived assets, debt conversion features, stock-based compensation, certain assumptions related to the valuation of the reserved shares and the assets acquired and liabilities assumed related to the Company's acquisitions. Certain of the Company's estimates could be affected by external conditions, including those unique to the Company and general economic conditions. It is reasonably possible that these external factors could have an effect on the Company's estimates and could cause actual results to differ from those estimates.

Long-Lived Assets

We record intangible assets based on their fair value on the date of acquisition. Intangible assets include the cost of developed technology, customer relationships, trademarks and identifiable media and influencer platforms. Intangible assets are amortized utilizing the straight-line method over their remaining economic useful lives. A significant percentage of the Company's long term assets are intangibles assets and therefore, estimates regarding the fair value of these assets have a material impact on our financial statements.

Goodwill

Goodwill is recorded for the difference between the fair value of the purchase consideration over the fair value of the net identifiable tangible and intangible assets acquired. We perform an impairment assessment of goodwill on an annual basis, or whenever impairment indicators exist. In the absence of any impairment indicators, goodwill is assessed for impairment during the fourth quarter of each fiscal year. Judgments regarding the existence of impairment indicators are based on market conditions and operational performance of the business.

We may assess our goodwill for impairment initially using a qualitative approach to determine whether it is more likely than not that the fair value of these assets is greater than their carrying value. When performing a qualitative test, we assess various factors including industry and market conditions, macroeconomic conditions and performance of our businesses. If the results of the qualitative assessment indicate that it is more likely than not that our goodwill and other indefinite-lived intangible assets are impaired, a quantitative impairment analysis would be performed to determine if impairment is required. We may also elect to perform a quantitative analysis of goodwill initially rather than using a qualitative approach.

The impairment testing for goodwill is performed at the reporting unit level. The valuation methods used in the quantitative fair value assessment, discounted cash flow and market multiples method, requires our management to make certain assumptions and estimates regarding certain industry trends and future profitability of our reporting units. If the fair value of a reporting unit exceeds the related carrying value, the reporting unit's goodwill is considered not to be impaired and no further testing is performed. If the carrying value of a reporting unit exceeds its fair value, an impairment loss is recorded for the difference. The valuation of goodwill is affected by, among other things, our business plan for the future and estimated results of future operations. Future events could cause us to conclude that impairment indicators exist, and, therefore, that goodwill may be impaired. Goodwill is a significant percentage of the Company's long term assets and therefore, estimates regarding the fair value of our goodwill have a material impact on our financial statements.

Warrant Accounting

The Company evaluates its financial instruments to determine if such instruments are derivatives or contain features that qualify as embedded derivatives in accordance with ASC Topic 815, "Derivatives and Hedging".

The Company classifies a warrant to purchase shares of its common stock as a liability on its consolidated balance sheets as this warrant is a free-standing financial instrument that may require the Company to transfer consideration upon exercise. Each warrant is initially recorded at fair value on date of grant using the Monte-Carlo simulation pricing model and net of issuance costs, and it is subsequently re-measured to fair value at each subsequent balance sheet date. Changes in fair value of the warrant are recognized as a component of other income (expense), net in the consolidated statement of operations and comprehensive loss. The Company will continue to adjust the liability for changes in fair value until the earlier of the exercise or expiration of the warrant. A significant percentage of the Company's long term liabilities are warrant liability and therefore, estimates regarding the fair value of our goodwill have a material impact on our financial statements.

Key Components of our Results of Operations

Revenues

We generate the majority of our revenues from inventory financing through our wholly owned subsidiary, Forever 8 Fund, LLC. In addition, we will generate revenues from the sale of corrugated custom packaging to a wide array of customers and the sales of Bitcoin mining equipment offered through CW Machines, LLC.

Cost of Revenues

Our cost of revenues includes inventory costs, materials and supplies costs, internal labor costs and related benefits, subcontractor costs, depreciation, overhead and shipping and handling costs. In addition, we incurred costs related to the purchase of Bitcoin mining equipment which was resold to customers.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist of selling, marketing, advertising, payroll, administrative, finance and professional expenses.

Interest Expense and Income, Net

Interest expense includes the cost of our borrowings under our debt arrangements. Interest income includes the interest earned under our notes receivable.

Other Income

Other income includes the gain on disposal of the building located in Washington, New Jersey.

Results of Operations

Year Ended December 31, 2023 versus the Year Ended December 31, 2022

The following table sets forth information comparing the components of net (loss) income for the years ended December 31, 2023 and 2022:

	Year Ended December 31,		Period over Period Change	
	2023	2022	\$	%
Revenues, net:				
Inventory Management Solutions	\$ 67,568,353	\$ 23,785,070	\$ 43,783,283	184.08%
Corrugated	7,729,131	8,035,709	(306,578)	-3.82%
Total	75,297,484	31,820,779	43,476,705	136.63%
Cost of revenues:				
Inventory Management Solutions	61,308,561	23,554,550	37,754,011	160.28%
Corrugated	5,496,462	6,072,319	(575,857)	-9.48%
Total	68,805,023	29,626,869	37,178,154	125.49%
Gross profit:				
Inventory Management Solutions	6,259,792	230,520	6,029,272	2,615.51%
Corrugated	2,232,669	1,963,390	269,279	13.72%
Total	8,492,461	2,193,910	6,298,551	287.09%
Operating expenses:				
Selling, general and administrative	16,335,651	16,401,414	(65,763)	-0.40%
Restructuring and severance	2,133,982	1,300,000	833,982	64.15%
Operating loss	(9,977,172)	(15,507,504)	5,530,332	-35.67%
Other (expense) income:				
Interest (expense)	(11,553,589)	(6,966,606)	(4,586,983)	65.84%
Loss on issuance of warrants	(46,928,815)	(25,318,519)	(21,610,296)	85.35%
Other income	139,162	173,572	(34,410)	-19.82%
Total other (expense) income, net	(58,343,242)	(32,111,553)	(26,231,689)	81.69%

(Loss) income before income taxes	<u>(68,320,414)</u>	<u>(47,619,057)</u>	<u>(20,701,357)</u>	<u>43.47%</u>
Income tax expense (benefit)	<u>-</u>	<u>(172,997)</u>	<u>172,997</u>	<u>-100.00%</u>
Net (loss)	\$ (68,320,414)	\$ (47,446,060)	\$ (20,874,354)	44.00%

Revenue

For the year ended December 31, 2023, revenues increased by \$43,476,705 or 136.63%, as compared to the year ended December 31, 2022. The increase was primarily the result of increased sales through the inventory management solutions business which resulted in revenues of \$67,568,353 for the year ended December 31, 2023 versus \$23,785,070 or the year ended December 31, 2022.

Cost of Revenues

For the year ended December 31, 2023, cost of revenues increased by \$37,178,154 or 125.49%, as compared to the year ended December 31, 2022. The increase was largely attributable to the increase in total revenues, increased costs of materials and production, as well as costs associated with the delivery and sale of goods related to the inventory management solutions business.

Gross Profit

For the year ended December 31, 2023, gross profit increased by \$6,298,551, or 287.09%, as compared to the year ended December 31, 2022. The increase was largely attributable to the increase in sales through the Forever 8 Fund.

Operating Expenses

Selling, general and administrative expenses were \$16,335,561 and \$16,401,414 for the years ended December 31, 2023 and 2022, respectively, representing a decrease of \$65,763, or 0.40%. The decrease was largely attributable to the decrease in salaries.

Restructuring and severance expenses were \$2,133,982 and \$1,300,000 for the years ended December 31, 2023 and 2022, respectively, representing an increase of \$833,982, or 64.15%. The increase was largely attributable to the headcount reductions.

Interest Expense

Interest expense was \$11,553,589 for the year ended December 31, 2023, versus \$6,966,606 for the year ended December 31, 2022. The increase in interest expense was largely attributable to the amortization of debt issuance costs related to borrowing under the convertible notes payable.

Total other (expense) income

Total other (expense) income was (\$58,343,242) for the year ended December 31, 2023 versus (\$32,111,553) for the year ended December 31, 2022. The increase in total other income (expense) was largely attributable to the loss on issuance of warrants and amortized interest expense.

Income tax expense

Income tax expense (benefit) was \$- for the year ended December 31, 2023, versus an income tax benefit of (\$172,997) for the year ended December 31, 2022, respectively. The decrease in income tax benefit for the year ended December 31, 2023 was a result of state taxes related to Ferguson Containers, Inc. for the year ended December 31, 2021.

Net (loss) income

Net loss was (\$68,320,414) for the year ended December 31, 2023, versus a net loss of (\$47,446,060) for the year ended December 31, 2022. The increase in net loss was largely attributable to the loss on issuance of warrants and amortized interest expense.

Liquidity and Capital Resources

Eightco Holdings Inc. has required funding from the Former Parent to fund its operations. In addition, other than those that relate to the Note Private Placement, which currently amount to approximately \$7.9 million, the Company has no significant debt obligations.

The Company currently has approximately \$500,000 in cash. The Company expects to need additional capital in order to fund its operations and increase revenues above current levels.

Cash Flows for the Years Ended December 31, 2023 and 2022

Since inception, Eightco Holdings Inc. and its subsidiaries have primarily used its available cash to fund its operations. The following table sets forth a summary of cash flows for the periods presented:

	For the Years Ended December 31,	
	2023	2022
Cash (used in) provided by:		
Operating Activities	\$ (6,399,079)	\$ (16,719,389)
Investing Activities	(295,150)	468,419
Financing Activities	6,361,634	20,920,207
Net increase in cash and restricted cash	<u>\$ (332,595)</u>	<u>\$ 4,669,237</u>

Operating Activities

Net cash (used in) operating activities was (\$6,399,079) during the year ended December 31, 2023, which consisted primarily of a net loss of \$68,320,414 offset by non-cash depreciation expense of \$3,044,531, amortization of debt issuance costs of \$8,109,078, impairment charges of 292,748, share based compensation of (\$358,937), loss on issuance of warrants of \$46,928,815 and changes in assets and liabilities of \$3,899,203. Net cash (used in) operating activities was (\$16,719,389) during the year ended December 31, 2022, which consisted primarily of a net loss of \$47,446,060 offset by non-cash depreciation expense of \$848,933, amortization of debt issuance costs of \$6,217,053, impairment charges of \$1,300,000, share based compensation of \$1,504,500, loss on issuance of warrants of \$25,318,519, bad debt expense of \$608,356 and changes in assets and liabilities of (\$5,070,690).

Investing Activities

Net cash provided by (used in) investing activities was (\$295,150) during the year ended December 31, 2023 compared to \$468,419 for the year ended December 31, 2022. The decrease is largely attributable to cash received from the acquisition of the Forever 8 Fund, LLC recognized in the year ended December 31, 2022.

Financing Activities

Net cash provided by financing activities was \$6,361,634 during the year ended December 31, 2023 compared to \$20,920,207 for the year ended December 31, 2022. This decrease was largely attributable to a decrease in proceeds from the issuance of common stock and borrowings under convertible notes as compared to the year ended December 31, 2022.

Eightco Holdings Inc. has required funding from the Former Parent to launch operations. Ferguson Containers has historically had positive cash flows from operations. Since inception, Ferguson Containers Inc.'s operations have been funded principally through its operations.

Going Concern

The financial statements have been prepared on a going concern basis which assumes the Company will be able to realize its assets and discharge its liabilities in the normal course of business for the foreseeable future. The Company has incurred a loss since Inception resulting in an accumulated deficit of \$113,278,588 as of December 31, 2023 and further losses are anticipated in the development of its business. Further, the Company has current liabilities in excess of current assets and has a stockholders' deficit at December 31, 2023. These factors raise substantial doubts about the Company's ability to continue as a going concern for a period of one year from the issuance of these financial statements.

As of December 31, 2023, the Company had approximately \$5.2 million in cash and cash equivalents as compared to \$5.6 million at December 31, 2022. The Company expects that its current cash and cash equivalents, approximately \$500,000 as of the date of this annual report, will not be sufficient to support its projected operating requirements for at least the next 12 months from this date.

The Company expects to need additional capital in order to increase revenues above current levels. Any additional equity financing, if available, may not be on favorable terms and would likely be significantly dilutive to the Company's current stockholders, and debt financing, if available, may involve restrictive covenants. The Company's ability to access capital when needed is not assured and, if not achieved on a timely basis, will likely have a materially adverse effect on our business, financial condition and results of operations. In 2023, the Company began reducing headcount to reduce the corporate overhead. The Company has continued to raise capital in 2024 and will continue to look to reduce costs in 2024.

Off-Balance Sheet Arrangements

We did not have, during the periods presented, and we do not currently have, any relationships with any organizations or financial partnerships, such as structured finance or special purpose entities, that would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, we are not required to provide this information.

ITEM 8. FINANCIAL STATEMENTS

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholder and Board of Directors of
Eightco Holdings Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Eightco Holdings Inc. (the “Company”) as of December 31, 2023 and 2022, the related consolidated statements of comprehensive loss, changes in stockholders’ deficit and cash flows for each of the two years in the period ended December 31, 2023 and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the consolidated financial statements, the Company has experienced net losses and negative cash flows from operations for the years ended December 31, 2023 and 2022, which raises substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 3. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

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 audits 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.

/s/ Morison Cogen LLP

We have served as the Company’s auditor since 2022.

Blue Bell, Pennsylvania
April 1, 2024

**EIGHTCO HOLDINGS INC.
CONSOLIDATED BALANCE SHEETS**

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 5,247,836	\$ 5,580,431
Restricted cash	-	1,000,000
Accounts receivable, net	1,873,950	1,263,552
Inventories	6,079,907	4,502,003
Prepaid expenses and other current assets	807,908	1,736,145
Total current assets	<u>14,009,601</u>	<u>14,082,131</u>
Property and equipment, net	744,559	1,321,042
Right of use assets – operating leases	-	68,600
Intangible assets, net	16,108,443	18,579,986
Goodwill	22,324,588	22,324,588
Loan held-for-investment	2,224,252	2,224,252
Total assets	<u>\$ 55,411,443</u>	<u>\$ 58,600,599</u>
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	\$ 2,135,596	\$ 2,174,034
Accounts payable – related parties	381,828	-
Accrued expenses and other current liabilities	747,775	2,624,518
Accrued expenses and other current liabilities – related parties	6,438,900	-
Current portion of operating lease liabilities	-	43,950
Current portion of convertible notes payable, net of debt discount of \$277,750	4,637,250	-
Convertible notes payable – related parties,	11,500,000	-
Line of credit	3,200,000	-
Line of credit – related parties	3,425,000	1,850,000
Due to Former Parent	6,977,193	7,226,700
Total current liabilities	<u>39,443,542</u>	<u>13,919,202</u>
Convertible notes payable, net of debt discount of \$0 and \$1,831,828, respectively	-	7,911,505
Convertible notes payable – related parties, net of debt discount of \$1,750,000 and \$2,750,000, respectively	14,133,700	24,750,000
Operating lease liabilities, net of current portion	-	26,564
Deferred tax liabilities	82,104	82,104
Contingent consideration	6,100,000	6,100,000
Total liabilities	<u>\$ 59,759,346</u>	<u>\$ 52,789,375</u>
Stockholders' equity (deficit):		
Common stock, \$0.001 par value, 500,000,000 shares authorized and 4,706,419 and 633,365 shares outstanding at December 31, 2023 and December 31, 2022, respectively	\$ 4,706	\$ 633
Additional paid-in capital	108,617,178	50,617,631
Accumulated deficit	(113,278,588)	(44,958,199)
Foreign currency translation	723,303	467,668
Total stockholders' (deficit) attributable to Eightco Holdings Inc.	<u>(3,933,401)</u>	<u>6,127,733</u>
Non-controlling interest	(414,502)	(316,509)
Total stockholders' equity (deficit)	<u>(4,347,903)</u>	<u>5,811,224</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 55,411,443</u>	<u>\$ 58,600,599</u>

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

EIGHTCO HOLDINGS INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
For the Years ended December 31, 2023 and 2022

	2023	2022
Revenues, net	75,297,484	\$ 31,820,779
Cost of revenues	66,805,023	29,626,869
Gross profit	8,492,461	2,193,910
Operating expenses:		
Selling, general and administrative expenses	16,335,651	16,401,414
Restructuring and severance	2,133,982	1,300,000
Total operating expenses	18,469,633	17,701,414
Operating loss	(9,977,172)	(15,507,504)
Non-operating income (expense):		
Interest expense	(11,553,589)	(6,966,606)
Loss on issuance of warrants	(46,928,815)	(25,318,519)
Other income	139,162	173,572
Total non-operating income (expense)	(58,343,242)	(32,111,553)
Net loss before income tax expense (benefit)	(68,320,414)	(47,619,057)
Income tax expense (benefit)	-	(172,997)
Net loss	(68,320,414)	(47,446,060)
Net loss attributable to non-controlling interest	(25)	(187,649)
Net loss attributable to Eightco Holdings Inc.	(68,320,389)	\$ (47,258,411)
Net loss per share:		
Net loss per share – basic and diluted	(23.63)	\$ (150.95)
Weight average number of common shares outstanding – basic and diluted	2,891,144	313,072

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

EIGHTCO HOLDINGS INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

	For the Years Ended December 31,	
	2023	2022
Net loss	\$ (68,320,414)	\$ (47,446,060)
Foreign currency translation – unrealized gain (loss)	255,635	467,688
Comprehensive loss	\$ (68,064,779)	\$ (46,978,372)

EIGHTCO HOLDINGS INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDER'S DEFICIT
For the Years ended December 31, 2023 and 2022

	Common Stock		Additional Paid in Capital	Non controlling Interest	Retained Earnings (Accumulated Deficit)	Accumulated Other Income	Total
	Shares	Amount					
Balances, January 1, 2023	633,365	\$ 633	\$ 50,617,631	\$ (316,509)	\$ (44,958,199)	\$ 467,668	\$ 5,811,224
Issuance of common stock to note holders	774,333	774	7,742,559	-	-	-	7,743,333
Issuance of common stock to investors	95,299	95	(95)	-	-	-	-
Exercise of warrants	2,544	2,544	12,256	-	-	-	14,800
Issuance of warrants	-	-	51,264,424	-	-	-	51,264,424
Repurchase of warrants from noteholder	-	-	(660,000)	-	-	-	(660,000)
Forfeiture of equity awards	-	-	(854,000)	-	-	-	(854,000)
Share-based compensation	658,954	659	494,404	-	-	-	495,063
Distributions to non-controlling interest	-	-	-	(97,968)	-	-	(97,968)
Foreign currency translation	-	-	-	-	-	255,635	255,635
Net loss	-	-	-	(25)	(68,320,389)	-	(68,320,414)
Balances, December 31, 2023	<u>4,706,419</u>	<u>\$ 4,706</u>	<u>\$ 108,617,178</u>	<u>\$ (414,502)</u>	<u>\$ (113,278,588)</u>	<u>\$ 723,303</u>	<u>\$ (4,347,903)</u>
Balances, January 1, 2022	200	\$ -	\$ -	\$ (128,860)	\$ 2,300,212	\$ -	\$ 2,171,352
Issuance of common stock to investors	30,000	30	11,999,970	-	-	-	12,000,000
Exercise of warrants	189,047	189	8,963	-	-	-	9,152
Issuance of common stock to shareholders upon distribution from Vinco Ventures, Inc.	376,105	376	(376)	-	-	-	-
Issuance of common stock to vendors	8,500	8	(8)	-	-	-	-
Issuance of common stock to note holders	30,000	30	1,589,970	-	-	-	1,590,000
Issuance of warrants to noteholders and placement agent	-	-	29,224,067	-	-	-	29,224,067
Offering costs	-	-	(960,000)	-	-	-	(960,000)
Repurchase of common stock from shareholders upon distribution	(487)	-	(49,455)	-	-	-	(49,455)
Share-based compensation	-	-	1,504,500	-	-	-	1,504,500
Shares reserved for future issuance of common stock to Sellers of Forever 8	-	-	7,300,000	-	-	-	7,300,000
Foreign currency translation	-	-	-	-	-	467,668	467,668
Net loss	-	-	-	(187,649)	(47,258,411)	-	(47,446,060)
Balances, December 31, 2022	<u>633,365</u>	<u>\$ 633</u>	<u>\$ 50,617,631</u>	<u>\$ (316,509)</u>	<u>\$ (44,958,199)</u>	<u>\$ 467,668</u>	<u>\$ 5,811,224</u>

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

EIGHTCO HOLDINGS INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years ended December 31, 2023 and 2022

	2023	2022
Cash flows from operating activities:		
Net loss	\$ (68,320,414)	\$ (47,446,060)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	3,044,531	848,933
Amortization of debt issuance costs	8,109,078	6,217,053
Impairments of long-lived assets	292,748	1,300,000
Loss on issuance of warrants	46,928,815	25,318,519
Share-based compensation	(358,937)	1,504,500
Provision for bad debts	-	608,356
Gain on disposal	5,897	-
Changes in assets and liabilities, net of acquisition:		
Accounts receivable	(610,398)	(443,312)
Inventories	(1,322,269)	3,541,152
Prepaid expenses and other current assets	928,237	5,462,405
Accounts payable	343,390	(25,775)
Accrued expenses and other current liabilities	4,560,243	(13,605,160)
Net cash used in operating activities	<u>(6,399,079)</u>	<u>(16,719,389)</u>
Cash flows from investing activities:		
Purchases of property and equipment	(117,387)	(105,703)
Purchase of license agreement	(358,763)	(158,594)
Cash from acquisition of Forever 8 Fund, LLC	-	732,716
Proceeds from sale of assets	181,000	-
Net cash (used in) provided by investing activities	<u>(295,150)</u>	<u>468,419</u>
Cash flows from financing activities:		
Net proceeds from issuance of common stock	14,798	11,529,152
Net borrowings under lines of credit	4,775,000	-
Net borrowings under convertible notes	3,360,000	7,000,000
Net repayments under notes payable – related parties	(249,507)	-
Repurchase of common stock from shareholders upon distribution	-	(49,455)
Due to (from) Former Parent	-	3,028,154
Fees paid to placement agent	-	(560,000)
Fees paid for financing costs	(664,389)	-
Repayments under notes payable – related parties	(116,300)	-
Repayments under notes payable	-	(27,644)
Repurchase of warrants from noteholders	(660,000)	-
Distributions	(97,968)	-
Net cash provided by financing activities	<u>6,361,634</u>	<u>20,920,207</u>
Net increase in cash and cash equivalents and restricted cash	(332,595)	4,669,237
Cash and cash equivalents and restricted cash, beginning of the year	5,580,431	911,194
Cash and cash equivalents and restricted cash, end of the year	\$ 5,247,836	\$ 5,580,431
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 444,781	\$ 203
Cash paid for income taxes	\$ -	\$ -
Right of use assets	\$ -	\$ 98,736
Operating lease liabilities	\$ -	\$ 98,736
Convertible shares under notes payable	\$ 7,743,333	\$ -
Issuance of warrants to noteholders and placement agent	\$ 4,335,611	\$ 3,905,458
Original issue discount	\$ 555,000	\$ 3,333,333
Accrued placement agent fees for equity placement	\$ -	\$ 480,000
Purchase of property, plant and equipment through settlement of portion of loan held-for-investment	\$ -	\$ 1,775,748
Fair value of preferred units of Forever 8 Fund, LLC issued in the acquisition reflected as additional paid in capital	\$ -	\$ 7,300,000
Convertible shares under notes payable – related party	\$ -	\$ 24,500,000
Accrual for contingent consideration for acquisition of Forever 8 Fund, LLC	\$ -	\$ 6,100,000
Issuance of common stock upon the distribution from Vinco Ventures, Inc.	\$ -	\$ 18,805

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

EIGHTCO HOLDINGS INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the Years ended December 31, 2023 and 2022

1. NATURE OF OPERATIONS AND BASIS OF PRESENTATION

As used herein, “Eightco” and the “Company” refer to Eightco Holdings Inc. and subsidiaries and/or where applicable, its management, a Delaware corporation originally incorporated on September 21, 2021 (date of inception) under the laws of the State of Nevada. On March 9, 2022, the Company converted to a Delaware corporation pursuant to a plan of conversion entered into with its former parent, Vinco Ventures, Inc. (“Vinco” or “Former Parent”). The Company operates in three main businesses: Forever 8 Inventory Cash Flow Solution, Web3 Business, and Packaging Business. Forever 8 Fund LLC (“Forever 8”), which focuses on purchasing inventory for e-commerce retailers, was acquired by the company on October 1, 2022, and is part of its Inventory Solution Business. The Company previously sold BTC mining equipment and developed an NFT character set under its Web3 Business but has no intention of continuing this business at this time. The Packaging Business manufactures and sells custom packaging for a wide variety of products and helps customers generate brand awareness and promote brand image through packaging. Prior to the Separation (as defined below), the Company was 100% owned by Vinco.

As of December 31, 2023, Eightco had three wholly-owned subsidiaries: Forever 8, Ferguson Containers, Inc. (“Ferguson Containers”) and BlockHiro, LLC. Ferguson Containers owns 100% of 8co Holdings Shared Services, LLC. Eightco owns 51% of CW Machines, LLC which is consolidated under the voting interest entity model. Under the voting interest entity model, control is presumed by the holder of a majority voting interest unless noncontrolling shareholders have substantive participating rights. Forever 8 owns 100% of Forever 8 UK, Ltd and Forever 8 Fund EU Holdings BV.

During 2021, the Former Parent announced it plans to spin-off (the “Separation”) certain of its businesses. The Former Parent has included Ferguson Containers as well as other subsidiaries of the Former Parent (the “Eightco Businesses”) as part of the spin-off. In anticipation of the Separation, the Former Parent contributed its assets and legal entities comprising the Eightco Businesses to facilitate the Separation. As a result of the Separation, the Company has become an independent, publicly traded company comprised of the Eightco Businesses on June 30, 2022.

On March 29, 2022, Ferguson Containers ownership was assigned by the Former Parent to the Company. This transaction between entities under common control resulted in a change in reporting entity and required retrospective combination of the entities for all periods presented, as if the combination had been in effect since the inception of common control. Accordingly, the condensed consolidated financial statements of the Company reflect the accounting of the combined acquired subsidiaries at historical carrying values, except that equity reflects the equity of Eightco.

Basis of Presentation.

The accompanying audited consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”). All significant intercompany transactions and balances have been eliminated in consolidation.

The Company is an emerging growth company as the term is used in The Jumpstart Our Business Startups Act, enacted on April 5, 2021 and has elected to comply with certain reduced public company reporting requirements.

EIGHTCO HOLDINGS INC.
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2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Reverse Stock Split. On April 3, 2023, the Company filed a Certificate of Amendment (the “Certificate of Amendment”) to the Company’s Certificate of Incorporation (the “Certificate of Incorporation”) with the Secretary of State of Delaware (1) to effect a 1-for-50 reverse stock split of the shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), either issued and outstanding or held by the Company as treasury stock (the “Reverse Stock Split”) and (2) to change the name of the Company from “Cryptyde, Inc.” to “Eightco Holdings Inc.” (the “Name Change”). Both the Reverse Stock Split and the Name Change were effective as of 4:05 p.m., New York time, on April 3, 2023. The Common Stock began trading on a reverse stock split-adjusted basis on the Nasdaq Capital Market on April 4, 2023. The trading symbol for the Common Stock following the Reverse Stock Split and the Name Change is “OCTO.” The new CUSIP number for the Common Stock following the Reverse Stock Split and the Name Change is 22890A203. All share, equity award, and per share amounts contained in the Consolidated Financial Statements have been adjusted to reflect the Reverse Stock Split for all prior periods presented.

Use of Estimates. The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. The Company’s significant estimates used in these consolidated financial statements include, but are not limited to, revenue recognition and the determination of the economic useful life of depreciable property and equipment. Certain of the Company’s estimates could be affected by external conditions, including those unique to the Company and general economic conditions. It is reasonably possible that these external factors could have an effect on the Company’s estimates and could cause actual results to differ from those estimates.

Business Combinations. For business combinations that meet the accounting definition of a business, the Company determines and allocates the purchase price of an acquired company to the tangible and intangible assets acquired, the liabilities assumed, and noncontrolling interest, if applicable, as of the date of acquisition at fair value. Fair value may be estimated using comparable market data, a discounted cash flow method, or a combination of the two. In the discounted cash flow method, estimated future cash flows are based on management’s expectations for the future. Revenues and costs of the acquired companies are included in the Company’s operating results from the date of acquisition. The Company uses its best estimates and assumptions as part of the purchase price allocation process to accurately value assets acquired and liabilities assumed at the acquisition date, and these estimates and assumptions are inherently uncertain and subject to refinement during the measurement period not to exceed one year from the acquisition date. As a result, any adjustment identified subsequent to the measurement period is included in operating results in the period in which the amount is determined (See Note 3 – Acquisitions).

Cash and Cash Equivalents. The Company considers all highly liquid, short-term investments with original maturities of three months or less when purchased to be cash equivalents.

Restricted Cash. The Company’s restricted cash, for the period ended December 31, 2022, consisted of cash that the Company was contractually obligated to maintain in accordance with the terms of its January 26, 2022 Secured Convertible Note.

Accounts Receivable. Accounts receivable are carried at their contractual amounts, less an estimated allowance for credit losses. Management estimates the allowance for credit losses using a loss-rate approach based on historical loss information, adjusted for management’s expectations about current and future economic conditions, as the basis to determine expected credit losses. Management exercises significant judgment in determining expected credit losses. Key inputs include macroeconomic factors, industry trends, the creditworthiness of counterparties, historical experience, the financial conditions of the customers, and the amount and age of past due accounts. Management believes that the composition of receivables at year-end is consistent with historical conditions as credit terms and practices and the client base has not changed significantly. Receivables are considered past due if full payment is not received by the contractual due date. Past due accounts are generally written off against the allowance for credit losses only after all collection attempts have been exhausted. The allowance for credit losses was \$67,350 and \$46,705 as of December 31, 2023 and 2022, respectively. There was one customer who represented 27% of total accounts receivable as of December 31, 2023.

Inventories. Inventory is recorded at the lower of cost or net realizable value on a first-in, first-out basis. The Company reduces the carrying value of inventories for those items that are potentially excess, obsolete, or slow moving based on changes in customer demand, technology developments, or other economic factors.

Property and Equipment. Property and equipment are stated at cost, net of accumulated depreciation and amortization, which is recorded commencing at the in-service date using the straight-line method over the estimated useful lives of the assets, as follows: 3 to 5 years for office equipment, 5 to 7 years for furniture and fixtures, 6 to 10 years for machinery and equipment, 10 to 15 years for building improvements, 5 years for software, 5 years for molds, 5 to 7 years for vehicles and 40 years for buildings. When fixed assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is included in the statements of comprehensive loss for the respective period. Minor additions and repairs are expensed in the period incurred. Major additions and repairs which extend the useful life of existing assets are capitalized and depreciated using the straight-line method over their remaining estimated useful lives.

Intangible Assets and Long-lived Assets. The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. The Company assesses the recoverability of its long-lived assets using undiscounted cash flows. If an asset is found to be impaired, the amount recognized for impairment is equal to the difference between the carrying value and the asset’s fair value. During the years ended December 31, 2023 and 2022, the Company recorded impairment charges to long lived assets in the amounts of \$292,748 and \$1,300,000, respectively. We record intangible assets based on their fair value on the date of acquisition. Intangible assets include the cost of developed technology, customer relationships, trademarks and tradenames. Intangible assets are amortized utilizing the straight-line method over their remaining economic useful lives, as follows: 10 years for developed technology, 7 years for customer relationships and 7 years for trademarks and tradenames. The Company reviews long-lived assets and intangible assets for potential impairment annually and when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. In the event the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss is recorded equal to the excess of the asset’s carrying value over its fair value. If an asset is determined to be impaired, the loss is measured based on quoted market prices in active markets, if available. If quoted market prices are not available, the estimate of fair value is based on various valuation techniques, including a discounted value of estimated future cash flows. In the event that management decides to no

longer allocate resources to an asset, an impairment loss equal to the remaining carrying value of the asset is recorded. The Company did not record any impairment charges related to intangibles assets during the years ended December 31, 2023 and 2022, respectively.

Goodwill. Goodwill is recorded for the difference between the fair value of the purchase consideration over the fair value of the net identifiable tangible and intangible assets acquired. We perform an impairment assessment of goodwill on an annual basis as of December 31st, or whenever impairment indicators exist. In the absence of any impairment indicators, goodwill is assessed for impairment during the fourth quarter of each fiscal year. Judgments regarding the existence of impairment indicators are based on market conditions and operational performance of the business. We may assess our goodwill for impairment initially using a qualitative approach to determine whether it is more likely than not that the fair value of these assets is greater than their carrying value. When performing a qualitative test, we assess various factors including industry and market conditions, macroeconomic conditions and performance of our businesses. If the results of the qualitative assessment indicate that it is more likely than not that our goodwill and other indefinite-lived intangible assets are impaired, a quantitative impairment analysis would be performed to determine if impairment is required. We may also elect to perform a quantitative analysis of goodwill initially rather than using a qualitative approach. The impairment testing for goodwill is performed at the reporting unit level. The valuation methods used in the quantitative fair value assessment, discounted cash flow and market multiples method, requires our management to make certain assumptions and estimates regarding certain industry trends and future profitability of our reporting units. If the fair value of a reporting unit exceeds the related carrying value, the reporting unit's goodwill is considered not to be impaired and no further testing is performed. If the carrying value of a reporting unit exceeds its fair value, an impairment loss is recorded for the difference. The valuation of goodwill is affected by, among other things, the Company's business plan for the future and estimated results of future operations. Future events could cause the Company to conclude that impairment indicators exist, and, therefore, that goodwill may be impaired.

EIGHTCO HOLDINGS INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the Years ended December 31, 2023 and 2022

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Contingent Liabilities. The Company, from time to time, may be involved in certain legal proceedings. Based upon consultation with outside counsel handling its defense in these matters and the Company's analysis of potential outcomes, if the Company determines that a loss arising from such matters is probable and can be reasonably estimated, an estimate of the contingent liability is recorded in its condensed consolidated financial statements. If only a range of estimated loss can be determined, an amount within the range that, based on estimates, assumptions and judgments, reflects the most likely outcome, is recorded as a contingent liability in the condensed consolidated financial statements. In situations where none of the estimates within the estimated range is a better estimate of probable loss than any other amount, the Company records the low end of the range. Any such accrual would be charged to expense in the appropriate period. Litigation expenses for these types of contingencies are recognized in the period in which the litigation services were provided.

Revenue Recognition. In accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 606, Revenue from Contracts with Customers, the Company recognizes revenue when it satisfies performance obligations, by transferring promised goods or services to customers, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for fulfilling those performance obligations. Revenue for product sales is recognized upon receipt by the customer. There are no contract assets or contract liabilities and therefore no unsatisfied performance obligations. One customer represented 71% of total revenues for the year ended December 31, 2023.

Disaggregation of Revenue. The Company's primary revenue streams include the sale of consumer goods through our inventory management solutions business and the sale of corrugated packaging materials. There are no other material operations that were separately disaggregated for segment purposes.

Cost of Revenues. Cost of revenues includes freight charges, purchasing and receiving costs, depreciation and inspection costs.

Comprehensive income. The Company follows Accounting Standards Codification ("ASC") 220 in reporting comprehensive income. Comprehensive income is a more inclusive financial reporting methodology that includes disclosure of certain financial information that historically has not been recognized in the calculation of net income. Since the Company has no items of other comprehensive loss, comprehensive loss is equal to net loss.

Foreign Currency Transactions and Translation. Eightco's functional currency is the United States Dollar ("USD") and the Forever 8 functional currency in which it operates is the Euro ("EUR").

For the purpose of presenting these condensed consolidated financial statements the reporting currency is USD. Forever 8 assets and liabilities are expressed in USDs at the exchange rate on the balance sheet date, equity accounts are translated at historical rates, and income and expense items are translated at the weighted average exchange rate during the period. The resulting translation adjustments are reported under accumulated other comprehensive income in the stockholders' equity section of the balance sheets.

Transactions in currencies other than the entity's functional currency are recorded at the rates of exchange prevailing on the date of the transaction. At the end of each reporting period, monetary items denominated in foreign currencies are translated at the rates prevailing at the end of the reporting periods. Exchange differences arising on the settlement of monetary items and on translation of monetary items at period-end are included in statement of comprehensive loss.

Exchange rate used for the translation as follows:

USD to EUR – 1 USD to .9009 EUR's.
USD to GBP – 1 USD to .7874 GBP's.

Earnings Per Share. The Company follows ASC 260 when reporting Earnings Per Share resulting in the presentation of basic and diluted earnings per share. Basic net (loss) income per common share is computed by dividing net (loss) income by the weighted average number of vested common shares outstanding during the period. Diluted net income per common share is computed by dividing net income by the weighted average number vested of common shares, plus the net impact of common shares (computed using the treasury stock method), if dilutive, resulting from the exercise of dilutive securities. In periods when losses are reported, the weighted-average number of common shares outstanding excludes common stock equivalents because their inclusion would be anti-dilutive. As of December 31, 2023 and 2022, the Company excluded the common stock equivalents summarized below, which entitle the holders thereof to ultimately acquire shares of common stock, from its calculation of earnings per share, as their effect would have been anti-dilutive.

	December 31, 2023	December 31, 2022
Warrants for Former Parent warrant holders	-	15,356
Convertible shares under notes payable	2,445,153	194,867
Warrants for noteholders and placement agent	221,084	720,000
Warrants for equity investors and placement agent	728,000	259,200
Shares to be issued to employees and directors	-	23,250
Shares reserved for issuance for preferred units of Forever 8 Fund, LLC	215,000	210,000
Convertible notes payable issued in acquisition of Forever 8 Fund, LLC	273,837	275,000
Shares reserved for contingent consideration for acquisition of Forever 8 Fund, LLC	370,000	140,000
Total common stock equivalents	4,253,074	1,837,673

EIGHTCO HOLDINGS INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Deferred Financing Costs. Deferred financing costs include debt discounts and debt issuance costs related to a recognized debt liability and are presented in the balance sheet as a direct deduction from the carrying value of the debt liability. Amortization of deferred financing costs are included as a component of interest expense. Deferred financing costs are amortized using the straight-line method over the term of the recognized debt liability which approximates the effective interest method.

Income Taxes. The Company accounts for income taxes under the provisions of the FASB ASC Topic 740 “Income Taxes” (“ASC Topic 740”). The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of items that have been included or excluded in the condensed consolidated financial statements or tax returns. Deferred tax assets and liabilities are determined on the basis of the difference between the tax basis of assets and liabilities and their respective financial reporting amounts (“temporary differences”) at enacted tax rates in effect for the years in which the temporary differences are expected to reverse. The Company utilizes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. Management has evaluated and concluded that there were no material uncertain tax positions requiring recognition in the Company’s condensed consolidated financial statements as of December 31, 2023 and 2022. The Company does not expect any significant changes in its unrecognized tax benefits within twelve months of the reporting date. The Company’s policy is to classify assessments, if any, for tax related interest as interest expense and penalties as general and administrative expenses in the consolidated statements of comprehensive income. The Company is subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

Fair Value Measurements. The Company measures the fair value of financial assets and liabilities based on the guidance of ASC 820 “Fair Value Measurements and Disclosures” (“ASC 820”) which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements.

ASC 820 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 also establishes a fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. ASC 820 describes three levels of inputs that may be used to measure fair value:

- Level 1 — quoted prices in active markets for identical assets or liabilities
- Level 2 — quoted prices for similar assets and liabilities in active markets or inputs that are observable
- Level 3 — inputs that are unobservable (for example, cash flow modeling inputs based on assumptions)

The carrying amounts of the Company’s financial instruments, such as cash, accounts receivable, accounts payable and other current liabilities approximate fair values due to the short-term nature of these instruments. The Company’s long-term debt consists of \$31,815,804. The estimated fair value of this debt approximates the carrying value of these instruments, due to the interest rates on this debt approximating current market interest rates.

Concentration of Credit Risks. Financial instruments that potentially subject the Company to concentrations of credit risk are cash equivalents and accounts receivable. Cash and cash equivalents are invested in deposits with certain financial institutions and may, at times, exceed federally insured limits. The Company has not experienced any significant losses on its deposits of cash and cash equivalents. In regard to trade receivables, the Company performs ongoing evaluations of its customers’ financial condition as well as general economic conditions and, generally, requires no collateral from its customers. On December 31, 2023, amount due from one customer totaled approximately 21% of accounts receivable.

Leases. In February 2016, the FASB issued Accounting Standards Update (“ASU”) 2016-02, *Leases* (Topic 842). This ASU requires a lessee to recognize a right-of-use asset and a lease liability under most operating leases in its balance sheet. The ASU is effective for annual and interim periods beginning after December 15, 2021. Early adoption is permitted. The Company has adopted ASU 2016-02 as of January 1, 2022. The adoption of the standard did not have a material impact on the balance sheet. As of April 26, 2022, the date the Company assumed the lease, the operating lease right of use asset and operating lease liability amounted to \$98,736 with no cumulative-effect adjustment.

Recent Accounting Pronouncements. In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses* (Topic 326), *Measurement of Credit Losses on Financial Instruments*, as modified by FASB ASU No. 2019-10 and other subsequently issued related ASUs. The amendments in this Update affect loans, debt securities, trade receivables, and any other financial assets that have the contractual right to receive cash. The ASU requires an entity to recognize expected credit losses rather than incurred losses for financial assets. The amendments in this Update are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company adopted this new guidance effective January 1, 2023 utilizing the modified retrospective transition method. The adoption of this standard did not have a material impact on the Company’s financial statements, but did change how the allowance for credit losses is determined.

Segment Reporting. The Company uses “the management approach” in determining reportable operating segments. The management approach considers the internal organization and reporting used by the Company’s chief operating decision maker for making operating decisions and assessing performance as the source for determining the Company’s reportable segments. The Company’s chief operating decision maker is the Chairman and Chief Executive Officer (“CEO”) of the Company, who reviews operating results to make decisions about allocating resources and assessing performance for the entire Company. The Company’s primary revenue streams include inventory management solutions and the sale of corrugated packaging materials. Therefore, the Company only identifies two reportable operating segments.

EIGHTCO HOLDINGS INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the Years ended December 31, 2023 and 2022

3. GOING CONCERN

The financial statements have been prepared on a going concern basis which assumes the Company will be able to realize its assets and discharge its liabilities in the normal course of business for the foreseeable future. The Company has incurred a loss since Inception resulting in an accumulated deficit of 113,278,588 as of December 31, 2023 and further losses are anticipated in the development of its business. Further, the Company has current liabilities in excess of current assets and has a stockholders' deficit at December 31, 2023. These factors raise substantial doubts about the Company's ability to continue as a going concern for a period of one year from the issuance of these financial statements.

As of December 31, 2023, the Company had approximately \$5.2 million in cash and cash equivalents as compared to \$5.6 million at December 31, 2022. The Company expects that its current cash and cash equivalents, approximately \$500,000 as of the date of this annual report, will not be sufficient to support its projected operating requirements for at least the next 12 months from this date.

The Company expects to need additional capital in order to increase revenues above current levels. Any additional equity financing, if available, may not be on favorable terms and would likely be significantly dilutive to the Company's current stockholders, and debt financing, if available, may involve restrictive covenants. The Company's ability to access capital when needed is not assured and, if not achieved on a timely basis, will likely have a materially adverse effect on our business, financial condition and results of operations. In 2023, the Company began reducing headcount to reduce the corporate overhead. The Company has continued to raise capital in 2024 and will continue to look to reduce costs in 2024.

4. ACQUISITIONS

Effective October 1, 2022, the Company acquired 100% of the issued and outstanding membership interests of Forever 8.

Pursuant to the Purchase Agreement, the Sellers received consideration consisting of (i) an aggregate of 215,000 non-voting preferred membership units of Forever 8 (the "Initial Base Preferred Units"), subject to adjustments discussed below, (ii) convertible promissory notes in an aggregate principal amount of \$27.5 million (the "Promissory Notes"), and (iii) the right to receive potential earnout amounts as discussed below. The following table summarizes the aggregate preliminary purchase price consideration paid to acquire Forever 8 Fund, LLC:

	October 1, 2022
215,000 non-voting preferred membership units of Forever 8	\$ 7,300,000
Convertible promissory notes in an aggregate principal amount of \$27.5 million	24,500,000
Contingent consideration	6,100,000
Total purchase price	\$ 37,900,000

The Company believes that this combination will further strengthen its future growth opportunities. The Company accounted for this acquisition as a business combination under the acquisition method of accounting. The following table summarizes the preliminary purchase price allocation of fair values of the assets acquired and liabilities assumed at the date of acquisition:

	October 1, 2022
Cash and cash equivalents	\$ 732,716
Accounts receivable, net	561,569
Inventories	7,464,823
Prepaid expenses and other assets	116,857
Property and equipment	2,146
Intangible assets	19,000,000
Goodwill	22,324,588
Total assets acquired	50,202,699
Accounts payable and accrued expenses	10,452,699
Debt	1,850,000
Earnout	-
Total liabilities assumed	12,302,699
Total	\$ 37,900,000

The Company anticipates the goodwill will be tax deductible.

5. ACCOUNTS RECEIVABLE

Accounts receivable consist of the following at December 31, 2023 and December 31, 2022:

	December 31, 2023	December 31, 2022
Trade accounts receivable	\$ 1,941,300	\$ 1,871,908
Less: allowance for credit losses	(67,350)	(608,356)
Total accounts receivable	\$ 1,873,950	\$ 1,263,552

6. INVENTORIES

Inventories consist of the following at December 31, 2023 and December 31, 2022:

	<u>December 31,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
Raw materials	\$ 22,116	\$ 27,922
Finished goods	6,657,791	5,174,081
Reserve for obsolescence	(600,000)	(700,000)
Total inventories	<u>\$ 6,079,907</u>	<u>\$ 4,502,003</u>

7. OTHER CURRENT ASSETS

Other current assets consist of the following at December 31, 2023 and December 31, 2022:

	<u>December 31,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
Advances for inventory purchases	\$ 517,228	\$ 630,967
Prepaid insurance	91,075	735,934
Deposits	4,994	90,578
Prepaid software deposit	-	242,200
Due from customer	106,846	-
Other	87,765	36,466
Total other current assets	<u>\$ 807,908</u>	<u>\$ 1,736,145</u>

8. LOAN HELD-FOR-INVESTMENT, RELATED PARTY

Loan held-for-investment, related party, represents a senior secured promissory note (“Note”) from Wattum Management Inc., a non-controlling member of CW Machines, LLC, a related party. The note bears interest of 5% per annum and matures on October 12, 2026 with the entire outstanding principal and accrued interest due at maturity date. The Note is secured by assets of Wattum Management, Inc. Expected credit losses for loan held for investment are based on management’s assessment of credit risk associated with the loan, including consideration of factors such as the financial condition of the entity, historical payment behavior, and any collateral or guarantees provided. The Company determined it was not necessary to record an allowance for credit losses as of December 31, 2023 and 2022.

At December 31, 2023 and 2022, the principal amount of the loan held for investment was \$2,224,252, respectively.

EIGHTCO HOLDINGS INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the Years ended December 31, 2023 and 2022

9. PROPERTY AND EQUIPMENT, NET

Property and equipment consist of the following at December 31, 2023 and December 31, 2022:

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Land	\$ -	\$ -
Building and building improvements	781,985	781,985
Equipment and machinery	4,752,663	5,146,029
Furniture and fixtures	284,049	280,811
Vehicles	585,854	572,927
	<u>6,404,551</u>	<u>6,781,752</u>
Less: accumulated depreciation	(5,659,992)	(5,460,710)
Total property and equipment, net	<u>\$ 744,559</u>	<u>\$ 1,321,042</u>

Depreciation and amortization expense was \$199,282 and \$270,325 for the years ended December 31, 2023 and 2022, respectively. The Company recorded an impairment charge of \$292,748 and \$1,300,000 for the years ended December 31, 2023 and 2022, respectively.

10. INTANGIBLE ASSETS, NET

Intangible assets consist of the following at December 31, 2023 and December 31, 2022:

	<u>Useful Lives</u>	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Customer relationships	7 years	\$ 7,100,000	\$ 7,100,000
Developed technology	10 years	10,219,775	9,858,594
Trademarks and tradenames	7 years	2,200,000	2,200,000
		<u>19,519,775</u>	<u>19,158,594</u>
Less: accumulated amortization		(3,411,332)	(578,608)
Total intangible assets, net		<u>\$ 16,108,443</u>	<u>\$ 18,579,986</u>

Amortization expense was \$2,832,724 and \$578,608 for the years ended December 31, 2023 and 2022, respectively.

Amortization expense for the next five years is as follows:

For the years ending December 31,	
2024	\$ 2,314,431
2025	2,314,431
2026	2,314,431
2027	2,314,431
2028	2,314,431
Thereafter	<u>4,536,288</u>
	<u>\$ 16,108,443</u>

11. GOODWILL

The changes in the carrying amount of goodwill for the period from January 1, 2023 through December 31, 2023 consisted of the following:

Balance, January 1, 2023	\$ 22,324,588
Additions and adjustments	-
Balance, December 31, 2023	<u>\$ 22,324,588</u>

EIGHTCO HOLDINGS INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the Years ended December 31, 2023 and 2022

12. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following at December 31, 2023 and December 31, 2022:

	December 31, 2023	December 31, 2022
Customer deposits	\$ -	\$ 83,504
Payroll and related benefits	1,831,499	386,781
Professional fees	-	280,000
Accrued settlement liability for equity holders of Forever 8	206,779	469,775
Accrued interest	3,741,155	825,872
Accrued rent	1,050,000	525,000
Other	357,242	53,586
Total accrued expenses and other current liabilities	<u>\$ 7,186,675</u>	<u>\$ 2,624,518</u>

13. DUE TO AND FROM FORMER PARENT

As of December 31, 2023 and 2022, due to Former Parent consists of net amounts due to Vinco related to management fees and borrowings for working capital and financing needs of Eightco Holdings Inc. as well as other operating expenses that were paid for on behalf of one to the other. As of December 31, 2023 and 2022, the net amount due to Former Parent was \$6,977,193 and \$7,226,700, respectively.

EIGHTCO HOLDINGS INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the Years ended December 31, 2023 and 2022

14. LINES OF CREDIT

Principal due under the lines of credit was as follows at December 31, 2023 and December 31, 2022:

	December 31, 2023	December 31, 2022
Lines of credit, 15%-18%	\$ 3,200,000	\$ -

Interest expense under lines of credit was \$227,630 and \$- for the years ended December 31, 2023 and 2022, respectively.

15. LINES OF CREDIT – RELATED PARTIES

Principal due under the lines of credit – related parties was as follows at December 31, 2023 and December 31, 2022:

	December 31, 2023	December 31, 2022
Lines of credit, 15%-18%	\$ 3,425,000	\$ 1,850,000

Interest expense under lines of credit – related parties was \$339,987 and \$69,375 for the years ended December 31, 2023 and 2022, respectively.

16. CONVERTIBLE NOTE PAYABLE

Principal due under the convertible note payable was as follows at December 31, 2023 and December 31, 2022:

	December 31, 2023	December 31, 2022
Note payable, 0%	4,637,250	9,743,333
Less: debt discount	-	(1,831,828)
Note payable, net	\$ 4,637,250	\$ 7,911,505

Interest expense under convertible notes payable was \$7,109,078 and \$5,697,149, of which \$7,109,078 and \$5,697,149 was related to amortization of the debt discount, for the years ended December 31, 2023 and 2022, respectively.

March 2023 Offering

On March 15, 2023, Eightco entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with Hudson Bay (the “Investor”) for the issuance and sale of a Senior Secured Convertible Note with an initial principal amount of \$5,555,000 (the “Note”) at a conversion price of \$6.245 per share of Common Stock, and a warrant (the “Warrant”) to purchase up to 889,512 shares of Common Stock with an initial exercise price of \$6.245 per share of Common Stock (the “Private Placement”). The purchase price of the Note was \$5,000,000 with an original issue discount of \$555,000.

In connection with the Private Placement, the Company entered into a Registration Rights Agreement (the “Registration Rights Agreement”), a Security and Pledge Agreement (the “Pledge Agreement”), and various ancillary certificates, disclosure schedules and exhibits in support thereof prior to the closing of the Securities Purchase Agreement.

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16. CONVERTIBLE NOTE PAYABLE (continued)

Securities Purchase Agreement

The Securities Purchase Agreement provides for the purchase by Hudson Bay and the sale by the Company of the March 2023 Note and the March 2023 Warrant. The Securities Purchase Agreement contains representations and warranties of the Company and Hudson Bay that are typical for transactions of this type. The representations and warranties made by the Company in the Securities Purchase Agreement are qualified by reference to certain exceptions contained in disclosure schedules delivered to Hudson Bay. Accordingly, the representations and warranties contained in the Securities Purchase Agreement should not be relied upon by third parties who have not reviewed those disclosure schedules and the documentation surrounding the transaction as a whole.

The Securities Purchase Agreement closed upon the satisfaction of certain conditions of Hudson Bay and the Company that are typical for transactions of this type, as well certain other condition including the following:

- the Company delivered to Hudson Bay a lock up agreement (the “Lock-Up Agreement”), executed by each of the parties identified in the Securities Purchase Agreement;
- the Company received stockholder approval of a resolution to increase the number of authorized shares of the Company, and filed with the Delaware Secretary of State a Certificate of Amendment to the Company’s Certificate of Incorporation causing the increase in the amount of authorized shares of the Company; and
- the Company, Hudson Bay and the certain creditors of the Company amended that certain Subordination Agreement, dated as of September 13, 2022, by and among the Company, the Investor and certain persons identified in that Subordination Agreement (the “Subordination Agreement Amendment”).

The Securities Purchase Agreement also obligates the Company to indemnify Hudson Bay for certain losses resulting from (1) any misrepresentation or breach of any representation or warranty made by the Company or any subsidiary of the Company, (2) any breach of any obligation of the Company or, any subsidiary of the Company, of the Securities Purchase Agreement or any agreements and instruments entered into or connection with the Securities Purchase Agreement and (3) certain third party claims.

Senior Secured Convertible Note

The Company issued the Note upon the closing. The entire outstanding principal balance and any outstanding fees or interest is due and payable in full on January 15, 2024 (“Maturity Date”). The Note does not bear interest, provided, however, that the March 2023 Note will bear interest at 18% per annum upon the occurrence of an event of default (as described below).

The Maturity Date may be extended at the sole option of Hudson Bay for so long as certain events of default is continuing or for so long as an event is continuing that if not cured and with the passage of time would result in an event of default.

The March 2023 Note is convertible at the option of Hudson Bay into shares of Common Stock at a conversion price of \$6.245 per share, subject to adjustment for stock splits, combinations or similar events (each a “Stock Combination Event”). If on the on the fifth trading day immediately following a Stock Combination Event, the conversion price then in effect on such fifth trading day (after giving effect to a proportional adjustment of the conversion price), is greater than the lowest weighted average price of the Common Stock during the twenty consecutive trading day period ending and including the trading day immediately preceding the fifth trading day after such Stock Combination Event (the “Event Market Price”), then the conversion price shall be adjusted to the Event Market Price.

The March 2023 Note contains certain limitations on conversion. It provides that no conversion may be made if, after giving effect to the conversion, Hudson Bay would own in excess of 9.99% of the Company’s outstanding shares of Common Stock. This percentage may be increased or decreased to a percentage not to exceed 9.99%, at the option of Hudson Bay, except any increase will not be effective until 61-days’ prior notice to the Company.

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16. CONVERTIBLE NOTE PAYABLE (continued)

The conversion price of the March 2023 Note will be subject to adjustments for stock splits, combinations or similar events. In addition, the conversion price of the March 2023 Note will also be subject to anti-dilution adjustment which, subject to specified exceptions, in the event that the Company issues or is deemed to have issued certain securities at a price lower than the then applicable conversion price, immediately reduces the conversion price of the March 2023 Note to equal the price at which the Company issues or is deemed to have issued its Common Stock.

The March 2023 Note imposes penalties on the Company for any failure to timely deliver any shares of its Common Stock issuable upon conversion.

The March 2023 Note contains events of default that are typical for transactions of this type, as well as the following events:

- the failure of any registration statement required by the Registration Rights Agreement to be filed within five trading days after the date required by the Registration Rights Agreement or the failure of any such registration statement to become effective within five trading days after the date required by the Registration Rights Agreement;
- the lapse or unavailability of any registration statement required by the Registration Rights Agreement for more than 5 consecutive trading days or more than an aggregate of 10 trading days in any 365-day period (other than certain allowable grace periods);
- the suspension from trading or failure of the Common Stock to be listed for trading on an eligible market for more than 2 consecutive trading days or more than an aggregate of 5 trading days in any 365-day period;
- the failure of the Company to issue shares upon conversion of the Note for more than 2 trading days after the relevant conversion date or a notice of the Company's intention not to comply with a request for conversion;
- the failure for 2 consecutive trading days to have reserved for issuance 250% of the full number of shares issuable upon conversion in accordance to the terms of the March 2023 Note;
- the failure for 2 trading days to pay Hudson Bay principal, interest, late charges or other amounts when and as due under the March 2023 Note;
- the occurrence of any default under, redemption of or acceleration prior to maturity of any indebtedness of the Company or a subsidiary;
- the invalidity of any material provision of the Security Documents (defined below) or if the enforceability of validity of any material provision of the Security Documents is contested by the Company;
- the failure of the Security Documents to perfect or maintain Hudson Bay's first priority security interest; and
- the failure to comply with certain covenants of the March 2023 Note.

If there is an event of default, then Hudson Bay has the right to request redemption of all or any portion of the March 2023 Note, at 130% of the sum of the outstanding principal, interest and late fees to be redeemed, provided that if certain conditions specified in the March 2023 Note are not satisfied, then Hudson Bay has the right to request redemption of all or any portion of the March 2023 Note, at 130% of the greater of (i) the sum of the outstanding principal, interest and late fees to be redeemed and (ii) the product of (a) the number of shares into which the March 2023 Note (including all principal, interest and late fees) subject to redemption may be converted and (b) the greatest closing sale price for the Common Stock beginning on the date immediately preceding the event of default and ending on the date the Company makes the entire payment required to be made upon the redemption provided, however, that if no Cash Release Event (as defined in the March 2023 Note) has occurred on or prior to the applicable date of default redemption, the principal amount used in calculating the applicable event of default redemption price on such event of default redemption date shall be decreased by the holder's pro rata portion.

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16. CONVERTIBLE NOTE PAYABLE (continued)

The March 2023 Note prohibits the Company from entering into certain transactions involving a change of control, unless the successor entity assumes in writing all of the obligations of the Company under the March 2023 Note and the other transaction documents. In the event of such a transaction, Hudson Bay will have the right to request redemption of the Note, at Redemption Variable Premium (as defined in the March 2023 Note) of the greater of (i) of the sum of the amount of principal, interest and late fees to be redeemed; and (ii) the product of (x) the sum of the amount of principal, interest and late fees to be redeemed and (y) the quotient determined by dividing (1) the greatest closing sale price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (A) the consummation of the applicable change of control and (B) the public announcement of such change of control and ending on the date Hudson Bay delivers a change of control redemption notice, by (2) the Conversion Price; or; (iii) Redemption Variable Premium of the product of (x) the number of shares into which the March 2023 Note (including all principal, interest and late fees) subject to such redemption may be converted multiplied by (y) the greatest closing sale price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (x) the consummation of the change of control and (y) the public announcement of such change of control and ending on the date Hudson Bay delivers the change of control redemption notice; provided, however, that if no Cash Release Event has occurred on or prior to the applicable change of control redemption date, the principal amount used in calculating the applicable change of control redemption price on such change of control.

If the Company issues options, convertible securities, warrants, stock, or similar securities to holders of its Common Stock, the holder of the March 2023 Note shall have the right to acquire the same as if it had converted its March 2023 Note.

Hudson Bay is entitled to receive any dividends paid or distributions made to the holders of the Common Stock on an “as if converted” to Common Stock basis.

The March 2023 Note contains a variety of covenants on the part of Company that are typical for transactions of this type, as well as the following covenants:

- the March 2023 Note ranks senior to all other indebtedness of the Company, except that certain permitted indebtedness ranks *pari passu* with the March 2023 Note;
- the Company will not incur other indebtedness, except for certain permitted indebtedness;
- the Company will not incur any liens, except for certain permitted liens;
- the Company will not, directly or indirectly, redeem or repay all or any portion of any permitted indebtedness if at the time such payment is due or is made or, after giving effect to such payment, an event constituting, or that with the passage of time and without being cured would constitute, an event of default has occurred and is continuing; and
- the Company will not redeem, repurchase or pay any dividend or distribution on its Common Stock or any other capital stock.

On March 23, 2023, the warrants issued were classified as equity with an initial grant date fair value of \$4,532,673, of which \$4,335,611 was recorded as a deferred debt discount, \$197,061 of the excess fair value was immediately expensed as loss on issuance of warrants. The Company also incurred \$664,389 of issuance expenses which were recorded as deferred debt discount. The fair value of the warrants was computed on the grant date using a per share price of \$0.12 per share. The fair value was estimated using the Black Scholes option pricing models with the following assumptions:

	Dividend Yield	Expected Volatility	Risk-free Interest Rate	Expected Life
Hudson Bay Warrant; March 2023	0.00%	143.23%	3.88%	2.5 years
Palladium Capital Warrant; March 2023	0.00%	143.23%	3.88%	2.5 years

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16. CONVERTIBLE NOTE PAYABLE (continued)

On April 5, 2023, the warrants issued under the March 2023 Offering were adjusted under the terms and conditions to a strike price of \$2.01 due to the reverse stock split. The adjustment resulted in a fair value of \$3,387,604, of which \$3,387,604 was immediately expensed as loss on issuance of warrants. The fair value was estimated using the Black Scholes option pricing models with the following assumptions:

	<u>Dividend Yield</u>	<u>Expected Volatility</u>	<u>Risk-free Interest Rate</u>	<u>Expected Life</u>
Hudson Bay Warrant; March 2023	0.00%	143.81%	3.67%	2.5 years
Palladium Capital Warrant; March 2023	0.00%	143.81%	3.67%	2.5 years

On October 23, 2023 (the “Effective Date”), the Company entered into a Prepayment and Redemption Agreement (the “Prepayment Agreement”), by and between the Company and an accredited investor (the “Investor”), pursuant to which, among things, the Company agreed to prepay the Notes (as defined below) and to redeem the March 2023 Warrant (as defined below), subject to the conditions set forth therein.

As previously disclosed, pursuant to the Note Securities Purchase Agreement, the Company sold to the Investor the January 2022 Note, of which an aggregate principal amount of \$2,000,000 remains outstanding. In addition, pursuant to the Securities Purchase Agreement (together with the Note Securities Purchase Agreement, the “SPAs”) the Company sold to Hudson Bay the March 2023 Note, of which the entire aggregate principal amount remains outstanding (together with the January 2022 Note, the “Notes”) and the March 2023 Warrant Common Stock.

Pursuant to the Prepayment Agreement, the Company agreed to make an aggregate payment of \$8,215,000 (the “Aggregate Payment Amount”) to Hudson Bay in six installments, of which an initial payment remitted in October 2023 of \$3,000,000 was allocated towards repayment in full of the remaining \$2,000,000 of the January 2022 Note, \$340,000 partial repayment of the March 2023 Note and \$660,000 for the redemption in full of the March 2023 Warrant (the “Initial Payment”). The remaining five installments, which range from \$150,000 to \$2,275,000 and are allocated towards the remaining principal of the March 2023 Note as specified in the Prepayment Agreement, are due on the fifteenth day of each month, beginning on November 15, 2023 and ending on March 15, 2024. At its option, the Company may prepay any monthly installment prior to its respective due date. During the three months ended December 31, 2023 the Company remitted a total of \$3,300,000 in payments.

Any cash payments required to be made pursuant to the terms of the Notes shall be suspended as long as the Company timely makes the payments set forth in the Prepayment Agreement and no Event of Default (as defined in the Notes) (or an event that with the passage of time or the giving of notice would result in an Event of Default) occurs and is continuing. In addition, upon receipt by Hudson Bay of the Initial Payment, all of the aggregate principal amount outstanding of the March 2023 Note will no longer be convertible into shares of Common Stock, *provided* that any aggregate principal amount outstanding of the March 2023 Note shall again become convertible into shares of Common Stock if an Event of Default (or an event that with the passage of time or the giving of notice would result in an Event of Default) occurs and is continuing or in the event the Company fails to timely make the payments under the Prepayment Agreement.

Upon receipt by Hudson Bay of the Aggregate Payment Amount, the SPAs, the Notes, the March 2023 Warrant and any other transaction documents related to the SPAs shall terminate and be of no further force or effect, other than certain indemnification obligations in the SPAs. In the event that the conditions to closing shall not have occurred by on or before the fifth (5th) business day following the Effective Date, subject to certain conditions, Hudson Bay has the option to terminate the Prepayment Agreement at the close of business on such date.

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16. CONVERTIBLE NOTE PAYABLE (continued)

January 2022 Offering

On January 26, 2022, the Company, entered into a Securities Purchase Agreement (the “Note Securities Purchase Agreement”) with an accredited investor (the “Note Investor”) for the issuance and sale of a Senior Convertible Note with an initial principal amount of \$33,333,333 (the “January 2022 Note”) at a conversion price of \$10.00 per share of Eightco’s Common Stock with a purchase amount of \$30,000,000 and an original issue discount of \$3,333,333, a warrant (the “January 2022 Warrant”) to purchase up to 66,667 shares of Common Stock with an initial exercise price of \$10.00 per share of Common Stock (the “Note Private Placement”). In addition, the Company issued a warrant to the placement agent to purchase up to 1,067 shares of Common Stock with an initial exercise price of \$10.00 per share of Common Stock. The warrants vest immediately, expiring on May 16, 2027 and had an estimated fair value of \$3,905,548. The Company recorded a debt discount of \$7,798,881 which consists of the original issue discount of \$3,333,333, the fair value of the warrants of \$3,905,548 and placement agent fees of \$560,000. The discount will be amortized over the term of the convertible note payable. The entire outstanding principal balance and any outstanding fees or interest shall be due and payable in full on the third anniversary of the date the note is issued, May 5, 2022. The January 2022 Note does not bear interest, provided, however, that the Note will bear interest at 18% per annum upon the occurrence of an event of default. Eightco and the Note Investor closed the transaction contemplated by the Note Securities Purchase Agreement on May 5, 2022. In connection with the Note Private Placement, the Company also entered into a Registration Rights Agreement (the “January 2022 Registration Rights Agreement”) with the Note Investor, and, upon the closing, entered into a Security Agreement, a Pledge Agreement and various ancillary certificates, disclosure schedules and exhibits in support thereof prior to the closing of the Note Securities Purchase Agreement.

On July 28, 2022, the Company entered into an Amendment Agreement (the “July 2022 Amendment Agreement”) with the Note Investor to amend the Note Securities Purchase Agreement, the January 2022 Note, and that certain January 2022 Registration Rights Agreement.

Pursuant to the July 2022 Amendment Agreement, the Company released an aggregate of \$29,000,000 (the “Released Funds”) from the restricted funds account maintained in accordance with the Note Securities Purchase Agreement (the “Restricted Funds Account”) and, going forward, must deposit 50% of any Warrant Exercise Cash (as defined in the July 2022 Amendment Agreement) into the Restricted Funds Account. As required by the July 2022 Amendment Agreement, the Company used \$22,000,000 of the Released Funds to repurchase from the Investor \$22,000,000 of the principal of the January 2022 Note. Pursuant to the July 2022 Amendment Agreement, the conversion price of the balance of the January 2022 Note that remains was voluntarily adjusted to \$1.06 (the “Adjustment”). The July 2022 Amendment Agreement also amended the January 2022 Registration Rights Agreement, to require the Company to register (i) the number of shares of common stock equal to 200% of the shares issuable upon conversion of the January 2022 Note and (ii) the number of shares of common stock equal to 200% of the shares issuable upon exercise of the warrant issued under the Note Securities Purchase Agreement, assuming all cash has been released from the Restricted Funds Account and the number of shares of common stock issuable upon exercise of the January 2022 Warrant issued under the Note Securities Purchase Agreement has been adjusted in accordance with Section 3(c) of the warrant. The July 2022 Amendment Agreement requires the Company to register additional shares of its common stock underlying the January 2022 Note. Accordingly, the Company filed a registration statement on Form S-1 dated August 12, 2022 (the “August S-1”) with the Securities and Exchange Commission. The August S-1 includes 301,007 shares of the Company’s common stock issuable upon the conversion of the January 2022 Note as a result of the Adjustment.

As a result of the Adjustment, the exercise price of (i) warrants to purchase up to 15,467 shares of the Company’s Common Stock held by Palladium Capital Group, LLC, (ii) warrants to purchase up to 66,667 shares of the Company’s Common Stock held by the Note Investor, and (iii) warrants to purchase up to 30,000 shares of the Company’s Common Stock held by BHP Capital NY, Inc. was adjusted to \$1.06 per share of the Company’s Common Stock.

The July 2022 Amendment Agreement amends the January 2022 Note to permit the Company to enter into technology license agreements which obligate the Company to make cash payments of up to \$10,000,000 (the “Cash Payment”) and Common Stock issuances of up to 5,000 restricted shares, provided (i) the Cash Payments are not due until at least two years after the signing of such license agreements, and (ii) the Company must enter into an intercreditor agreement in connection with each license agreement. The July 2022 Amendment Agreement also amends the January 2022 Note to increase the permitted amount of a lien on indebtedness of the Company from \$500,000 to \$10,000,000.

The July 2022 Amendment Agreement grants the holder of the January 2022 Note the right, at any time after December 27, 2023, to force the Company to redeem all or any portion of the outstanding principal, interest or penalties on the January 2022 Note.

The parties also amended the Company’s carve out to its financing standstill as set forth in the July 2022 Amendment Agreement.

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16. CONVERTIBLE NOTE PAYABLE (continued)

On September 14, 2022, the Company and the Note Investor entered into a waiver (the “Waiver”) to permit, subject to the terms and conditions set forth therein, the entry into a purchase agreement for Forever 8. Pursuant to the Waiver, the conversion price and exercise price of the January 2022 Note and the January 2022 Warrants, respectively, were voluntarily and irrevocably adjusted to equal \$50.00, subject to further adjustment as set forth therein. As a result of the price adjustment feature, the number of shares of the Company’s common stock issuable upon exercise of the January 2022 Warrants and conversion of the January 2022 Notes was increased upon the acquisition of Forever 8 on October 1, 2022.

As a result of the adjustment of the January 2022 Note and January 2022 Warrant conversion and exercise price, respectively, in the Waiver, the exercise price of (i) warrants to purchase up to 15,467 shares of the Company’s Common Stock held by Palladium Capital Group, LLC, (ii) warrants to purchase up to 66,667 shares of the Company’s Common Stock held by the Note Investor, and (iii) warrants to purchase up to 30,000 shares of the Company’s Common Stock held by BHP Capital NY, Inc. was adjusted to \$50.00 per share of the Company’s Common Stock.

On January 6, 2023, the Company entered into a Second Amendment Agreement (the “Second Amendment Agreement”) with Hudson Bay to amend the (i) Note Securities Purchase Agreement, (ii) the January 2022 Note, (iii) the January 2022 Registration Rights Agreement, and (iv) the January 2022 Warrant.

Pursuant to the Second Amendment Agreement, the conversion price of the balance of the January 2022 Note that remains outstanding was voluntarily adjusted to \$10.00 per share of Common Stock.

The Second Amendment Agreement grants the Company the right to redeem all or a portion of the outstanding amount of the January 2022 Note (the “Redemption Right”) upon 10 trading days’ notice provided that (i) no Equity Conditions Failure (as defined in the January 2022 Note) exists and (ii) the Company has sufficient resources to effect the redemption. The Redemption Right is subject to certain other restrictions contained in the Second Amendment Agreement.

The Second Amendment Agreement provides that if Hudson Bay converts any portion of the January 2022 Note during the 10 consecutive trading day period starting on January 6, 2023 (the “Applicable Conversion Period”), Hudson Bay shall, on the first business day immediately following the end of the Applicable Conversion Period, release to the Company an amount of cash from the Control Account (as defined in the January 2022 Note) equal to 20% of the amount converted during the Applicable Conversion Period if the volume-weighted average price (“VWAP”) of the common stock on each trading day during the Applicable Conversion Period equals or exceeds \$10.00 and there is no circumstance or event that would, with or without the passage of time or the giving of notice, result in a material default, material breach or event of default under any Transaction Document (as defined in the Note Securities Purchase Agreement).

As a result of the voluntary adjustment to the conversion price of the January 2022 Note, the exercise price of the January 2022 Warrant was automatically adjusted to \$10.00 per share of common stock and the number of shares issuable upon exercise of the January 2022 Warrant (the “HB Warrant Shares”) was proportionately increased to 3,333,333 HB Warrant Shares. Pursuant to the Second Amendment Agreement, Hudson Bay agreed to waive the adjustment to the number of HB Warrant Shares issuable pursuant to the January 2022 Warrant to the extent such adjustment results in a number of HB Warrant Shares underlying the January 2022 Warrant exceeding 2,220,000. The Second Amendment Agreement provides that Hudson Bay (i) will not exercise January 2022 Warrants to purchase more than an aggregate of 1,500,000 HB Warrant Shares until March 2, 2023, provided such limitation will be waived upon the occurrence of an Event of Default (as defined in the January 2022 Note) or if the VWAP of the common stock on any trading day from January 6, 2023 until March 2, 2023 is less than \$11.00 and (ii) will not exercise the January 2022 Warrant until (x) such time as the aggregate principal amount outstanding of the January 2022 Note is equal to or less than the amount remaining in the Control Account or (y) the occurrence of an Event of Default (the “HB Initial Exercisability Date”). However, Hudson Bay may exercise Warrants for up to 200,000 shares of common stock prior to the HB Initial Exercisability Date if the VWAP of the common stock on any trading day during the period starting on March 1, 2023 and ending on and including March 31, 2023 is less than \$10.00. If the VWAP of the common stock on each trading day from January 6, 2023 through March 1, 2023, is greater than \$11.00, Hudson Bay will forfeit the right to purchase 720,000 HB Warrant Shares pursuant to the January 2022 Warrant, provided that there is no circumstance or event that would, with or without the passage of time or the giving of notice, result in a material default, material breach or event of default under any Transaction Document. Additionally, the exercise price of the January 2022 Warrant was voluntarily further adjusted to \$0.01 per share of common stock in lieu of the investors taking less warrant shares. The VWAP of the common stock, from January 6, 2023 through March 1, 2023, was below \$11.00, as such Hudson Bay did not forfeit the 720,000 HB Warrant Shares.

The Second Amendment Agreement required the Company to provide each stockholder entitled to vote at the next special or annual meeting of stockholders of the Company, which was required to be held no later than April 1, 2023, a proxy statement soliciting each such stockholder’s affirmative vote at the stockholder meeting for approving the increase of the authorized shares of common stock from 250,000,000 to 500,000,000 (“Stockholder Approval”). The Stockholder Approval was obtained at the Company’s special meeting of stockholders held on March 15, 2023.

The warrants issued by the Company were modified to reduce the exercise price, which also increased the number of warrants to purchase common stock. The warrant modification expense of \$43,344,150 was computed on the modification date using a per share price of \$0.32 per share. The fair value was estimated using the Black Scholes option pricing models with the following assumptions:

	<u>Dividend Yield</u>	<u>Expected Volatility</u>	<u>Risk-free Interest Rate</u>	<u>Expected Life</u>
Hudson Bay Warrant; as adjusted January 2023	0.00%	142.28%	4.10%	2.5 years
Palladium Capital Warrant; as adjusted January 2023	0.00%	142.28%	4.10%	2.5 years
BHP Warrant; as adjusted January 2023	0.00%	142.28%	4.10%	2.5 years

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17. CONVERTIBLE NOTES PAYABLE – RELATED PARTIES

The convertible notes payable, related party were issued as part of consideration for the acquisition of Forever 8. The discount was calculated based on the fair value of the instrument as of October 1, 2022. Please see **3. Acquisitions** for further information. Principal due under the convertible note payable – related parties was as follows at December 31, 2023 and 2022:

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Notes payable, 10%	27,383,700	27,500,000
Less: current portion	11,500,000	-
Notes payable, long-term portion	\$ 15,883,700	\$ 27,500,000
Less: debt discount	1,750,000	2,750,000
Notes payable, long-term portion, net	<u>14,133,700</u>	<u>24,750,000</u>

Interest expense under convertible notes payable – related parties was \$3,878,696 and \$937,500, of which \$1,000,000 and \$250,000 was related to amortization of the debt discount, for the years ended December 31, 2023 and 2022, respectively.

18. INCOME TAXES

Eightco Holdings Inc. is taxed as a corporation and pays corporate federal, state and local taxes on income.

Forever 8 Fund, LLC, BlockHiro, LLC and Cryptyde Shares Services, LLC are limited liability companies which are disregarded entities for income tax purposes and are owned 100% by Eightco Holdings Inc. and Ferguson Containers, Inc., respectively. The Company pays corporate federal, state and local taxes on income allocated to it from BlockHiro, LLC and 8co Holdings Shared Services, LLC.

CW Machines, LLC is a limited liability company for income tax purposes and is owned 51% by Eightco Holdings Inc. The Company pays corporate federal, state and local taxes on income allocated to it from CW Machines, LLC.

Ferguson Containers is taxed as a corporation and pays corporate federal, state and local taxes on income.

Forever 8 UK Ltd. is taxed as a corporation and pays foreign taxes on income.

F8 Fund EU Holdings BV is taxed as a corporation and pays foreign taxes on income.

Components of income before income taxes were as follows:

	<u>2023</u>	<u>2022</u>
United States	\$ (67,719,971)	\$ (46,850,995)
Foreign	(600,443)	(768,062)
Income before income tax expense	<u>\$ (68,320,414)</u>	<u>\$ (47,619,057)</u>

The tax effects of temporary differences that give rise to deferred tax assets or liabilities are presented below:

	<u>2023</u>	<u>2022</u>
Deferred tax assets:		
Stock-based compensation	\$ (8,387)	\$ 154,298
Goodwill and intangibles	270,574	54,453
Leases	-	14,808
Reserves	140,143	-
Net operating loss carryforwards	8,755,550	4,419,519
Less: valuation allowance	(9,157,880)	(4,628,672)
Net deferred tax assets	<u>\$ -</u>	<u>\$ 14,406</u>
Deferred tax liabilities:		
Right of use assets	\$ -	(14,406)
Property and equipment	\$ (82,104)	(82,104)
Net deferred tax liabilities	<u>\$ (82,104)</u>	<u>\$ (96,510)</u>
Net deferred taxes	<u>\$ (82,104)</u>	<u>\$ (82,104)</u>

The income tax provision consists of the following:

	<u>2023</u>	<u>2022</u>
Current:		

Federal	\$	-	\$	(172,997)
State		-		-
Foreign		-		-
Total current		-		(172,997)
Deferred:				
Federal		(4,415,124)		(4,150,207)
State		-		-
Foreign		(114,084)		145,932
Less: change in valuation allowance		4,529,208		4,004,275
Total deferred		-		-
Total income tax provision	\$	-	\$	(172,997)

A reconciliation of the statutory federal income tax rate to the Company's effective tax rate is as follows:

	<u>2023</u>	<u>2022</u>
Tax at federal statutory rate	21.0%	21.0%
Income from pass-through entities taxable to noncontrolling interests	0.0%	-0.1%
Warrant valuation	-14.5%	-11.2%
Nondeductible expenses	-0.1%	-0.7%
State and local income taxes	0.0%	0.0%
Foreign income not subject to U.S. federal taxes	-0.2%	-0.3%
U.S. income taxes subject to valuation allowance	-6.2%	-8.7%
Other	0.0%	0.4%
Total income tax provision	0.0%	0.4%

Income tax (benefit) expense for the years ended December 31, 2023 and 2022 was \$0 and (\$172,997), respectively. The Company has recorded a full valuation allowance on the deferred tax assets.

The Company's policy is to record interest and penalties associated with unrecognized tax benefits as additional income taxes in the statement of operations. As of January 1, 2023, the Company had no unrecognized tax benefits and no charge during 2023, and accordingly, the Company did not recognize any interest or penalties during 2023 related to unrecognized tax benefits. There is no accrual for uncertain tax positions as of December 31, 2023.

The Company files U.S. income tax returns and a state income tax return. With few exceptions, the U.S. and state income tax returns filed for the tax years ending on December 31, 2021 and thereafter are subject to examination by the relevant taxing authorities.

As of December 31, 2023, the Company had a net operating loss carryforward for federal income tax purposes of approximately \$8,755,550 and credit carryforwards are subject to annual limitations due to the "change in ownership" provisions of the Internal Revenue Code of 1986 and similar state provisions. The Company's net operating loss carryforward begins to expire in 2041.

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19. STOCKHOLDERS' EQUITY

Common Stock. Prior to the Separation, Vinco Ventures, Inc. owned 100% of the issued and outstanding common stock of Eightco Holdings Inc. Effective June 29, 2022, the Company separated from its former parent company, Vinco Ventures, Inc., and the distribution of its common stock was completed.

Common stock issuances during the year ended December 31, 2023:

From January 1, 2023 through December 31, 2023, the Company issued a total of 774,733 shares of common stock to a noteholder for repayment of principal valued at \$7,743,333 based on the conversion price set forth in the Note.

On January 26, 2023, the Company issued a total of 20,550 shares of common stock to employees for services rendered on behalf of the Company valued at \$571,200 and previously expensed as stock-based compensation.

On January 26, 2023, the Company issued a total of 2,700 shares of common stock to three directors for director compensation valued at \$91,800 and previously expensed as stock-based compensation.

On April 14, 2023, the Company issued 95,112 shares of common stock for broker dealers to investors for partial share ownership due to the Company's reverse stock split.

On September 22, 2023, the Company issued 150,000 shares to a consultant.

On November 10, 2023, the Company issued 25,000 shares of its common stock to a consultant for services rendered on behalf of the Company.

During the year ended December 31, 2023, the Company issued 2,544,592 shares of common stock upon the exercise of warrants.

Common stock issuances during the year ended December 31, 2022:

On June 29, 2022, Vinco Ventures, Inc. distributed 100% of the shares of our common stock held by Vinco to holders of shares of Vinco common stock, subject to certain conditions. On the Distribution Date, each holder of Vinco common stock received one share of Eightco common stock for every ten shares of Vinco common stock held at the close of business on the Record Date. The total number shares of our common stock issued related to the distribution was 376,105.

On May 18, 2022, the Company issued warrants to warrant holders of the Former Parent to purchase up to 204,404 shares of Common Stock with an initial exercise price of \$0.001 per share of Common Stock (the "Replacement Warrants"). The Replacement Warrants have been recorded within stockholders' equity.

On January 26, 2022, the Company, with respect to certain sections, entered into a Securities Purchase Agreement (the "Equity Private Placement") with an accredited investor (the "Equity Investor") for the issuance of a (i) 30,000 shares of Common Stock, and (ii) a warrant (the "Equity Investor Warrant") to purchase up to 30,000 shares of Common Stock with an exercise price of \$8.00 per share of Common Stock (the "Equity Private Placement"). In addition, the Company issued a warrant to the placement agent to purchase up to 4,800 shares of Common Stock with an initial exercise price of \$8.00 per share of Common Stock. The transaction closed on May 20, 2022. The consideration paid to Eightco under the Equity Private Placement was \$12,000,000. The Equity Private Placement contains covenants on the part of Eightco, including that Eightco will reserve for the purpose of issuance at least 100% of the maximum number of shares of Common Stock issuable upon conversion of the Equity Investor Warrant. In addition, under the Equity Private Placement, Eightco will grant the Equity Investor certain rights to participate in any Subsequent Placements for the same duration as the participation right pursuant to the Note Securities Purchase Agreement.

During August 2022, the Company issued 30,000 shares of common stock to noteholders for repayment of principal valued at \$1,590,000 based on the conversion price set forth in the Note.

On August 29, 2022, the Company issued 6,000 shares of common stock to Emmersive Entertainment for the settlement of the Former Parent's earnout shares valued at \$609,000 based on the fair value of the underlying shares on the vesting date. The amount was recorded as shared-based compensation, which is included in selling, general and administrative expenses.

On September 7, 2022, the Company issued 2,250 shares of common stock to vendors for compliance an investor relation services valued at \$152,125 based on the fair value of the underlying shares on the vesting date. The amount was recorded as shared-based compensation, which is included in selling, general and administrative expenses.

On September 27, 2022, the Company approved the issuance of 19,500 shares of restricted stock units to employees for services provided valued at \$663,000 based on the fair value of the underlying restricted stock units. The amount was recorded as shared-based compensation, which is included in selling, general and administrative expenses.

As of December 31, 2023 and 2022, the Company had 4,706,419 and 633,365 issued and outstanding shares of common stock, respectively.

20. COMMITMENTS AND CONTINGENCIES

Operating Leases. The Company leases certain office space from an entity affiliated through common ownership under an operating lease agreement on a month-to-month basis.

On April 26, 2022, the Company entered into an assignment and assumption agreement with Vinco Ventures, Inc. whereby the parties agreed to transfer and assign to Eightco Holdings Inc. the lease agreement dated July 16, 2021 by and between Abdi R. Boozer-Jomehri (d/b/a Safety Harbor Centre, Inc.)

and Edison Nation, LLC, a 100% owned subsidiary of Vinco Ventures, Inc. (the “Safety Harbor Lease”). The Company adopted ASC 842 on January 1, 2022 and recognized a right of use asset and liability of \$98,736 using a discount rate of 4.5%. There are no other material operating leases. The Company has elected not to recognize right-of-use assets and lease liabilities arising from short-term leases.

On October 19, 2022, the Company entered into a commercial lease agreement with Foxx Trot Tango, LLC to lease approximately 25 acres of land, including approximately 250,000 square feet of warehouse space in Sylvester, Georgia for \$87,500 on a month-to-month basis, effective July 2022. Owners of Foxx Trot, LLC are also shareholders of the Company.

Rent expense for the years ended December 31, 2023 and 2022 was \$849,575 and \$795,959, respectively. Rental payments are expensed in the statements of comprehensive income in the period to which they relate.

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20. COMMITMENTS AND CONTINGENCIES (continued)

Emmersive Sellers: On April 17, 2021, the Former Parent entered into (and closed on) a certain Asset Contribution Agreement (“Asset Contribution Agreement”) with Emmersive Entertainment, Inc. (“Emmersive”), pursuant to which Emmersive contributed/transferred to the Company the assets used for Emmersive’s business, which include digital assets, software and certain physical assets (the “Contributed Assets”) in consideration for, among other things, the Former Parent assuming certain obligations of Emmersive, hiring certain employees, and issuing preferred membership units (“Preferred Units”) in EVNT Platform, LLC to Emmersive and/or its shareholders (“Preferred Members”) pursuant to a First Amended and Restated Operating Agreement for the Former Parent dated as of April 17, 2021 (“Amended Operating Agreement”). Certain put rights are associated with Preferred Units, which if exercised by the Preferred Members, obligates the Former Parent to purchase the Preferred Units in exchange for shares of the Former Parent’s common stock (“Put Rights”). In addition, the Preferred Members have the opportunity to earn Conditional Preferred Units if certain conditions are satisfied for earn out targets (“Earn-Out Targets”).

On February 25, 2022, the Former Parent and Emmersive entered into a Termination and Release Agreement, terminating certain transaction documents dated April 17, 2021, and a Milestone Agreement for the earnout shares to be earned and any remaining consideration to be paid by Eightco Holdings Inc. with an effective date of the agreements upon the spin-off being declared effective (“Effective Date”) Upon the spinoff, the agreements release Emmersive of the opportunity to earn the additional shares of common stock of the Former Parent from the Asset Contribution Agreement. The contingent consideration to be paid by Eightco Holdings Inc. upon the successful completion of the spin-off are described below:

Earned Shares: Issuance of 6,000 shares of common stock of Eightco Holdings Inc. (“Eightco Shares”). The Company recorded \$609,000 of share-based compensation related to the Eightco Shares.

Milestone 1: In the event that the Company generates a minimum of \$5,500,000 in annualized booked revenues from the operation of the Musician & Artist Platform (“Attributed Revenue”) ending eight (8) months following the Effective Date (“Tranche 1 Milestone Date”), the Emmersive Parties shall receive 2,000 restricted Eightco Shares (“Tranche One”) within thirty (30) after the Tranche 1 Milestone Date. In the event that the Company does not satisfy this milestone for any reason by the Tranche 1 Milestone Date, the Emmersive Parties shall have no rights to the additional Eightco Shares.

Milestone 2: After the Effective Date, in the event the Company generates a minimum of \$26,500,000 in annualized Attributed Revenues in any three-calendar month period ending on or before September 30, 2023, from the Musician & Artist Platform, the Emmersive Parties shall receive an additional 2,000 restricted Eightco Shares (“Tranche Two”). In the event Milestone Two is achieved, then Milestone One shall also be deemed to have been achieved. In the event that the Company does not satisfy Milestone Two for any reason by September 30, 2023, the Emmersive Parties shall have no rights to Tranche Two.

Milestone 3: After the Effective Date in the event that Buyer generates a minimum of \$60,000,000 in annualized Attributed Revenues in any three-calendar-month period ending on or before September 30, 2024, from the Musician & Artist Platform, the Emmersive Parties shall receive an additional 2,000 restricted Eightco Shares (“Tranche Three”). In the event Milestone Three is achieved, then Milestones One and Two shall also be deemed to have been achieved. In the event that the Company does not satisfy Milestone Three for any reason by September 30, 2024, time being of the essence, the Emmersive Parties shall have no rights to Tranche Three. In the event that the Company satisfies Milestone Three in the time prescribed they shall have the right to receive an additional 100,000 restricted shares of Eightco Shares (“Bonus Tranche”). In the event that the Company does not satisfy Milestone Three for any reason, the Emmersive Parties shall have no rights to the Bonus Tranche.

None of the above milestones were met as of December 31, 2023.

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21. SEGMENTING REPORTING

The Company's principal operating segments coincide with the types of products to be sold. The products from which revenues are derived are consistent with the reporting structure of the Company's internal organization. The Company's two reportable segments for the years ended December 31, 2023 were the Inventory Management Solutions segment and the Corrugated segment. The Company's chief operating decision maker has been identified as the Chairman and CEO, who reviews operating results to make decisions about allocating resources and assessing performance for the entire Company. Segment information is presented based upon the Company's management organization structure as of December 31, 2023 and the distinctive nature of each segment. Future changes to this internal financial structure may result in changes to the reportable segments disclosed. There are no inter-segment revenue transactions and, therefore, revenues are only to external customers.

Segment operating profit is determined based upon internal performance measures used by the chief operating decision maker. The Company derives the segment results from its internal management reporting system. The accounting policies the Company uses to derive reportable segment results are the same as those used for external reporting purposes. Management measures the performance of each reportable segment based upon several metrics, including net revenues, gross profit and operating loss. Management uses these results to evaluate the performance of, and to assign resources to, each of the reportable segments. The Company manages certain operating expenses separately at the corporate level and does not allocate such expenses to the segments. Segment income from operations excludes interest income/expense and other income or expenses and income taxes according to how a particular reportable segment's management is measured. Management does not consider impairment charges, and unallocated costs in measuring the performance of the reportable segments.

Segment information available with respect to these reportable business segments for the year ended December 31, 2023 and 2022 was as follows:

	For the Years Ended December 31,	
	2023	2022
Revenues:		
Inventory Management Solutions	\$ 67,568,353	\$ 23,785,070
Corrugated	7,729,131	8,035,709
Total segment and consolidated revenues	\$ 75,297,484	\$ 31,820,779
Cost of revenues:		
Inventory Management Solutions	\$ 61,308,561	\$ 23,554,550
Corrugated	5,496,462	6,072,319
Total segment and consolidated cost of revenues	\$ 66,805,023	\$ 29,626,869
Gross profit:		
Inventory Management Solutions	\$ 6,259,792	\$ 230,520
Corrugated	2,232,669	1,963,390
Total segment and consolidated gross profit	\$ 8,492,461	\$ 2,193,910
Income from operations:		
Inventory Management Solutions	\$ (3,063,241)	\$ (3,034,702)
Corrugated	702,645	391,139
Corporate	(7,116,576)	(12,863,941)
Total segment and consolidated income from operations	\$ (9,477,172)	\$ (15,507,504)
Depreciation and amortization:		
Inventory Management Solutions	\$ 2,830,306	\$ 578,608
Corrugated	214,225	270,325
Total segment and consolidated depreciation and amortization	\$ 3,044,531	\$ 848,933
Revenues by geography:		
North America	\$ 14,634,111	\$ 19,020,719
Europe	60,663,373	12,800,060
Total geography and consolidated revenues	\$ 75,297,484	\$ 31,820,779
Segment capital expenditures:		
Inventory Management Solutions	\$ 51,922,852	\$ 1,775,748
Corrugated	2,967,629	105,703
Corporate	2,409,913	-
Total segment and consolidated capital expenditures	\$ 57,300,394	\$ 1,881,451
Segment total assets:		
Inventory Management Solutions	\$ 50,023,910	\$ 49,572,768
Corrugated	2,967,629	3,109,690
Corporate	2,419,904	5,918,141
Total segment and consolidated assets	\$ 55,411,443	\$ 58,600,599

EIGHTCO HOLDINGS INC.
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22. SUBSEQUENT EVENTS

Nasdaq Staff Determination

On March 28, 2024, we received a letter from the Listing Qualifications Department of Nasdaq indicating that the Company has not regained compliance with Nasdaq Listing Rule 5810(c)(3)(A) and is not eligible for a second 180 day period. The Company has not regained compliance with the Rule and is not eligible for a second 180 day period. Specifically, the Company does not comply with the \$5,000,000 minimum stockholders' equity initial listing requirement for The Nasdaq Capital Market.

Accordingly, unless the Company requests an appeal of this determination as described in further detail below, we have determined that the Company's securities will be scheduled for delisting from The Nasdaq Capital Market and will be suspended at the opening of business on April 8, 2024, and a Form 25-NSE will be filed with the Securities and Exchange Commission (the "SEC"), which will remove the Company's securities from listing and registration on The Nasdaq Stock Market.

We intend on appealing the Staff's determination to a Hearings Panel (the "Panel"), pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series. A hearing request will stay the suspension of the Company's securities and the filing of the Form 25-NSE pending the Panel's decision.

O'Donnell Severance Agreement

On March 17, 2024, Kevin O'Donnell resigned as Executive Chairman and Interim Chief Executive Officer of the Company, effective immediately. Mr. O'Donnell's resignation was not the result of any disagreement regarding any matter relating to the Company's operations, policies, or practices.

In connection with Mr. O'Donnell's resignation from these positions, on March 17, 2024, the Company and Kevin O'Donnell entered into a General Release and Severance Agreement (the "O'Donnell Severance Agreement"), effective as of March 17, 2024 (the "O'Donnell Effective Date"). The O'Donnell Severance Agreement terminated of the amended and restated employment agreement, by and between the Company and Mr. O'Donnell, effective as of October 21, 2022 (the "O'Donnell Employment Agreement"). Pursuant to the O'Donnell Severance Agreement, as of the O'Donnell Effective Date, the O'Donnell Employment Agreement shall terminate forever, and no party shall have any further obligation or liability thereunder except as related to any obligations that survive employment termination, including but not limited to the obligations set forth under the Employee Confidential Disclosure, Invention Assignment, Non-Competition, Non-Solicitation and Non-Interference Agreement, attached to the O'Donnell Employment Agreement.

Pursuant to the O'Donnell Severance Agreement, the Company will provide Mr. O'Donnell with (i) back pay wages through the Separation Date in the amount of \$138,000, less all lawful and authorized withholdings and deductions, to be paid as soon as practicable following the O'Donnell Effective Date and (ii) severance equal to 24 months of Mr. O'Donnell's base salary, less all lawful and authorized withholdings and deductions, under the O'Donnell Employment Agreement. Pursuant to the O'Donnell Severance Agreement, the Company shall also provide Mr. O'Donnell with (i) reimbursement of the premiums associated with the continuation of Mr. O'Donnell's health insurance for the period commencing on the Separation Date through and including September 27, 2024, pursuant to applicable law, (ii) reimbursement of expenses in accordance with the Company's expense reimbursement policy, and (iii) the full vesting of any earned, outstanding and unvested shares of Common Stock subject to the Plan (as define below). The O'Donnell Severance Agreement also provides for a mutual waiver and release of any claims in connection with Mr. O'Donnell's employment, separation and departure from the Company, and for certain customary covenants regarding confidentiality.

Seller Notes Amendment

On March 17, 2024, the Company entered into an agreement to amend certain provisions of the Seller Notes (the "Seller Notes Amendment") previously issued under the terms of the Membership Interest Purchase Agreement dated February 14, 2022 between the Company, Forever 8, LLC ("Forever 8"), the member of Forever 8 and Paul Vassilakos. Pursuant to the Seller Notes Amendment, the Sellers agreed, among other things, to (i) forgive, without the payment of any additional consideration, accrued interest on the Seller Notes in an aggregate amount of approximately \$3.0 million, (ii) convert approximately \$1.1 million of accrued interest on the Seller Notes into 1.4 million shares of common stock of the Company, and (iii) defer interest and any payments due on the Seller Notes until October 30, 2024.

Appointment of Paul Vassilakos as Executive Chairman and Chief Executive Officer

In connection with Mr. O'Donnell's resignation from his positions as Executive Chairman and Interim Chief Executive Officer, on March 17, 2024, the Board appointed Paul Vassilakos as Executive Chairman and Chief Executive Officer of the Company, effective immediately, to serve until a successor is chosen and qualified, or until his earlier resignation or removal.

Mr. Vassilakos, age 47, has served as a director of Adamas One Corp. (NASDAQ) since October 2021. Mr. Vassilakos co-founded, and since July 2020 has been a partner of Forever 8 Fund, LLC, a subsidiary of Eightco Holdings Inc., a consumer products inventory capital provider. Since 2013 Mr. Vassilakos has served and held various Board, CEO and CFO positions on several publicly listed companies. In July 2007, Mr. Vassilakos founded Petrina Advisors, Inc., a privately held advisory firm formed to provide investment banking services for public and privately held companies, and has served as its President since its formation. Mr. Vassilakos also founded and has served as the President of Petrina Properties Ltd., a privately held real estate holding company, since December 2006. Earlier in his career, Mr. Vassilakos was engaged as a consultant to assist several SPACs with business combinations. Mr. Vassilakos started his career an Analyst at Salomon Smith Barney's New York Investment Banking Division and later as an Associate within the Greek Coverage Group of Citigroup Inc.'s UK Investment Banking Division. While attending university, Mr. Vassilakos was a Registered Securities Representative at Paine Webber CSC - DJS Securities Ltd, during which time he provided securities brokerage services to private clients. Mr. Vassilakos holds a Bachelor of Science in finance from the Leonard N. Stern Undergraduate School of Business and was a licensed Registered Securities Representative (Series 7 and 63) from February 1996 to February 2002.

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22. SUBSEQUENT EVENTS (continued)

There is no family relationship between Mr. Vassilakos and any director or executive officer of the Company.

In connection with Mr. Vassilakos' appointment as the Executive Chairman and Chief Executive Officer of the Company, on March 17, 2024, the Company and Mr. Vassilakos entered into an Employment Agreement (the "Vassilakos Employment Agreement"), which supersedes and replaces the Employment Agreement dated October 16, 2022, by and between Mr. Vassilakos, the Company and Forever 8. The Vassilakos Employment Agreement provides for an initial term of two year, unless earlier terminated in accordance therein, and automatic renewals for successive one (1) year terms unless either party provides timely written notice otherwise.

Pursuant to the terms of the Vassilakos Employment Agreement, Mr. Vassilakos will be entitled to a base salary payable at the annualized rate of \$300,000 per year (the "Vassilakos Base Salary"). Mr. Vassilakos is eligible for an annual cash bonus opportunity equal to up to 75% of the Vassilakos Base Salary and awards of restricted stock units up to 100% of the Vassilakos Base Salary, subject to the terms and conditions of the Eightco Holdings Inc. 2022 Long-Term Incentive Plan (the "Plan") and the Company's form of restricted stock unit agreement (the "Vassilakos Bonus"), based on certain milestones to be determined in the sole and absolute discretion of the Board. Mr. Vassilakos may also be eligible for additional compensation in the sole and complete discretion of the Board or the Compensation Committee of the Board.

Mr. Vassilakos will be eligible to participate in all health, medical, dental and life insurance policies offered to employees of the Company, and the Company will pay all applicable premiums. The Company will reimburse Mr. Vassilakos for all reasonable out-of-pocket expenses incurred by him in the conduct of the Company's business. The Vassilakos Employment Agreement provides Mr. Vassilakos with four (4) weeks of paid vacation and five (5) days of paid personal time. The Vassilakos Employment Agreement also provides Mr. Vassilakos with liability insurance coverage and shall reimburse certain financial planning expenses incurred by Mr. Vassilakos. Pursuant to the terms and provisions of the Vassilakos Employment Agreement, Mr. Vassilakos and the Company have entered into a standard indemnification agreement (the "Indemnification Agreement").

In the event the Company terminates Mr. Vassilakos' employment without cause (as defined in the Vassilakos Employment Agreement), Mr. Vassilakos will receive (i) the Accrued Obligations (as defined in the Vassilakos Employment Agreement) and (ii) severance in the amount of equal to the Vassilakos Base Salary for twelve (12) months, less applicable payroll deductions and tax withholdings. In addition, this termination will cause the vesting of all equity awards subject to the terms of the Plan held by Mr. Vassilakos and entitle Mr. Vassilakos to reimbursement of premiums associated with the continuation of health insurance benefits provided under the Vassilakos Employment Agreement during the remaining Term of Employment (as defined in the Vassilakos Employment Agreement).

On March 17, 2024, the Board approved grants of fully vested stock options in the aggregate amount of 451,560 shares of Common Stock to certain officers, employees and consultants of the Company, subject to the terms and conditions of the Plan and the form of the nonqualified stock option agreement. The Board also approved grants of fully vested stock options outside of the Plan in the aggregate amount of 648,110 shares of Common Stock to certain officers, employees and consultants of the Company, subject to the terms and conditions of the form of the nonqualified stock option agreement.

On March 17, 2024, the Board approved compensation for services to be rendered by its independent directors in 2024 in the following amounts: (i) \$40,000 in cash, paid quarterly in four installments during 2024, (ii) 42,500 fully-vested restricted shares of Common Stock, subject to the terms and conditions of the Plan and the Company's standard restricted stock award agreement and (iii) grants of fully vested stock options permitting each director to acquire up to 100,000 shares of Common Stock with (a) a date of grant as of March 17, 2024, (b) an exercise price equal to the greater of (x) the Fair Market Value (as defined in the Plan) on the date of grant and (y) \$0.82 and (c) a five-year term, subject to the terms and conditions of the Plan and the form of the nonqualified stock option agreement.

On March 15, 2024, Forever 8 Fund, LLC ("Forever 8") entered into the Series D Loan and Security Agreement (the "Series D Agreement"), with the lenders party thereto from to time (collectively, the "Lenders") for an amount of up to \$5,000,000.

In connection with the Series D Agreement, on March 15, 2024, Forever 8 also entered into a Subordination Agreement (the "Subordination Agreement") with each of the Lenders, the several individuals, financial institutions or entities from time to time party thereto (collectively, the "Senior Lenders") and the collateral agent for the Senior Lenders. Forever 8 additionally entered into an Intercreditor Agreement (the "Intercreditor Agreement") with the lenders party thereto and the collateral agent for such lenders.

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22. SUBSEQUENT EVENTS (continued)

McFadden Severance Agreement

On February 26, 2024, the Company and Brian McFadden entered into General Release and Severance Agreement, (the “McFadden Severance Agreement”), effective as of the eighth day following the McFadden Severance Agreement (the “McFadden Effective Date”) in connection with Mr. McFadden’s resignation as Chief Executive Officer of the Company, effective as of December 31, 2023 (the “Separation Date”). Pursuant to the McFadden Severance Agreement, Mr. McFadden is eligible to receive \$146,683 in accrued but unpaid base salary through the Separation Date in four quarterly payments of \$36,670.75 each, less all applicable tax withholdings, by December 31, 2024.

In consideration of the McFadden Severance Agreement, the release therein and Mr. McFadden’s resignation as Chief Executive Officer of the Company, the Company shall provide Mr. McFadden severance pay in the gross amount of amount of \$422,500, less all lawful and authorized withholdings and deductions (the “Severance Payment”), which Severance Payment shall be paid in four quarterly installments of \$105,625 per each installment, payable at the Company’s option in either cash or Common Stock, with the payment to be made as follows: (i) as of the McFadden Effective Date, on which such date Mr. McFadden shall be granted, in lieu of cash, 128,811 fully-vested restricted shares of the Common Stock at a price of \$0.82 per share, which such shares of Common Stock subject to the terms and conditions of the Company’s 2022 Long-Term Incentive Plan (the “Plan”), and as of each of (ii) April 1, 2024, (iii) July 1, 2024, and (iv) October 1, 2024, payable at the Company’s option, in either cash or Common Stock. The shares of Common Stock to be issued to Mr. McFadden under installments (ii), (iii) and (iv), if applicable, shall be fully vested and the number of shares to be issued shall be determined based on the volume weighted average trading price of the Common Stock on the principal exchange on which the Common Stock is listed or admitted to trade during the period of 10 trading days immediately prior to the date of such issuance.

Pursuant to the McFadden Severance Agreement, the Company shall also reimburse to Mr. McFadden the premiums associated with the continuation of Mr. McFadden’s health insurance for the period commencing on the Separation Date through December 31, 2024, pursuant to applicable law, and approved but unpaid business expenses through the Separation Date within 30 days following McFadden Effective Date.

Pursuant to the McFadden Severance Agreement, as of the Separation Date, the amended and restated employment agreement, by and between the Company and Mr. McFadden, effective as of September 27, 2022 (the “McFadden Employment Agreement”), shall terminate forever, and no party shall have any further obligation or liability thereunder except as related to any obligations that survive employment termination, including but not limited to the obligations set forth under the Employee Confidential Disclosure, Invention Assignment, Non-Competition, Non-Solicitation and Non-Interference Agreement (the “Restrictive Covenants Agreement”), attached to the McFadden Employment Agreement. Notwithstanding the foregoing, the Company has agreed to waive certain post-termination obligations as related to certain non-competition and non-compete provisions in the Restrictive Covenants Agreement.

Pursuant to the McFadden Severance Agreement, for a period of 8 weeks following the Separation Date, Mr. McFadden has agreed to reasonably cooperate with the Company in the transition of positions. Additionally, Mr. McFadden shall remain a director of the Company’s board of directors (the “Board”) under the standard terms, conditions, and bylaws of the Company from the Separation Date through March 31, 2024, at which time Mr. McFadden shall resign from the Board. The McFadden Severance Agreement also provides for a mutual waiver and release of any claims in connection with Mr. McFadden’s employment, separation and departure from the Company, and for certain customary covenants regarding confidentiality.

On March 17, 2024, the Board approved the entry by the Company into the First Amendment to McFadden Severance Agreement to amend Mr. McFadden’s end date of service on the Board to March 17, 2024.

EIGHTCO HOLDINGS INC.
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22. SUBSEQUENT EVENTS (continued)

Vroman Severance Agreement and Consulting Agreement

On February 26, 2024, the Company and Brett Vroman entered into General Release and Severance Agreement, (the “Vroman Severance Agreement”), effective as of the eighth date following the Vroman Severance Agreement (the “Vroman Effective Date”) in connection with the termination of the amended and restated employment agreement, by and between the Company and Mr. Vroman, effective as of September 27, 2022 (the “Vroman Employment Agreement”). Pursuant to the Vroman Severance Agreement, as of the Separation Date, the Vroman Employment Agreement shall terminate forever, and no party shall have any further obligation or liability thereunder except as related to any obligations that survive employment termination, including but not limited to the obligations set forth under the Employee Confidential Disclosure, Invention Assignment, Non-Competition, Non-Solicitation and Non-Interference Agreement, attached to the Vroman Employment Agreement.

Additionally, on February 22, 2024, the Company and CXO Lite, LLC, a limited liability company organized under the laws of Pennsylvania, of which Mr. Vroman is the sole member, entered into a consulting agreement (the “Consulting Agreement”) pursuant to which Mr. Vroman shall be engaged and continue to serve the Company as its Chief Financial Officer. Pursuant to the Consulting Agreement, the Company has agreed to compensate Mr. Vroman at a rate of \$10,000 per month for services rendered as Chief Financial Officer of the Company, commencing as of January 1, 2024. The term of the Consulting Agreement shall automatically renew on a month-to-month basis unless terminated by either the Company or Mr. Vroman upon 30 days written notice to the other party. The Consulting Agreement additionally provides for certain customary covenants regarding confidentiality.

Pursuant to the Vroman Severance Agreement, the Company will provide Mr. Vroman with (i) back pay wages through the Separation Date in the amount of \$151,615.46, less all lawful and authorized withholdings and deductions, to be paid as soon as practicable following the Vroman Effective Date and (ii) severance of 24 months of Mr. Vroman’s base salary, less all lawful and authorized withholdings and deductions, under the Vroman Employment Agreement. Pursuant to the Vroman Severance Agreement, the Company shall also reimburse to Mr. Vroman the premiums associated with the continuation of Mr. Vroman’s health insurance for the period commencing on the Separation Date through December 31, 2024, pursuant to applicable law, expenses in accordance with the Company’s expense reimbursement policy, and the full vesting of any earned shares of Common Stock. The Vroman Severance Agreement also provides for a mutual waiver and release of any claims in connection with Mr. Vroman’s employment, separation and departure from the Company, and for certain customary covenants regarding confidentiality.

Appointment of Interim Chief Executive Officer

On February 22, 2024, the Board appointed Kevin O’Donnell as Interim Chief Executive Officer of the Company, effective as of the Separation Date, to serve until a successor is chosen and qualified, or until his earlier resignation or removal.

There is no family relationship between Mr. O’Donnell and any director or executive officer of the Company. There are no transactions between Mr. O’Donnell and the Company that would be required to be reported under Item 404(a) of Regulation S-K of the Securities Exchange Act of 1934, as amended.

Issuance of Common Stock

On January 30, 2024, the Company issued 56,235 shares of common stock valued at \$34,866 to satisfy a portion of the outstanding severance due to the former employee.

On February 22, 2024, the Company issued 42,424 shares of common stock value at \$23,333 to satisfy outstanding fees for services performed due to the consultant.

On February 28, 2024, the Company issued 77,500 shares of common stock valued at \$48,050 to satisfy a portion of the outstanding severance due to the former employee.

On February 22, 2024, the Company issued 128,894 shares of common stock value at \$79,914 to satisfy outstanding fees for services performed due to the consultant.

On March 27, 2024, the Company issued 1,399,994 shares of common stock valued at \$1,147,995 to satisfy a portion of the convertible notes payable due to the sellers of Forever 8.

On March 27, 2024, the Company issued 300,000 shares of common stock valued at \$186,000 to a consultant for services performed related to Forever 8.

On March 27, 2024, the Company issued 256,098 shares of common stock valued at \$158,781 to the independent board of directors to satisfy deferred amounts due for services performed.

On March 27, 2024, the Company issued 865,856 shares of common stock valued at \$710,000 to investors related to proceeds received in a private investment in a public entity.

On March 27, 2024, the Company issued 252,169 shares of common stock valued at \$206,799 to satisfy the cash settlement warrants assumed in the Forever 8 acquisition.

On March 27, 2024, the Company issued 120,974 shares of common stock valued at 99,199 to certain former Forever 8 security holders, pursuant to the settlement agreements by and among the Company and certain former Forever 8 security holders, as consideration for the immediate termination of the Company’s obligation to deliver such to the former Forever 8 securityholders the consideration provided for in the MIPA.

On March 28, 2024, the Company issued 73,171 shares of common stock valued at 60,000 to certain holders of the Series D Loan and Security Agreement.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Principal Executive Officer and Principal Financial and Accounting Officer has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report. Based on such evaluation, the Company's Principal Executive Officer and Principal Financial and Accounting Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures were not effective to provide reasonable assurance that information that it is required to disclose in reports that the Company files with the SEC is recorded, processed, summarized and reported within the time periods specified by the Exchange Act rules and regulations.

As of December 31, 2023, management completed an effective assessment of the Company's internal control over financial reporting based on the 2013 Committee of Sponsoring Organizations (COSO) framework. Management has concluded that as of December 31, 2023, our internal control over financial reporting was not effective to detect the inappropriate application of U.S. GAAP. Management identified the following material weakness set forth below in our internal control over financial reporting.

The Company was unable to provide a timely financial reporting package in connection with the year end audit. This was primarily the result of the Company's limited accounting personnel. This also limits the extent to which the Company can segregate incompatible duties and has a lack of controls in place to ensure that all material transactions and developments impacting the financial statements are reflected. There is a risk under the current circumstances that intentional or unintentional errors could occur and not be detected.

Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) under the Exchange Act (already defined).

Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of our financial statements would be prevented or detected. Under the supervision of our Chief Executive Officer and Chief Financial Officer, the Company conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2023 using the criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") (2013 Framework).

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. In our assessment of the effectiveness of internal control over financial reporting as of December 31, 2023, we determined that there were control deficiencies existing that constituted a material weakness.

Our Chief Executive Officer and Chief Financial Officer concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2023 based on criteria established in Internal Control — Integrated Framework issued by COSO (2013 Framework).

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. Under the supervision and with the participation of management, including our principal executive officer, we have completed an evaluation of the effectiveness of our internal 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 (the “COSO Framework”). Based on this evaluation under the COSO Framework, management concluded that our internal control over financial reporting was not effective as of December 31, 2023.

This Annual Report does not include an attestation report of the Company’s independent registered public accounting firm regarding internal controls over financial reporting because this is not required of the Company pursuant to Regulation S-K Item 308(b).

Changes in Internal Control over Financial Reporting

During the year ended December 31, 2023, there were no changes in our internal control over financial reporting that materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

We are not required by current SEC rules to include, and do not include, an auditor’s attestation report regarding our internal controls over financial reporting. Accordingly, our registered public accounting firm has not attested to management’s reports 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 sets forth information about our directors and executive officers.

Name	Age	Position
Paul Vassilakos	47	Chief Executive Officer, Chairman
Brett Vroman	43	Chief Financial Officer
Kevin O’Donnell	49	Director
Frank Jennings	54	Director
Louis Foreman	56	Director
Mary Ann Halford	65	Director

Executive Officers and Directors

Paul Vassilakos. Mr. Vassilakos has served as Chairman and Chief Executive Officer since March 18, 2024. Mr. Vassilakos has also served as a director of Adamas One Corp. (NASDAQ) since October 2021. Mr. Vassilakos co-founded, and since July 2020 has been a partner of Forever 8 Fund, LLC, a subsidiary of Eightco Holdings Inc., a consumer products inventory capital provider. Since 2013 Mr. Vassilakos has served and held various Board, CEO and CFO positions on several publicly listed companies. In July 2007, Mr. Vassilakos founded Petrina Advisors, Inc., a privately held advisory firm formed to provide investment banking services for public and privately held companies, and has served as its President since its formation. Mr. Vassilakos also founded and has served as the President of Petrina Properties Ltd., a privately held real estate holding company, since December 2006. Earlier in his career, Mr. Vassilakos was engaged as a consultant to assist several SPACs with business combinations. Mr. Vassilakos started his career as an Analyst at Salomon Smith Barney's New York Investment Banking Division and later as an Associate within the Greek Coverage Group of Citigroup Inc.'s UK Investment Banking Division. While attending university, Mr. Vassilakos was a Registered Securities Representative at Paine Webber CSC - DJS Securities Ltd, during which time he provided securities brokerage services to private clients. Mr. Vassilakos holds a Bachelor of Science in finance from the Leonard N. Stern Undergraduate School of Business and was a licensed Registered Securities Representative (Series 7 and 63) from February 1996 to February 2002.

Brett Vroman. Mr. Vroman has served as Chief Financial Officer since October 13, 2021. Mr. Vroman served as Vinco Venture, Inc.'s Chief Financial Officer from June 2019 to November 22, 2021, and previously served as its Controller from May 2018 through May 2019. From October 2014 to May 2018, Mr. Vroman was Director of Financial Reporting at Avantor, Inc., a global manufacturer and distributor of high-quality products, services and solutions to customers and suppliers in the life science, advanced technology, and applied materials industries. From March 2011 to October 2014, Mr. Vroman was employed as an Assurance Senior Manager at BDO USA, LLP, a public accounting, tax, consulting. Mr. Vroman is a certified public accountant and holds a Bachelor of Science in Accounting from York College of Pennsylvania. Mr. Vroman brings to Tyde accounting and management experience. On February 26, 2024, the Company and Brett Vroman entered into General Release and Severance Agreement, effective as of the eighth date following the Vroman Severance Agreement in connection with the termination of the amended and restated employment agreement, by and between the Company and Mr. Vroman, effective as of September 27, 2022. Mr. Vroman signed a consulting agreement to remain on as Chief Financial Officer on a fractional basis going forward for \$10,000 per month.

Kevin O'Donnell. Mr. O'Donnell served as Chairman of the board of directors from October 15, 2021 to March 17, 2024, and continues to serve as a member of the board of directors. Mr. O'Donnell founded Poptop Partners, LLC, a boutique operating and investment firm specializing in small to mid-market companies with an emphasis on the retail sector in April 2011 and continues to serve as its Managing Partner. From May 2007 to June 2010, Mr. O'Donnell served as the Founder/President of KOR Capital, LLC, a private equity and consulting firm specializing in turn around management of mid-market companies. Mr. O'Donnell has been an early-stage investor in multiple industries including hospitality, beverage, cannabis, hemp and technology. Mr. O'Donnell has served or continues to serve on numerous private and public boards including but not limited to SRM Entertainment, Vinco Ventures, Inc., Lakeside Alternatives Hospital Foundation, and The University Club. Mr. O'Donnell will bring to Eightco close to 25 years of strategic corporate growth, financial structuring, leadership, and business development initiatives to emerging growth companies. On February 22, 2024, the Board appointed Kevin O'Donnell as Interim Chief Executive Officer of the Company, and he later resigned from this position on March 17, 2024.

Frank Jennings. Mr. Jennings has served as a member of the board of directors since October 13, 2021. Since 2019, Mr. Jennings has served as the Chief Sales Officer at Castlight Health. From August 2014 to 2019, Mr. Jennings was employed as the Vice President of Sales, North America by Doctor on Demand, Inc., an innovative healthcare telemedicine provider. He currently serves as an advisor at Aptihealth and Covera Health and is on the board of directors for Vinco Ventures, Inc. Mr. Jennings is a co-founder of the CMK Foundation, a charitable organization which has been helping people in local communities since 2009. Mr. Jennings brings to Eightco 30 years of experience in business development and management of sales professionals in a variety of technology-adjacent industries.

Louis Foreman. Louis Foreman has served as a member of the board of directors since October 15, 2021. Mr. Foreman is the founder and Chief Executive of Enventys, an integrated product design and engineering firm. Over the past 34 years Louis has created 10 successful start-ups and has been directly responsible for the creation of over 20 others. In 2013, Mr. Foreman was appointed by the SBA Administrator to serve on the National SBDC Advisory Board until the end of 2022. In 2008, Mr. Foreman was appointed by United States Secretary of Commerce Carlos M. Gutierrez to serve for a three-year term on the nine-person Patent Public Advisory Committee (PPAC) of the United States Patent and Trademark Office. In 2011, he was appointed by Secretary Gary Locke to serve an additional three-year term. In addition to being an inventor, Mr. Foreman was the creator of the Emmy® Award winning PBS TV show, *Everyday Edisons*, and served as the Executive Producer and lead judge. Mr. Foreman currently serves as Chairman of the board of directors of the James Dyson Foundation, the Intellectual Property Owners Association (IPO), New Dominion Bank, The Federal Reserve Bank Industry Roundtable, Beyond Campus Innovations, Vinco Ventures, Inc., and the Intellectual Property Owners Educational Foundation (IPOEF). Mr. Foreman has a Bachelor of Arts degree in Economics from the University of Illinois. Mr. Foreman brings to Eightco significant experience with start-ups and knowledge of intellectual property matters.

Mary Ann Halford. Ms. Halford has served as a member of the board of directors since October 13, 2021. She is the Founder and Managing Principal of Halford Media Advisory, which provides strategic, operational and investment advisory services to the media and entertainment industry. From 2021 to 2023, she was a Partner in the Telecommunications, Media, and Technology (“TMT”) strategy consultancy Altman Solon. She was a Senior Advisor to OC&C Strategy Consultants from December 2017 to December 2020. From March 2012 to April 2017, Ms. Halford was both a Managing Director and then a Senior Managing Director in FTI Consulting’s TMT Group working both in NY and London. Ms. Halford built out the digital operations for ITN Networks from 2008 – 2009. In 2002, she co-founded the entity that ultimately became North American Midway Entertainment, which today is largest midway operator in the State and County Fair industry. From 1997 through 2001, Ms. Halford built and established the Fox International Channels Group. She also held senior roles at two independent filmed entertainment production and distribution companies, Solomon International Enterprises and the Samuel Goldwyn Company. She started her career in banking, working both at Chase Manhattan Bank and Bankers Trust Company. Presently, Ms. Halford serves on two other public boards, Media and Games Invest and Cineverse. Previously from 2020 to 2022, she served on the board of Vinco Ventures and from 2007 through 2014, she served on the board of directors of Triton Digital. Ms. Halford received her Bachelor of Arts degree in Government and Economics from Georgetown University and her Master’s in Business Administration from Harvard University. Ms. Halford brings to Eightco over 30 years of experience as both an operator and consultant to the global media and entertainment industry.

Family Relationships

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

Delinquent Section 16(a) Reports

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires our directors and officers, and persons who own more than ten percent of our common stock, to file with the SEC initial reports of ownership and reports of changes in ownership of our common stock. To our knowledge, based solely on a review of the copies of such reports furnished to us, during the fiscal year ended December 31, 2023, we believe that all filing requirements applicable to our officers, directors and greater than ten percent stockholders were complied with for the fiscal year ended December 31, 2023.

Corporate Governance Overview:

Director Nominations Process

Each year the board of directors is expected to nominate a slate of directors for election by stockholders at the annual meeting of stockholders based on the recommendations of the Nominating and Corporate Governance Committee. In identifying prospective director candidates, the Nominating and Corporate Governance Committee may seek referrals from other members of the board of directors, management, stockholders and other sources, including third-party recommendations.

Director and Executive Officer Qualifications

Under our Corporate Governance Guidelines, our Nominating and Corporate Governance Committee is responsible for reviewing with our board of directors, on an annual basis, the appropriate experience, skills and characteristics for the board of directors as a whole and its individual members. In evaluating the suitability of individuals for board of directors membership, our Nominating and Corporate Governance Committee, pursuant to our Corporate Governance Guidelines, takes into account many factors, including but not limited to: the individual’s qualification as independent, as well as consideration of diversity, skills, age, education and experience and the general needs of the board of directors. Our Nominating and Corporate Governance Committee evaluates each individual in the context of the board of directors as a whole, with the objective of recommending a group of directors that can best perpetuate the success of the business and represent stockholder interests through the exercise of sound judgment, using its diversity of experience. In determining whether to recommend a director for re-election, our Nominating and Corporate Governance Committee considers the director’s past attendance at meetings and participation in and contributions to the activities of the board of directors.

The Company’s officers and board of directors is composed of a diverse group of leaders in their respective fields. Many of these officers or directors have senior leadership experience at various companies. In these positions, they have also gained experience in core management skills, such as strategic and financial planning, public company financial reporting, compliance, risk management, and leadership development. Many of the Company’s officers and directors also have experience serving on boards of directors and/or board committees of other public companies and private companies and have an understanding of corporate governance practices and trends, which provides an understanding of different business processes, challenges, and strategies. Further, these officers and directors have other experience that makes them valuable, such as managing and investing assets or facilitating the consummation of business investments and combinations.

The Company, along with its officers and directors, believe that the above-mentioned attributes, along with the leadership skills and other experiences of the Company’s directors and executive officers described above, provide the Company with a diverse range of perspectives and judgment necessary to facilitate the Company’s goals of stockholder value appreciation through organic and acquisition growth.

Board Structure, Number and Terms of Office of Officers and Directors

Our board of directors consists of five Directors. In accordance with our Certificate of Incorporation, the minimum number of directors we may have is five and maximum number of Directors is eleven. The number of Directors may be increased or decreased by our board of directors from time to time. In accordance with our Bylaws and Delaware law, our board of directors will oversee the management of the business and affairs of the Company. Our Directors will be elected by our stockholders at our annual stockholders meeting for three-year terms and to serve until their successors are duly elected and qualified or until their earlier death, resignation, or removal. Stockholders will not be entitled to cumulative voting in the election of our directors. Our board of directors will be classified, meaning the directors will be divided into three classes each consisting of as close to 1/3 of the total Directors as possible. At each annual meeting of the stockholders, one class of Directors will be up for election. Directors will serve three-year terms. No determination has been made regarding the directors to be in the individual classes. This classification of the board of directors may delay or prevent a change in control of our company or our management.

Director Independence

Nasdaq listing standards require that a majority of the Company's board of directors be independent. An "independent director" is defined generally as a person other than an officer or employee of the Company or its subsidiaries or any other individual having a relationship that, in the opinion of the Company's board of directors, would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. The board of directors intends to affirmatively determine that Frank Jennings, Louis Foreman, and Mary Ann Halford qualify as independent directors in accordance with the Nasdaq listing rules.

Board Leadership Structure

Our board of directors is not expected to have a formal policy regarding the combination of the roles of Chairman of the board of directors and Chief Executive Officer because the board of directors believes that it is in the best interests of the Company to have the flexibility to determine, from time to time, whether the positions should be held by the same person or by separate persons. The board of directors believes that it is currently in the best interest of our stockholders that the role of Chairman be held by Paul Vassilakos.

The board of directors may reconsider this leadership structure from time to time based on the leadership needs of our board of directors and the Company at any particular time. The Nominating and Corporate Governance Committee is expected to evaluate on an ongoing basis whether the board of directors' leadership structure is appropriate to effectively address the evolving needs of the Company's business and the long-term interests of our stockholders. The committee is expected to then makes recommendations to the board of directors concerning the board of directors' leadership structure, including whether the roles of Chairman and Chief Executive Officer should be separated or combined.

Lead Independent Director

Under our Corporate Governance Guidelines, if the Chairman of the board of directors is not an independent director, as determined by the Nominating and Governance Committee and the board of directors, the independent directors will annually appoint one independent director to be the Lead Independent Director in accordance with the Director Nominating Agreement. Given that our Chairman will not be an independent director, our independent directors have appointed Frank Jennings as our Lead Independent Director. The Lead Independent Director's responsibilities are to: (i) preside over executive sessions of the independent directors and at all meetings at which the Chairman of the board of directors is not present; (ii) call meetings of the independent directors as he or she deems necessary; (iii) serve as a liaison between the Chairman of the board of directors and the independent directors; (iv) propose agendas and schedules for board of directors meetings in consultation with the Chairman of the board of directors; and (v) be available for consultation and communication if requested by stockholders.

Board's Role in Risk Oversight

Our management is responsible for identifying risks facing our Company, including strategic, financial, operational, and regulatory risks, implementing risk management policies and procedures and managing our day-to-day risk exposure. The board of directors is expected to have overall responsibility for risk oversight, including, as part of regular board of directors and committee meetings, general oversight of executives' management of risks relevant to the Company. While the full board of directors has overall responsibility for risk oversight and is currently overseeing the Company's business continuity risks, it is expected to be supported in this function by its Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee once the committees have been formed. The committees are expected to be formed prior to the Distribution, and each of the committees is expected to regularly reports to the board of directors.

The Audit Committee will review and discuss with management and the Company's auditors, as appropriate, the risks faced by the Company and the policies, guidelines, and process by which management assesses and manages the Company's risks, including the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures.

The Compensation Committee will review the Company's incentive compensation arrangements to determine whether they encourage excessive risk-taking, to review and discuss at least annually the relationship between risk management policies and practices and compensation, and to evaluate compensation policies and practices that could mitigate any such risk.

The Nominating and Corporate Governance Committee will be responsible for developing and recommending to the board of directors for approval an officer succession plan (the "Succession Plan"), reviewing the Succession Plan periodically with the Chief Executive Officer, evaluating potential candidates for executive positions and recommending to the board of directors any changes to and any candidates for succession under the Succession Plan.

In addition, the board of directors will be presented with information at its regularly scheduled and special meetings regarding risks facing our Company, and management will provide more frequent, informal communications to the board of directors between regularly scheduled meetings which will be designed to give the board of directors regular updates about our business. The board of directors will consider this information and will provide feedback, will make recommendations, and, as appropriate, will authorize or direct management to address particular exposures to risk.

Committees of the Board of Directors

Our board of directors has three standing committees: Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee. Frank Jennings, Mary Ann Halford and Louis Foreman, have been appointed to serve on the Company's Audit Committee, with Louis Foreman serving as the chair and qualifying as an audit committee financial expert, as such term is defined in Item 407(d)(5) of Regulation S-K. Frank Jennings, Mary Ann Halford, Louis Foreman have been appointed to serve on the Company's Compensation Committee, with Frank Jennings serving as the chair. Frank Jennings, Mary Ann Halford, Louis Foreman have been appointed to serve on the Company's Nominating and Corporate Governance Committee, with Frank Jennings serving as the chair. Each of the committee charters is available on the Company's website at www.8co.holdings.

Audit Committee

The Audit Committee's duties, which are specified in its charter include, but are not limited to:

- reviewing and discussing with management and the independent auditor the annual audited financial statements, and recommending to the board of directors whether the audited financial statements should be included in our annual reports;

- discussing with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of our financial statements;
- discussing with management major risk assessment and risk management policies;
- monitoring the independence of the independent auditor;
- verifying the rotation of the lead (or coordinating) audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit as required by law;
- reviewing and approving all related-party transactions;
- inquiring and discussing with management our compliance with applicable laws and regulations;
- pre-approving all audit services and permitted non-audit services to be performed by our independent auditor, including the fees and terms of the services to be performed;
- appointing or replacing the independent auditor;
- determining the compensation and oversight of the work of the independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work; and
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls or reports which raise material issues regarding our financial statements or accounting policies.

Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee's duties, which are specified in its charter, include, but are not limited to:

- identifying, evaluating, and selecting, or recommending that the board of directors approve, nominees for election to the board of directors;
- evaluating the performance of the board of directors and of individual directors;
- reviewing developments in corporate governance practices;
- evaluating the adequacy of corporate governance practices and reporting;
- reviewing management succession plans; and
- developing and making recommendations to the board of directors regarding corporate governance guidelines and matters.

Compensation Committee

The Compensation Committee has overall responsibility for determining and approving the compensation of the Company's Chief Executive Officer and reviewing and approving the annual base salaries and annual incentive opportunities of the Company's executive officers. The Company may utilize the services of independent consultants to perform analyses and to make recommendations relative to executive compensation matters. These analyses and recommendations will be conveyed to the Compensation Committee, and the Compensation Committee takes such information into consideration in making its compensation decisions.

Compensation Committee Interlocks and Insider Participation

Mr. Jennings, Ms. Halford and Mr. Foreman comprise our Compensation Committee. None of these individuals have any material contractual or other relationships with our company except as directors. None of our executive officers served on the compensation committee or board of directors of any entity whose executive officers will serve as a member of our board of directors or our Compensation Committee.

Executive Sessions

Independent directors are expected to regularly meet in executive session at board of directors meetings without any members of management being present. The Lead Independent Director will preside over the executive sessions, and may, as applicable, call executive sessions as appropriate.

Board and Board Committee Meetings and Attendance

Our Corporate Governance Guidelines provide that directors are expected to prepare themselves for and attend all board of directors meetings, the annual meeting of stockholders and the meetings of the board of directors' standing committees on which they serve.

Anti-Hedging Policy

Our board of directors adopted an Insider Trading Policy, which prohibits, among other things, our directors, officers, and employees from engaging in any hedging or monetization transactions with respect to the Company's securities. In addition, our Insider Trading Policy prohibits our directors, officers, and employees from engaging in certain short-term or speculative transactions in the Company's securities, such as short-term trading, short sales, and publicly traded options, which could create heightened legal risk and/or the appearance of improper or inappropriate conduct by our directors, officers, and employees.

Corporate Code of Conduct and Ethics and Whistleblower Policy

The board of directors adopted a Corporate Code of Conduct and Ethics and Whistleblower Policy that applies to all of the Company's directors, officers, and employees. The Corporate Code of Conduct and Ethics and Whistleblower Policy covers areas such as conflicts of interest, insider trading and compliance with laws and regulations. The Code of Conduct and Ethics is available on our website at www.8co.holdings. We intend to post any amendments to or waivers from our Code of Conduct and Ethics and Whistleblower Policy at this location on our website.

Stockholder Communications

Stockholders who wish to communicate with the board of directors may do so by writing the Company's Office of the Secretary by mail at 101 Larry Holmes Dr., Suite 313, Easton, PA 18042, Attention: Office of the Secretary or by email at investors@8co.holdings. All communications that relate to matters within the scope of the responsibilities of the board of directors and its standing committees will be forwarded to the Chairman of the board of directors. Communications that relate to ordinary business matters that are not within the scope of the responsibilities of the board of directors are to be sent to the appropriate executive officer or employee.

Our "whistleblower" policy prohibits our Company or any of our employees from retaliating or taking any adverse action against anyone for raising a concern. If a stockholder or an employee nonetheless prefers to raise his or her concern in a confidential or anonymous manner, he or she may call our external service provider, toll-free at 866-980-2818.

Certain Legal Proceedings

To the knowledge of the Company's management, there is no litigation currently pending or contemplated against any of its officers or directors in their capacity as such.

Board Diversity

It is anticipated that we will seek diversity in experience, viewpoint, education, skill, and other individual qualities and attributes to be represented on our board of directors. We believe directors should have various qualifications, including individual character and integrity; business experience; leadership ability; strategic planning skills, ability, and experience; requisite knowledge of our industry and finance, accounting, and legal matters; communications and interpersonal skills; and the ability and willingness to devote time to our company. We also believe the skill sets, backgrounds, and qualifications of our anticipated directors, taken as a whole, should provide a significant mix of diversity in personal and professional experience, background, viewpoints, perspectives, knowledge, and abilities. Nominees will not be discriminated against on the basis of race, religion, national origin, sex, sexual orientation, disability, or any other basis proscribed by law. It is anticipated that the assessment of prospective directors will be made in the context of the perceived needs of our board of directors from time to time.

We expect that all of our directors will be individuals of high character and integrity, able to work well with others, and committed to devote sufficient time to the business and affairs of our company. In addition to these attributes, the description of each anticipated director's background set forth above indicates the specific qualifications, skills, perspectives, and experience necessary to conclude that each individual should serve as a director of our company.

Board Leadership Structure

We believe that effective board leadership structure can depend on the experience, skills, and personal interaction between persons in leadership roles as well as the anticipated needs of our company at any point in time. Our anticipated Corporate Governance Guidelines will support flexibility in the structure of our board of directors by not requiring the separation of the roles of Chief Executive Officer and Chairman of the board of directors.

Our board of directors is not expected to have a formal policy regarding the combination of the roles of Chairman of the board of directors and Chief Executive Officer. It is anticipated that our Chief Executive Officer will be responsible for setting our strategic direction and day-to-day leadership and performance of our company. Our Bylaws will provide that the Chairperson of our board of directors will, when present, preside over all meetings of our stockholders, unless another person is so designated by the board of directors, and board of directors. We anticipate that the Chairperson of the board of directors will provide input to the Chief Executive Officer and set the agenda for board meetings of our board of directors.

Clawback Policy

We have adopted a clawback policy effective as of November 6, 2023, that complies with the Nasdaq's new clawback rules promulgated under the SEC's Rule 10D-1. Under this policy, the Compensation Committee must seek payment of incentive-based compensation, such as cash payments under our annual incentive plan or long-term equity-based incentive awards, that was paid to our executive officers based on financial statements that were subsequently restated. The policy provides that if the Compensation Committee determines that there has been a material restatement of publicly issued financial results from those previously issued to the public, the Compensation Committee will review all incentive-based compensation made to executive officers during the three-year period prior to the restatement. If such payments would have been lower had they been calculated based on such restated results, our Compensation Committee will recoup the payments in excess of the amount that would have been received had it been determined based on the restated amounts.

Additionally, the Sarbanes-Oxley Act of 2002 subjects incentive-based compensation and stock sale profits of our CEO and CFO to forfeiture in the event of an accounting restatement resulting from any non-compliance, as a result of their misconduct, with any financial reporting requirement under securities laws.

The brief overview above is qualified in its entirety by reference to the full text of our Clawback Policy, which is attached as Exhibit 97.1 to this Annual Report.

ITEM 11. EXECUTIVE COMPENSATION

Summary Compensation Table

The following table presents summary information regarding the total compensation incurred by Eightco Holdings Inc. for the years ended December 31, 2023 and 2022, for the named executive officers of the Company.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	All Other Compensation (\$)	Total (\$)
<i>Brian McFadden*</i>	2023	325,000	-	-	-	-	325,000
<i>Former Chief Executive Officer</i>	2022	248,846	-	44,000	-	-	292,846
<i>Brett Vroman**</i>	2023	292,000	-	-	-	-	292,000
<i>Chief Financial Officer</i>	2022	243,261	-	39,600	-	-	282,861
<i>Kevin O'Donnell***</i>	2023	292,000	-	-	-	-	292,000
<i>Former Executive Chairman</i>	2022	138,643	-	39,600	-	-	178,243

* Brian McFadden was appointed President of Eightco on September 23, 2021, and his title was later expanded to include Chief Executive Officer, which he served until March 17, 2024. The Company paid cash of \$171,635 of Mr. McFadden's salary for the year ended December 31, 2023 and \$153,365 was deferred until a later date to be determined.

** Brett Vroman was appointed Chief Financial Officer of Eightco on October 13, 2021. The Company paid cash of \$147,462 of Mr. Vroman's salary for the year ended December 31, 2023 and \$144,538 was deferred until a later date to be determined.

*** Kevin O'Donnell served as the Executive Chairman of the Board of Directors from October 15, 2021 to March 17, 2024. The Company paid cash of \$165,923 of Mr. O'Donnell's salary for the year ended December 31, 2023 and \$126,077 was deferred until a later date to be determined.

Overview

The Company expects to provide total compensation packages that are competitive, tailored to the unique characteristics and needs of the Company within its industry, and adequately reward its executives for their roles in creating value for our stockholders. The Company expects that it will be competitive in its executive compensation with other similarly situated companies in its industry. The compensation decisions regarding the Company's executives are expected to be based on its need to attract individuals with the skills necessary to achieve its business plan, to reward those individuals fairly over time and to retain those individuals who continue to perform at or above the Company's expectations.

The Company's executive compensation program is expected to consist of three primary components: salary, incentive bonus and stock-based awards issued under an equity incentive plan. The Company determines the appropriate level for each compensation component based in part, but not exclusively, on its view of internal equity and consistency, individual performance, the Company's performance, and other information deemed relevant and timely.

Employment Agreements

On September 27, 2022, the Company entered into new employment agreements for the Company's Chief Executive Officer (the "McFadden Employment Agreement") and Chief Financial Officer (the "Vroman Employment Agreement"). The employment agreements reported here replace existing employment agreements entered into with Mr. McFadden (the "March McFadden Agreement") and Mr. Vroman (the "March Vroman Agreement") in March 2022. What follows below is a summary of the principal terms for each of the new employment agreements, each as amended on October 18, 2022.

Brian McFadden Employment Agreement

Pursuant to the terms of the McFadden Employment Agreement, Mr. McFadden is employed as the Chief Executive Officer of the Company. Mr. McFadden's employment under the McFadden Employment Agreement lasts until September 27, 2024, unless earlier terminated pursuant to the terms of the agreement. The McFadden Employment Agreement provides for an automatic renewal for a period of one year unless either party provides timely written notice otherwise.

Pursuant to the terms of Mr. McFadden's employment agreement, Mr. McFadden will receive, subject to approval by the board of directors of the Company (the "Board"), an annual grant of 200,000 restricted stock units convertible into shares of the Company's common stock, which shall be immediately vested and subject to the terms and conditions of the Company's 2022 Long-Term Incentive Plan. This reflects an increase from the 150,000 shares provided to Mr. McFadden under the March McFadden Agreement. Mr. McFadden will be entitled to a base salary payable at the annualized rate of \$325,000 per year (the "McFadden Base Salary"), which reflects an increase from the \$250,000 provided to Mr. McFadden under the March McFadden Agreement. Mr. McFadden is eligible for an annual cash bonus opportunity equal to 100% of the McFadden Base Salary (the "McFadden Bonus") based on the achievement of performance goals as determined by Company's audit committee and the Board. The McFadden Bonus reflects a decrease on a percentage basis from the maximum 150% of base salary provided for in the March McFadden Agreement.

In addition, Mr. McFadden shall under some circumstances be entitled to receive additional shares of the Company's common stock contingent upon the satisfaction of certain additional performance goals. Mr. McFadden shall be entitled to receive a maximum total of 1,100,000 shares upon full satisfaction of certain corporate growth achievements based upon a review of the Company's audited financial statements and subject to the approval of the Board. This reflects an increase over the March McFadden Agreement, which provided that Mr. McFadden would be eligible to receive a maximum of 500,000 shares in connection with revenue growth. Mr. McFadden shall be eligible to receive a one-time bonus of 200,000 shares in the event that the Company achieves a positive cash flow based on a review of the Company's audited financial statements and subject to the review of the Board. The March McFadden Agreement provided for a substantially similar bonus in connection with cash flow. Mr. McFadden shall be eligible to receive a bonus of a maximum aggregate of 1,750,000 shares in the event that certain market capitalization milestones are met based on a review of the Company's audited financial statements and subject to approval by the Board. Though specific milestone thresholds vary, the March McFadden Agreement contained a substantially similar provision with respect to a market capitalization bonus. Subsequent to receiving the maximum aggregate 1,750,000 shares provided for under the first three market capitalization milestones, Mr. McFadden will be eligible to receive additional bonuses of 150,000 shares for each doubling in market capitalization of the Company over the market capitalization recorded at the prior bonus threshold, provided such increase is sustained for a period of at least three consecutive trading days. Though specific milestone thresholds and timing requirements vary, the March McFadden Agreement contained a substantially similar provision with respect to a continuing market capitalization bonus. Mr. McFadden may also be eligible for additional compensation in the sole and complete discretion of the Board.

Mr. McFadden will be eligible to participate in all health, medical, dental and life insurance policies offered to employees of the Company, and the Company will pay all applicable premiums. The Company will reimburse Mr. McFadden up to \$10,000 per year as a car allowance, reimburse Mr. McFadden up to \$2,500 for home office expenses and reimburse Mr. McFadden for all reasonable out-of-pocket expenses incurred by him in the conduct of the Company's business. The McFadden Employment Agreement provides Mr. McFadden with four (4) weeks of paid vacation and five (5) days of paid personal time. The McFadden Employment Agreement also provides Mr. McFadden with liability insurance coverage and shall reimburse certain financial planning expenses incurred by Mr. McFadden. All terms provided in this paragraph are substantially similar to those provided in the March McFadden Agreement.

In the event the Company terminates Mr. McFadden's employment without cause (as defined in the McFadden Employment Agreement), Mr. McFadden will receive (i) the Accrued Obligation (as defined in the McFadden Employment Agreement) and (ii) severance in the amount of equal to the McFadden Base Salary for twenty-four (24) months. In addition, this termination will cause the vesting of all Eightco common stock held by Mr. McFadden and entitle Mr. McFadden to reimbursement of premiums associated with the continuation of health insurance benefits provided under the McFadden Employment Agreement during the remaining Term of Employment (as defined in the McFadden Employment Agreement).

On February 26, 2024, the Company and Brian McFadden entered into General Release and Severance Agreement (the "McFadden Severance Agreement"), effective as of the eighth day following the McFadden Severance Agreement in connection with Mr. McFadden's resignation as Chief Executive Officer of the Company, effective as of December 31, 2023. Pursuant to the McFadden Severance Agreement, Mr. McFadden is eligible to receive \$146,683 in accrued but unpaid base salary through the Separation Date in four quarterly payments of \$36,670.75 each, less all applicable tax withholdings, by December 31, 2024.

In consideration of the McFadden Severance Agreement, the release therein and Mr. McFadden's resignation as Chief Executive Officer of the Company, the Company shall provide Mr. McFadden severance pay in the gross amount of amount of \$422,500, less all lawful and authorized withholdings and deductions (the "Severance Payment"), which Severance Payment shall be paid in four quarterly installments of \$105,625 per each installment, payable at the Company's option in either cash or Common Stock, with the payment to be made as follows: (i) as of the McFadden Effective Date, on which such date Mr. McFadden shall be granted, in lieu of cash, 128,811 fully-vested restricted shares of the Common Stock at a price of \$0.82 per share, which such shares of Common Stock subject to the terms and conditions of the Company's 2022 Long-Term Incentive Plan (the "Plan"), and as of each of (ii) April 1, 2024, (iii) July 1, 2024, and (iv) October 1, 2024, payable at the Company's option, in either cash or Common Stock. The shares of Common Stock to be issued to Mr. McFadden under installments (ii), (iii) and (iv), if applicable, shall be fully vested and the number of shares to be issued shall be determined based on the volume weighted average trading price of the Common Stock on the principal exchange on which the Common Stock is listed or admitted to trade during the period of 10 trading days immediately prior to the date of such issuance.

Pursuant to the McFadden Severance Agreement, the Company shall also reimburse to Mr. McFadden the premiums associated with the continuation of Mr. McFadden's health insurance for the period commencing on the Separation Date through December 31, 2024, pursuant to applicable law, and approved but unpaid business expenses through the Separation Date within 30 days following McFadden Effective Date.

Pursuant to the terms of the McFadden Severance Agreement, Mr. McFadden was to remain a director of the Company's board (the "Board") from the Separation Date through March 31, 2024, at which time Mr. McFadden would resign from the Board. On March 17, 2024, the Board approved the entry by the Company into the First Amendment to the McFadden Severance Agreement to amend Mr. McFadden's end date of service on the Board to March 17, 2024.

A copy of the complete McFadden Severance Agreement is included as Exhibit 10.2 to the Company's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on February 26, 2024.

Brett Vroman Employment Agreement

Pursuant to the terms of the Vroman Employment Agreement, Mr. Vroman is employed as the Chief Financial Officer of the Company. Mr. Vroman's employment under the Vroman Employment Agreement lasts until September 27, 2024, unless earlier terminated pursuant to the terms of the agreement.

Pursuant to the terms of Mr. Vroman's employment agreement, Mr. Vroman will receive, subject to approval by the Board, an annual grant of 180,000 restricted stock units convertible into shares of the Company's common stock, which shall be immediately vested and subject to the terms and conditions of the Company's 2022 Long-Term Incentive Plan. This reflects an increase from the 135,000 shares provided to Mr. Vroman under the March Vroman Agreement. Mr. Vroman will be entitled to a base salary payable at the annualized rate of \$292,000 per year (the "Vroman Base Salary"), which reflects an increase from the \$250,000 provided to Mr. Vroman under the March Vroman Agreement. Mr. Vroman is eligible for an annual cash bonus opportunity equal to 100% of the Vroman Base Salary (the "Vroman Bonus") based on the achievement of performance goals as determined by the Company's audit committee and the Board. The Vroman Bonus reflects a decrease on a percentage basis from the maximum 150% of base salary provided for in the March Vroman Agreement.

In addition, Mr. Vroman shall under some circumstances be entitled to receive additional shares of the Company's common stock contingent upon the satisfaction of certain additional performance goals. Mr. Vroman shall be entitled to receive a maximum total of 990,000 shares upon full satisfaction of certain corporate growth achievements based upon a review of the Company's audited financial statements and subject to the approval of the Board. This reflects an increase over the March Vroman Agreement, which provided that Mr. Vroman would be eligible to receive a maximum of 450,000 shares in connection with revenue growth. Mr. Vroman shall be eligible to receive a one-time bonus of 180,000 shares in the event that the Company achieves a positive cash flow based on a review of the Company's audited financial statements and subject to the review of the Board. The March Vroman Agreement provided for a substantially similar bonus in connection with cash flow. Mr. Vroman shall be eligible to receive a bonus of a maximum aggregate of 1,600,000 shares in the event that certain market capitalization milestones are met based on a review of the Company's audited financial statements and subject to approval by the Board. This reflects an increase above the maximum aggregate of 1,575,000 shares provided for in connection with meeting market capitalization milestones under the March Vroman Agreement. Subsequent to receiving the maximum aggregate 1,600,000 shares provided for under the first three market capitalization milestones, Mr. Vroman will be eligible to receive additional bonuses of 135,000 shares for each doubling in market capitalization of the Company over the market capitalization recorded at the prior bonus threshold, provided such increase is sustained for a period of at least three consecutive trading days. Though specific milestone thresholds and timing requirements vary, the March Vroman Agreement contained a substantially similar provision with respect to a continuing market capitalization bonus. Mr. Vroman may also be eligible for additional compensation in the sole and complete discretion of the Board.

Mr. Vroman will be eligible to participate in all health, medical, dental and life insurance policies offered to employees of the Company, and the Company will pay all applicable premiums. The Company will reimburse Mr. Vroman up to \$10,000 per year as a car allowance, reimburse Mr. Vroman up to \$2,500 for home office expenses and reimburse Mr. Vroman for all reasonable out-of-pocket expenses incurred by him in the conduct of the Company's business. The Vroman Employment Agreement provides Mr. Vroman with four (4) weeks of paid vacation and five (5) days of paid personal time. The Vroman Employment Agreement also provides Mr. Vroman with liability insurance coverage and shall reimburse certain financial planning expenses incurred by Mr. Vroman. All terms provided in this paragraph are substantially similar to those provided in the March Vroman Agreement.

In the event the Company terminates Mr. Vroman's employment without cause (as defined in the Vroman Employment Agreement), Mr. Vroman will receive (i) the Accrued Obligation (as defined in the Vroman Employment Agreement) and (ii) severance in the amount of equal to the Vroman Base Salary for twenty-four (24) months. In addition, this termination will cause the vesting of all Eightco common stock held by Mr. Vroman and entitle Mr. Vroman to reimbursement of premiums associated with the continuation of health insurance benefits provided under the Vroman Employment Agreement during the remaining Term of Employment (as defined in the Vroman Employment Agreement).

On February 26, 2024, the Company and Brett Vroman entered into General Release and Severance Agreement (the “Vroman Severance Agreement”), effective as of the eighth date following the Vroman Severance Agreement in connection with the termination of the amended and restated employment agreement, by and between the Company and Mr. Vroman, effective as of September 27, 2022. Pursuant to the Vroman Severance Agreement, as of the Separation Date, the Vroman Employment Agreement shall terminate forever, and no party shall have any further obligation or liability thereunder except as related to any obligations that survive employment termination, including but not limited to the obligations set forth under the Employee Confidential Disclosure, Invention Assignment, Non-Competition, Non-Solicitation and Non-Interference Agreement, attached to the Vroman Employment Agreement.

Pursuant to the Vroman Severance Agreement, the Company will provide Mr. Vroman with (i) back pay wages through the Separation Date in the amount of \$151,615.46, less all lawful and authorized withholdings and deductions, to be paid as soon as practicable following the Vroman Effective Date and (ii) severance of 24 months of Mr. Vroman’s base salary, less all lawful and authorized withholdings and deductions, under the Vroman Employment Agreement. Pursuant to the Vroman Severance Agreement, the Company shall also reimburse to Mr. Vroman the premiums associated with the continuation of Mr. Vroman’s health insurance for the period commencing on the Separation Date through December 31, 2024, pursuant to applicable law, expenses in accordance with the Company’s expense reimbursement policy, and the full vesting of any earned shares of Common Stock. The Vroman Severance Agreement also provides for a mutual waiver and release of any claims in connection with Mr. Vroman’s employment, separation and departure from the Company, and for certain customary covenants regarding confidentiality.

Additionally, on February 22, 2024, the Company and CXO Lite, LLC, a limited liability company organized under the laws of Pennsylvania, of which Mr. Vroman is the sole member, entered into a consulting agreement (the “CXO Lite Consulting Agreement”) pursuant to which Mr. Vroman shall be engaged and continue to serve the Company as its Chief Financial Officer.

A copy of the complete Vroman Severance Agreement and CXO Lite Consulting Agreement are included as Exhibits 10.3 and 10.4, respectively, to the Company’s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on February 26, 2024.

Kevin O’Donnell Employment Agreement and Separation Agreement

On February 22, 2024, the Board appointed Kevin O’Donnell as Interim Chief Executive Officer of the Company, effective as of the Separation Date, to serve until a successor is chosen and qualified, or until his earlier resignation or removal.

On March 17, 2024, Kevin O’Donnell resigned as Executive Chairman and Interim Chief Executive Officer of the Company, effective immediately. Mr. O’Donnell’s resignation was not the result of any disagreement regarding any matter relating to the Company’s operations, policies, or practices.

In connection with Mr. O’Donnell’s resignation from these positions, on March 17, 2024, the Company and Kevin O’Donnell entered into a General Release and Severance Agreement (the “O’Donnell Severance Agreement”), effective as of March 17, 2024 (the “O’Donnell Effective Date”). The O’Donnell Severance Agreement terminated the amended and restated employment agreement, by and between the Company and Mr. O’Donnell, effective as of October 21, 2022 (the “O’Donnell Employment Agreement”). Pursuant to the O’Donnell Severance Agreement, as of the O’Donnell Effective Date, the O’Donnell Employment Agreement shall terminate forever, and no party shall have any further obligation or liability thereunder except as related to any obligations that survive employment termination, including but not limited to the obligations set forth under the Employee Confidential Disclosure, Invention Assignment, Non-Competition, Non-Solicitation and Non-Interference Agreement, attached to the O’Donnell Employment Agreement.

Pursuant to the O’Donnell Severance Agreement, the Company will provide Mr. O’Donnell with (i) back pay wages through the Separation Date in the amount of \$138,000, less all lawful and authorized withholdings and deductions, to be paid as soon as practicable following the O’Donnell Effective Date and (ii) severance equal to 24 months of Mr. O’Donnell’s base salary, less all lawful and authorized withholdings and deductions, under the O’Donnell Employment Agreement. Pursuant to the O’Donnell Severance Agreement, the Company shall also provide Mr. O’Donnell with (i) reimbursement of the premiums associated with the continuation of Mr. O’Donnell’s health insurance for the period commencing on the Separation Date through and including September 27, 2024, pursuant to applicable law, (ii) reimbursement of expenses in accordance with the Company’s expense reimbursement policy, and (iii) the full vesting of any earned, outstanding and unvested shares of Common Stock subject to the Plan (as define below). The O’Donnell Severance Agreement also provides for a mutual waiver and release of any claims in connection with Mr. O’Donnell’s employment, separation and departure from the Company, and for certain customary covenants regarding confidentiality.

Outstanding Equity Awards at Fiscal Year-End

None.

Retirement Benefits

The Company expects to maintain a tax-qualified defined contribution plan that meets the requirements of Section 401(k) of the Internal Revenue Code (the “Code”), commonly called a 401(k) plan, for substantially all of its employees. The 401(k) plan will be made available on the same basis to all employees, including the named executive officers. Each participant in the 401(k) plan will be able to elect to defer from 0% to 100% of compensation, subject to limitations under the Code and Employee Retirement Income Security Act.

Director Compensation

The Company’s board of directors’ compensation program is expected to be designed to provide competitive compensation necessary to attract and retain high quality non-employee directors and to encourage ownership of Company stock to further align their interests with those of our stockholders.

The director annual compensation program is expected to provide the following compensation for independent, non-employee directors following the Business Combination:

- A quarterly retainer (the “Quarterly Retainer”) of \$25,000, and 25,000 shares of the Company common stock, a supplemental 5,000 shares of the Company common stock as an annual retainer for each of the Audit Committee Chair, the Compensation Committee Chair, and the Nominating and Governance Committee Chair; and
- Additional compensation for ad hoc services on a case-by-case basis.

The following table presents summary information regarding the director compensation for each non-employee member of our board of directors for the years ended December 31, 2023.

Name	Year	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
Brian McFadden (1)	2023	\$ -	\$ -	-	-	-	-	\$ -
Kevin O'Donnell (2)	2023	\$ -	\$ -	-	-	-	-	\$ -
Frank Jennings (3)(6)	2023	\$ 100,000	\$ -	-	-	-	-	\$ 100,000
Louis Foreman (4)(6)	2023	\$ 100,000	\$ -	-	-	-	-	\$ 100,000
Mary Ann Halford (5)(6)	2023	\$ 100,000	\$ -	-	-	-	-	\$ 100,000

- (1) Mr. McFadden served as a director from October 13, 2021 to March 17, 2024.
- (2) Mr. O'Donnell has served as a director since October 15, 2021. He served as the Company's Executive Chairman until March 17, 2024.
- (3) Mr. Jennings was appointed a director of Eightco Holdings, Inc. on October 15, 2021.
- (4) Mr. Foreman was appointed a director of Eightco Holdings, Inc. on October 15, 2021.
- (5) Ms. Halford was appointed a director of Eightco Holdings, Inc. on October 15, 2021.
- (6) No cash compensation was paid during the year ended December 31, 2023, but was accrued within the Company's financials.

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

Security Ownership of Management and Certain Beneficial Owners

The following table sets forth information regarding the beneficial ownership of our common stock as of April 1, 2024 for:

- each person known by the Company to be a beneficial owner of more than 5% of the common stock of the Company;
- each of the Company's named executive officers and directors; and
- all executive officers and directors of the Company as a group.

The addresses of the executive officers and directors is 101 Larry Holmes Dr., Suite 313, Easton, PA 18042.

Beneficial ownership is determined according to the rules of the Securities and Commission, which generally provide that a person has beneficial ownership of a security if he, she, or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days.

The beneficial ownership percentages set forth in the table below are based on 8,537,310 shares of common stock issued and outstanding as of April 1, 2024.

Unless otherwise indicated, the Company believes that all persons named in the table have sole voting and investment power with respect to all shares of common stock beneficially owned by them.

Name and Address of Beneficial Owner ⁽¹⁾	Beneficial Ownership	
	Number of Shares	Percentage
5% Stockholders		
BHP Capital NY Inc. ⁽²⁾	845,193	9.99%
Named Executive Officers and Directors		
Paul Vassilakos ⁽³⁾	884,374	10.09%
Brett Vroman ⁽⁴⁾	212,868	2.43%
Kevin O'Donnell ⁽⁵⁾	142,500	1.64%
Brian McFadden ⁽⁶⁾	62,610	*%
Frank Jennings ⁽⁷⁾	228,681	2.56%
Louis Foreman ⁽⁸⁾	229,332	2.64%
Mary Ann Halford ⁽⁹⁾	228,531	2.63%
Current Executive Officers and Directors as a group (six persons)	1,926,286	22.00%

* Less than 1%

(1) Based on 8,537,310 shares of common stock issued and outstanding as of April 1, 2024. All shares reported are shares of the Company's common stock.

(2) Includes 300,000 shares of common stock, 545,193 shares of common stock issuable upon the exercise of the BHP Warrants and excludes 182,807 shares of common stock issuable upon the exercise of the BHP Warrants. Pursuant to the terms of the BHP Warrants, BHP may not exercise the BHP Warrants to the extent (but only to the extent) BHP or any of its affiliates would beneficially own upon such conversion or exercise a number of shares of our common stock which would exceed 9.99% of the outstanding shares of common stock of the Company. The number of shares and percentage reflect these limitations as of April 14, 2023. Bryan Pantofel is the President of BHP and has sole voting and investment power over these securities. BHP's address is 45 SW 9th Street, Suite 1603, Miami, Florida 33130. All shares reported are shares of the Company's common stock.

(3) Includes 654,419 shares of common stock, 101,921 shares of common stock issuable upon conversion of the Note issued in connection with the acquisition of Forever 8, 51,887 shares of common stock issuable upon conversion of the Preferred Units issued in connection with the acquisition of Forever 8 and 76,147 shares of common stock issuable upon the achievement of certain earnout considerations as per the terms of the MIPA and excludes 1,683 shares of common stock issuable upon the achievement of certain earnout considerations as per the terms of the MIPA. Paul Vassilakos is President of the Forever 8 Fund, LLC and has sole voting and investment power over these securities. Mr. Vassilakos' address is 101 Larry Holmes Dr., Suite 313, Easton, PA 18042. All shares reported are shares of the Company's common stock.

- (4) Mr. Vroman's address is 101 Larry Holmes Dr., Suite 313, Easton, PA 18042. Includes 2,840 shares of common stock and 210,028 shares of common stock to be issued under the stock option granted to Mr. Vroman.
- (5) Mr. O'Donnell's address is 101 Larry Holmes Dr., Suite 313, Easton, PA 18042. Includes 42,500 shares of common stock and 100,000 shares of common stock to be issued under the stock option granted to Mr. O'Donnell.
- (6) Mr. McFadden's address is 8 The Green #13716, Dover, DE 19901. Includes 1,634 shares of common stock held in Mr. McFadden's name and 60,976 shares of common stock held in the name of Mainspring, LLC, an entity controlled by Mr. McFadden.
- (7) Mr. Jennings' address is 101 Larry Holmes Dr., Suite 313, Easton, PA 18042. Includes 128,861 shares of common stock and 100,000 shares of common stock to be issued under the stock option granted to Mr. Jennings.
- (8) Mr. Foreman's address is 101 Larry Holmes Dr., Suite 313, Easton, PA 18042. Includes 129,332 shares of common stock and 100,000 shares of common stock to be issued under the stock option granted to Mr. Foreman.
- (9) Ms. Halford's address is 101 Larry Holmes Dr., Suite 313, Easton, PA 18042. Includes 128,531 shares of common stock and 100,000 shares of common stock to be issued under the stock option granted to Ms. Halford.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Policies and Procedures for Related Person Transactions

The Company's board of directors has adopted a written related person transaction policy that sets forth the following policies and procedures for the review and approval or ratification of related person transactions.

A "Related Party Transaction" is a transaction, arrangement, or relationship in which the Company or any of its subsidiaries was, is or will be a participant, the amount of which involved exceeds \$120,000, and in which any related party had, has or will have a direct or indirect material interest. A "Related Party" means:

- any person who is, or at any time during the applicable period was, one of the Company's executive officers or a member of or nominee for the board of directors;
- any person (including any entity or group) who is known by the Company to be the beneficial owner of more than five percent (5%) of our voting stock;
- any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, daughter-in-law, brother-in-law or sister-in-law of a director, officer, or a beneficial owner of more than five percent (5%) of our voting stock, and any person (other than a tenant or employee) sharing the household of such director, executive officer, or beneficial owner of more than five percent (5%) of our voting stock;
- any of the foregoing persons that qualify as such at any time during the fiscal year in which a transaction that would otherwise be subject to this the policy occurs, even if such person has ceased to have such status during such fiscal year; and
- any firm, corporation, or other entity in which any of the foregoing persons is a partner or principal or in a similar position or in which such person has a ten percent (10%) or greater beneficial ownership interest.

In addition, we will have in place policies and procedures designed to minimize potential conflicts of interest arising from any dealings the Company may have with its affiliates and to provide appropriate procedures for the disclosure of any real or potential conflicts of interest that may exist from time to time. Specifically, pursuant to the Audit Committee charter, the Audit Committee will have the responsibility to review related party transactions.

Related Party Transactions

On February 29, 2024, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and Mainspring, LLC (the "Lender"), an entity controlled by the Company's Former Chief Executive Officer, entered into the Series B Loan and Security Agreement whereby the Lender advanced the Borrower \$50,000. The Borrower issued Mainspring, LLC a Promissory Note in the amount of \$50,000 on this same date.

On February 26, 2024, Mainspring, LLC, an entity controlled by the Company's former Chief Executive Officer, purchased 60,976 shares of common stock through the Company's February 2024 private placement.

On February 14, 2024, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and Brett Vroman (the "Lender"), the Company's Chief Financial Officer, entered into the Series B Loan and Security Agreement whereby the Lender advanced the Borrower \$100,000. The Borrower issued Mr. Vroman a Promissory Note in the amount of \$100,000 on this same date.

On August 29, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and Frank Jennings (the "Lender"), a Company director, entered into the Series A Loan and Security Agreement whereby the Lender advanced the Borrower \$100,000. The Borrower issued Mr. Jennings a Promissory Note in the amount of \$100,000 on this same date.

On August 17, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and Kevin O'Donnell (the "Lender"), a Company director, entered into the Series A Loan and Security Agreement whereby the Lender advanced the Borrower \$100,000. The Borrower issued Mr. O'Donnell a Promissory Note in the amount of \$100,000 on this same date.

On June 21, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and Brian McFadden (the "Lender"), the Company's Former Chief Executive Officer, entered into the Series A Loan and Security Agreement whereby the Lender advanced the Borrower \$100,000. The Borrower issued Mr. McFadden a Promissory Note in the amount of \$100,000 on this same date.

On May 30, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and TXC Services, LLC (the "Lender"), an entity controlled by a Forever 8 member, entered into the Series A Loan and Security Agreement whereby the Lender advanced the Borrower \$225,000. The Borrower issued TXC Services, LLC a Promissory Note in the amount of \$225,000 on this same date.

On April 1, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and Paul Vassilakos (the "Lender"), the Company's Chief Executive Officer, entered into the Series A Loan and Security Agreement whereby the Lender advanced the Borrower \$675,000. The Borrower issued Mr. Vassilakos a Promissory Note in the amount of \$675,000 on this same date.

On April 1, 2023, the Company's wholly owned subsidiary, Forever 8 Fund, LLC (the "Borrower") and TXC Services, LLC (the "Lender"), an entity controlled by a Forever 8 member, entered into the Series A Loan and Security Agreement whereby the Lender advanced the Borrower \$975,000. The Borrower issued TXC Services, LLC a Promissory Note in the amount of \$975,000 on this same date.

Other Related Party Transactions

We have entered into indemnification agreements with each of our directors and executive officers. These agreements require us to indemnify and advance litigation expenses incurred by such individuals by reason of (i) their status as directors and/or officers of the Company, (ii) acts or omissions made in good faith, (iii) their service in any capacity with respect to an employee benefit plan of our company or one or more of our majority owned subsidiaries, or (iv) their service as directors, officers, managers, general partners, trustees, employees, or agents of another entity (including a majority owned subsidiary of our company) at our request while directors and/or officers of our company to the fullest extent permitted by applicable law. See "Limitations on Personal Liability of Directors, Indemnification and Advancement Rights of Directors and Officers, and Director and Officer Insurance" for more detail on the extent to which Delaware law permits the indemnification of Directors and Officers under the indemnification agreement.

Pursuant to the indemnification agreements, the Company will advance all reasonable expenses to be incurred by the indemnitee related to a proceeding for which the indemnitee is entitled to indemnification. The indemnitee shall repay to the Company any expenses advanced to the indemnitee if it is ultimately determined that indemnitee is not entitled to be indemnified against such expenses.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The following is a summary of the fees billed to the Company by our auditors and tax professionals for professional accounting services rendered for the fiscal years ended December 31, 2023 and 2022.

	Fiscal Year 2023	Fiscal Year 2022
Audit Fees (1)	\$ 148,253	\$ 155,087
Audit-Related Fees	85,011	46,750
Tax Fees (2)	53,250	7,500
Other Fees (3)	10,789	-
Total	\$ 297,303	\$ 209,337

(1) Audit fees consist of fees billed for services rendered for the audit of our financial statements and review of our financial statements included in our quarterly reports on Form 10-Q. Other fees consist of comfort letter service fees.

(2) Tax fees consist of fees billed for professional services related to the preparation of our U.S. federal and state income tax returns.

(3) Other fees consist of fees billed for professional services related to non-recurring fees for the initial public offering and the acquisitions completed during the year.

PART IV

ITEM 15. EXHIBITS

Exhibit No.	Description
2.1#	<u>Separation and Distribution Agreement, dated May 5, by and between Vinco Ventures, Inc. and the Registrant (previously filed with the Securities and Exchange Commission as Exhibit 2.1 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022)</u>
2.2#	<u>Membership Interest Purchase Agreement, dated September 14, 2022, by and among Eightco Holdings Inc., Forever8 Fund, LLC, members of Forever 8, LLC set forth on the signature pages thereto and Paul Vassilakos (previously filed with the Securities and Exchange Commission as Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed September 15, 2022)</u>
4.1*	<u>Description of Securities</u>
4.2	<u>Form of Senior Indenture (previously filed with the Securities and Exchange Commission as Exhibit 4.1 to the Registrant's Registration Statement on Form S-3 filed February 5, 2024)</u>
4.3	<u>Form of Subordinated Indenture (previously filed with the Securities and Exchange Commission as Exhibit 4.2 to the Registrant's Registration Statement on Form S-3 filed February 5, 2024)</u>
10.1	<u>Amended and Restated Tax Matters Agreement, dated June 7, 2022 by and between Vinco Ventures, Inc. and the Registrant (previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Amendment No. 1 to Form S-1 dated June 7, 2022, with a filing date of June 8, 2022)</u>
10.2+	<u>2022 Incentive Compensation Plan (previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022)</u>
10.3+	<u>Form of Restricted Stock Unit Award Grant Notice and Agreement to the 2022 Incentive Compensation Plan (previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022)</u>
10.4+	<u>Employment Agreement by and between the Registrant and Brian McFadden (previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K dated October 5, 2022)</u>
10.5+	<u>Employment Agreement by and between the Registrant and Brett Vroman (previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K dated October 5, 2022)</u>
10.6	<u>Form of Indemnification Agreement entered into between the Registrant and each of its directors and executive officers (previously filed with the Securities and Exchange Commission as Exhibit 10.6 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022)</u>
10.7	<u>Form of Amendment Agreement between Eightco Holdings Inc., Vinco Ventures, Inc., and Hudson Bay Master Fund Ltd., dated November 11, 2021 (previously filed with the Securities and Exchange Commission as Exhibit 10.11 to the Registrant's Amendment No. 1 to Form 10 on January 25, 2022)</u>
10.7.1	<u>First Amendment to the Amendment Agreement between Eightco Holdings Inc., Vinco Venture, Inc., and Hudson Bay Master Fund Ltd., dated May 5, 2022 (previously filed with the Securities and Exchange Commission as Exhibit 10.7.1 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022)</u>
10.8	<u>Form of Eightco Holdings Inc. Warrant to Purchase Common Stock (previously filed with the Securities and Exchange Commission as Exhibit 10.12 to the Registrant's Amendment No. 1 to Form 10 on January 25, 2022)</u>
10.9	<u>Form of Registration Rights Agreement between Eightco Holdings Inc. and Hudson Bay Master Fund Ltd., dated November 11, 2021 (previously filed with the Securities and Exchange Commission as Exhibit 10.13 to the Registrant's Amendment No. 1 to Form 10 on January 25, 2022)</u>

- 10.10# [Note Securities Purchase Agreement, dated January 26, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.10 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022\)](#)
- 10.11 [First Amendment to Note Securities Purchase Agreement between Hudson Bay Master Fund Ltd., and Eightco Holdings Inc., dated May 5, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.10.1 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022\)](#)
- 10.12 [Registration Rights Agreement, dated January 26, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.13 to the Registrant's Amendment No. 2 to Form 10 dated March 18, 2022\)](#)
- 10.13 [Form of Note related to the January 26, 2022 Note Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.14 to the Registrant's Amendment No. 2 to Form 10 dated March 18, 2022\)](#)
- 10.14 [Form of Warrant related to the January 26, 2022 Note Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.15 to the Registrant's Amendment No. 2 to Form 10 dated March 18, 2022\)](#)
- 10.15 [Form of Pledge Agreement related to the January 26, 2022 Note Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.16 to the Registrant's Amendment No. 2 to Form 10 dated March 18, 2022\)](#)
- 10.16 [Amendment Agreement, dated July 28, 2022, by and between Eightco Holdings Inc. and Hudson Bay Master Fund Ltd. \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated July 28, 2022\)](#)
- 10.17# [Form of Securities Purchase Agreement dated January 26, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.17 to the Registrant's Amendment No. 2 to Form 10 dated March 18, 2022\)](#)
- 10.18 [Amendment to Securities Purchase Agreement, by and among Eightco Holdings Inc. and BHP Capital NY, Inc., dated April 18, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.15.1 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022\)](#)
- 10.19 [Form of Warrant related to the January 26, 2022 Equity Private Placement \(previously filed with the Securities and Exchange Commission as Exhibit 10.18 to the Registrant's Amendment No. 2 to Form 10 dated March 18, 2022\)](#)
- 10.20# [Milestone Agreement, entered into in April 2022, between Eightco Holdings Inc., Emmersive Entertainment, Inc., and certain former shareholders of Emmersive Entertainment, Inc. identified therein. \(previously filed with the Securities and Exchange Commission as Exhibit 10.17 to the Registrant's Registration Statement on Form S-1 filed May 9, 2022\)](#)
- 10.21 [Hudson Bay Master Fund Ltd. Warrants dated May 18, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed May 24, 2022\)](#)
- 10.22 [BHP Capital NY, Inc. Warrants dated May 20, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed May 24, 2022\)](#)
- 10.23 [Form of Seller Promissory Note issued under the Membership Interest Purchase Agreement, by and among Eightco Holdings Inc., Forever 8 Fund, LLC, members of Forever 8, LLC set forth on the signature pages thereto and Paul Vassilakos \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed September 15, 2022\)](#)

- 10.24# [Form of Operating Agreement by and among Eightco Holdings Inc. Forever 8 Fund, LLC and the members listed on Exhibit B thereto \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed September 15, 2022\)](#)
- 10.25 [Form of Subordination Agreement by and among Eightco Holdings Inc., Hudson Bay and the persons listed on Annex A thereto \(previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed September 15, 2022\)](#)
- 10.26 [First Amendment to Amendment Agreement, dated September 14, 2022, by and among Eightco Holdings Inc. and Hudson Bay \(previously filed with the Securities and Exchange Commission as Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed September 15, 2022\)](#)
- 10.27 [Waiver, dated September 14, 2022, by and among Eightco Holdings Inc. and Hudson Bay \(previously filed with the Securities and Exchange Commission as Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed September 15, 2022\)](#)
- 10.28 [Registration Rights Agreement, dated October 1, 2022 \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed October 5, 2022\)](#)
- 10.29+ [Amended and Restated Employment Agreement, dated October 18, 2022, by and between the Company and Brett Vroman \(previously filed with the Securities and Exchange Commission as Exhibit 10.30 to the Registrant's Registration Statement on Form S-1/A filed November 14, 2022\)](#)
- 10.30+ [Amended and Restated Employment Agreement, dated October 18, 2022, by and between the Company and Brian McFadden \(previously filed with the Securities and Exchange Commission as Exhibit 10.31 to the Registrant's Registration Statement on Form S-1/A filed November 14, 2022\)](#)
- 10.31 [Form of Second Amendment Agreement, dated January 6, 2023, by and between Eightco Holdings Inc. and the Investor \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed January 6, 2023\)](#)
- 10.32 [Waiver Agreement, dated January 6, 2023, by and between Eightco and BHP \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed January 6, 2023\)](#)
- 10.33 [Waiver Agreement, dated January 19, 2023 by and between Eightco and Palladium Capital Group, LLC \(previously filed with the Securities and Exchange Commission as Exhibit 10.34 to the Registrant's Registration Statement on Form S-1/A filed on January 24, 2023\)](#)
- 10.34 [Waiver Agreement, dated January 18, 2023, among the members of Forever 8 Fund, LLC set forth on the signature pages to the Membership Interest Purchase Agreement, dated September 14, 2022, by and among Eightco Holdings Inc., Forever 8 Fund, LLC and members of Forever 8 Fund, LLC set forth on the signature pages thereto and Paul Vassilakos \(previously filed with the Securities and Exchange Commission as Exhibit 10.35 to the Registrant's Registration Statement on Form S-1 filed January 23, 2023\)](#)
- 10.35 [Securities Purchase Agreement, dated March 15, 2023 \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated March 16, 2023\)](#)
- 10.36 [Form of Warrant related to the March 15, 2023 Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K dated March 16, 2023\)](#)
- 10.37 [Form of Note related to the March 15, 2023 Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K dated March 16, 2023\)](#)
- 10.38 [Form of Registration Rights Agreement related to the March 15, 2023 Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.4 to the Registrant's Current Report on Form 8-K dated March 16, 2023\)](#)

- 10.39 [Form of Lock-Up Agreement related to the March 15, 2023 Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.5 to the Registrant's Current Report on Form 8-K dated March 16, 2023\).](#)
- 10.40 [Form of Pledge and Security Agreement related to the March 15, 2023 Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.6 to the Current Report on Form 8-K dated March 16, 2023\).](#)
- 10.41 [Form of Guarantee Agreement related to the March 15, 2023 Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.7 to the Registrant's Current Report on Form 8-K dated March 16, 2023\).](#)
- 10.42 [Form of Subordination Agreement Amendment related to the March 15, 2023 Securities Purchase Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.8 to the Registrant's Current Report on Form 8-K dated March 16, 2023\).](#)
- 10.43 [Form of Pledge and Security Agreement, dated as of March 16, 2023 \(previously filed with the Securities and Exchange Commission as Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed March 16, 2023\).](#)
- 10.44 [Form of Lock-Up Agreement, dated as of March 16, 2023 \(previously filed with the Securities and Exchange Commission as Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed March 16, 2023\).](#)
- 10.45 [Form of Registration Rights Agreement, dated as of March 16, 2023 \(previously filed with the Securities and Exchange Commission as Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed March 16, 2023\).](#)
- 10.46 [Form of Note, dated as of March 16, 2023 \(previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed March 16, 2023\).](#)
- 10.47 [Form of Warrant, dated as of March 16, 2023 \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed March 16, 2023\).](#)
- 10.48 [Securities Purchase Agreement, dated as of March 15, 2023, by and between Cryptyde, Inc. and Buyers \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed March 16, 2023\).](#)
- 10.49 [Letter Agreement, dated as of May 8, 2023, by and between Eightco Holdings Inc. and Sellers' Representative \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed May 10, 2023\).](#)
- 10.50 [Debt Exchange Agreement, dated as of May 30, 2023, by and between Forever 8 Fund, LLC and TXC Services, LLC \(previously filed with the Securities and Exchange Commission as Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed June 5, 2023\).](#)
- 10.51 [Debt Exchange Agreement, dated as of May 30, 2023, by and between Forever 8 Fund, LLC and Paul Vassilakos \(previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed June 5, 2023\).](#)
- 10.52 [Form of Promissory Note \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed June 5, 2023\).](#)

- 10.53 [Loan and Security Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed June 5, 2023\)](#)
- 10.54 [Form of Promissory Note \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed June 27, 2023\)](#)
- 10.55 [Loan and Security Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed June 27, 2023\)](#)
- 10.56 [Loan and Security Agreement Series C \(previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed October 24, 2023\)](#)
- 10.57 [Lender Joinder Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed October 24, 2023\)](#)
- 10.58 [Loan and Security Agreement Series B \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed October 24, 2023\)](#)
- 10.59 [Prepayment and Redemption Agreement, dated as of October 23, 2023, by and between Eightco Holdings Inc. and the investor signatory thereto \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed October 24, 2023\)](#)
- 10.60 [Loan and Security Agreement and Promissory Note between Forever 8 Fund, LLC and Todd Kuimjian \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed August 25, 2023\)](#)
- 10.61 [Loan and Security Agreement and Promissory Note between Forever 8 Fund, LLC and Joseph Johnston \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed August 22, 2023\)](#)
- 10.62 [Loan and Security Agreement and Promissory Note between Forever 8 Fund, LLC and Kevin O'Donnell \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed August 22, 2023\)](#)
- 10.63 [Subordination Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed December 5, 2023\)](#)
- 10.64 [Form of Securities Purchase Agreement, dated as of February 26, 2024, by and between Eightco Holdings Inc. and the investors named therein \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed February 26, 2024\)](#)
- 10.65+ [General Release and Severance Agreement, dated as of February 26, 2024, by and between Eightco Holdings Inc. and Brian McFadden \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed February 26, 2024\)](#)
- 10.66+ [General Release and Severance Agreement, dated as of February 26, 2024, by and between Eightco Holdings Inc. and Brett Vroman \(previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed February 26, 2024\)](#)
- 10.67+ [Consulting Agreement, dated as of February 22, 2024, by and between Eightco Holdings Inc. and CXO Lite, LLC \(previously filed with the Securities and Exchange Commission as Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed February 26, 2024\)](#)
- 10.68 [Series D Loan and Guaranty Agreement, dated as of March 15, 2024 \(previously filed with the Securities and Exchange Commission as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 10.69 [Subordination Agreement, dated as of March 15, 2024 \(previously filed with the Securities and Exchange Commission as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 10.70 [Intercreditor Agreement, dated as of March 15, 2024 \(previously filed with the Securities and Exchange Commission as Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 10.71 [Seller Notes Amendment, dated as of March 17, 2024 \(previously filed with the Securities and Exchange Commission as Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 10.72+ [First Amendment to the General Release and Severance Agreement, dated as of March 17, 2024, by and between Eightco Holdings Inc. and Brian McFadden \(previously filed with the Securities and Exchange Commission as Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 10.73+ [General Release and Severance Agreement, dated as of March 17, 2024, by and between Eightco Holdings Inc. and Kevin O'Donnell \(previously filed with the Securities and Exchange Commission as Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 10.74+ [Employment Agreement, dated as of March 17, 2024, by and between Eightco Holdings Inc. and Paul Vassilakos \(previously filed with the Securities and Exchange Commission as Exhibit 10.7 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 10.75+ [Indemnification Agreement, dated as of March 17, 2024, by and between Eightco Holdings Inc. and Paul Vassilakos \(previously filed with the Securities and Exchange Commission as Exhibit 10.8 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)

- 10.76 [Form of Non-Qualified Stock Option Agreement \(previously filed with the Securities and Exchange Commission as Exhibit 10.9 to the Registrant's Current Report on Form 8-K filed March 18, 2024\)](#)
- 21.1 [Subsidiaries of the Registrant \(previously filed with the Securities and Exchange Commission as Exhibit 21.1 to the Registrant's Annual Report on Form 10-K filed April 17, 2023\)](#)
- 23.2* [Consent of Morison Cogen LLP](#)
- 31.1* [Certification of the Chief Executive Officer of the Company, pursuant to the Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 31.2* [Certification of the Chief Financial Officer of the Company, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.1* [Certification of the Chief Executive Officer and Chief Financial Officer of the Company, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 97.1* [Clawback Policy](#)
- 101.INS* Inline XBRL Instance Document – the XBRL Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
- 101.SCH* Inline XBRL Taxonomy Extension Schema Document.
- 101.CAL* Inline XBRL Taxonomy Extension Calculation Linkbase Document.
- 101.DEF* Inline XBRL Taxonomy Extension Definition Linkbase Document.
- 101.LAB* Inline XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE* Inline XBRL Taxonomy Extension Presentation Linkbase Document.
- 104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101),

* Filed herewith.

** To be filed by amendment or as an exhibit to a report pursuant to Section 13(a), 13(c) or 15(d) of the Exchange Act.

+ Management contract or compensatory plan or arrangement.

Schedules and/or exhibits have been omitted from this filing pursuant to Item 601(a)(5) of Regulation S-K. We agree to furnish supplementally a copy of any omitted schedule or exhibit to the Securities and Exchange Commission upon request.

ITEM 16. FORM 10-K SUMMARY

None.

SIGNATURES

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

Date: April 1, 2024

EIGHTCO HOLDINGS, INC.

By: /s/ Paul Vassilakos

Paul Vassilakos
Chief Executive Officer and President
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed 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/ Paul Vassilakos</u> Paul Vassilakos	Chief Executive Officer and Executive Chairman (principal executive officer)	April 1, 2024
<u>/s/ Brett Vroman</u> Brett Vroman	Chief Financial Officer (principal financial and principal accounting officer)	April 1, 2024
<u>/s/ Kevin O'Donnell</u> Kevin O'Donnell	Director	April 1, 2024
<u>/s/ Frank Jennings</u> Frank Jennings	Director	April 1, 2024
<u>/s/ Louis Foreman</u> Louis Foreman	Director	April 1, 2024
<u>/s/ Mary Ann Halford</u> Mary Ann Halford	Director	April 1, 2024

DESCRIPTION OF CAPITAL STOCK

The following description of common stock and preferred stock summarizes the material terms and provisions of the common stock and preferred stock that we may offer under this prospectus, but is not complete. For the complete terms of our common stock and preferred stock, please refer to our certificate of incorporation, as amended, any certificates of designation for our preferred stock, and our bylaws, as amended. While the terms we have summarized below will apply generally to any future common stock or preferred stock that we may offer, we will describe the specific terms of any series of preferred stock in more detail in the applicable prospectus supplement. If we so indicate in a prospectus supplement, the terms of any preferred stock we offer under that prospectus supplement may differ from the terms we describe below.

We have authorized 510,000,000 shares of capital stock, par value \$0.001 per share, of which 500,000,000 are shares of common stock and 10,000,000 are shares of preferred stock, of which 300,000 are authorized as Series A Preferred Stock with a par value of \$0.001 per share. As of April 1, 2024, there were 8,537,310 shares of common stock issued and outstanding and no shares of our Series A Preferred Stock outstanding. The authorized and unissued shares of common stock and the authorized and undesignated shares of preferred stock are available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange on which our securities may be listed. Unless approval of our stockholders is so required, our board of directors does not intend to seek stockholder approval for the issuance and sale of our common stock or preferred stock.

Common Stock

Authorization. We have 500,000,000 shares of common stock, par value \$0.001 per share, authorized.

Voting Rights. Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our stockholders do not have cumulative voting rights. Because of this, the holders of a majority of the common stock entitled to vote in any election of directors will be able elect all of the directors standing for election.

Dividend Rights. Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of our common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds. We have never paid cash dividends on our common stock and do not anticipate paying any cash dividends in the foreseeable future but intend to retain our capital resources for reinvestment in our business. Any future disposition of dividends will be at the discretion of our board of directors and will depend upon, among other things, our future earnings, operating and financial condition, capital requirements, and other factors.

Liquidation. In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding preferred stock.

Rights and Preferences. Holders of common stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of any series of preferred stock that we may designate in the future.

Stock Exchange Listing. The Company's common stock is listed on the Nasdaq Stock Market LLC under the symbol "OCTO."

Transfer Agent

The transfer agent for our Common Stock is Securities Nevada Agency and Transfer Company at 50 West Liberty St., Suite 880, Reno, NV 89501. The transfer agent's telephone number is (775) 322-0626.

Preferred Stock

The board of directors is authorized, subject to any limitations prescribed by law, without further vote or action by the stockholders, to issue from time to time shares of preferred stock in one or more series. Each such series of preferred stock shall have such number of shares, designations, preferences, voting powers, qualifications, and special or relative rights or privileges as shall be determined by the board of directors, which may include, among others, dividend rights, voting rights, liquidation preferences, conversion rights and preemptive rights. Issuance of preferred stock by our board of directors may result in such shares having dividend and/or liquidation preferences senior to the rights of the holders of our common stock and could dilute the voting rights of the holders of our common stock.

Prior to the issuance of shares of each series of preferred stock, the board of directors is required by the Delaware General Corporation Law (the "DGCL") and our certificate of incorporation to adopt resolutions and file a certificate of designation with the Secretary of State of the State of Delaware. The certificate of designation fixes for each class or series the designations, powers, preferences, rights, qualifications, limitations and restrictions, including, but not limited to, some or all of the following:

- the number of shares constituting that series and the distinctive designation of that series, which number may be increased or decreased (but not below the number of shares then outstanding) from time to time by action of the board of directors;
- the dividend rate and the manner and frequency of payment of dividends on the shares of that series, whether dividends will be cumulative, and, if so, from which date;
- whether that series will have voting rights, in addition to any voting rights provided by law, and, if so, the terms of such voting rights;
- whether that series will have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the board of directors may determine;
- whether or not the shares of that series will be redeemable, and, if so, the terms and conditions of such redemption;
- whether that series will have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;
- whether or not the shares of the series will have priority over or be on a parity with or be junior to the shares of any other series or class in any respect;
- the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the corporation, and the relative rights or priority, if any, of payment of shares of that series; and
- any other relative rights, preferences and limitations of that series.

Once designated by our board of directors, each series of preferred stock may have specific financial and other terms that will be described in a prospectus supplement. The description of the preferred stock that is set forth in any prospectus supplement is not complete without reference to the documents that govern the preferred stock. These include our certificate of incorporation and any certificates of designation that our board of directors may adopt.

All shares of preferred stock offered hereby will, when issued, be fully paid and nonassessable, including shares of preferred stock issued upon the exercise of preferred stock warrants or subscription rights, if any.

Although our board of directors has no intention at the present time of doing so, it could authorize the issuance of a series of preferred stock that could, depending on the terms of such series, impede the completion of a merger, tender offer or other takeover attempt.

Anti-Takeover Effects of Certain Provisions of Delaware Law, our Certificate of Incorporation and Bylaws

Delaware Law

We are subject to Section 203 of the DGCL. Section 203 generally prohibits a public Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (but not the outstanding voting stock owned by the interested stockholder) (i) shares owned by persons who are directors and also officers and (ii) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an “interested stockholder” as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with, or controlling, or controlled by, the entity or person. The term “owner” is broadly defined to include any person that, individually, with or through that person’s affiliates or associates, among other things, beneficially owns the stock, or has the right to acquire the stock, whether or not the right is immediately exercisable, under any agreement or understanding or upon the exercise of warrants or options or otherwise or has the right to vote the stock under any agreement or understanding, or has an agreement or understanding with the beneficial owner of the stock for the purpose of acquiring, holding, voting or disposing of the stock.

The restrictions in Section 203 do not apply to corporations that have elected, in the manner provided in Section 203, not to be subject to Section 203 of the DGCL or, with certain exceptions, which do not have a class of voting stock that is listed on a national securities exchange or held of record by more than 2,000 stockholders. Our certificate of incorporation and bylaws do not opt out of Section 203.

Section 203 could delay or prohibit mergers or other takeover or change in control attempts with respect to us and, accordingly, may discourage attempts to acquire us even though such a transaction may offer our stockholders the opportunity to sell their stock at a price above the prevailing market price.

Certificate of Incorporation and Bylaws

Provisions of our certificate of incorporation and our bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our certificate of incorporation and bylaws:

- permit our board of directors to issue up to 10,000,000 shares of preferred stock, without further action by the stockholders, with any rights, preferences and privileges as they may designate, including the right to approve an acquisition or other change in control;
 - provide that the authorized number of directors may be changed only by a resolution adopted by a majority of the total number of authorized directors;
 - do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
 - provide advance notice provisions with which a stockholder who wishes to nominate a director or propose other business to be considered at a stockholder meeting must comply;
 - the division of the Company’s board of directors into three classes of directors, with each class serving a staggered term; and
 - a provision that directors serving on a classified board may be removed by stockholders only for cause.
-

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8, as amended (File No. 333-276733 and 333-272465) of Eightco Holdings, Inc., of our report dated April 1, 2024, relating to the consolidated financial statements of Eightco Holdings Inc. as of December 31, 2023 and 2022 and for each of the two years in the period ended December 31, 2023, which appears in this Form 10-K.

/s/ Morison Cogen LLP

Blue Bell, Pennsylvania
April 1, 2024

**EIGHTCO HOLDINGS INC.
CERTIFICATION PURSUANT TO RULE 13a-14 OR 15d-14 OF
THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,
AS ADOPTED PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Paul Vassilakos, certify that:

1. I have reviewed this annual report on Form 10-K of Eightco Holdings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 1, 2024

/s/ Paul Vassilakos
Paul Vassilakos
Chief Executive Officer
(Principal Executive Officer)

**EIGHTCO HOLDINGS INC.
CERTIFICATION PURSUANT TO RULE 13a-14 OR 15d-14 OF
THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,
AS ADOPTED PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Brett Vroman, certify that:

1. I have reviewed this annual report on Form 10-K of Eightco Holdings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 1, 2024

/s/ Brett Vroman
Brett Vroman
Chief Financial Officer
(Principal Financial Officer)

**EIGHTCO HOLDINGS INC.
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 on Form 10-K for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “**Report**”), of Eightco Holdings Inc. (the “**Company**”), each of the undersigned officers of the Company hereby certify, in their capacity as an executive officer of the Company, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of their knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

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

Date: April 1, 2024

/s/ Paul Vassilakos

Paul Vassilakos
Chief Executive Officer
(Principal Executive Officer)

Date: April 1, 2024

/s/ Brett Vroman

Brett Vroman
Chief Financial Officer
(Principal Financial Officer)

EIGHTCO HOLDINGS INC.
Compensation Recovery Policy

This Compensation Recovery Policy (this “**Policy**”) of Eightco Holdings Inc. (the “**Company**”) is hereby adopted as of November 3, 2023 in compliance with Rule 5608 of the Nasdaq Rules. Certain terms used herein shall have the meanings set forth in “Section 3, Definitions” below.

Section 1. Recovery Requirement

Subject to Section 4 of this Policy, in the event the Company is required to prepare an Accounting Restatement, then the Board and Committee hereby direct the Company, to the fullest extent permitted by governing law, to recover from each Executive Officer the amount, if any, of Erroneously Awarded Compensation received by such Executive Officer, with such recovery occurring reasonably promptly after the Restatement Date relating to such Accounting Restatement.

The Board or the Committee may effect recovery in any manner consistent with applicable law including, but not limited to, (a) seeking reimbursement of all or part of Erroneously Awarded Compensation previously received by an Executive Officer, together with any expenses reasonably incurred as described below in connection with the recovery of such Erroneously Awarded Compensation, (b) cancelling prior grants of Incentive-Based Compensation, whether vested or unvested, restricted or deferred, or paid or unpaid, and through the forfeiture of previously vested equity awards, (c) cancelling or setting-off against planned future grants of Incentive-Based Compensation, (d) deducting all or any portion of such Erroneously Awarded Compensation from any other remuneration payable by the Company to such Executive Officer, and (e) any other method authorized by applicable law or contract.

To the extent that an Executive Officer fails to repay all Erroneously Awarded Compensation to the Company when due, the Company shall take all actions reasonable and appropriate to recover such Erroneously Awarded Compensation from the applicable Executive Officer. The applicable Executive Officer shall be required to reimburse the Company for any and all expenses reasonably incurred (including legal fees) by the Company in recovering such Erroneously Awarded Compensation in accordance with the immediately preceding sentence.

The Company’s right to recovery pursuant to this Policy is not dependent on if or when the Accounting Restatement is filed with the SEC.

Section 2. Incentive-Based Compensation Subject to this Policy

This Policy applies to all Incentive-Based Compensation received by each Executive Officer on or after the Effective Date:

- (i) if such Incentive-Based Compensation was received on and after the date such person became an Executive Officer of the Company;
- (ii) if such Executive Officer served as an Executive Officer at any time during the performance period for such Incentive-Based Compensation;
- (iii) while the Company has a class of securities listed on a national securities exchange or a national securities association; and
- (iv) during the three completed fiscal years immediately preceding the date that the Company is required to prepare an Accounting Restatement (including any transition period that results from a change in the Company’s fiscal year that is within or immediately following those three completed fiscal years; provided that a transition period of nine to 12 months is deemed to be a completed fiscal year).

This Policy shall apply and govern Incentive-Based Compensation received by any Executive Officer, notwithstanding any contrary or supplemental term or condition in any document, plan or agreement including, without limitation, any employment contract, indemnification agreement, equity or bonus agreement, or equity or bonus plan document. This Policy shall also apply to any bonus, incentive or equity compensation paid or granted to any employee, independent contractor or outside director of the Company who is not an Executive Officer to the extent that (x) the applicable plan document or award agreement relating to such bonus, incentive or equity compensation provides that this Policy may or will apply and (y) the Board or the Committee, in its sole discretion, determines that it is appropriate for this Policy to apply to such persons.

Section 3. Definitions:

For purposes of this Policy, the following terms have the meanings set forth below:

- “**Accounting Restatement**” means an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error (i) in previously issued financial statements that is material to the previously issued financial statements (commonly referred to as a “Big R” restatement), or (ii) that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (commonly referred to as a “little r” restatement).
- “**Board**” means the Board of Directors of the Company.
- “**Committee**” means the Compensation Committee of the Board.
- “**Effective Date**” means November 3, 2023.
- “**Erroneously Awarded Compensation**” means the amount of Incentive-Based Compensation received that exceeds the amount of Incentive-Based Compensation that otherwise would have been received by the Executive Officer had it been determined based on the restated amounts in the Accounting Restatement (computed without regard to any taxes paid). For Incentive-Based Compensation based on stock price or total shareholder return (“**TSR**”), where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in the Accounting Restatement, the Company shall: (i) base the calculation of the amount on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive-Based Compensation received was based; and (ii) retain documentation of the determination of that reasonable estimate and provide such documentation to The Nasdaq Stock Market LLC (“**Nasdaq**”) or, if a class of securities of the Company is no longer listed on Nasdaq, such other national securities exchange or national securities association on which a class of the Company’s securities is then listed for trading.
- “**Executive Officer**” means the Company’s current and former executive officers, as determined by the Board or the Committee in accordance with the definition of executive officer set forth in Rule 5608(d) of the Nasdaq Rules.

- “**Financial Reporting Measures**” means measures that are determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measures that are derived wholly or in part from such measures. Stock price and TSR are also Financial Reporting Measures. A Financial Reporting Measure need not be presented within the Company’s financial statements or included in any of the Company’s filings with the SEC.
- “**Incentive-Based Compensation**” means any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a Financial Reporting Measure (including, without limitation, any cash bonuses, performance awards, restricted stock awards or restricted stock unit awards that are granted, earned or vest based on achievement of a Financial Reporting Measure). The following do not constitute Incentive-Based Compensation for purposes of this Policy: (a) equity awards for which (1) the grant is not contingent upon achieving any Financial Reporting Measure performance goals and (2) vesting is contingent solely upon completion of a specified employment period and/or attaining one or more nonfinancial reporting measures, and (b) bonus awards that are discretionary or based on subjective goals or goals unrelated to Financial Reporting Measures.
- “**Nasdaq Rules**” means the listing rules of The Nasdaq Stock Market LLC.
- “**received**”: An Executive Officer shall be deemed to have “received” Incentive-Based Compensation in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, even if the payment or grant of the Incentive-Based Compensation occurs after the end of that fiscal period.
- “**Restatement Date**” means the earlier to occur of (i) the date the Board or the Committee (or an officer or officers of the Company authorized to take such action if Board action is not required) concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement and (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare an Accounting Restatement.
- “**SEC**” means the U.S. Securities and Exchange Commission.

Section 4. Exceptions to Recovery

Notwithstanding the foregoing, the Company is not required to recover Erroneously Awarded Compensation to the extent that the Committee, or in the absence of such committee, a majority of the independent directors serving on the Board has made a determination that recovery would be impracticable and that:

- (i) after the Company has made a reasonable attempt to recover such Erroneously Awarded Compensation (which has been documented and such documentation has been provided to Nasdaq), the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered;
- (ii) recovery would violate one or more laws of the home country that were adopted prior to November 28, 2022 (which determination shall be made after the Company obtains an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in a such a violation, and a copy of such opinion is provided to Nasdaq);

- (iii) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company and its subsidiaries, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder; or
- (iv) any other exception permitted under Rule 5608(b)(1)(iv) of the Nasdaq Rules.

Section 5. Right to Adjust Unvested Incentive-Based Compensation

If the Board or the Committee, in its sole discretion, determines that the performance metrics of outstanding but unvested Incentive-Based Compensation were established using Financial Reporting Measures that were impacted by the Accounting Restatement, the Board or the Committee, in its sole discretion, may adjust such Financial Reporting Measures or modify such Incentive-Based Compensation, in such manner as the Board or the Committee determines, in its sole discretion, to be appropriate.

Section 6. Additional Actions in Case of Misconduct

If the Board or the Committee learns of any misconduct by an Executive Officer that contributed to the Company's having to restate its financial statements, it shall take, or direct the Company to take, such action as it deems reasonably necessary to remedy the misconduct, prevent its recurrence and, if appropriate, based on all relevant facts and circumstances, take remedial action against the wrongdoer. In determining whether remedial action is appropriate, the Board or the Committee shall take into account such factors as it deems relevant, including whether the misconduct reflected negligence, recklessness or intentional wrongdoing. Remedial action may include dismissal and initiating legal action against the Executive Officer, termination of employment, and/or forfeiture of existing awards, including, without limitation, awards that do not constitute Incentive-Based Compensation, or clawback of prior amounts paid or shares vested.

In determining what action to take or to require the Company to take, the Board and the Committee may consider, among other things, penalties or punishments imposed by third parties, such as law enforcement agencies, regulators or other authorities, the impact upon the Company in any related proceeding or investigation of taking remedial action against an Executive Officer, and the cost and likely outcome of taking remedial action. The Board's and the Committee's power to determine the appropriate remedial action is in addition to, and not in replacement of, remedies imposed by such authorities.

Section 7. No Right to Indemnification or Insurance

The Company shall not indemnify any Executive Officer against the loss of Erroneously Awarded Compensation or losses arising from any claims relating to the Company's enforcement of this Policy. In addition, the Company shall not pay, or reimburse any Executive Officer for, any premiums for a third-party insurance policy purchased by the Executive Officer or any other party that would fund any of the Executive Officer's potential recovery obligations under this Policy.

Section 8. Plan Documents and Award Agreements

The Board further directs the Company to include clawback language in each of the Company's incentive compensation plans and any award agreements such that each individual who receives Incentive-Based Compensation under those plans understands and agrees that all or any portion of such Incentive-Based Compensation may be subject to recovery by the Company, and such individual may be required to repay all or any portion of such Incentive-Based Compensation, if (i) recovery of such Incentive-Based Compensation is required by this Policy, (ii) such Incentive-Based Compensation is determined to be based on materially inaccurate financial and/or performance information (which includes, but is not limited to, statements of earnings, revenues or gains), or (iii) repayment of such Incentive-Based Compensation is required by applicable federal or state securities laws.

Section 9. **Interpretation and Amendment of this Policy**

The Board or the Committee, in its discretion, shall have the sole authority to interpret and make any determinations regarding this Policy. Any interpretation, determination, or other action made or taken by the Committee (or, if applicable, the Board) shall be final, binding, and conclusive on all interested parties. The determination of the Committee (or, if applicable, the Board) need not be uniform with respect to one or more officers of the Company. The Board or the Committee may amend this Policy from time to time in its discretion and shall amend the Policy to comply with any rules or standards adopted by Nasdaq or any national securities exchange on which the Company's securities are then listed.

Section 10. **Filing Requirement**

The Company shall file this Policy as an exhibit to its Annual Report on Form 10-K and make such other disclosures with respect to this Policy in accordance with the requirements of the federal securities laws, including the disclosure required by applicable SEC rules and regulations.

Section 11. **Other Recoupment Rights**

The Company intends that this Policy will be applied to the fullest extent of the law. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other remedies available to the Company under applicable law. Without by implication limiting the foregoing, following a restatement of the Company's financial statements, the Company also shall be entitled to recover any compensation received by the Chief Executive Officer and Chief Financial Officer that is required to be recovered by Section 304 of the Sarbanes-Oxley Act of 2002.

Section 12. **Successors**

This Policy shall be binding and enforceable against all Executive Officers and their respective beneficiaries, heirs, executors, administrators or other legal representatives.