

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

FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 or 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934  
Date of Report (Date of earliest event reported): **July 26, 2023**

**Aterian, Inc.**  
(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-38937**  
(Commission  
File Number)

**83-1739858**  
(IRS Employer  
Identification No.)

**Aterian, Inc.**  
**350 Springfield Avenue, Suite 200**  
**Summit, New Jersey 07901**  
(Address of Principal Executive Offices)(Zip Code)  
**(347) 676-1681**  
(Registrant's telephone number, including area code)  
N/A  
(Former Name, or Former Address, if Changed Since Last Report)

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

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

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.0001 par value	ATER	The Nasdaq Stock Market LLC

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

Emerging growth company

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

## **Item 2.02 Results of Operations and Financial Condition.**

On July 27, 2023, Aterian, Inc. (the “Company”) issued a press release announcing, among other things, certain preliminary financial results for the second quarter ended June 30, 2023 (the “Press Release”). A copy of the Press Release is furnished as Exhibit 99.1 to this Current Report. The preliminary revenue information presented in the Press Release is based on the Company’s current expectations and may be adjusted as a result of, among other things, completion of customary quarter-end close review procedures and financial review.

In accordance with General Instructions B.2 of Form 8-K, the information in Item 2.02 of this Current Report on Form 8-K, including Exhibit 99.1 hereto, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liability of that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

## **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

### *Resignation of Chief Executive Officer*

On July 26, 2023, Yaniv Sarig notified the Board of Directors (the “Board”) of the Company of his decision to resign as Chief Executive Officer of the Company and from the Board, effective as of July 26, 2023. Mr. Sarig’s decision to leave the Company is not due to any disagreement with the Company on any matter relating to the Company’s operations, policies or practices.

In connection with his departure, Mr. Sarig and the Company entered into a Separation and Release Agreement, effective July 26, 2023 (the “Separation and Release Agreement”). Pursuant to the Separation and Release Agreement, Mr. Sarig is entitled to a lump sum payment of \$350,000. All of Mr. Sarig’s unvested equity awards were forfeited as of July 26, 2023.

In addition, pursuant to the Separation and Release Agreement, Mr. Sarig released all claims against the Company.

The foregoing description of the Separation and Release Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Separation and Release Agreement, a copy of which is filed as Exhibit 10.1 hereto and is incorporated by reference.

### *Appointment of Co-Chief Executive Officers*

The Company appointed Joseph Risico, age 49, and Arturo Rodriguez, age 48, to succeed Mr. Sarig as the Company’s Co-Chief Executive Officers, effective July 26, 2023. Upon their appointment, each of Mr. Risico and Mr. Rodriguez assumed the duties of the Company’s co-principal executive officer until such time as his successor is appointed, or until his earlier resignation or removal. There are no reportable family relationships or related party transactions (as defined in Item 404(a) of Regulation S-K) involving the Company and either Mr. Risico or Mr. Rodriguez.

Mr. Risico has served as the Company’s chief legal officer since March 2021 and Head of M&A since July 2021. Prior to that, he served as the Company’s general counsel since September 2018 and has served as general counsel for Aterian Group, Inc. since February 2018. Prior to joining the Company, Mr. Risico held a number of legal and business positions, most recently at AutoModality, Inc., a UAV flight control software company, where he served as chief operating officer and general counsel from February 2017 to February 2018, Ecovative Design LLC, a biomaterials company, where he served as general counsel and head of business development from August 2011 to February 2017, and 3M Company, where he served as the general counsel of 3M’s corporate ventures business from May 2010 to July 2011. Mr. Risico started his legal career as a corporate associate at the law firm of Cravath, Swaine & Moore LLP from August 2001 to June 2006. Mr. Risico holds a B.A. from New York University with concentrations in accounting and economics and a J.D. from Columbia Law School. Mr. Risico also holds a CPA (not active).

Mr. Risico’s annualized salary is currently \$310,000. He is currently eligible to receive an annual cash or stock performance bonus, based on the achievement of certain net revenue and adjusted EBITDA metrics, at a target rate of 50% of his base salary for fiscal 2023, which may be adjusted to up to 75% of his base salary for fiscal 2023 if certain net revenue and adjusted EBITDA metrics are exceeded. Mr. Risico’s salary and performance bonus percentage may be adjusted at the discretion of the Compensation Committee of the Board. Mr. Risico’s employment is on an “at will basis.”

Mr. Rodriguez has served as the Company’s chief financial officer since March 2021 and was appointed interim chief operating officer in May 2023. Prior to that, he served as the Company’s senior vice president of Finance since September 2017. Prior to joining the Company, Mr. Rodriguez served as chief accounting officer and global controller for Pikel, Inc. from July 2012 to September 2017

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and also held the role of interim chief operating officer in 2017. From 2000 to 2011, Mr. Rodriguez held several financial leadership roles with the Atari Group, most notably acting chief financial officer of Atari, Inc. (Nasdaq: ATAR) from 2007 to 2008, and deputy chief financial officer of Atari SA (Euronext: ATA) from 2008 to 2010. Mr. Rodriguez started his career at Arthur Andersen LLP in 1997 and is a CPA in the State of New York (inactive). Mr. Rodriguez holds a Bachelor of Business Administration – Accounting from Hofstra University.

Mr. Rodriguez’s annualized salary is currently \$310,000. He is currently eligible to receive an annual cash or stock performance bonus, based on the achievement of certain net revenue and adjusted EBITDA metrics, at a target rate of 50% of his base salary for fiscal 2023, which may be adjusted to up to 75% of his base salary for fiscal 2023 if certain net revenue and adjusted EBITDA metrics are exceeded. Mr. Rodriguez’s salary and performance bonus percentage may be adjusted at the discretion of the Compensation Committee of the Board. Mr. Rodriguez’s employment is on an “at will basis.”

The Company previously entered into an indemnification agreement with each of Mr. Risico and Mr. Rodriguez, in the form filed by the Company as an exhibit to the Registration Statement on Form S-1 filed on May 24, 2019.

#### *Appointment of Directors*

In connection with their appointment as co-Chief Executive Officers, Mr. Risico and Mr. Rodriguez were appointed a Class II and Class III Director, respectively, effective July 26, 2023. As a Class II Director, Mr. Risico’s initial term will expire at the annual meeting of the Company’s stockholders to be held in 2024. As a Class III Director, Mr. Rodriguez’s initial term will expire at the annual meeting of the Company’s stockholders to be held in 2025.

Neither Mr. Risico nor Mr. Rodriguez has any family relationships with any director or executive officer of the Company and neither were selected by the Board to serve as a director pursuant to any arrangement or understanding with any person. Additionally, neither Mr. Risico nor Mr. Rodriguez has engaged in any transaction that would be reportable as a related party transaction under Item 404(a) of Regulation S-K. Mr. Risico and Mr. Rodriguez are current employees of the Company and will not receive any additional compensation for service as a director.

#### *Appointment of Chairperson of the Board*

Effective July 26, 2023, the Board appointed William Kurtz as Chairperson of the Board.

#### *Engagement of Advisor to Senior Management*

On and effective, July 26, 2023, in connection with the appointment of Messrs. Risico and Rodriguez as Co-Chief Executive Officers, Mr. Kurtz and the Company entered into an Advisor Agreement, effective July 26, 2023 (the “Advisor Agreement”), pursuant to which Mr. Kurtz shall act as an advisor to senior management of the Company. The initial term of the Advisor Agreement shall be six months and, subject to the agreement of the Company and Mr. Kurtz, may be extended for an additional six month period. Mr. Kurtz will be paid \$10,000 per month for his services pursuant to the Advisor Agreement.

The foregoing description of the Advisor Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Advisor Agreement, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

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**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

Number	Description
99.1	<a href="#">Press Release, dated July 27, 2023</a>
10.1	<a href="#">Separation Agreement and Release, dated July 26, 2023, by and between Aterian, Inc. and Yaniv Sarig</a>
10.2	<a href="#">Advisor Agreement, dated July 26, 2023, by and between Aterian, Inc. and William Kurtz.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL)

**SIGNATURES**

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

**ATERIAN, INC.**

Date: July 27, 2023

By: /s/ Joseph Risico

Name: Joseph Risico

Title: *Co-Chief Executive Officer*

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**SEPARATION AGREEMENT AND RELEASE**

This Separation Agreement and Release (“Agreement”) is made by and between Yaniv Sarig (“Employee”) and Aterian, Inc. (the “Company”) (collectively referred to as the “Parties” or individually referred to as a “Party”).

**RECITALS**

WHEREAS, Employee’s employment with the Company terminated on July 26, 2023 (the “Termination Date”);

WHEREAS, Employee signed a Proprietary Information and Inventions Agreement with the Company in connection with Employee’s commencement of employment pursuant to an offer letter agreement with the Company dated April 1, 2015 (the “Confidentiality Agreement”);

WHEREAS, the Parties wish to resolve any and all disputes, claims, complaints, grievances, charges, actions, petitions and demands that Employee may have against the Company and any of the Releasees as defined below, arising out of or in any way related to Employee’s employment with or separation from the Company;

NOW, THEREFORE, in consideration of the mutual promises made herein, the Company and Employee hereby agree as follows:

**AGREEMENT**

1. **Recitals; Termination.** The recitals set forth above are expressly incorporated into this Agreement. Employee also acknowledges and agrees that Employee resigned, effective as of the Termination Date, from (a) all positions that Employee held with the Company or any of its affiliates, including, without limitation, as an employee, officer, manager or director and (b) all fiduciary positions (including as a trustee) Employee held with respect to any employee benefit plans or trusts established by the Company or any affiliate, and hereby confirms that Employee’s resignation was not due to any disagreement with the Company relating to any of the Company’s operations, policies or practices. Employee agrees to execute any additional documents consistent with the foregoing resignations that the Company may reasonably request.

2. **Consideration.** In consideration of Employee’s execution of this Agreement and Employee’s fulfillment of all of its terms and conditions, and provided that Employee does not revoke this Agreement pursuant to paragraph 6 below, the Company agrees as follows:

a. **Separation Payment.** The Company will pay Employee a lump sum of \$350,000, less applicable withholding (the “Separation Payment”). This payment will be made to Employee within fourteen (14) business days after the Effective Date (as defined below). Employee acknowledges and agrees that the Separation Payment shall be in lieu of any other separation benefits or payments to which Employee may be entitled (other than vested benefits under Company pension or retirement plans), whether in connection with any Company policy, employment agreement or otherwise.

b. General. Employee acknowledges that without this Agreement, Employee is otherwise not entitled to the consideration listed in this paragraph 2.

3. Benefits; Equity Awards. Employee agrees that Employee's participation in all benefits and incidents of employment (other than Excluded Rights/Claims (as defined below)), including, but not limited to, the accrual of bonuses, vacation and paid time off, ceased as of the Termination Date. Employee's health and dental insurance benefits, if any, shall cease on the last day of July 2023, subject to Employee's right to continue Employee's coverage under COBRA. Employee shall retain all of Employee's vested equity awards with respect to the Company's Common Stock in accordance with the terms of the plans and award agreements evidencing such awards, and except as otherwise provided in paragraph 2, Employee will forfeit all of Employee's unvested equity awards as of the Termination Date (the "Unvested Shares"), including, without limitation, all 333,104 shares of the Company's common stock, par value \$0.0001 per share ("Common Stock"), issued by the Company to Employee that would have vested in full on January 19, 2024, subject to Employee's continued employment with the Company through such date.

4. Payment of Salary and Receipt of All Benefits. Employee acknowledges and represents that, other than the consideration set forth in this Agreement, the Company has paid or provided all salary, wages, bonuses, accrued vacation/paid time off, premiums, leaves, housing allowances, relocation costs, interest, severance, outplacement costs, fees, reimbursable expenses, commissions, equity-based compensation and any and all other benefits and compensation due from the Company to Employee, other than Excluded Rights/Claims.

5. Release of Claims. Employee agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to Employee by the Company, other than Excluded Rights/Claims (as defined below). Employee, on Employee's own behalf and on behalf of Employee's respective heirs, family members, executors, agents and assigns (the "Releasers"), hereby and forever releases the Company and its current and former officers, directors, employees, agents, investors, attorneys, shareholders, administrators, affiliates, benefit plans, plan administrators, insurers, trustees, parents, divisions and subsidiaries and predecessor and successor corporations and assigns (collectively, the "Releasees") from, and agrees not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, demand or cause of action, whether presently known or unknown, suspected or unsuspected, that Employee possesses or may possess against any of the Releasees arising from or related to Employee's employment or service with the Company or any of its affiliates and/or Employee's separation from employment or engagement with the Company or any of its affiliates, as of the time that Employee signs this Agreement (the "Released Claims"). The Released Claims include, but are not limited to, claims arising under federal, state and local statutory or common law, such as (as amended) Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA) and any similar federal, state or local laws, such as the New York State and City Human Rights Laws, the New York Labor Law and the law of contract and tort.

Employee agrees that the release set forth in this section shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under this Agreement. Notwithstanding anything to the contrary in this



Agreement, the Released Claims do not include any rights or claims (i) for already-vested or accrued benefits under the Company's benefit plans, (including without limitation any Company pension or retirement plans), (ii) for benefits and/or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes, (iii) with respect to any indemnification or other protections owing to Employee under the Company's (or any other Company Group (as defined below) member's) certificate of incorporation or bylaws or equivalent charter documents or any indemnification agreement between the Company (or any other member of the Company Group) and Employee or under any directors' and officers' liability insurance policy maintained by the Company or any other Company Group member (collectively, the "Indemnification Rights"), (iv) with respect to Employee's equity interests in the Company (other than claims related to any Unvested Shares), (v) arising after Employee signs this Agreement, (vi) arising under this Agreement or (vii) any claims that cannot be released as a matter of law, including, but not limited to, Employee's right to file a charge with or participate in a charge by the Equal Employment Opportunity Commission, or any other local, state or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, against the Company (with the understanding that any such filing or participation does not give Employee the right to recover any monetary damages against the Company; Employee's release of claims herein bars Employee from recovering such monetary relief from the Company) (clauses (i) – (vii) collectively, the "Excluded Rights/Claims"). Employee represents that Employee has made no assignment or transfer of any right, claim, complaint, charge, duty, obligation, demand, cause of action, or other matter waived or released by this section. For purposes of this Agreement, "Company Group" means the Company and its affiliates, subsidiaries, parents, divisions, subsidiaries and predecessor and successor corporations and assigns.

6. Acknowledgment of Waiver of Claims under ADEA. Employee understands and acknowledges that Employee is waiving and releasing any rights Employee may have under the Age Discrimination in Employment Act of 1967 ("ADEA"), and that this waiver and release is knowing and voluntary. Employee understands and agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. Employee understands and acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Employee was already entitled. Employee further understands and acknowledges that Employee has been advised by this writing that: (a) Employee should consult with an attorney prior to executing this Agreement; (b) Employee has twenty-one (21) days within which to consider this Agreement (but may accept this Agreement at any time before the end of the 21-day period); (c) Employee has seven (7) days following Employee's execution of this Agreement to revoke this Agreement; (d) this Agreement shall not be effective until after the revocation period has expired; and (e) nothing in this Agreement prevents or precludes Employee from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by federal law. In the event Employee signs this Agreement and returns it to the Company before the end of the 21-day period identified above, Employee hereby acknowledges that Employee has freely and voluntarily chosen to waive the time period allotted for considering this Agreement. Employee acknowledges and understands that revocation must be accomplished by a written notification to the person executing this Agreement on behalf of the Company that is received prior to the eighth day after Employee signs this Agreement. The Parties agree that changes, whether material or immaterial, do not restart the running of the 21-day period.

7. Unknown Claims; California Civil Code Section 1542.

a. Unknown Claims. Employee acknowledges that Employee has been advised to consult with legal counsel and that Employee is familiar with the principle that a general release does not extend to claims that the releaser does not know or suspect to exist in her favor at the time of executing the release, which, if known by her, must have materially affected her settlement with the releasee. Employee, being aware of said principle, agrees to expressly waive any rights Employee may have to that effect, as well as under any other statute or common law principles of similar effect.

b. California Civil Code Section 1542. Employee acknowledges that Employee has been advised to consult with legal counsel and is familiar with the provisions of California Civil Code Section 1542, a statute that otherwise prohibits the release of unknown claims, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Employee, being aware of said code section, agrees to expressly waive any rights Employee may have thereunder, as well as under any other statute or common law principles of similar effect.

8. No Pending or Future Lawsuits. Employee represents that Employee has no lawsuits, claims or actions pending in Employee's name, or on behalf of any other person or entity, against the Company or any of the other Releasees. Employee also represents that Employee does not presently intend to or is currently contemplating whether to bring any claims on Employee's own behalf or on behalf of any other person or entity against the Company or any of the other Releasees in connection with any Released Claim. However, nothing in this Agreement prohibits Employee from testifying pursuant to a subpoena or from accepting witness fees accompanying a subpoena, and this Agreement in no way limits Employee's right to file a charge with or participate in any administrative proceeding conducted by a governmental agency relating to Employee's employment with Company, or to pursue or enforce any Excluded Rights/Claims.

9. Confidentiality. Employee agrees to maintain in complete confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as "Separation Information"). Except as required by law, Employee may disclose Separation Information only to Employee's immediate family members, the court in any proceedings to enforce the terms of this Agreement, Employee's counsel, Employee's accountant and any professional tax advisor to the extent that the professional tax advisor needs to know the Separation Information in order to provide advice on tax treatment or to prepare tax returns, and must prevent disclosure of any Separation Information to all other third parties. Employee agrees that Employee will not publicize, directly or indirectly, any Separation Information. Nothing in this Agreement prevents Employee from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Employee has reason to believe is unlawful. Employee and the Company acknowledge Employee's rights to make truthful statements or disclosures required by law, regulation, or legal

process and to request or receive confidential legal advice, and nothing in this Agreement shall be deemed to impair those rights.

10. Trade Secrets and Confidential Information/Company Property. Employee reaffirms and agrees to observe and abide by the terms of the Confidentiality Agreement, specifically including the provisions regarding nondisclosure of the Company's trade secrets and confidential and proprietary information and any restrictive covenants contained therein. Employee's signature below constitutes Employee's certification under penalty of perjury that Employee has returned all documents and other items provided to Employee by the Company, developed or obtained by Employee in connection with Employee's employment with the Company, or otherwise belonging to the Company.

11. Board and Committee Resignation. Employee hereby resigns from all positions that Employee holds as a manager or member of the board of directors of the Company and each direct and indirect subsidiary of the Company. Employee hereby confirms that his resignation is not due to any disagreement with the Company relating to any of the Company's operations, policies or practices.

12. No Cooperation. Employee agrees that Employee will not knowingly encourage, counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges or complaints by any third party against any of the Releasees in connection with any Released Claim, unless under a subpoena or other court order to do so or as related directly to the ADEA waiver in this Agreement. To the extent permitted by the terms of any such subpoena or court order and/or applicable law, Employee agrees both to immediately notify the Company upon receipt of any such subpoena or court order, and to furnish, within three (3) business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Releasees in connection with any Released Claim, Employee shall state no more than that Employee cannot provide counsel or assistance.

13. Non-Disparagement. Employee agrees to refrain from any disparagement, defamation, libel or slander of any of the Company or its subsidiaries, or its or their current or former officers, directors, customers, business, employees, agents, attorneys, parents, divisions and subsidiaries and predecessor and successor corporations and assigns, or, solely in their capacity as investors/ stockholders of the Company, investors/stockholders of the Company, and agrees to refrain from any tortious interference with the contracts and relationships of the Company or its subsidiaries, or its or their business and successor corporations and assigns. The Company agrees to instruct its directors and officers to refrain from any disparagement, defamation, libel or slander of Employee and any other Releasor, and agrees to refrain from any tortious interference with the contracts and relationships of Employee and any other Releasor. Employee shall direct any inquiries by potential future employers to the Company's human resources department, which shall use its best efforts to provide only the Employee's last position and dates of employment. Notwithstanding the foregoing, nothing herein shall prohibit Employee from reporting a suspected violation of law to the appropriate governmental authority or agency or from responding truthfully in connection with a governmental investigation or legal proceeding.

14. No Admission of Liability. Employee understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by Employee with respect to any Released Claim. No action taken by the Parties hereto, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by any Party of any fault or liability whatsoever to the other Party or to any third party.

15. Costs. The Parties shall each bear their own costs, attorneys' fees and other fees incurred in connection with the preparation of this Agreement.

16. Tax Consequences. The Company makes no representations or warranties with respect to the tax consequences of the payments and any other consideration provided to Employee or made on Employee's behalf under the terms of this Agreement. Employee agrees and understands that Employee is responsible for payment, if any, of local, state and/or federal taxes on the payments and any other consideration provided hereunder by the Company and any penalties or assessments thereon, other than the employer-portion of any such taxes and/or penalties or assessments. Employee further agrees to indemnify and hold the Company harmless from any claims, demands, deficiencies, penalties, interest, assessments, executions, judgments, or recoveries by any government agency against the Company for any amounts claimed due on account of (a) Employee's failure to pay or delayed payment of, federal or state taxes in connection with the payments to Employee under the terms of this Agreement, or (b) damages sustained by the Company by reason of any such claims in connection with Employee's failure to pay or delayed payment of, federal or state taxes in connection with the payments to Employee under the terms of this Agreement, including attorneys' fees and costs.

This Agreement is intended to comply with or be exempt from Section 409A of the Internal Revenue Code of 1986, as amended and the regulations thereunder ("Section 409A"), and the Company shall have complete discretion to interpret and construe this Agreement in any manner that establishes an exemption from (or otherwise conforms to) the requirements of Section 409A. For purposes of Section 409A, each payment hereunder shall at all times be considered a separate and distinct payment. To the extent required under Section 409A, any payments to be made under this Agreement due to a termination of employment only will be made upon a "separation from service" within the meaning of Section 409A. The Company makes no guarantee as to any tax treatment relating to this Agreement and neither the Company, its employees, officers, directors or attorneys shall have any liability to Employee on account of any adverse tax or related consequences relating to this Agreement including but not limited to adverse consequences under Section 409A.

17. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. Employee represents and warrants that Employee has the capacity to act on Employee's own behalf and on behalf of all who might claim through Employee to bind them to the terms and conditions of this Agreement. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

18. No Representations. Employee represents that Employee has had an opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the

provisions of this Agreement. Employee has not relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

19.No Waiver. The failure of the Company to insist upon the performance of any of the terms and conditions in this Agreement, or the failure to prosecute any breach of any of the terms or conditions of this Agreement, shall not be construed thereafter as a waiver of any such terms or conditions. This entire Agreement shall remain in full force and effect as if no such forbearance or failure of performance had occurred.

20.Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

21.Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Employee concerning the subject matter of this Agreement and Employee's employment with and separation from the Company and the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement and Employee's relationship with the Company, with the exception of (i) the Confidentiality Agreement, (ii) agreements related to Employee's equity in the Company, and (iii) agreements related to or governing any Indemnification Rights.

22.No Oral Modification. This Agreement may only be amended in a writing signed by Employee and a duly authorized representative of the Company.

23.Governing Law. This Agreement shall be governed by the laws of the State of New York, without regard for choice-of-law provisions. Employee consents to personal and exclusive jurisdiction and venue in the State of New York.

24.Effective Date. Employee has seven (7) days after Employee signs this Agreement to revoke it. This Agreement will become effective on the eighth (8th) day after Employee signed this Agreement, so long as it has been signed by the Parties and has not been revoked by Employee before that date (the "Effective Date"). Employee understands that this Agreement shall be null and void if not executed by Employee and returned to the Company within the twenty-one (21) day period set forth under paragraph 6 above.

25.Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

26.Voluntary Execution of Agreement. Employee understands and agrees that Employee executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of releasing all of the Released Claims. Employee acknowledges that:

- a. Employee has read this Agreement;

b. Employee has a right to consult an attorney regarding this Agreement. Employee has been represented in the preparation, negotiation and execution of this Agreement by legal counsel of Employee's own choice or has elected not to retain legal counsel;

c. Employee understands the terms and consequences of this Agreement and of the releases it contains; and

d. Employee is fully aware of the legal and binding effect of this Agreement.

*[Remainder of Page Blank; Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Yaniv Sarig

ATERIAN, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Christopher Porcelli, its General Counsel & Head of People





## ATERIAN, INC.

## ADVISOR AGREEMENT

THIS ADVISOR AGREEMENT (“**Agreement**”) is entered into as of July 26, 2023 (the “**Effective Date**”), by and between Aterian, Inc., a Delaware corporation (“**Company**”), with a principal place of business at 350 Springfield Avenue, Suite 200, Summit, New Jersey 07901, and William H. Kurtz, an individual residing at \_\_\_\_\_ (“**Advisor**”).

**1. Services.**

**1.1 Nature of Services.** Advisor will perform the services, as more particularly described on **EXHIBIT A** attached hereto, for Company as a strategic advisor (the “**Services**”). The Services have been specially ordered and commissioned by Company. To the extent the Services include materials subject to copyright, Advisor agrees that the Services are done as “work made for hire” as that term is defined under U.S. copyright law, and that as a result, Company will own all copyrights in the Services. Advisor will perform such services in a diligent and workmanlike manner. The content, style, form and format of any work product of the Services shall be completely satisfactory to Company and shall be consistent with Company’s standards. Company agrees that Advisor’s services need not be rendered at any specific location and may be rendered at any location selected by Advisor. Advisor hereby grants Company the right, but not the obligation, to use and to license others the right to use Advisor’s, and Advisor’s employees’, name, voice, signature, photograph, likeness and biographical information in connection with and related to the Services. **EXHIBIT A** attached hereto forms a part of this Agreement.

**1.2 Relationship of the Parties.** Advisor enters into this Agreement as, and shall continue to be, a strategic advisor. All Services shall be performed only by Advisor. Under no circumstances shall Advisor look to Company as Advisor’s employer, or as a partner, agent or principal. Neither Advisor, nor any of Advisor’s employees, shall be entitled to any benefits accorded to Company’s employees, including without limitation worker’s compensation, disability insurance, vacation or sick pay. Advisor shall be responsible for providing, at Advisor’s expense, and in Advisor’s name, unemployment, disability, worker’s compensation and other insurance, as well as licenses and permits usual or necessary for conducting the Services. Nothing herein shall be construed to create a partnership, joint venture, agency or employer-employee relationship between Company, on the one hand, and Advisor, on the other hand. Advisor will not represent Advisor to be, or hold Advisor out as, an employee of Company. Advisor shall not have any express or implied right or authority to assume or create any obligations on behalf of or in the name of Company, or to bind Company to any other contract, agreement or undertaking with any third party.

**1.3 Compensation and Reimbursement.** Advisor shall be compensated and reimbursed for the Services solely as set forth on **EXHIBIT B** attached hereto. Completeness of work product shall be determined by Company in its sole discretion, and Advisor agrees to make all revisions, additions, deletions or alterations as requested by Company. No other fees and/or expenses will be paid to Advisor, unless such fees and/or expenses have been approved in advance by the appropriate Company executive in writing. Advisor shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to such compensation. Advisor hereby indemnifies and holds Company harmless from, any claims, losses, costs, fees, liabilities, damages or injuries suffered by Company arising out of Advisor’s failure with respect to its obligations in this Section 1.3.

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**1.4 Personnel.** Advisor represents and warrants to Company that only the individual signing this Agreement shall perform the Services. Advisor will not allow any of other individual or party to perform Services for Company pursuant to this Agreement.

## **2. Protection of Company's Confidential Information.**

**2.1 Confidential Information.** Company now owns and will hereafter develop, compile and own certain proprietary techniques, trade secrets, and confidential information which have great value in its business (collectively, "**Company Information**"). Company will be disclosing Company Information to Advisor during Advisor's performance of the Services. Company Information includes not only information disclosed by Company, but also information developed or learned by Advisor during Advisor's performance of the Services. Company Information is to be broadly defined and includes all information which has or could have commercial value or other utility in the business in which Company is engaged or contemplates engaging or the unauthorized disclosure of which could be detrimental to the interests of Company, whether or not such information is identified by Company. By way of example and without limitation, Company Information includes any and all information concerning discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, data, research techniques, customer and supplier lists, marketing, sales or other financial or business information, scripts, and all derivatives, improvements and enhancements to any of the above. Company Information also includes like third-party information which is in Company's possession under an obligation of confidential treatment.

**2.2 Protection of Company Information.** Advisor agrees that at all times during or subsequent to the performance of the Services, Advisor will keep confidential and not divulge, communicate, or use Company Information, except for Advisor's own use during the Term (as defined below) to the extent necessary to perform the Services. Advisor further agrees not to cause the transmission, removal or transport of tangible embodiments of, or electronic files containing, Company Information from Company's principal place of business, without prior written approval of Company.

**2.3 Exceptions.** Advisor's obligations with respect to any portion of Company Information as set forth above shall not apply when Advisor can document that: (i) such information was in the public domain at the time it was communicated to Advisor by Company; (ii) such information entered the public domain subsequent to the time it was communicated to Advisor by Company through no fault of Advisor or its representatives; (iii) such information was in Advisor's possession free of any obligation of confidence at the time it was communicated to Advisor by Company; or (iv) such information was rightfully communicated to Advisor free of any obligation of confidence subsequent to the time it was communicated to Advisor by Company.

**2.4 Notice.** Advisor acknowledges receipt of the following notice pursuant to 18 U.S.C. § 1833(b)(1) (Defend Trade Secrets Act) and further acknowledges that such notice shall apply with respect to Advisor notwithstanding anything in this Agreement to the contrary:

An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in

the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.

**2.5 Company Property.** All materials, including without limitation documents, drawings, drafts, notes, designs, computer media, electronic files and lists, including all additions to, deletions from, alterations of, and revisions in the foregoing (together the “**Materials**”), which are furnished or made available to Advisor by Company or which are developed in the process of performing the Services, or embody or relate to the Services, Company Information or the Innovations (as defined below), are the property of Company, and shall be returned by Advisor to Company promptly at Company’s request together with any copies thereof, and in any event promptly upon expiration or termination of this Agreement for any reason. Advisor is granted no rights in or to such Materials, Company Information or the Innovations, except as necessary to fulfill its obligations under this Agreement. Advisor shall not use or disclose the Materials, Company Information or Innovations to any third party.

### **3. Assignment of Advisor’s Inventions and Copyrights.**

**3.1 Disclosure.** Advisor will promptly disclose in writing to Company all works, products, discoveries, developments, designs, innovations, improvements, inventions, formulas, processes, techniques, know-how and data (whether or not patentable, and whether or not at a commercial stage, or registrable under copyright or similar statutes) which are authored, made, conceived, reduced to practice or learned by Advisor (either alone or jointly with others) during the period Advisor provides the Services as a result of performing the Services, including any concepts, ideas, suggestions and approaches related thereto or contained therein (collectively, the “**Innovations**”).

**3.2 Assignment.** Advisor hereby assigns and agrees to assign to Company, without royalty or any other consideration except as expressly set forth herein, all worldwide right, title and interest Advisor may have or acquire in and to (i) all Materials, (ii) all Innovations, (iii) all worldwide patents, patent applications, copyrights, mask work rights, trade secrets rights and other intellectual property rights in any Innovations, and (iv) any and all “moral rights” or right of “droit moral” (collectively “**Moral Rights**”) that Advisor may have in or with respect to any Innovations. To the extent any Moral Rights are not assignable, Advisor waives, disclaims and agrees that Advisor will not enforce such Moral Rights. Advisor agrees that such assignment shall extend to all languages and including the right to make translations of the Materials and Innovations. Additionally, Advisor agrees, at no charge to Company, but at Company’s sole expense, to sign and deliver to Company (either during or subsequent to Advisor’s performance of the Services) such documents as Company considers desirable to evidence the assignment of all rights of Advisor, if any, described above to Company and Company’s ownership of such rights and to do any lawful act and to sign and deliver to Company any document necessary to apply for, register, prosecute or enforce any patent, copyright or other right or protection relating to any Innovations in any country of the world.

**3.3 Power of Attorney.** Advisor hereby irrevocably designates and appoints each of Company and its Chief Executive Officer as Advisor’s agent and attorney-in-fact, to act for and in Advisor’s behalf and stead, for the limited purpose of executing and filing any such document and doing all other lawfully permitted acts to further the prosecution, issuance and enforcement of patents, copyrights or other protections which employ or are based on Innovations with the same force and effect as if executed and delivered by Advisor.

**3.4 Representations and Warranties.** Advisor represents and warrants to Company that (a) Advisor has full power and authority to enter into this Agreement including all rights necessary to make the foregoing assignments to Company; that in performing under this Agreement, (b) Advisor will not violate the terms of any agreement with any third party, and (c) the Services and any work product thereof are the original work of Advisor, do not and will not infringe upon, violate or misappropriate any

patent, copyright, trade secret, trademark, contract, or any other publicity right, privacy right, or proprietary right of any third party. Advisor shall defend, indemnify and hold Company and its successors, assigns and licensees harmless from any and all claims, actions and proceedings, and the resulting losses, damages, costs and expenses (including reasonable attorneys' fees) arising from any claim, action or proceeding based upon or in any way related to Advisor's, or Advisor's employees, breach or alleged breach of any representation, warranty or covenant in this Agreement, and/or from the acts or omissions of Advisor or Advisor's employees.

**4. Solicitation.** Advisor agrees that during the term of this Agreement and for one year thereafter, Advisor will not encourage or solicit any employee or consultant of Company to leave Company for any reason.

#### **5. Termination of Agreement.**

**5.1 Term.** This Agreement shall commence on the Effective Date and continue until the earliest to occur of (a) the date that is six months after the Effective Date, and (b) the date it is terminated by either party upon 30 days' advance written notice to the other party ("**Term**"). Prior to the end of the Term pursuant to clause (a) of the prior sentence, the Company and Advisor may mutually agree in writing to extend the Term for up to an additional six-month period. If Company exercises its right to terminate this Agreement, any obligation it may otherwise have under this Agreement shall cease immediately, except that Company shall be obligated to compensate Advisor for work performed up to the time of termination. If Advisor exercises its right to terminate this Agreement, any obligation it may otherwise have under this Agreement shall cease immediately. Additionally, this Agreement shall automatically terminate upon Advisor's death or permanent disability. In such event, Company shall be obligated to pay Advisor's estate or beneficiaries only the accrued but unpaid compensation and expenses due as of the date of death.

**5.2 Continuing Obligations of Advisor.** The provisions of Sections 1.1 (as relates to creation and ownership of copyright), 1.2, 1.3, 2, 3, 4, 5.2, and 6 shall survive expiration or termination of this Agreement for any reason.

#### **6. Additional Provisions.**

**6.1 Governing Law and Attorney's Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its choice of law principles. The parties consent to exclusive jurisdiction and venue in the state, federal or other applicable courts sitting in the county or province of the Company's principal place of business. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses.

**6.2 Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and permitted assigns of the parties hereto. Advisor shall have no right to (a) assign this Agreement, by operation of law or otherwise, or (b) subcontract or otherwise delegate the performance of the Services without Company's prior written consent which may be withheld as Company determines in its sole discretion. Any such purported assignment shall be void.

**6.3 Severability.** If any provision of this Agreement shall be found invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties.

**6.4 Entire Agreement.** This Agreement, including the Exhibits, constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and

contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties.

**6.5 Injunctive Relief.** Advisor acknowledges and agrees that in the event of a breach or threatened breach of this Agreement by Advisor, Company will suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

**6.6 Advisor's Remedy.** Advisor's remedy, if any, for any breach of this Agreement shall be solely in damages and Advisor shall look solely to Company for recover of such damages. Advisor waives and relinquishes any right Advisor may otherwise have to obtain injunctive or equitable relief against any third party with respect to any dispute arising under this Agreement. Advisor shall look solely to Company for any compensation which may be due to Advisor hereunder.

**6.7 Agency.** In Advisor's capacity as an advisor to the Company pursuant to this Agreement, Advisor is not Company's agent or representative and has no authority to bind or commit Company to any agreements or other obligations.

**6.8 Amendment and Waivers.** Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

**6.9 Time.** Advisor agrees that time is of the essence in this Agreement.

**6.10 Notices.** Any notice, demand, or request with respect to this Agreement shall be in writing and shall be effective only if it is delivered by personal service, by air courier with receipt of delivery or email or mailed, certified mail, return receipt requested, postage prepaid, to the address set forth above. Such communications shall be effective when they are received by the addressee; but if sent by certified mail in the manner set forth above, they shall be effective five (5) days after being deposited in the mail. Any party may change its address for such communications by giving notice to the other party in conformity with this section.

**6.11 Counterparts; Manner of Delivery.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**CAUTION:** THIS AGREEMENT AFFECTS ADVISOR'S RIGHTS TO INNOVATIONS ADVISOR MAKES PERFORMING THE SERVICES, AND RESTRICTS ADVISOR'S RIGHT TO DISCLOSE OR USE COMPANY'S CONFIDENTIAL INFORMATION DURING OR SUBSEQUENT TO ADVISOR'S SERVICES.

ADVISOR HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS ITS TERMS.

**ADVISOR**

**COMPANY**

**Aterian, Inc.**

Name: William H. Kurtz

By: Christopher Porcelli \_\_\_\_\_  
Its: General Counsel

**EXHIBIT A**  
**Description of Services**

**Services to be provided by Advisor:** Advisor will provide the following advisory services as requested by the Company's senior management and the Board of Directors from time to time for up to 10 hours per month, including any additional services determined by the Company or the Board of Directors, on the one hand, and Advisor, on the other hand:

- Management advisory services as it relates to the Company including but not limited to strategy, finance and operations

Notwithstanding anything in the Agreement the contrary, Advisor shall not participate in the preparation of the financial statements of the Company or any subsidiary of the Company.

*Exhibit A*  
*Page 1 of 1*

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**EXHIBIT B**  
**Payment**

**Compensation**

**Cash Compensation:** \$10,000 per month (pro rated for partial months), paid within 30 days of month end.

*Exhibit B*  
*Page 1 of 1*

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## Aterian Announces Management Change & Second Quarter 2023 Preliminary Results

*Joe Risico and Arturo Rodriguez Appointed Co-CEOs  
William Kurtz Appointed Chair of the Board*

*Second Quarter Revenue Range Between \$34.8 Million to \$35.4 Million*

*Second Quarter Adjusted EBITDA Loss Range Between \$8.0 Million to \$9.0 Million*

**NEW YORK, July 27, 2023** – Aterian, Inc. (Nasdaq: ATER) (“Aterian” or the “Company”) today announced the appointment of Joe Risico and Arturo (Arty) Rodriguez as Co-Chief Executive Officers effective July 26, 2023. They have also joined the Company’s Board of Directors (the “Board”) effective that same date. As part of these changes, Mr. William (Bill) Kurtz, the Company’s current lead independent director and a Board member since 2019, has been named the Chair of the Board. Mr. Yaniv Sarig has resigned as CEO and from the Board effective yesterday.

In their new roles as Co-CEO, Mr. Risico will lead strategy and revenue generation, among other things, while Mr. Rodriguez will lead the Company’s technology and development and continue to lead supply chain and finance. Mr. Rodriguez will also continue his present role as Chief Financial Officer.

“On behalf of our board of directors, we thank Yaniv for his tremendous efforts and commitment to Aterian. We respect Yaniv’s desire to spend more time with his family”, said Bill Kurtz, Chair of Aterian’s Board of Directors. “Joe and Arty have been an integral part of Aterian’s management and the Board believes they are the right people to lead the Company through the next phase of the Company’s growth trajectory given their experience, complementary skill sets and deep understanding of Aterian’s business. I look forward to their success.”

“I am grateful for the opportunity to continue my partnership with Arty, our board and our team at Aterian,” said Joe Risico, Co-CEO. “Aterian has a strong set of core brands and products and we will continue to focus them and Aterian towards profitable growth as we navigate a challenging consumer discretionary environment.”

“I am excited to partner with Joe in leading Aterian,” said Arturo Rodriguez, Co-CEO. “Aterian’s core brands and products, supported by our technology, supply chain, and most importantly our people, will allow us to continue to execute on our path towards profitability. I am honored and humbled to be given this opportunity from our board to co-lead Aterian into its future.”

“Aterian has been an incredible nine year journey for me, I am extremely proud of the company that was built from scratch and the team and culture that we fostered,” said Yaniv Sarig, Aterian’s Co-Founder. “It is time for a change and I believe that Joe and Arty will continue to be a great team and bring Aterian even greater successes.”

Mr. Risico has been with Aterian since 2018, serving as Aterian’s Chief Legal Officer and Head of M&A since March 2021 and June 2021, respectively. Prior to joining Aterian, Mr. Risico spent over 25 years in legal and

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business development roles including earlier stage ventures. Mr. Risico started his professional career as an auditor at Ernst & Young, during which time he obtained his CPA and he began his legal career as a corporate lawyer at Cravath, Swaine & Moore LLP. Mr. Risico holds a B.A. from New York University with concentrations in accounting and economics and a J.D. from Columbia Law School.

Mr. Rodriguez has been with Aterian since 2017 and served as the Company's Chief Financial Officer since March 2021. Prior to joining Aterian, Mr. Rodriguez had spent the last 25 years in various finance and operational leadership roles for both domestic and international public companies, including holding the Chief Financial Officer role at Atari, Inc. (Nasdaq: ATAR) and the Deputy Chief Financial Officer of Atari SA (Euronext: ATA). Mr. Rodriguez started his career at Arthur Andersen LLP in 1997 and is a CPA in the State of New York. Mr. Rodriguez holds a Bachelor of Business Administration – Accounting from Hofstra University.

Mr. William H. Kurtz has served as an Aterian director since August 2019. Mr. Kurtz is a senior financial and operations executive with over 30 years of experience operating as either a Chief Commercial and Financial Officer or a Chief Operating and Financial Officer of several private and public companies on the East Coast and in Silicon Valley. Mr. Kurtz holds a Bachelor of Science in Commerce from Rider University and a Master of Science in Management Sciences from Stanford University.

### **Second Quarter Preliminary Net Revenue and Adjusted EBITDA Update**

The Company today also announced an update to its previously stated net revenue and adjusted EBITDA ranges for the second quarter ended June 30, 2023. The Company expects net revenue to be in the range of \$34.8 million to \$35.4 million and adjusted EBITDA loss to be in the range of (\$8.0) million to (\$9.0) million, excluding \$1.2 million of restructuring expenses expected to be reported.

The previously announced ranges of net revenue and adjusted EBITDA loss were \$37.0 million to \$44.0 million and \$(4.2) million and \$(5.2) million, respectively. The previously announced adjusted EBITDA range has been adjusted to exclude the previously announced \$1.0 million of restructuring expense for comparable purposes. The Company's cash balance as of June 30, 2023 is expected to be approximately \$28.9 million and borrowing under its credit facility is expected to be approximately \$15.7 million.

"We continue to see consumer softness in the consumer discretionary space which has impacted our expected results for the second quarter, however, we are still pleased with the continued improvements of our balance sheet and continued liquidity position," commented Arturo Rodriguez, Co-CEO of Aterian. "We are still very focused on driving the Company to profitability; however, with our expected view of continued consumer softness in 2023, we believe adjusted EBITDA profitability will be more realistic in the summer of 2024 versus the second half of 2023."

The most directly comparable GAAP financial measure for adjusted EBITDA is net loss and we expect to report a net loss for the three months ending June 30, 2023, for the second half of 2023 and for the year ending December 31, 2024, due primarily to interest, restructuring, and stock-based compensation expenses. We are unable to reconcile the forward-looking statement of adjusted EBITDA in this press release to its nearest GAAP measure because the nearest GAAP financial measure is not accessible on a forward-looking basis and reconciling such information is not available without unreasonable effort.

The net revenue and adjusted EBITDA information in this press release is based on the Company's current expectations and may be adjusted as a result of, among other things, the completion of customary quarter-end close review procedures and financial review. The Company expects to report its final second quarter 2023 results on or about August 8, 2023.

### **About Aterian, Inc.**

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Aterian, Inc. (Nasdaq: ATER) is a leading technology-enabled consumer product company that builds, acquires, and partners with leading e-commerce brands by harnessing proprietary software and an agile supply chain to create top selling consumer products. The Company's cloud-based platform, Artificial Intelligence Marketplace Ecommerce Engine (AIMEE™), leverages machine learning, natural language processing and data analytics to streamline the management of products at scale across the world's largest online marketplaces with a focus on Amazon, Shopify and Walmart. Aterian owns and operates a number of brands and sells its products in multiple categories, including home and kitchen appliances, health and wellness, beauty and consumer electronics.

### **Non-GAAP Financial Measure**

Adjusted EBITDA, the non-GAAP financial measure referenced herein, is a supplement to the corresponding financial measure prepared in accordance with U.S. GAAP. The non-GAAP financial measure referenced excludes the items described below. Management believes that adjustments for these items assist investors in making comparisons of period-to-period operating results. Furthermore, management also believes that these items are not indicative of the Company's on-going core operating performance. The non-GAAP financial measure has certain limitations in that it does not reflect all of the costs associated with the operations of the Company's business as determined in accordance with GAAP.

Therefore, investors should consider the non-GAAP financial measure in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. The non-GAAP financial measure referenced by the Company may be different from the non-GAAP financial measures used by other companies.

The Company has referenced adjusted EBITDA, a non-GAAP measure, to assist investors in understanding the Company's core net operating results on an on-going basis. This non-GAAP financial measure may also assist investors in making comparisons of the Company's core operating results with those of other companies.

As used herein, EBITDA represents net loss plus depreciation and amortization, interest expense, net and income tax expense. As used herein, adjusted EBITDA represents EBITDA plus stock-based compensation expense, restructuring expenses and other expense, net. EBITDA and adjusted EBITDA do not represent, and should not be considered as, alternatives to loss from operations or net loss, as determined under GAAP.

We reference EBITDA and adjusted EBITDA because we believe each of these measures provides an additional metric to evaluate our operations and, when considered with both our GAAP results and the reconciliation to net loss, provides useful supplemental information for investors. We use EBITDA and adjusted EBITDA, together with financial measures prepared in accordance with GAAP, such as sales and gross margins, to assess our historical and prospective operating performance, to provide meaningful comparisons of operating performance across periods, to enhance our understanding of our operating performance and to compare our performance to that of our peers and competitors.

We believe EBITDA and adjusted EBITDA are useful to investors in assessing the operating performance of our business without the effect of non-cash items. EBITDA and adjusted EBITDA should not be considered in isolation or as alternatives to net loss, loss from operations or any other measure of financial performance calculated and prescribed in accordance with GAAP. Neither EBITDA nor adjusted EBITDA should be considered a measure of discretionary cash available to us to invest in the growth of our business. Our EBITDA and adjusted EBITDA may not be comparable to similarly titled measures in other organizations because other organizations may not calculate EBITDA or adjusted EBITDA in the same manner as we do. Reference to adjusted EBITDA should not be construed as an inference that our future results will be unaffected by the expenses that are excluded from such financial measure or by unusual or non-recurring items.

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We recognize that both EBITDA and adjusted EBITDA have limitations as analytical financial measures. For example, neither EBITDA nor adjusted EBITDA reflects:

- our capital expenditures or future requirements for capital expenditures or acquisitions;
- the interest expense or the cash requirements necessary to service interest expense or principal payments associated with indebtedness;
- depreciation and amortization, which are non-cash charges, although the assets being depreciated and amortized will likely have to be replaced in the future, or any cash requirements for the replacement of assets; or
- changes in cash requirements for our working capital needs.

Additionally, adjusted EBITDA excludes non-cash expenses for stock-based compensation, which is and will remain a key element of our overall long-term incentive compensation strategy.

### **Forward Looking Statements**

All statements, other than statements of historical facts, included in this press release that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements including, in particular, the statements regarding expectations of profitable growth for our core brands and products; our expectations regarding consumer softness, our expected net revenue and adjusted EBITDA range for the second quarter of 2023; and cash balance and credit facility availability as of June 30, 2023; our target of achieving adjusted EBITDA profitability in the summer of 2024; and our expectations regarding net loss for the three months ending June 30, 2023, for the second half of 2023 and for the year ending December 31, 2024, due primarily to interest, restructuring, and stock-based compensation expenses. These forward-looking statements are based on management's current expectations and beliefs and are subject to a number of risks and uncertainties and other factors, all of which are difficult to predict and many of which are beyond our control and could cause actual results to differ materially and adversely from those described in the forward-looking statements. These risks include, but are not limited to, those related to consumer demand, including inflation and other factors impacting consumer demand, global shipping disruptions; our ability to continue as a going concern; our ability to meet financial covenants with our lenders; our ability to create operating leverage and efficiency when integrating companies that we acquire or have acquired, including through the use of our team's expertise, the economies of scale of our supply chain and automation driven by our platform; our ability to grow internationally and through the launch of products under our brands and the acquisition of additional brands; the impact of COVID-19, the war in the Ukraine, the rising tensions between China and Taiwan and other macroeconomic factors, including their impact on consumer demand, our cash flows, financial condition, forecasting and revenue growth rate; our supply chain including sourcing, manufacturing, warehousing and fulfillment; our ability to manage expenses, working capital (including liquidations of inventory) and capital expenditures efficiently; our business model and our technology platform; the impact of intangible assets such as goodwill, and other impairments; disruptions to the Company's information technology systems, including but not limited to potential or actual security breaches of systems protecting consumer and employee information or other types of cybercrimes or cybersecurity attacks; our ability to disrupt the consumer products industry; our ability to maintain and grow market share in existing and new product categories; our ability to generate profitability and stockholder value; international tariffs and trade measures; product liability claims, recalls or other safety and regulatory concerns; reliance on third party online marketplaces; seasonal and quarterly variations in our revenue and expenses; acquisitions of other companies and technologies and our ability to successfully integrate such companies and technologies with our business; our ability to continue to access debt and equity capital (including on terms advantageous to the Company) and the extent of our leverage; and other factors discussed in the "Risk Factors" section of our most recent periodic reports filed with the Securities and Exchange Commission ("SEC"), all of which you may obtain for free on the SEC's website at [www.sec.gov](http://www.sec.gov).

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Although we believe that the expectations reflected in our forward-looking statements are reasonable, we do not know whether our expectations will prove correct. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof, even if subsequently made available by us on our website or otherwise. We do not undertake any obligation to update, amend or clarify these forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

**Investor Contact:**

Ilya Grozovsky  
Vice President of Investor Relations & Corp. Development  
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