

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): April 3, 2023

ZIVO BIOSCIENCE, INC.

(Exact name of Registrant as Specified in Its Charter)

<u>Nevada</u> (State or Other Jurisdiction of Incorporation)	<u>000-30415</u> (Commission File Number)	<u>87-0699977</u> (IRS Employer Identification No.)
<u>21 East Long Lake Road, Suite 100, Bloomfield Hills, Michigan</u> (Address of Principal Executive Offices)		<u>48304</u> (Zip Code)

Registrant's Telephone Number, Including Area Code: (248) 452-9866

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(s)</u>	<u>Name of each exchange on which registered</u>
<u>Common Stock, par value \$0.001 per share</u>	<u>ZIVO</u>	<u>The Nasdaq Stock Market</u>
<u>Warrants to purchase shares of Common Stock, par value \$0.001 per share</u>	<u>ZIVOW</u>	<u>The Nasdaq Stock Market</u>

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On April 3, 2023, Zivo Bioscience, Inc. (the “*Company*”) entered into a Subscription Agreement (the “*Subscription Agreement*”) with the Company’s Chief Executive Officer (the “*Subscriber*”), pursuant to which the Company, in a private placement (the “*Private Placement*”), agreed to issue and sell to the Subscriber a 10% promissory note with a principal amount of \$1 million (the “*Note*”) and a warrant (the “*Warrant*”) to purchase 390,000 shares of the Company’s common stock, par value \$0.001 per share (“*Common Stock*”) at an exercise price of \$2.91.

The Note bears interest at a fixed rate of 10% per annum and requires us to repay the principal and accrued and unpaid interest thereon on October 2, 2023 (the “*Maturity Date*”), with an option to extend the Maturity Date an additional six months. There is no penalty on prepayment of the Note.

The Warrants is exercisable commencing on the date of issuance and expires on the three year anniversary of the issuance date. The exercise price and number of the shares of our common stock issuable upon exercising the Warrants will be subject to adjustment in the event of any stock dividends and splits, reverse stock split, recapitalization, reorganization or similar transaction, as described therein.

The foregoing summary descriptions of the Subscription Agreement, the Note and the Warrant do not purport to be complete and are qualified in their entirety by reference to the forms of the Note, the Warrant and the Subscription Agreement, which are attached as Exhibits 4.1, 4.2 and 10.1 hereto, respectively, and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off Balance Sheet Arrangement of a Registrant.

The information included in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

Pursuant to the Private Placement described in Item 1.01 above, which description is hereby incorporated by reference into this Item 3.02, the Company has agreed to sell the Notes and the Warrants issued in the Private Placement to the Subscriber, an accredited investor, in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the “*Securities Act*”). The Company will rely on this exemption from registration based in part on representations made by the Subscriber. The net proceeds to the Company from the Private Placement will be used for general working capital. The Warrant has not been and will not be registered under the Securities Act or applicable state securities laws and may not be offered or sold in the United States absent registration under the Securities Act or an exemption from such registration requirements. Neither this Current Report on Form 8-K nor any exhibit attached hereto shall constitute an offer to sell or the solicitation of an offer to buy the Note, the Warrant, shares of Common Stock or any other securities of the Company.

Item 8.01 Other Events.

On April 5, 2023, the Company issued a press release regarding the Private Placement. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Information contained on or accessible through any website reference in the press release is not part of, nor incorporated by reference in, this Current Report on Form 8-K, and the inclusion of such website address in this Current Report on Form 8-K by incorporation by reference of the press release is as inactive textual references only.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
4.1	Note
4.2	Warrant
10.1	Subscription Agreement
99.1	Press Release, dated April 5, 2023
104	Cover Page Interactive Data File (embedded within Inline XBRL document).

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.

ZIVO BIOSCIENCE, INC.

By: /s/ Keith Marchiando
Keith Marchiando
Chief Financial Officer

Date: April 5, 2023

THIS PROMISSORY NOTE MAY BE SOLD ONLY IN COMPLIANCE WITH APPLICABLE FEDERAL AND STATE SECURITIES LAWS. THIS SUBORDINATED NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY APPLICABLE STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS PROMISSORY NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

ZIVO BIOSCIENCE, INC.

PROMISSORY NOTE

Principal Amount: US\$1,000,000

Issue Date: April 3, 2023

ZIVO BIOSCIENCE, INC., a Nevada corporation (the “Company”), for value received, hereby promises to pay to **John B. Payne** or his permitted assigns or successors (the “Holder”) the principal amount of **ONE MILLION DOLLARS (US\$1,000,000)** (the “Principal Amount”), without demand, on the Maturity Date (as hereinafter defined), together with any accrued and unpaid interest due thereon.

This Note shall bear interest at a fixed rate of 10% per annum, beginning on the Issue Date. Interest shall be computed based on a 360-day year of twelve 30-day months and shall be payable, along with the Principal Amount, on the Maturity Date. Payment of all principal and interest due shall be in such coin or currency of the United States of America as shall be legal tender for the payment of public and private debts at the time of payment.

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. The terms defined in this Article whenever used in this Note shall have the respective meanings hereinafter specified.

“Common Stock” means the common stock, par value \$0.001 per share, of the Company.

“Event of Default” shall have the meaning set forth in Section 4.1.

“Maturity Date” shall mean October 2, 2023. The Maturity Date may be extended by six months upon the written consent of both parties.

“Note” means this Promissory Note, as the same may be amended, modified or restated.

ARTICLE II

GENERAL PROVISIONS

SECTION 2.1 Loss, Theft, Destruction of Note. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Note and, in the case of any such loss, theft or destruction, upon receipt of indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Note, the Company will make and deliver, in lieu of such lost, stolen, destroyed or mutilated Note, a new Note of like tenor and unpaid principal amount dated as of the date hereof. This Note shall be held and owned upon the express condition that the provisions of this Section 2.1 are exclusive with respect to the replacement of a mutilated, destroyed, lost or stolen Note and shall preclude any and all other rights and remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement of negotiable instruments or other securities without their surrender.

SECTION 2.2 Prepayment. This Note may be prepaid by the Company in whole or in part.

SECTION 2.3 Status of Note. This Note is a direct, general and unconditional obligation of the Company, and constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms subject, as to enforcement, to bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity.

ARTICLE III

COVENANTS

The Company covenants and agrees that so long as this Note shall be outstanding:

SECTION 3.1 Payment of Note. The Company will punctually, according to the terms hereof pay or cause to be paid all amounts due under this Note.

SECTION 3.2 Notice of Default. If any one or more events occur that constitute or, with the giving of notice or the lapse of time or both, would constitute an Event of Default, the Company will forthwith give notice to the Holder, specifying the nature and status of the Event of Default or other event or of such demand or action, as the case may be.

ARTICLE IV

REMEDIES

SECTION 4.1 Events of Default. "Event of Default" wherever used herein means any one of the following events:

(a) The Company shall default in the due and punctual payment of the Principal Amount of, or any other amount owing in respect of (including interest), this Note when and as the same shall become due and payable;

(b) The entry of a decree or order by a court having jurisdiction adjudging the Company as bankrupt or insolvent; or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) calendar days;

(c) The institution by the Company of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors;

(d) The Company shall seek the appointment of a statutory manager or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or any group or class thereof or files a petition for suspension of payments or other relief of debtors or a moratorium or statutory management is agreed or declared in respect of or affecting all or any material part of the indebtedness of the Company; or

(e) It becomes unlawful for the Company to perform or comply with its obligations under this Note.

SECTION 4.2 Effects of Default. If an Event of Default occurs and is continuing, then and in every such case the Holder may declare this Note to be due and payable immediately, by a notice in writing to the Company, and upon any such declaration, the Company shall pay to the Holder the outstanding Principal Amount of this Note plus all accrued and unpaid interest through the date the Note is paid in full.

SECTION 4.3 Remedies Not Waived. No course of dealing between the Company and the Holder or any delay in exercising any rights hereunder shall operate as a waiver by the Holder. No failure or delay by the Holder in exercising any right, power or privilege under this Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable law.

ARTICLE V

MISCELLANEOUS

SECTION 5.1 Severability. If any provision of this Note shall be held to be invalid or unenforceable, in whole or in part, neither the validity nor the enforceability of the remainder hereof shall in any way be affected.

SECTION 5.2 Notice. Where this Note provides for notice of any event, such notice shall be given (unless otherwise herein expressly provided) in writing and either (i) delivered personally, (ii) sent by certified, registered or express mail, postage prepaid or (iii) sent by facsimile or other electronic transmission, and shall be deemed given when so delivered personally, sent by facsimile or other electronic transmission (confirmed in writing) or mailed. Notices shall be addressed, if to Holder, to its address as provided in the books and records of the Company and, if to the Company, to its principal office.

SECTION 5.3 Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of Delaware (without giving effect to any conflicts or choice of law provisions that would cause the application of the domestic substantive laws of any other jurisdiction).

SECTION 5.4 Forum. The Holder and the Company hereby agree that any dispute which may arise out of or in connection with this Note shall be adjudicated before a court of competent jurisdiction in the State of Michigan and they hereby submit to the exclusive jurisdiction of the courts of the State of Michigan, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, with respect to any action or legal proceeding commenced by either of them and hereby irrevocably waive any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum.

SECTION 5.5 Headings. The headings of the Articles and Sections of this Note are inserted for convenience only and do not constitute a part of this Note.

SECTION 5.6 No Sinking Fund; Convertibility. This Note is not entitled to the benefit of any sinking fund. This Note is not convertible into or exchangeable for any of the equity securities, other securities or assets of the Company or any subsidiary.

SECTION 5.7 Amendments; Waivers. Any provision of this Note may be amended, modified or waived if and only if the Holder of this Note and the Company has consented in writing to such amendment, modification or waiver of any such provision of this Note. Any consent or waiver given by the Holder shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

SECTION 5.8 Further Issues. The Company may, without the consent of the Holder, create and issue additional notes having the same terms and conditions as this Note so that such further notes shall be consolidated and form a single series with the Note.

SECTION 5.9 No Recourse Against Others. The obligations of the Company under this Note are solely obligations of the Company and no officer, employee or stockholder shall be liable for any failure by the Company to pay amounts on this Note when due or perform any other obligation.

SECTION 5.10 Assignment; Binding Effect. This Note may not be assigned by the Company without the prior written consent of the Holder. This Note shall be binding upon and inure to the benefit of both parties hereto and their respective permitted successors and assigns.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be signed by its duly authorized officer on the date hereinabove written.

ZIVO BIOSCIENCE, INC.

By: /s/ Keith Marchiando

Name: Keith Marchiando

Title: Chief Financial Officer

NEITHER THIS WARRANT NOR THE SHARES OF STOCK ISSUABLE UPON EXERCISE HEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR STATE SECURITIES LAWS. NO SALE, TRANSFER OR OTHER DISPOSITION OF THIS WARRANT OR SAID SHARES MAY BE EFFECTED WITHOUT (i) AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS, OR (ii) AN EXEMPTION FROM REGISTRATION UNDER SUCH LAWS IS AVAILABLE.

Warrant No. AA-6565

STOCK PURCHASE WARRANT

No. of Shares: 390,000

To Subscribe for and Purchase Common Stock of
ZIVO BIOSCIENCE, INC.

THIS CERTIFIES that, for value received, JOHN BERNARD PAYNE (together with any subsequent transferees of all or any portion of this Warrant, the "Holder"), is entitled, upon the terms and subject to the conditions hereinafter set forth, to subscribe for and purchase from ZIVO BIOSCIENCE, INC., a Nevada Corporation (hereinafter called the "Company"), at the price hereinafter set forth in Section 2, up to 390,000 fully paid and non-assessable shares (the "Shares") of the Company's Common Stock, \$.001 par value per share (the "Common Stock").

1. Definitions. As used herein the following term shall have the following meaning:
"Act" means the Securities Act of 1933, as amended, or a successor statute thereto and the rules and regulations of the Securities and Exchange Commission issued under that Act, as they each may, from time to time, be in effect.
2. Purchase Rights. The purchase rights represented by this Warrant shall be exercisable by the Holder in whole or in part commencing on the date hereof. The purchase rights represented by this Warrant shall expire on April 2, 2026. This Warrant may be exercised for Shares at a price of \$2.91 per share, subject to adjustment as provided in Section 6 (the "Warrant Purchase Price").
3. Exercise of Warrant. Subject to Section 2 above, the purchase rights represented by this Warrant may be exercised, in whole or in part and from time to time, by the surrender of this Warrant and the duly executed Notice of Exercise (the form of which is attached as Exhibit A) and a form of subscription letter acceptable to the Company, at the principal office of the company and, except in the case of a "cashless exercise", by the payment to the Company, by check, of an amount equal to the then applicable Warrant Purchase Price per share multiplied by the number of Shares then being purchased.

At the election of the Holder, this warrant may be exercised for the nearest whole number, rounding upwards, of shares Common Stock determined in accordance with the following formula (a "cashless" exercise):

$$X = \frac{Y(A-B)}{A}$$

Where:

X = the number of Warrant Shares to be issued to the Holder

Y = the number of Warrant Shares purchasable under the Warrant or, if only a portion of the Warrant is being exercised, that portion of the Warrant being canceled (at the date of such calculation)

A = the fair market value of one Warrant Share (using the average of the last reported sale prices of the Common Stock for the five (5) trading days immediately preceding the date of the exercise)

B = Exercise Price (as adjusted to the date of such calculation)

Upon exercise, the Holder shall be entitled to receive, within a reasonable time, a certificate or certificates, or electronic equivalent thereof issued in the Holders' name or in such name or names as the Holder may direct, for the number of Shares so purchased. The Shares so purchased shall be deemed to be issued as of the close of business on the date on which this Warrant shall have been exercised.

4. Shares to be Issued: Reservation of Shares. The Company covenants that the Shares that may be issued upon the exercise of the purchase rights represented by this Warrant will, upon issuance in accordance herewith, be fully paid and non-assessable, and free from all liens and charges with respect to the issue thereof. During the period within which the purchase rights represented by the Warrant may be exercised, the Company will, at all times, have authorized and reserved, for the purpose of issuance upon exercise of the purchase rights represented by this Warrant, a sufficient number of shares of its Common Stock to provide for the exercise of the right represented by this Warrant.
5. No Fractional Shares. No fractional shares shall be issued upon the exercise of this Warrant. In lieu thereof, a cash payment shall be made equal to such fraction multiplied by the fair market value of such shares of Common Stock, as determined in good faith by the Company's Board of Directors.
6. Adjustments of Warrant Purchase Price and Number of Shares. If there shall be any change in the Common Stock of the Company, through merger, consolidation, reorganization, recapitalization, stock dividend, stock split or other change in the corporate structure of the Company, appropriate adjustments shall be made by the Board of Directors of the Company (or if the Company is not the surviving corporation in any such transaction, the Board of Directors of the surviving corporation) in the aggregate number and kind of shares subject to this Warrant, and the number and kind of shares and the price per share then applicable to the shares covered by the unexercised portion of this Warrant.
7. No Rights as Shareholders. This Warrant does not entitle the Holder to any voting rights or other rights as a shareholder of the Company prior to the exercise of this Warrant and the payment for the Shares so purchased. Notwithstanding the foregoing, the Company agrees to transmit to the Holder such information, documents and reports as are generally distributed to holders of the capital stock of the Company concurrently with the distribution thereof to the shareholders. Upon valid exercise of this Warrant and payment for the Shares so purchased in accordance with the terms of the Warrant, the Holder or the Holder's designee, as the case may be, shall be deemed a shareholder of the Company.

8. Sale or Transfer of the Warrant and the Shares; Legend. The Warrant and the Shares shall not be sold or transferred unless either (i) they first shall have been registered under applicable Federal and State Securities laws, or (ii) such sale or transfer is exempt from the registration requirements of such laws. Each certificate representing any Warrant shall bear the legend set out on page 1 hereof. Each certificate representing any Shares shall bear a legend substantially in the following form, as appropriate:

THE SHARES EVIDENCED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS.

The Warrant and Shares may be subject to additional restrictions on transfer imposed under applicable state and federal securities law.

Registration of Transfers. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto as Exhibit B duly completed and signed to the Company at its address specified herein. Upon any such registration or transfer, a new Warrant to purchase Common Stock, in substantially the form of this Warrant (any such new Warrant, a "New Warrant"), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

9. Modifications and Waivers. This Warrant may not be changed, waived, discharged or terminated except by an instrument in writing signed by the party against which enforcement of the same is sought.
10. Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder or the Company shall be delivered, or shall be sent by certified or registered mail, postage prepaid, to the Holder at its address shown on the books of the Company, or in the case of the Company, at the address indicated therefore on the signature page of this Warrant, or, if different, at the principal office of the Company.
11. Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants with the Holder that upon its receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant or any stock certificate and, in the case of any such loss, theft or destruction, of an indemnity or security reasonably satisfactory to it, and upon reimbursement to the Company of all reasonable expenses incidental thereto, and upon surrender and cancellation of this Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Warrant or stock certificate.
12. Binding Effect on Successors. This Warrant shall be binding upon any corporation succeeding the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets, and all of the obligations of the Company relating to the Shares issuable upon exercise of this Warrant shall survive the exercise and termination of this Warrant and all of the covenants and agreements of the Company shall inure to the benefit of the successors and assigns of the Holder.

13. Governing Law. This Warrant shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Nevada, without regard to the conflicts of law provisions thereof.

IN WITNESS WHEREOF, ZIVO BIOSCIENCE, INC. has caused this Warrant to be executed by its officer thereunto duly authorized.

ORIGINAL ISSUANCE AS OF: April 3, 2023

ZIVO BIOSCIENCE, INC.

/s/ Keith Marchiando

By: Keith Marchiando, Chief Financial Officer

Zivo Bioscience, Inc.
21 E. Long Lake Road, Suite 100
Bloomfield Hills, MI 48304

EXHIBIT A

NOTICE OF EXERCISE

To: ZIVO BIOSCIENCE, INC.,

Warrant # _____

1. The undersigned hereby elects to exercise warrants for [SHARES] shares of Common Stock of ZIVO BIOSCIENCE, INC. pursuant to the terms of the attached Warrant.
2. The undersigned hereby wishes to exercise the warrants in a (select one only):
 - CASHLESS, or
 - CASH

exercise; and in the case of a cash exercise tenders herewith payment of the purchase price of such shares in full.

2. Please issue a certificate or certificates, or electronic equivalent representing the appropriate number of shares in the name of the undersigned or in such other name or names as are specified below.
3. The undersigned represents that the aforesaid shares of Common Stock are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares. The undersigned further represents that such shares shall not be sold or transferred unless either (i) they first shall have been registered under applicable federal and state securities laws or (ii) an exemption from applicable federal and state registration requirements is available.
4. In the event of partial exercise, please re-issue an appropriate Warrant exercisable into the remaining shares.

Signature

Name

Date

Address

Social Security / Tax ID Number

EXHIBIT B
ASSIGNMENT FORM

To: ZIVO BIOSCIENCE, INC.,

Warrant # _____

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares. Completed form must be acknowledged by Zivo to be effective.)

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

Number of Shares (or ALL) _____

Assignee

Name: _____

Address: _____

Phone Number:

Email Address: _____

SSN / TIN _____

Assignor

Holder's Signature: _____

Holder's Address: _____

Dated: _____

Zivo Bioscience, Inc.

Acknowledged: _____

Name Title Date

Certain identified information has been excluded from the exhibit because it is both not material and is of the type that the Company treats as private or confidential. Double asterisks denote omissions.

SUBSCRIPTION AGREEMENT

This **SUBSCRIPTION AGREEMENT** (this “*Agreement*”) is made as of April 3, 2023, by and among **ZIVO BIOSCIENCE, INC.**, a Nevada corporation (the “*Company*”), and John B. Payne (the “*Subscriber*”).

RECITALS

WHEREAS, the Company seeks to sell a maximum of \$1,000,000 (or such higher amount as the Company’s Board of Directors shall determine) (the “*Total Amount*”) in a Promissory Note in the form annexed hereto as **EXHIBIT A** (the “*Note*”) and, subject to **Section 1.1** below, a Warrant to purchase shares of the Company’s common stock as provided in the form of warrant agreement annexed hereto as **EXHIBIT B** (the “*Warrant*”) pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “*Securities Act*”) as promulgated under the Securities Act (the “*Offering*”); and

WHEREAS, the Subscriber wishes to purchase the Note with the principal amount as set forth on the signature page hereto.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Subscriber hereby agree as follows:

1. PURCHASE OF CONVERTIBLE PROMISSORY NOTES.

1.1 SUBSCRIPTION. The Subscriber hereby subscribes (the “*Subscription*”) to purchase the Note in the amount set forth on the signature page hereto (the “*Subscription Amount*”) and the Warrant. This Subscription shall become effective when (a) it has been duly executed by the Subscriber, (b) this Agreement has been accepted and agreed to by the Company and (c) the Company has effectuated the closing of the Subscription for the Note and Warrant. The Subscriber shall be entitled to receive a Warrant to purchase 390,000 of shares of the Company’s common stock, par value \$0.001 per share.

1.2 PAYMENT FOR SUBSCRIPTION. The Subscriber agrees that the Subscription Amount to the Company for the amount of the Subscriber’s Subscription is to be made upon submission of this Agreement in the form included in these Subscription Documents (as hereinafter defined) by wire transfer to an account designated by the Company.

2. REPRESENTATIONS AND WARRANTIES.

2.1 REPRESENTATIONS AND WARRANTIES BY THE COMPANY. The Company represents and warrants to each Subscriber that:

(a) Authorization. The Company has all corporate right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. All corporate action on the part of the Company, its directors and stockholders necessary for the: (i) authorization execution, delivery and performance of this Agreement by the Company; (ii) authorization, sale, issuance and delivery of the Note and Warrant contemplated hereby and the performance of the Company’s obligations hereunder; and (iii) authorization, issuance and delivery of the securities issuable upon exercise of the Warrant, has been taken. The securities issuable upon exercise of the Warrant will be validly issued, fully paid and nonassessable. The issuance and sale of the securities contemplated hereby will not give rise to any preemptive rights or rights of first refusal on behalf of any person which have not been waived in connection with this offering. The Company is not in default of any other obligations, including any promissory notes or debentures.

(b) Enforceability. Assuming this Agreement has been duly and validly authorized, executed and delivered by the parties hereto and thereto other than the Company, this Agreement is duly authorized, executed and delivered by the Company constitutes the legal, valid and binding obligations of the Company enforceable against the Company in accordance with its terms, except as such enforcement is limited by general equitable principles, or by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors rights generally.

(c) No Violations. The execution, delivery and performance of this Agreement and the Note by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Warrant and the securities issuable upon the exercise of the Warrants) will not (i) result in a violation of the Certificate of Incorporation of the Company or other organizational documents of the Company, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree applicable to the Company by which any property or asset of the Company is bound or affected.

(d) Intellectual Property. The Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes necessary for its business as now conducted without any known infringement of the rights of others. The Company has not received any written communications alleging that the Company has violated or, by conducting its business as presently proposed to be conducted, would violate any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity.

(e) Title to Assets. The Company has good and marketable title to its properties and assets, and good title to its leasehold estates, in each case subject to no mortgage, pledge, lien, lease, encumbrance or charge, other than (i) those resulting from taxes which have not yet become delinquent; (ii) liens and encumbrances which do not materially detract from the value of the property subject thereto or materially impair the operations of the Company; and (iii) those that have otherwise arisen in the ordinary course of business. The Company is in compliance with all material terms of each lease to which it is a party or is otherwise bound.

(f) Investment Company. The Company is not an “investment company” within the meaning of such term under the Investment Company Act of 1940, as amended, and the rules and regulations of the Securities and Exchange Commission thereunder.

(g) No Solicitation. Neither the Company nor any person participating on the Company’s behalf in the transactions contemplated hereby has conducted any “general solicitation,” as such term is defined in Regulation D promulgated under the Securities Act, with respect to any of the Notes being offered hereby.

(h) No Integration. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has directly or indirectly made any offers or sales in any security or solicited any offers to buy any security under circumstances that would require registration under the Securities Act of the issuance of the Note, the Warrant or securities issuable upon exercise of the Warrant to the Subscriber. The issuance of the Note, the Warrant and securities issuable upon exercise of the Warrants to the Subscriber will not be integrated with any other issuance of the Company’s securities (past, current or future) such that the offering of the Note or the Warrant would require registration under the Securities Act or would require shareholder approval.

(i) The execution, delivery and performance of this Agreement by the Company will not (i) violate any law, treaty, rule or regulation applicable to or binding upon the Company or any of its properties or assets, or (ii) result in a breach of any contractual obligation to which the Company is a party or by which it or any of its properties or assets is bound that would reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations under this Agreement.

2.2 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of the Company shall survive the closing of the Subscription for the Note and Warrant for a period of 12 months and shall be fully enforceable at law or in equity against the Company and the Company’s successors and assigns.

2.3 DISCLAIMER. It is specifically understood and agreed by the Subscriber that the Company has not made, nor by this Agreement shall be construed to make, directly or indirectly, explicitly or by implication, any representation, warranty, projection, assumption, promise, covenant, opinion, recommendation or other statement of any kind or nature with respect to the anticipated profits or losses of the Company, except as otherwise provided with this Agreement.

2.4 REPRESENTATIONS AND WARRANTIES BY THE SUBSCRIBERS. The Subscriber represents and warrants to the Company that:

(a) The Subscriber is acquiring the Note and the Warrant for the Subscriber’s own account, as principal, for investment purposes only and not with any intention to resell, distributes or otherwise dispose of the Note or Warrant, as the case may be, in whole or in part.

(b) The Subscriber has had an unrestricted opportunity to: (i) obtain information concerning the Offering, including the Note, the Warrant, the Company and its proposed and existing business and assets; and (ii) ask questions of, and receive answers from the Company concerning the terms and conditions of the Offering and to obtain such additional information as may have been necessary to verify the accuracy of the information contained in the this Agreement or otherwise provided.

(c) Except as otherwise disclosed in writing by the Subscriber to the Company, the Subscriber has not dealt with a broker in connection with the purchase of the Note and agrees to indemnify and hold the Company and its officers and directors harmless from any claims for brokerage or fees in connection with the transactions contemplated herein.

(d) The Subscriber is not relying on the Company or any of its management, officers or employees with respect to any legal, investment or tax considerations involved in the purchase, ownership and disposition of Note or Warrant. The Subscriber has relied solely on the advice of, or has consulted with, in regard to the legal, investment and tax considerations involved in the purchase, ownership and disposition of Note and Warrant, the Subscriber's own legal counsel, business and/or investment adviser, accountant and tax adviser.

(e) The Subscriber understands that the Note and the Warrant, or the securities into which the Warrant may be exercised for, cannot be sold, assigned, transferred, exchanged, hypothecated or pledged, or otherwise disposed of or encumbered except in accordance with the Securities Act or the Securities and Exchange Act of 1934, as amended (the "*Exchange Act*"), and that no market will exist for the resale of any such securities. In addition, the Subscriber understands that the Note, Warrant or the securities into which the Warrant may be exercised, have not been registered under the Securities Act, or under any applicable state securities or blue sky laws or the laws of any other jurisdiction, and cannot be resold unless they are so registered or unless an exemption from registration is available. The Subscriber understands that there is no current plan to register the Note, Warrant or the securities into which they may convert.

(f) The Subscriber is willing and able to bear the economic and other risks of an investment in the Company for an indefinite period of time. The Subscriber has read and understands the provisions of this Agreement.

(g) The Subscriber maintains the Subscriber's domicile, and is not merely a transient or temporary resident, at the residence address shown on the signature page of this Agreement.

(h) The Subscriber understands that the Company has made available to the Subscriber and the Subscriber's accountants, attorneys and other advisors full and complete information concerning the financial structure of the Company, and any and all data requested by the Subscriber as a basis for estimating the potential profits and losses of the Company and the Subscriber acknowledges that the Subscriber has either reviewed such information or has waived review of such information.

(i) The Subscriber is not participating in the Offering as a result of or subsequent to: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio; (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising; or (iii) any registration statement the Company may have filed with the Securities and Exchange Commission.

(j) The Subscriber acknowledges and agrees that the Company intends, in the future, to raise additional funds to expand its business which may include, without limitation, the need to: fund more rapid expansion; fund additional marketing expenditures; enhance its operating infrastructure; hire additional personnel; respond to competitive pressures; or acquire complementary businesses or necessary technologies.

(k) The Subscriber acknowledges and agrees that the Company will have broad discretion with respect to the use of the proceeds from this Offering, and investors will be relying on the judgment of management regarding the application of these proceeds.

3. MISCELLANEOUS.

3.1 INDEMNIFICATION.

(a) The Subscriber will indemnify and hold harmless the Company and its officers, directors, members, shareholders, partners, representatives, employees and agents, successors and assigns against any losses, obligations, claims, damages, liabilities, contingencies, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several (collectively, "**Company Claims**"), reasonably incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto, to which any of them may become subject insofar as such Company Claims (or actions or proceedings, whether commenced or threatened, in respect thereof): (i) arise out of or are based upon any untrue statement or untrue statement of a material fact made by the Subscriber and contained in this Agreement; or (ii) arise out of or are based upon any breach by the Subscriber of any representation, warranty, or agreement made by the Subscriber contained herein; provided, however, and notwithstanding anything to the contrary, in no event shall the liability of the Subscriber pursuant to this Section 3.1 exceed the amount of the Note that the Subscriber purchases pursuant to this Agreement.

(b) The Company will indemnify and hold harmless the Subscriber and its officers, directors, members, shareholders, partners, representatives, employees and agents, successors and assigns, and each other person, if any, who controls such Subscriber within the meaning of the Securities Act against any losses, obligations, claims, damages, liabilities, contingencies, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several (collectively, "**Subscriber Claims**"), reasonably incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto, to which any of them may become subject insofar as such Subscriber Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact made by the Company in this Agreement; (ii) arise out of or are based upon any breach by the Company of any representation, warranty, or agreement made by it contained herein or in the Note; or (iii) any violation by the Company or its agents of any rule or regulation promulgated under the Securities Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such registration; and will reimburse such Subscriber, and each such officer, director or member and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Claim or action; provided, however, that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by the Subscriber or any such controlling person to the Company.

3.2 ADDRESSES AND NOTICES. All notices, demands, consents, requests, instructions and other communications to be given or delivered or permitted under or by reason of the provisions of this Agreement or in connection with the transactions contemplated hereby shall be in writing and shall be deemed to be delivered and received by the intended recipient as follows: (i) if personally delivered, on the business day of such delivery (as evidenced by the receipt of the personal delivery service); (ii) if mailed certified or registered mail return receipt requested, two (2) business days after being mailed; or (iii) if delivered by overnight courier (with all charges having been prepaid), on the business day of such delivery (as evidenced by the receipt of the overnight courier service of recognized standing). If any notice, demand, consent, request, instruction or other communication cannot be delivered because of a changed address of which no notice was given (in accordance with this Section 3.2), or the refusal to accept same, the notice, demand, consent, request, instruction or other communication shall be deemed received on the second business day the notice is sent (as evidenced by a sworn affidavit of the sender). All such notices, demands, consents, requests, instructions and other communications will be sent to the following addresses or facsimile numbers as applicable:

If to the Company Zivo Bioscience, Inc.
to: East Long Lake Road, Ste. 100
 Bloomfield Hills, MI 48304
 Attention: Keith Marchiando

With copies to: Honigman LLP
 2290 First National Building
 660 Woodward Avenue
 Detroit, MI 48226
 Attention: Don Kunz, Esq.

If to the Subscriber, to the address set forth on the signature page annexed hereto.

Any such person may by notice given in accordance with this Section 3.2 to the other parties hereto designate another address or person for receipt by such person of notices hereunder.

3.3 TITLES AND CAPTIONS. All Article and Section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and do not in any way define, limit, extend or describe the scope or intent of any provisions hereof.

3.4 ASSIGNABILITY. This Agreement is not transferable or assignable by the undersigned.

3.5 PRONOUNS AND PLURALS. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

3.6 FURTHER ACTION. The parties shall execute and deliver all documents, provide all information and take or forbear from taking all such action as may be necessary or appropriate to achieve the purposes of this Agreement. Each party shall bear its own expenses in connection therewith.

3.7 APPLICABLE LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware without regard to its conflict of law rules.

3.8 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, legal representatives, personal representatives, permitted transferees and permitted assigns. If the undersigned is more than one person, the obligation of the undersigned shall be joint and several and the agreements, representations, warranties and acknowledgments herein contained shall be deemed to be made by and be binding upon each such person and such person's heirs, executors, administrators and successors.

3.9 INTEGRATION. This Agreement, together with the remainder of the Subscription Documents of which this Agreement forms a part, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes and replaces all prior and contemporaneous agreements and understandings, whether written or oral, pertaining thereto. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the express provisions hereof.

3.10 AMENDMENT. This Agreement, the Note and the Warrant may be amended only with the written consent of the Company and the Subscriber.

3.11 CREDITORS. None of the provisions of this Agreement shall be for the benefit of or enforceable by creditors of any party.

3.12 WAIVER. No failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition.

3.13 RIGHTS AND REMEDIES. The rights and remedies of each of the parties hereunder shall be mutually exclusive, and the implementation of one or more of the provisions of this Agreement shall not preclude the implementation of any other provision.

3.14 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

SIGNATURES ON THE FOLLOWING PAGES

IN WITNESS WHEREOF, the undersigned has executed this Agreement on this 3rd day of April, 2023.

Signature of Subscriber:

By: /s/ John B. Payne John B. Payne
Name: John B. Payne Print Name of Subscriber
Title: N/A
**
Social Security Number(s) or EIN

Mailing Address of Subscriber(s) Residence of Subscriber(s)
**
Street Street
**
City State Zip Code City State Zip Code

\$ 1,000,000
Aggregate Subscription Amount

FOREGOING SUBSCRIPTION ACCEPTED:

ZIVO BIOSCIENCE, INC.

By: /s/ Keith Marchiando
Name: Keith Marchiando
Title: Chief Financial Officer

SIGNATURE PAGE TO SUBSCRIPTION AGREEMENT

EXHIBIT A
PROMISSORY NOTE

A-1

EXHIBIT B

WARRANT

ZIVO Bioscience Receives \$1 Million Bridge Financing

BLOOMFIELD HILLS, Mich. (April 5, 2023) – **Zivo Bioscience, Inc. (NASDAQ: ZIVO) (the “Company”)** a biotech/agtech R&D company engaged in the development of therapeutic, medicinal and nutritional product candidates derived from proprietary algal cultures, today announced a \$1 million unsecured six-month loan from its Chairman, Chief Executive Officer, and President, John Payne. The loan carries 10% simple interest, may be prepaid without penalty, is extendable for an additional six months and includes warrants to purchase 390,000 shares of ZIVO common stock with a strike price of \$2.91 per share. More information on the loan and warrants is available in ZIVO’s Form 8-K filed today with the SEC.

ZIVO Bioscience intends to use the proceeds from this bridge financing for working capital purposes, to fund a recently launched validation study with its product candidate for the prevention and treatment of coccidiosis in broiler chickens, and to pursue additional strategic alternatives.

“I am optimistic about the future of ZIVO Bioscience due to our talented team, our thoughtful business strategy and multiple near-term milestones. More specifically, I am confident in our novel immune-modulating product and believe the results we’ve produced to date demonstrate its efficacy in preventing coccidiosis in broiler chickens,” said Mr. Payne. “We have begun another study to further validate our coccidiosis product, including confirming titration levels, disease concentration and other environmental conditions. I look forward to the completion of this comprehensive study.”

“No one knows ZIVO better than Mr. Payne and we are grateful for his financial support as we work to fund the Company beyond the results of the current coccidiosis study and pursue a corporate partnership. John’s continued investment in ZIVO signals confidence in our business strategies, including our near-term biotech strategy with our product candidate for the treatment of coccidiosis in chickens, and our agtech plans focused on human nutrition,” added Keith Marchiando, Chief Financial Officer of ZIVO Bioscience.

ZIVO Bioscience has commenced the comprehensive study in broiler chickens and expects to complete work to affirm the protocol of its planned coccidiosis study including titration analysis and dosing challenges, in May. Thereafter, ZIVO will commence the 42-day study in over 2,000 chickens, which is expected to conclude in mid-2023. The Company also continues to fund the scale up of production for its dried algal biomass for the human food industry.

About ZIVO Bioscience

ZIVO Bioscience is a research and development company with an intellectual property portfolio comprised of proprietary algal and bacterial strains, biologically active molecules and complexes, production techniques, cultivation techniques and patented or patent pending inventions for applications in human and animal health. Please visit www.zivobioscience.com for more information.

Forward Looking Statements

Except for any historical information, the matters discussed in this press release contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Although ZIVO believes that we have a reasonable basis for each forward-looking statement, we caution you that these statements are based on a combination of facts and factors currently known by us and our expectations of the future, about which we cannot be certain. Our actual future results may be materially different from what we expect due to factors largely outside our control, including risks that our strategic partnerships may not facilitate the commercialization or market acceptance of our products; risks that our products may not be ready for commercialization in a timely manner or at all; risks that our products will not perform as expected based on results of our pre-clinical and clinical trials; our ability to raise additional funds; uncertainties inherent in the development process of our products; changes in regulatory requirements or decisions of regulatory authorities; the size and growth potential of the markets for our products; the results of clinical trials, our ability to protect our intellectual property rights and other risks, uncertainties and assumptions, including those described under the heading "Risk Factors" in our filings with the Securities and Exchange Commission. These forward-looking statements speak only as of the date of this press release and ZIVO undertakes no obligation to revise or update any forward-looking statements for any reason, even if new information becomes available in the future.

Contacts

ZIVO Bioscience, Inc.

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LHA Investor Relations

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