Risk Factors Comparison 2024-03-04 to 2023-02-28 Form: 10-K

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In addition to the factors discussed elsewhere in this Report, the following risks and uncertainties could materially and adversely affect the Company' s business, financial condition, results of operations, and cash flows. Risk Factors Summary The following is a summary of the principal risks that could adversely affect our business, operations and financial results. Risks Related to Our Business and Industry • We have a history of losses that casts substantial doubt as to our ability to continue as a going concern. We must deliver on our potential for significant business growth and improved manufacturing processes to achieve sustained, long- term profitability and long- term commercial success. • We **believe our ability to utilize our net operating loss carryforwards will likely be substantially limited as a result of an " ownership change, " as defined in Section 382 of the Internal Revenue Code of 1986, as amended. • We** identified material weaknesses in our internal controls over financial reporting ~~at December 31, 2022 and 2021~~ , and we may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. If we ~~fail to~~ **do not effectively** remediate these material weaknesses or if we otherwise fail to ~~establish and~~ maintain effective **internal** ~~control~~ **controls** over financial reporting, ~~our ability~~ **we may not be able** to accurately and timely report our financial results ~~could~~ **. • Our business and financial results have and may continue to** be adversely affected **by the effects of sustained inflation and increased interest rates. • Current market conditions and recessionary pressures in one or more of our markets could impact our ability to grow our business** . • The relatively recent commercialization of our products makes it difficult to evaluate our prospects. • ~~If demand for energy storage solutions does not continue to grow or grows at a slower rate than we anticipate, our business and results of operations may be impacted. •~~ Failure to deliver the benefits offered by our technologies, or the emergence of improvements to competing technologies, could reduce demand for our products and harm our business **. • A decline in lithium prices may result in increased competition from traditional lithium- ion batteries and adversely affect the demand for our products** . • As we endeavor to expand our business, we will incur significant costs and expenses, which could outpace our cash reserves. Unfavorable conditions or disruptions in the capital and credit markets may adversely impact business conditions and the availability of credit. • **Our success depends on the continuing contributions of our key personnel, and the loss of services of any principal member of our management team could adversely affect our business. •** The failure or breach of our **network or** IT systems **, including as a result of a cybersecurity breach,** could affect our sales and operations **. • Internal system or service failures, or failures in the systems or services of third parties on which we rely, could disrupt our business and impair our ability to effectively provide our services and products to our customers, which could damage our reputation and adversely affect our business** . • The nature of our business exposes us to potential ~~claims, and we are subject to~~ legal proceedings **or claims** ~~and legal compliance risks~~ that could ~~harm~~ **adversely affect our operating results. These claims could conceivably exceed the level of our liability insurance coverage. • Labor disputes could disrupt our ability to serve our customers and /** ~~our~~ **or** ~~business~~ **lead to higher labor costs** . Risks Related to Our Products and Manufacturing • We must obtain Underwriters Laboratories ~~(" UL")~~ and other related certifications for our future generations of our **products. • Compared to traditional Li- ion energy storage technologies, our cells and modules have less power density and round trip efficiency and may be considered inferior to competitors'** products. • We have limited manufacturing experience and could experience difficulty producing commercial volumes of the battery storage system, establishing manufacturing capacity to scale and in meeting potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities. • We may experience delays, disruptions, or quality control problems in our manufacturing operations. • **We may not have sufficient insurance coverage to cover business continuity. •** Defects or performance problems in our products could result in loss of customers, **reputational damage,** and decreased revenue, **facing** ~~as well as~~ warranty, indemnity, and product liability claims **that may arise from defective products** . • We are heavily dependent on third- party suppliers and contractors. Supply chain issues ~~and constraints, including those attributable to the Covid- 19 pandemic,~~ could adversely affect our operations and financial results ~~, including our ability to deliver products to customers on time~~ . • If we elect to expand our production capacity by constructing one or more new manufacturing facilities, we may encounter challenges relating to the construction, management and operation of such facilities. • **We could incur substantial costs as a result of violations of, or liabilities under, environmental laws. •** Increased scrutiny from stakeholders and regulators regarding ESG practices and disclosures, including those related to sustainability and related disclosures could result in additional costs and **risks** ~~adversely impact our business and reputation~~ . Risks Related to Our Future Growth • If we fail to manage our recent and future growth effectively, we may be unable to execute our business plan, maintain high levels of customer service, or adequately address competitive challenges **. • Our growth prospects depend on our ability to capitalize on market opportunities** . • We will require additional financing to achieve our long- term goals and a failure to obtain this capital on acceptable terms, or at all, may adversely impact our ability to support our business growth strategy **. • If we fail to meet the covenants in our Senior Secured Term Loan Credit Agreement, we may be subject to default on the loan, which could have a material adverse effect on our business** . • Our planned expansion into new geographic markets or new product lines or services could subject us to additional business, financial, and competitive risks. • Our results of operations may fluctuate from quarter to quarter, which could make our future performance difficult to predict and could cause our results of operations for a particular period to fall below expectations, resulting in a decline in the price of our common stock. ~~• Forecasts of market growth in this Form 10- K may not be accurate.~~ Risks Related to Our United States ~~and Foreign~~ Operations • The reduction, elimination or expiration of government subsidies and economic incentives related to renewable energy solutions could reduce demand for our technologies and harm our business. • Changes in the U. S. trade environment, including the imposition of import tariffs, could adversely affect the amount or timing of our revenues, results of operations or cash flows. • **We have operations in the United States, which exposes us to multiple federal, state and local regulations. •** Changes in applicable law, regulations or requirements, or our material failure to comply with any of them, can increase our costs and have other negative impacts on our business **. • We are subject to complex and evolving laws, regulations, rules, standards and contractual obligations regarding data privacy and cybersecurity, which could increase the cost of doing business, compliance risks and potential liability** . • We could be adversely affected by any violations of the FCPA, the U. K. Bribery Act, and other foreign anti- bribery laws, as well as violations against export controls and economic embargo regulations. Risks Related to Intellectual Property • If we fail to protect, or incur significant costs in defending, our intellectual property and other proprietary rights, then our business and results of operations could be materially harmed. • Third parties may assert that we are infringing upon their intellectual property rights, which could divert management' s attention, cause us to incur significant costs, and prevent us from selling or using the technology to which such rights relate. Risk Related to Our Securities • **To the extent that any shares of common stock are issued upon exercise of any of the warrants, the number of shares eligible for resale in the public market would increase. •** Provisions in our third amended and restated certificate of incorporation of the Company (the " Charter ") **and Delaware law may have the effect of discouraging lawsuits against our directors and officers. • Provisions in our Charter** may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management ~~. • We may redeem the public warrants prior to their exercise at a time that is disadvantageous to such warrant holders, thereby making your public warrants worthless~~ . • Our stock price may be volatile and may decline regardless of our operating performance. • **Future resales of our common stock** ~~There can be no assurance that the warrants will be in the money at the time they become exercisable, and they~~ may ~~expire worthless~~ **cause the market price of our securities to drop significantly, even if our business is doing well** . • There can be no assurance that our common stock will be able to comply with the continued listing standards of Nasdaq **. • We do not intend to pay dividends on our common stock in the foreseeable future and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock. • We are a " smaller reporting company " and, because we have opted to use the reduced reporting requirements available to us, certain investors may find investing in our securities less attractive** . An investment in our securities involves a high degree of risk. You should carefully consider the risks described below before making an investment decision. Our business, prospects, financial condition, or operating results could be harmed by any of these risks, as well as other risks not known to us or that we consider immaterial as of the date of this Form 10- K. The trading price of our securities could decline due to any of these risks, and, as a result, you may lose all or part of your investment. We have had net losses and negative operating cash flows each fiscal quarter since inception of our business. For the years ended December 31, **2023 and** 2022 ~~and 2021~~ , we had $ 229. **5 million and $ 229.** 8 ~~million and $ 124. 2~~ million in net losses, respectively. We expect to continue to incur losses and experience negative operating cash flows for the foreseeable future, as we anticipate continued investment in the development and launch of product with outside capital at the expense of short- term profitability. For the fiscal year ended December 31, ~~2022~~ **2023** , the Company concluded that there was substantial doubt about its ability to continue to operate as a going concern for the 12 months following the issuance of these consolidated financial statements. Although our available capital has increased substantially since our Merger through the issuance of convertible notes and other financing, we continue to have limited resources relative to certain of our competitors, especially certain Li- ion manufacturers that have a longer history, are part of large multinational corporations and are already operating at a profit. To achieve profitability as well as long- term commercial success, we must continue to execute our plan to expand our business, which will require us to deliver on our existing global sales pipeline in a timely manner, increase our production capacity, improve our cost profile, grow demand for our products, and seize new market opportunities by leveraging our proprietary technology and its manufacturing processes for novel solutions. Failure to do one or more of these things could prevent us from achieving sustained, long- term commercial success. As a growth company in the early commercialization stage of its lifecycle, Eos is subject to inherent risks and uncertainties associated with the development of an enterprise. Our revenues may not grow as expected for a number of reasons, many of which are outside of our control, including a decline in global demand for battery storage products, increased competition, or our failure to continue to capitalize on growth opportunities. In addition, although we have achieved sales of our products to potential customers, it is not clear to what extent, if any, the products will be profitable and when. The costs of goods associated with production of our battery storage system are significant. While we are working to optimize our supply chain, improve the speed and efficiency of our manufacturing processes, and lower the cost of other input costs such as raw material and conversion costs, there can be no assurance that we will be successful in these efforts. If we are not able to sustain revenue growth, reduce cost and continue to raise the capital necessary to support operations, our failure to achieve or maintain profitability could negatively impact the value of our common stock. Even if we do achieve profitability when expected, we may be unable to sustain or increase our profitability in the future. In order to execute our development strategy, we have historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively " outside capital ") to fund our cost structure and expect to continue to rely on outside capital for the foreseeable future. While we believe we will eventually reach a scale of profitability to sustain our operations, there can be no assurance we will be able to achieve such profitability or do so in a manner that does not require our continued reliance on outside capital. Moreover, while we have historically been successful in raising outside capital, there can be no assurance we will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to us. **As of December 31, 2023 and 2022, we had approximately $ 638. 5 million and $ 485. 4 million of net operating loss (" NOL ") carryforwards for U. S. federal tax purposes. Under U. S. federal income tax law, we generally would be able to use our NOL carryforwards (and certain related tax credits) to offset ordinary taxable income, thereby reducing our U. S. federal income tax liability, for up to 20 years from the year in which the**

losses were generated, after which time they will expire. In addition, as of December 31, 2023 and 2022, we had approximately $ 228. 3 million and $ 235. 7 million in state NOL carryforwards (and certain related tax credits) which generally would be useable to offset future state taxable income for approximately 20 years from the year in which the losses are generated, depending on the state, after which time they will expire. The rate at which we are able to utilize our NOL carryforwards will become subject to a limitation that can be very significant (and that will result in our NOL carryforwards expiring prior to their use) when we experience an " ownership change, " as determined under Section 382 of the Internal Revenue Code. A Section 382 ownership change generally occurs if a stockholder or a group of stockholders who are deemed to own at least 5 % of our common stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three- year period. If an ownership change occurs, Section 382 generally would impose an annual limit on the amount of post- ownership change taxable income that may be offset with pre- ownership change NOL carryforwards equal to the product of the total value of our outstanding equity immediately prior to the ownership change (reduced by certain items specified in Section 382) and the U. S. federal long- term tax- exempt interest rate in effect at the time of the ownership change. A number of special and complex rules apply in calculating this Section 382 limitation. While the complexity of Section 382 makes it difficult to determine whether and when an ownership change has occurred, and a formal study has not been performed, we believe that a Section 382 ownership change likely has occurred or will occur as a result of our capital raising efforts through equity financings during fiscal years 2022 and 2023. We believe this Section 382 limitation will likely substantially reduce the amount of federal and state NOLs that may be used by us before they expire. In addition, our ability to use our NOL carryforwards also is limited to the extent we fail to generate enough taxable income in the future before they expire. Existing and future Section 382 limitations and our inability to generate enough taxable income in the future could result in a substantial portion of our NOL carryforwards expiring before they are used. We have recorded a full valuation allowance for our deferred tax assets. We identified material weaknesses in our internal controls over financial reporting and we may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. If we do not effectively remediate these material weaknesses or if we otherwise fail to maintain effective internal controls over financial reporting, we may not be able to accurately and timely report our financial results. Our management is responsible for establishing and maintaining adequate internal controls over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our management is likewise required, on a quarterly basis, to evaluate the effectiveness of our internal controls and to disclose any changes and material weaknesses identified through such evaluation in those internal controls. A material weakness is a deficiency, or a combination of deficiencies, in internal controls over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Our management identified material weaknesses in our internal controls over financial reporting as of December 31, **2023 and** 2022 ~~and 2021~~ . See Item 9A, " Controls and Procedures, " in this Annual Report for information regarding the identified material weaknesses and our actions to date to remediate the material weaknesses. As a result of these material weaknesses, our management has concluded that our internal controls over financial reporting were not effective as of December 31, ~~2022~~ **2023** . We are taking steps to remediate these material weaknesses, which include hiring personnel with the depth of knowledge and experience to join our accounting and finance organization, and designing and implementing improved processes and internal controls. However, our efforts to remediate these material weaknesses may not be effective in preventing a future material weakness or significant deficiency in our internal controls over financial reporting. If we do not effectively remediate these material weaknesses or if we otherwise fail to maintain effective internal controls over financial reporting, we may not be able to accurately and timely report our financial results, which could cause our reported financial results to be materially misstated, result in the loss of investor confidence and cause the market price of our common stock to decline. We can give no assurance that the measures we have taken or plans to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal controls over financial reporting or circumvention of these controls. ~~Our business and financial results have and may continue to be adversely affected by the effects of sustained inflation and increased interest rates.~~ Inflation has the potential to adversely affect our liquidity, business, financial condition and results of operations by increasing our overall cost structure, particularly if we are unable to achieve commensurate increases in the prices that we charge our customers. The existence of sustained inflation in the economy has resulted in, and may continue to result in, higher interest rates and capital costs, increased shipping costs, supply shortages, increased costs of labor, weakening exchange rates and other similar effects. As interest rates rise **or remain elevated** to address inflation or otherwise, we may experience further increases in capital and other costs. Further, changes in monetary or other policies here and abroad to combat inflation may lead to an economic downturn in some of our markets. Although we may take measures to mitigate the impact of this inflation, if these measures are not effective, our business, financial condition, results of operations and liquidity could be materially adversely affected. Even if such measures are effective, the benefits of such measures may not be realized until after the costs of inflation have been incurred. ~~Current market conditions and recessionary pressures in one or more of our markets could impact our ability to grow our business.~~ Over the last few years in the U. S. and globally, market and economic conditions have been challenging ~~, particularly in light of the COVID- 19 pandemic~~ . Any negative impact on economic conditions and international markets, continued volatility or deterioration in the debt and equity capital markets, inflation, deflation or other adverse economic conditions may adversely affect our liquidity and financial condition. It may limit our ability to access the capital markets to meet liquidity and / or capital needs, which could have a material adverse effect on our financial condition and results of operations. Ongoing uncertain economic and financial market conditions may also adversely affect the financial condition of our customers, suppliers and other business partners. When our customers' financial conditions are adversely affected, it could materially and adversely affect our sales and financial results, which could have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our common shares to decline. Our global business may be negatively affected by local economic conditions, including inflation, increasing labor costs, potential recession, and currency exchange rate fluctuations, which could adversely affect our cost to manufacture and provide our products and services and revenues generated through sales of such products and services. There is no guarantee that we will be able to fully absorb any such additional costs or revenue declines in the prices for our products and services. The relatively recent commercialization of our products makes it difficult to evaluate our future prospects. Since our inception, we have sold a limited quantity of Eos Znyth ™ DC battery systems to our customers. We began commercializing our products in mid- 2018, and while our research and development activities successfully established the efficiency of our chemistry, we struggled to incorporate our proven technologies into an effective manufacturing design prior to 2018. We continue to invest in the design and development of the next generation product, the Z3 ™ battery which builds off the same electrochemistry that has not fundamentally changed for the better part of a decade. The Z3 ~~™~~ battery is designed to reduce cost and weight and improve manufacturability and system performance. The **Eos** Z3 **transition** ~~™ product~~ is **fully underway,** ~~currently in the testing phase~~ and **the first semi- automated battery manufacturing line** is ~~expected to launch~~ **installed and has started commercial production. The Company started delivery of its Z3 battery modules** in the ~~second half~~ **third quarter** of 2023. Our success will depend on our ability to manufacture products at scale and low cost while timely meeting customers' demands and overcome any negative perception in the market related to our historical manufacturing challenges, and we may not be able to generate sufficient customer confidence in our latest designs and ongoing product improvements and lower the cost due to economies of scale. Our inability to predict the extent of customer adoption of our proprietary technologies in the already- established traditional energy storage market makes it difficult to evaluate our profitability and future prospects ~~. Our flagship product, the Eos Znyth ™ system, is a Znyth ™ battery that can be used as an alternative to Li- ion batteries. Our products have been piloted by eight blue chip utilities and C & I end users. The pilots involved several use cases including solar shifting, peak shaving, price arbitrage, utility ancillary services and microgrids. The viability and demand for our products, may be affected by many factors outside of our control, including: • cost competitiveness, reliability and performance of our products compared to Li- ion products; • levels of investment by end users of energy storage products, which may decrease when economic growth or energy demand slows resulting in a reduction in battery purchases generally; • expansion of electricity use across the global economy, including growth of the electric vehicle market. If electric vehicles sales slow, thus diminishing the demand for Li- ion, then Li- ion competitors could move capacity to the stationary battery storage market to avoid shutting factories, which could put pressures on pricing in the market; • strength of the renewable energy industry and associated integration opportunities for our products; • a favorable regulatory landscape, including full adoption by the states in the United States of FERC Order 841, which mandates that battery storage can participate in the demand response and ancillary markets; incentives for the implementation of battery storage by state regulators; and adoption by Congress of an ITC for standalone battery storage; and • the emergence, continuance or success of other alternative energy storage technologies and products. If we do not manage these risks and overcome these potential difficulties outside of our control successfully, our business and results of operations may suffer~~ . We believe that, compared to Li- ion batteries, our energy storage solutions offer significant benefits, including the use of widely- available and low- cost materials with no rare earth or toxic components, recyclability at end- of- life, an over twenty (20) year product life requiring minimal maintenance, and a wide thermal operating range that eliminates the need for fire suppression and HVAC, which would otherwise be required for use with Li- ion batteries. ~~However~~ **The rates at which electricity is available from a customer' s local electric utility company is subject to change and any changes in such rates may affect the relative benefits of our energy storage systems. Further** , if our manufacturing costs do not decrease to the extent we intend, or if our expectations regarding the operation, performance, maintenance and disposal of our products are not realized, we could have difficulty marketing our products as a superior alternative to already- established technologies and impact the market reputation and adaptability of our products. ~~In addition, developments~~ **Developments** of existing and new technologies could improve their cost and usability profile, reducing any relative benefits currently offered by our products which would negatively impact the likelihood of our products gaining market acceptance. **A decline in lithium prices may result in increased competition from traditional lithium- ion (" Li- ion ") batteries and adversely affect the demand for our products. Currently, global lithium available supply exceeds demand. Decreases in the price of lithium, a key component of traditional Li- ion batteries, may increase the competitiveness of the traditional Li- ion batteries relative to the zinc- based energy storage solutions we provide. Mineral prices fluctuate widely and are affected by numerous factors beyond our control such as global and regional supply and demand, interest rates, exchange rates, inflation or deflation, fluctuation in the value of the United States dollar and foreign currencies, and the political and economic conditions of mineral- producing countries throughout the world. The exact effect of these factors cannot be accurately predicted, but the combination of these factors may result in a decrease in lithium prices, which may adversely affect our business and results of operations.** We expect to incur additional costs and expenses in the future related to the continued development and expansion of our business, including in connection with expanding our manufacturing capabilities to significantly increase production capacity, developing our products, maintaining and enhancing our research and development operations, expanding our sales, marketing, and business development activities in the United States and internationally, and growing our project management, field services and overall operational capabilities for delivering projects. We do not know whether we will be able to reduce our manufacturing cost and grow our revenue rapidly enough to absorb these costs or the extent of these expenses or their impact on our results of operations. Disruptions in the global capital and credit markets as a result of an economic downturn, economic uncertainty, changing or increased regulation, or failures of significant financial institutions could adversely affect our customers' ability to access capital and could adversely affect our access to liquidity needed for business in the future. Our business could be hurt if we are unable to obtain additional capital as required, resulting in a decrease in our revenues and profitability ~~. Our success depends on the continuing contributions of our key personnel, and the loss of services of any principal member of our management team could adversely affect our business~~ . We rely heavily on the services of our key executive officers. We are investing significant resources in developing new members of management as we complete our restructuring and strategic transformation, and the loss of services of any principal member of our management team could adversely affect our business. The competition for qualified personnel is intense in our industry, and we may not be successful in attracting and retaining enough qualified personnel to support our anticipated growth. We also cannot guarantee that any employee will remain employed with us for any definite period since all of our employees, including our key executive officers, serve at- will and may terminate their employment at any time for any reason. The Company' s Compensation Committee of the Board of Directors is committed to working with the management to design compensation plans that attract, retain and motivate the Company' s executives and support business objectives that create shareholder value. In addition, the Board of Directors has implemented procedures to plan for the effective succession of senior management and key personnel. However, we still depend on the experience of our senior management team, including our chief executive officer, chief financial officer and chief accounting officer, and other key personnel, each of whom would be difficult to replace in the event of an unforeseen departure from the Company. Despite successfully managing recent turnover, the loss of any such personnel could have a material adverse effect on our business and our ability to implement our business strategy. All of our employees, including our senior management, are free to terminate their employment relationships with us at any time. We do not maintain key- person insurance for any of our employees, including senior management. In addition, changes and replacement, as well as transition in senior executive leadership could adversely affect our relationships with clients, customers, and employees. We must successfully integrate new key personnel whom we hire within our organization in order to achieve our operating objectives. Additionally, our ability to attract qualified personnel, including senior management and key technical personnel, is critical to the execution of our growth strategy. Competition for qualified senior management personnel and highly skilled individuals with technical expertise is extremely intense. We face and are likely to continue to face challenges identifying, hiring, and retaining qualified personnel in all areas of our business. In addition, integrating new employees into our team could prove disruptive to our operations, require substantial resources and management attention, and ultimately prove unsuccessful. Our failure to attract and retain qualified senior management and other key technical personnel could limit or delay our strategic efforts, which could have a material adverse effect on our business, financial condition, results of operations, and prospects. ~~Third parties might attempt to gain unauthorized access to our network or seek to compromise our products and services.~~ From time to time, we may face attempts by others to gain unauthorized access **to our network or IT systems** through various forms of the Internet or try to introduce malicious software to our **network or** IT systems, including our BMS. We or our products may be a target of computer hackers, organizations or malicious attackers who attempt to: • gain access to our **systems,** network or data centers or those of our customers; • steal proprietary information related to our business, products, employees, and customers; or • ~~or~~ interrupt our infrastructure or those of our customers. To date, no attempts have resulted in any material adverse impact to our business or operations; however, there can be no guarantee that such intrusions will not be material in the future. While we seek to detect and investigate all unauthorized attempts and attacks against our network and products, and to prevent their recurrence where practicable through changes to our internal processes and tools and / or changes to our products, we remain potentially vulnerable to additional known or unknown threats **, such as, among other things, malware and computer virus attacks, ransomware attacks, social engineering attacks (including phishing attacks) or denial- of- service attacks** . In addition to intentional third- party cybersecurity breaches, the integrity and confidentiality of ~~company~~ **Company** and customer data may be compromised as a result of human error, **fraud or malice on the part of our employees or third parties,** product defects, **software bugs, server malfunctions, software** or **hardware failure or other** technological failures **. Such threats are evolving, may be difficult for long periods of time, and may see their frequency increased and effectiveness enhanced by the use of artificial intelligence. Further, these risks may be heightened in connection with ongoing global conflicts such as the military conflict between Russia and Ukraine and the military conflict between Israel and Hamas** . Cybersecurity breaches, whether successful or unsuccessful, and other IT system interruptions, including those resulting from human error and technological failures, could result in us incurring significant costs related to, for example, rebuilding internal systems, reduced inventory value, providing modifications to our products and services, defending against litigation, responding to regulatory inquiries or actions, paying damages, or taking other remedial steps with respect to third parties. Our IT infrastructure is currently managed by a third party Managed Services Provider (" MSP"). While we regularly review the cybersecurity tools and other security protection provided by this MSP, **and** this MSP regularly runs intrusion and other security tests on services provided to us, there can be no guarantee that a failure or breach of such systems will not occur **. While we generally perform cybersecurity diligence on our other key service providers, we do not control our service providers and our ability to monitor their cybersecurity is limited. Some of our service providers may store or have access to our data and may not have effective controls, processes, or practices to protect our information from loss, unauthorized disclosure, unauthorized use or misappropriation or cybersecurity breaches. A vulnerability in our service providers' software or systems, a failure of our service providers' safeguards, policies or procedures, or a cybersecurity breach affecting any of these third parties could harm our business** . We operate a few IT systems throughout our business that could fail for a variety of reasons, including the threats of unauthorized intrusions and attackers. If such failures were to occur, we may not be able to sufficiently recover to avoid the loss of data or any adverse impact on our operations that are dependent on such IT systems. This could result in lost sales as we may not be able to meet the demands for our product. Furthermore, because our IT systems are essential for the exchange of information both internally and in communicating with third parties, including our suppliers and manufacturers, cybersecurity breaches could potentially lead to the unauthorized release of sensitive, confidential or personal data or information, improper use of our systems, or, unauthorized access, use, disclosure, modification or destruction of information or defective products. If these cybersecurity breaches continue, our operations and ability to communicate both internally and with third parties may be negatively impacted. Additionally, if we try to remediate our cybersecurity problems, we could face significant unplanned costs or capital investments and any damage or interruption could have a material adverse effect on our reputation, business, financial condition, and results of operations. ~~The nature of~~ **Additionally, we cannot be certain that** our ~~business exposes~~ **insurance coverage will be adequate for data security liabilities actually incurred, that insurance will continue to be available to** us ~~to potential legal proceedings~~ **on economically reasonable terms,** or ~~claims~~ **at all, or** that **our insurer will not deny coverage as to any future claim. Any system or service disruptions, including to our IT systems managed by a MSP, if not anticipated and appropriately mitigated,** could **materially and** adversely affect our **business** ~~operating results~~. ~~These~~ **We, and the service providers on which we rely, are also subject to systems failures, including network, software or hardware failures, whether caused by us, third- party service providers, cybersecurity threats, malicious insiders, natural disasters, power shortages, terrorist attacks, pandemics or other events, which could cause loss of data and interruptions or delays in our business, cause us to incur remediation costs, subject us to** claims **and damage our reputation. In addition, the failure or disruption of our communications, or those of our service providers,** could **cause us to interrupt** ~~conceivably exceed the level of our~~ - **or** ~~liability~~ **suspend our operations or otherwise adversely affect our business. Our property and business interruption** insurance ~~coverage~~ **may be inadequate to compensate us for all losses resulting from any system or operational failure or disruption** . We are a party to lawsuits in the normal course of our business. Litigation can be expensive, lengthy and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict. Responding to lawsuits brought against us, or legal actions that we may initiate, can be expensive and time- consuming. Unfavorable outcomes from these claims and / or lawsuits could adversely affect our business, results of operations, or financial condition and cash flows, and we could incur substantial monetary liability and / or be required to change our business practices. See Part I, Item 3, " Legal Proceedings. " Our business may expose us to claims for personal injury, death or property damage resulting from the use of our products or from employee related matters. Additionally, we could be subject to potential litigation associated with compliance with various laws and governmental regulations at the federal, state or local levels, such as those relating to the protection of persons with disabilities, employment, health, safety, security and other regulations under which we operate. We carry comprehensive insurance, subject to deductibles, at levels we believe are sufficient to cover existing and future claims made during the respective policy periods. However, we may be exposed to multiple claims, and, as a result, could incur significant out- of- pocket costs before reaching the deductible amount, which could adversely affect our financial condition and results of operations. In addition, the cost of such insurance policies may increase significantly upon renewal of those policies as a result of general rate increases for the type of insurance we carry as well as our historical experience and experience in our industry. Although we have not experienced any material losses that were not covered by insurance, our existing or future claims may exceed the coverage level of our insurance, and such insurance may not continue to be available on economically reasonable terms, or at all. If we are required to pay significantly higher premiums for insurance, are not able to maintain insurance coverage at affordable rates or must pay amounts in excess of claims covered by our insurance, then we could experience higher costs that could adversely affect our financial condition and results of operations. ~~Labor disputes could disrupt our ability to serve our customers and / or lead to higher labor costs.~~ As of December 31, ~~2022~~ **2023** , we had ~~333~~ **420** full- time employees, none of whom are represented by unions or covered by collective bargaining agreements. If a union sought to organize any of our employees, such organizing efforts or collective bargaining negotiations could potentially lead to work stoppages and / or slowdowns or strikes by certain of our employees, which could adversely affect our ability to serve our customers. Further, settlement of actual or threatened labor disputes or an increase in the number of our employees covered by collective bargaining agreements can have unknown effects on our labor costs, productivity and flexibility. We must obtain Underwriters Laboratories (" UL") and other related certifications for our future generations of product. Our existing generation of battery systems has received Underwriters Laboratories (" UL") 1973 certification and has been tested for UL 9540A. Based on these North American certifications, we also intend to expand our current generation of battery systems product certification to other national standards such as European Conformity (" CE ") marking in the European Union and the international certification of the International Electrotechnical Commission (" IEC "). We also intend to obtain the UL certification and all applicable safety standards for our future products. Failure to obtain UL, IEC or CE certification would have a significant impact on our revenues, as such certifications are required by most of our customers. As Battery Storage is a relatively new market segment, additional rules will be introduced and regulation changes will occur. We must continue to adapt and ensure conformity to new standards and regulations introduced in the market. ~~Compared to traditional Li- ion energy storage technologies, our cells and modules have less power density and round trip efficiency and may be considered inferior to competitors' products.~~ While the energy density of the Eos Z3 **™** battery enclosure product is significantly improved compared to the Eos Gen 2. 3 enclosure product, and we believe that for certain installation sites the Eos Z3 systems may now equal Li- ion energy density per acre of land, traditional Li- ion cells and modules continue to offer higher power density and a lower self- discharge rate than Eos cells and modules. The differences in power density and energy efficiency become lower when comparing full size Li- ion systems to Eos Z3 systems due to the differences in auxiliary loads required by Li- ion systems and safety spacing between enclosures required by Li- ion, however, if customers were to place greater value on power density and efficient power delivery on a cell and module basis, then we could have difficulty positioning our batteries as a viable or compelling alternative to traditional Li- ion batteries and our business would suffer. We have limited manufacturing experience and could experience difficulty in producing commercial volumes of the battery storage system, establishing manufacturing capacity to scale and in meeting potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities. We have limited experience in commercial manufacturing of the battery storage system. On August 21, 2019, we entered into a joint venture agreement with Holtec and formed Hi- Power, which was owned 51 % by Holtec and 49 % by us.

We acquired the 51 % equity interest owned by Holtec in April 2021. Because we have limited prior commercial manufacturing experience, we may incur manufacturing inefficiencies, delays or interruptions. Our current manufacturing and testing processes do not require significant technological or production process expertise. However, any change in our processes could cause one or more production errors, requiring a temporary suspension or delay in our production line until the errors can be researched, identified, and properly addressed and rectified. This may occur particularly as we introduce new products, modify our engineering and production techniques, and / or expand our capacity. In addition, our failure to maintain appropriate quality assurance processes could result in increased product failures, loss of customers, increased warranty reserve, decreased production, and logistical costs and delays. Any of these developments could have a material adverse effect on our business, financial condition, and results of operations. To date, we have only manufactured batteries in limited quantities for commercial customers. The output achieved to date is a fraction of what the Company expects will be necessary for full commercialization and to meet the demand we see in the market for our product. The manufacturing process for commercial scale is being refined and improved. There are risks associated with scaling up manufacturing to commercial volumes including, among others, technical or other problems with process scale- up, process reproducibility, stability issues, quality consistency, timely availability of raw materials and cost overruns. There is no assurance that we will be successful in establishing a larger- scale commercial manufacturing process that achieves our objectives for manufacturing capacity and cost per battery, in a timely manner or at all. If we are unable to produce sufficient quantities of product for commercialization on a timely basis and in a cost- effective manner, the Company' s commercialization efforts would be impaired which could materially affect our business, financial condition, results of operations and growth prospects. Our operations require significant amounts of certain components and raw materials. We deploy a continuous, company wide process to source the components and raw materials from a few suppliers. If we are unable to source these components or raw materials, our operations may be disrupted, or we could experience a delay or halt in certain of our manufacturing operations. We believe that our supply management and production practices are based on an appropriate balancing of the foreseeable risks and the costs of alternative practices. Nonetheless, reduced availability or interruption in supplies, whether resulting from more stringent regulatory requirements, supplier financial condition, increases in duties and tariff costs, disruptions in transportation, an outbreak of a severe public health pandemic, ~~such as the COVID- 19 pandemic, including resurgences and the emergence of new variants,~~ severe weather, the occurrence or threat of wars **, and other geopolitical conflict** , including the ongoing Russia- Ukraine war, inflation, or increased interest rates could have an adverse effect on our financial condition, results of operations and cash flows. For example, we have experienced supply chain issues related to the COVID- 19 pandemic, including but not limited to suppliers utilizing force majeure provisions under existing contracts. ~~Furthermore, the ongoing global economic recovery from the COVID- 19 pandemic has caused challenges for global supply chains resulting in inflationary cost pressures, component shortages, and transportation delays. In recent periods, we have seen an increase in costs for a wide range of materials and components and logistics, and such increases may continue, particularly if the high rates of inflation seen in 2022 persist. We expect prices for these materials to continue to increase in the near term and then to fluctuate over time. Available supply for these materials may also be unstable, depending on market conditions and global demand for these materials. We have also experienced increased prices and / or inconsistent quality and supply of the components. Any reduced availability of these materials may impact our access and any further increases in their prices may reduce our profitability if we cannot recoup the increased costs through increased prices for our products. Moreover, any such attempts to increase product prices may be difficult to achieve and even if achieved, may harm our brand, prospects and operating results.~~ Some of our customers may experience project delays as a result of delays in site selection and preparation, procedures of obtaining necessary permissions and establishing grid connections. These delays have impacted, and may, from time to time, continue to impact the timing of our product deliveries and our results of operations. We ~~may not have sufficient insurance coverage to cover business continuity. We~~ rely on a single manufacturing site in Turtle Creek, Pennsylvania to manufacture the products to our customers. As a result, a sustained or repeated interruption in the manufacturing of our products due to labor shortage, fire, flood, war, pandemic, or natural disasters may interfere with our ability to manufacture our products and fulfill customers' demands in a timely manner. Failure to manufacture our products and meet customer demands would impair our ability to generate revenues which would adversely affect our financial results ~~. Defects or performance problems in our products could result in loss of customers, reputational damage, and decreased revenue, facing warranty, indemnity, and product liability claims that may arise from defective products~~ . Since our inception, our business objectives have been focused on producing a safe, low- cost grid- scale energy storage solution to meet the increasing demand for and adoption of renewable energy generation assets. Our Gen 2. 3 battery design has, after years of research and prototype development, resulted in robust control of cell- to- cell spacing using a method which can easily be scaled for mass manufacturing production. Although our products meet our stringent quality requirements, they may contain undetected errors or defects, especially when first introduced or when new generations of products are released. Errors, defects, or poor performance can arise due to design flaws, defects in raw materials or components or manufacturing difficulties, which can affect the quality of our products. In addition, our BMS software may contain errors, bugs, vulnerabilities (including to cyber attacks), design defects or technical limitations. Some errors, bugs or vulnerabilities inherently may be difficult to detect. Any actual or perceived errors, bugs, vulnerabilities, defects, or poor performance in our products could result in the replacement or recall of our products, shipment delays, rejection of our products, damage to our reputation, legal claims, lost revenue, diversion of our engineering personnel from our product development efforts, and increases in customer service and support costs, all of which could have a material adverse effect on our business, financial condition, and results of operations. Furthermore, defective components may give rise to warranty, indemnity, or product liability claims against us that exceed any revenue or profit we receive from the affected products. Generally, our product comes with an initial two (2) year manufacturing warranty. We also offer customers an extended performance warranty of up to twenty (20) years at an additional cost to the customer. The price charged for any such extended warranty is based on the use case of the customer and the additional performance that such customer desires. For extended warranties, this may require system augmentation or battery replacements, which would be provided at no additional charge beyond the price of the extended warranty paid by such customer. While we accrued reserves for warranty claims, our estimated warranty costs for previously sold products may change to the extent future products are not compatible with earlier generation products under warranty. Our warranty accruals are based on various assumptions, which are based on a short operating history. As a result, these assumptions could prove to be materially different from the actual performance of our systems, causing us to incur substantial unanticipated expense to repair or replace defective products in the future or to compensate customers for defective products. Our failure to accurately predict future claims could result in unexpected volatility in, and have a material adverse effect on, our financial condition. If one of our products were to cause injury to someone or cause property damage, due to a result of product malfunctions, defects, or improper installation, we could be exposed to product liability claims. We could incur significant costs and liabilities if we are sued and if damages are awarded against us. Further, any product liability claim we face could be expensive to defend and could divert management' s attention. The successful assertion of a product liability claim against us could result in potentially significant monetary damages, penalties or fines, subject us to adverse publicity, damage our reputation and competitive position, and adversely affect sales of our products. In addition, product liability claims, injuries, defects, or other problems experienced by other companies in the battery industry could lead to unfavorable market conditions for the industry as a whole and may have an adverse effect on our ability to attract new customers, thus harming our growth and financial performance. We are heavily dependent on third- party suppliers and contractors ~~. Supply chain issues could adversely affect our operations and financial results. We are heavily dependent on third- party suppliers and contractors~~ and their ability to deliver sufficient quantities of key components, products and services at reasonable prices and in time for us to meet schedules for the delivery of our products and services. In addition, our operations depend on our ability to anticipate and our suppliers' ability to fulfill, our needs for sufficient quantities of key components and products. Given the diverse distribution of our suppliers and contract manufacturers, and the long lead times required to manufacture, assemble and deliver our products, problems could arise in production, planning and inventory management, and regulatory compliance that could seriously harm our business. ~~Third- party suppliers~~ **Suppliers** may **face** ~~have limited financial resources to withstand challenging business conditions, such as the adverse impact from Covid- 19. Suppliers are facing~~ global supply chain challenges, such as **transportation** ~~truck shortages, container~~ delays ~~,~~ **or reduced access to** raw materials, ~~etc. While we have taken several initiatives to mitigate the effects of such disruptions~~ and ~~disruptions caused by Covid- 19,~~ our business could be negatively impacted if ~~key~~ suppliers are forced to **reduce** ~~cease or limit~~ their **normal** operations. We currently operate our manufacturing facility located in Pennsylvania. We may, however, seek to construct one or more manufacturing facilities designed to meet our product supply needs in the future. Although we currently believe that we can expand our Turtle Creek facility to a 1. 2 gigawatt- hour (" GWh ") manufacturing facility, we cannot provide any assurances that we would be able to successfully establish or operate a new manufacturing facility in a timely or profitable manner, or at all, or within any budget that might be forecasted for such a project. The construction of any such facility would require significant capital expenditures and result in significantly increased fixed costs. If we are unable to transition manufacturing operations to any such new facilities in a cost-efficient and timely manner, then we may experience disruptions in operations, which could negatively impact our business and financial results. Further, if the demand for our products decreases or if we do not produce the expected output after any such new facility is operational, we may not be able to spread a significant amount of our fixed costs over the production volume, thereby increasing our product unit fixed cost, which would have a negative impact on our financial condition and results of operations. Our ability to expand our manufacturing capacity would also greatly depend on our ability to hire, train and retain an adequate number of manufacturing employees, in particular employees with the appropriate level of knowledge, background and skills. Should we be unable to hire such employees, our business and financial results could be negatively impacted. ~~We could incur substantial costs as a result of violations of, or liabilities under, environmental laws.~~ Our properties, operations and the products we manufacture are subject to a number of environmental, health and safety laws and regulations in each of the jurisdictions in which we operate. These laws and regulations govern, among other things, air emissions, water discharges, handling and disposal of solid and hazardous substances and wastes, soil and groundwater contamination, employee health and safety and the content of products. Under certain of these laws and regulations, we may be subject to joint and several liability for environmental investigations and remediation, including sites at which waste we generated was disposed, even if the contamination was not caused by us or was lawful at the time it occurred. Our failure to comply with these environmental, health and safety laws and regulations, including failing to obtain any necessary permits, could cause us to incur substantial civil or criminal fines or penalties or enforcement actions, including regulatory or judicial orders enjoining or curtailing our operations or requiring us to conduct or fund remedial or corrective measures, install pollution control equipment or perform other actions. The future identification of presently unidentified environmental conditions, more vigorous enforcement by regulatory agencies, enactment of more stringent laws, regulations or permit requirements, including relating to climate change, or other unanticipated events may arise in the future and give rise to environmental liabilities, which could adversely affect our business, financial condition and results of operations. Increased scrutiny from stakeholders and regulators regarding environmental, social and governance (" ESG") practices and disclosures, including those related to climate change and sustainability, could result in additional costs and risks. Companies across many industries are facing increasing scrutiny relating to their environmental, social and governance practices and disclosures. Our failure to satisfy evolving stakeholder expectations for ESG practices and reporting may potentially harm our reputation and impact employee retention, customer relationships and access to capital and financial markets. We have established goals related to ESG matters. These goals reflect our current plans and aspirations and are not guarantees that we will be able to achieve them. Our efforts to accomplish and accurately report on these goals and objectives present numerous operational, reputational, financial, legal and other risks, any of which could have a material negative impact, including on our reputation and the market price of our common stock. Further, certain institutional investors, investor advocacy groups, investment funds, creditors, influential financial markets participants and other stakeholders have become increasingly focused on companies' ESG issues in evaluating their investments and business relationships. Certain organizations also provide ESG ratings, scores and benchmarking studies that assess companies' ESG practices. Although there are no universally accepted standards for such ratings, scores or benchmarking studies, they are used by some investors to inform their investment and voting decisions. It is possible that our future shareholders or organizations that report on, rate or score ESG practices will not be satisfied with our ESG performance. **There are also an increasing number of anti- ESG initiatives that may conflict with other regulatory requirements or our stakeholders' expectations.** Unfavorable press about or ratings or assessments of our ESG practices, regardless of whether or not we comply with applicable legal requirements, may lead to negative investor sentiment toward us, which could have a negative impact on our share price and our access to and cost of capital. In addition, the adoption of new ESG- related regulations applicable to our business, or pressure from key stakeholders to comply with additional voluntary ESG- related initiatives or frameworks, could require us to make substantial investments in ESG matters, which could impact the results of our operations. Decisions or related investments in this regard could affect consumer perceptions as to our brand. Furthermore, if our competitors' corporate responsibility or ESG performance is perceived to be better than ours, potential or current investors may elect to invest with our competitors instead. We could also fail, or be perceived to fail, in our achievement of any announced ESG initiatives, goals or objectives, or we could be criticized for the scope of such initiatives, goals or objectives. If we fail to satisfy the expectations of investors and other key stakeholders or our initiatives, goals or objectives are not executed as planned, our reputation, financial results and market price of our common stock and access to and cost of capital could be materially and adversely affected. We have experienced significant growth in recent periods and intend to continue to expand our business significantly within existing and new markets. This growth has placed, and any future growth may place, a significant strain on our management, operational, and financial infrastructure. We will be required to expand, train, and manage our growing employee base and scale and otherwise improve our information technology (" IT ") infrastructure in tandem with that headcount growth. Our management will also be required to maintain and expand our relationships with customers, suppliers, and other third parties and attract new customers and suppliers, as well as manage multiple geographic locations. Our current and planned operations, personnel, customer support, IT, information systems, and other systems and procedures might be inadequate to support future growth and may require us to make additional unanticipated investments in its infrastructure. Our success and ability to further scale our business will depend, in part, on our ability to manage these changes in a cost- effective and efficient manner. If we cannot manage our growth, we may be unable to take advantage of market opportunities, execute our business strategies, or respond to competitive pressures. This could also result in declines in quality or customer satisfaction, increased costs, difficulties in introducing new offerings, or other operational difficulties. Any failure to effectively manage growth could adversely impact our business and reputation ~~. Our growth prospects depend on our ability to capitalize on market opportunities~~ . We believe that several market opportunities could help fuel our growth prospects, including the following: • the pervasiveness of electric grid congestion, creating an opportunity to deploy batteries to reduce the peak energy usage of a customer in specific locations where infrastructure constraints create a need for transmission and / or distribution upgrades; • the demand for co- location of battery assets on solar or wind farms to store off- peak intermittent renewable energy production and provide on- peak energy at the higher price of alternative energy; • C & I end users' adoption of alternative energy generation technologies to supplement or replace on- the- grid energy usage; and • carbon reduction targets and lower prices from renewables may be forcing earlier retirement of conventional energy sources and drive demand for energy storage. If these expected market opportunities do not materialize, or if we fail to capitalize on them, then we may not be able to meet our growth projections. We will require additional financing to achieve our long- term goals and a failure to obtain this capital on acceptable terms may adversely impact our ability to support our business growth strategy. We intend to continue to make investments to support our business and will require significant additional funds. In particular, we will require additional funds to enhance existing products and develop new products, expand our operations domestically and internationally, including our sales and marketing organizations and our presence outside of the United States, improve our infrastructure or acquire complementary businesses, technologies, products and other assets. Accordingly, we anticipate that equity or debt financings to secure additional funds will be necessary to support our business strategy. If we raise additional funds through future issuances of equity or convertible debt securities, our stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing that we may secure in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing when we require it, our ability to continue to support our business growth, scale our infrastructure, develop product enhancements and to respond to business challenges could be significantly impaired, and our business, results of operations and financial condition may be adversely affected. ~~If we fail to meet the covenants in our Senior Secured Term Loan Credit Agreement, we may be subject to default on the loan, which could have a material adverse effect on our business.~~ The Senior Secured Term Loan contains customary affirmative and negative covenants, which limit the Company' s and its subsidiaries' ability to incur indebtedness, make restricted payments, including cash dividends on its common stock, make certain investments, loans and advances, enter into mergers and acquisitions, sell, assign, transfer or otherwise dispose of its assets, enter into transactions with its affiliates and engage in sale and leaseback transactions, among other restrictions. The Senior Secured Term Loan also includes a minimum financial liquidity covenant. The minimum financial liquidity covenant requires that the Company have enough available liquidity as of the last day of each fiscal quarter to meet the Interest Escrow Required Amount (as defined in the Senior Secured Term Loan), which is calculated as the aggregate amount of the four immediately following interest payments on loans under the Senior Secured Term Loan. While the Company was in compliance with this covenant as of December 31, ~~2022~~ **2023** , and expects to remain in compliance as of March 31, ~~2023~~ **2024**, absent the Company' s ability to secure additional outside capital, the Company may be unable to remain in compliance with this covenant beginning on June 30, ~~2023~~ **2024**, and thereafter. There can be no assurance that the Company will be able to secure additional outside capital in order to satisfy the minimum financial liquidity covenant on terms acceptable to the Company, on a timely basis, or at all. In the event the Company is unable to remain in compliance with the minimum financial liquidity covenant and the other covenants under the Senior Secured Term Loan, and the Company is further unable to cure such noncompliance or secure a waiver, **the Lender-** Atlas **Credit Partners (ACP) Post Oak Credit I LLC (Atlas)** may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among other things, entering into a forbearance agreement with the Company and / or asserting its rights in the Company' s assets securing the Senior Secured Term Loan. Moreover, the Company' s other lenders may exercise similar rights and remedies under the cross- default provisions of their respective borrowing arrangements with the Company. See Note ~~13~~ **12**, Borrowings to our consolidated financial statements included elsewhere in this Annual Report. During the years ended December 31, **2023 and** 2022 ~~and 2021~~, we **primarily** sold our products in ~~a number of different countries, including~~ the United States ~~, India, Greece, and Nigeria~~. We have in the past, and may in the future, evaluate opportunities to expand into new geographic markets and introduce new product offerings and services that are a natural extension of our existing business. We also may from time to time engage in acquisitions of businesses or product lines with the potential to strengthen our market position, enable us to enter attractive markets, expand our technological capabilities, or provide synergy opportunities. Our success operating in these new geographic or product markets, or in operating any acquired business, will depend on a number of factors, including our ability to develop solutions to address the requirements of the electric utility industry and C & I end users, our timely qualification and certification of new products, our ability to manage increased manufacturing capacity and production, and our ability to identify and integrate any acquired businesses. Further, any additional markets that we may enter could have different characteristics from the markets in which we currently sell products, and our success will depend on our ability to adapt properly to these differences. These differences may include regulatory requirements, including tax laws, trade laws, labor regulations, tariffs, export quotas, customs duties, or other trade restrictions, limited or unfavorable intellectual property protection, international, political or economic conditions, restrictions on the repatriation of earnings, longer sales cycles, warranty expectations, product return policies and cost, performance and compatibility requirements. In addition, expanding into new geographic markets will increase our exposure to presently existing and new risks, such as fluctuations in the value of foreign currencies and difficulties and increased expenses in complying with United States and foreign laws, regulations, and trade standards, including the Foreign Corrupt Practices Act of 1977, as amended (the " FCPA "). Failure to develop and introduce these new products successfully into the market, to successfully integrate acquired businesses or to otherwise manage the risks and challenges associated with our potential expansion into new product and geographic markets, could adversely affect our revenues and our ability to sustain profitability. Revenue from our battery sales is primarily recorded upon transfer of ownership of the product to the customer. Under our customer contracts, this transfer typically takes place upon shipment of the battery from our manufacturing facility but, in some instances, occurs upon delivery to a customer site or, even more infrequently, when commercial operation commences. Because our revenues are generally derived from sales of hardware that may take many months to manufacture and prepare for delivery, such revenue can come in peaks and troughs based on the underlying customer arrangements. As a result, our quarterly results of operations are difficult to predict and may fluctuate significantly in the future based on the timing of product deliveries. To promote renewable energy generation and consumption, federal, state, local and foreign government bodies provide incentives to owners, end users, distributors, system integrators and manufacturers of alternative energy systems in the form of rebates, tax credits and other financial incentives such as system performance payments, issuance of renewable energy credits associated with renewable energy generation and exclusion of certain renewable energy systems from property tax assessments. Our business relies, in part, on the co- location of battery assets with solar and wind technologies. The market for on- grid applications, where solar or wind power is used to supplement a customer' s electricity purchased from the utility network or sold to a utility under tariff, often depends in large part on the availability and size of government and economic incentives that vary by geographic market. The reduction, elimination or expiration of government subsidies and economic incentives for on- grid renewable electricity may negatively affect the competitiveness of alternative electricity generation relative to conventional and nonrenewable sources of electricity and could harm or halt the growth of the alternative electricity industries. Because our C & I end user sales are generally expected to be made into the on- grid market, these changes could harm our business. For example, the Inflation Reduction Act enacted in August 2022 allows owners of new batteries to claim an ITC of between 30 % and 70 % during 2023 through a period that extends at least into the 2030s and possibly longer. The tax credit amount depends on the location of the battery and amount of domestic content. Companies should have an incentive to buy US- made batteries to qualify for a higher tax credit. A condition to claim tax credits at these levels is the same wages that are paid on federal construction projects must be paid to mechanics and laborers who work at the project site and lay down yard during construction and for the five years after on alterations and repairs, and qualified apprentices must be used during the same periods for as much as 15 % of total labor hours. The Inflation Reduction Act also allows manufacturers of certain battery components made in the United States to claim tax credits. The Internal Revenue Service will pay such manufacturers the tax credit amounts in cash for the first five tax years after the manufacturer starts producing. The tax credits for manufacturers start phasing down in amount after 2029 and end after 2032. Both sets of tax credits are expected to increase demand for batteries and encourage more US domestic manufacturing of batteries. If in the future, Congress were to repeal or cut back the incentives, it could have an adverse impact on our business, financial condition, and results of operations. In general, subsidies and incentives may expire on a particular date, end when the allocated funding is exhausted or be reduced or terminated as renewable energy adoption rates increase or as a result of legal challenges, the adoption of new statutes or regulations or the passage of time. These reductions or terminations often occur without warning. In addition, several jurisdictions have adopted renewable portfolio standards, which mandate that a certain portion of electricity delivered by utilities to customers each year must come from renewable energy resources. Utilities must either generate the renewable electricity themselves or buy renewable energy credits (" REC" s) from independent generators who have been awarded them for generating renewable electricity. Utilities may buy such RECs bundled with renewable electricity. An REC allows the utility to add this electricity to its renewable portfolio requirement total without actually expending the capital for generating facilities. However, there can be no assurances that such policies will continue. If subsidies and incentives applicable to alternative energy implementation or usage are reduced or eliminated, or the regulatory landscape otherwise becomes less favorable, then there could be reduced demand for alternative energy solutions, which could have an adverse impact on our business, financial condition, and results of operations. See Part I, Item I- Business- Regulations for further discussion of government programs and incentives. We currently procure the felt required for our batteries and the electrical cables for the Eos Cube **™** from China, as we believe that the materials procured from our Chinese suppliers currently have the best overall performance and price compared to domestic alternatives. Trade tensions between the United States and China have led to certain increased tariffs and trade restrictions. There can be no guarantee that these developments will not negatively impact the price of the felt used in our products. We believe we could obtain a similar performing felt and electrical cabling in the United States, but such sources would likely also charge a higher cost than our current suppliers, which would negatively impact our gross margins. It is difficult to predict what further trade- related actions governments may take, which may include additional or increased tariffs and trade restrictions, and we may be unable to quickly and effectively react to such actions, which could result in supply shortages and increased costs. We have operations in the United States, which exposes us to multiple federal, state and local regulations. Changes in applicable law, regulations or requirements, or our material failure to comply with any of them, can increase our costs and have other negative impacts on our business. Applicable laws and requirements address multiple aspects of our operations, such as worker safety, consumer rights, privacy, employee benefits and more, and can often have different requirements in different jurisdictions. Changes in these requirements, or any material failure to comply with them, could increase our costs, affect our reputation, limit our business, drain management' s time and attention or otherwise, generally impact our operations in adverse ways **. We are subject to complex and evolving laws, regulations, rules, standards and contractual obligations governing data privacy and cybersecurity and any failure to comply with these laws, regulations, rules, standards and contractual obligations could expose us to liability and / or reputational damage. Compliance with these laws, regulations, rules and standards may require us to change our policies, procedures and technology for cybersecurity, which could, among other things, make us more vulnerable to operational failures and to monetary penalties for breach of such laws, regulations, rules and standards. In the U. S., there are numerous federal, state and local data privacy and cybersecurity laws and regulations governing the collection, sharing, use, retention, disclosure, security, storage, transfer and other processing of personal information. At the federal level, we are subject to, among other laws and regulations, the rules and regulations promulgated under the authority of the Federal Trade Commission (which has the authority to regulate and enforce against unfair or deceptive acts or practices in or affecting commerce, including acts and practices with respect to data privacy and cybersecurity). Moreover, the U. S. Congress has recently considered, and is currently considering, various proposals for more comprehensive data privacy and cybersecurity legislation, to which we may be subject if passed. At the U. S. state level, we may be subject to laws and regulations such as the California Consumer Privacy Act as amended by the California Privacy Rights Act (collectively, the " CCPA "), which broadly defines personal information and gives California residents expanded privacy rights and protections, such as affording them the right to access and request deletion of their information and to opt out of certain sharing and sales of personal information. Numerous other states also have enacted, or are in the process of enacting or considering, comprehensive state- level data privacy and cybersecurity laws and regulations that share similarities with the CCPA. Moreover, laws in all 50 U. S. states require businesses to provide notice under certain circumstances to consumers whose personal information has been disclosed as a result of a data breach. Further, while we strive to publish and prominently display privacy policies that are accurate, comprehensive, and compliant with applicable laws, regulations, rules and industry standards, we cannot ensure that our privacy policies and other statements regarding our practices will be sufficient to protect us from claims, proceedings, liability or adverse publicity relating to data privacy and cybersecurity. Although we endeavor to comply with our privacy policies, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other documentation that provide promises and assurances about data privacy and cybersecurity can subject us to potential government or legal action if they are found to be deceptive, unfair, or misrepresentative of our actual practices. Any concerns about our data privacy and cybersecurity practices, even if unfounded, could damage our reputation and adversely affect our business. Any failure or perceived failure by us to comply with our privacy policies, or applicable data privacy and cybersecurity laws, regulations, rules, standards or contractual obligations, or any compromise of security that results in unauthorized access to, or unauthorized loss, destruction, use, modification, acquisition, disclosure, release or transfer of personal information, may result in requirements to modify or cease certain operations or practices, the expenditure of substantial costs, time and other resources, proceedings or actions against us, legal liability, governmental investigations, enforcement actions, claims, fines, judgments, awards, penalties, sanctions and costly litigation (including class actions). Any of the foregoing could harm our reputation, distract our management and technical personnel, increase our costs of doing business, adversely affect the demand for our products and services, and ultimately result in the imposition of liability, any of which could have a material adverse effect on our business, financial condition and results of operations** . The FCPA prohibits companies and their intermediaries from making improper payments to foreign government officials for the purpose of obtaining or retaining business. Other countries in which we operate also have anti- bribery laws, some of which prohibit improper payments to government and non- government persons and entities. Our policies mandate compliance with these anti- bribery laws. However, we currently operate in and intend to further expand into, many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti- bribery laws may conflict with local customs and practices. In addition, due to the level of regulation in our industry and related energy industries, our entry into certain jurisdictions may require substantial government contact where norms can differ from U. S. standards. Although we expect to maintain strict internal control policies and procedures designed to guard against improper conduct, there can be no guarantee that our employees, agents, and business partners will not take actions in violation of our internal control policies. In the event that we believe or have reason to believe that our employees or agents have or may have violated applicable laws, including anti- corruption laws, we may be required to investigate or have outside counsel investigate the relevant facts and circumstances, and detecting, investigating and resolving actual or alleged violations can be expensive and require significant time and attention from senior management. Any violation of U. S. federal and state and non- U. S. laws, regulations and policies could result in substantial fines, sanctions, civil and / or criminal penalties, and curtailment of operations in the United States or other applicable jurisdictions. In addition, actual or alleged violations could damage our reputation and ability to do business. Any of the foregoing could materially adversely affect our business, financial condition and results of operations. Furthermore, we are subject to the export controls and economic embargo rules and regulations of the United States, including, but not limited to, the Export Administration Regulations and trade sanctions against embargoed countries, which are administered by the Office of Foreign Assets Control within the Department of the Treasury, as well as the laws and regulations administered by the Department of Commerce. These regulations limit our ability to market, sell, distribute or otherwise transfer our products or technology to prohibited countries or persons. While we do not conduct business with sanctioned and embargoed countries and we expect to maintain strict internal controls policies and procedures designed to guard against improper conduct, a determination that we have failed to comply, whether knowingly or inadvertently, may result in substantial penalties, including fines and enforcement actions and civil and / or criminal sanctions, the disgorgement of profits and the imposition of a court- appointed monitor, as well as the denial of export privileges, and may have an adverse effect on our reputation. Our success depends to a significant degree on our ability to protect our intellectual property and other proprietary rights. We rely on a combination of patent, trademark, copyright, trade secret and unfair competition laws, as well as confidentiality and other contractual provisions with our customers, suppliers, employees, and others, to establish and protect our intellectual property and other proprietary rights. Our ability to enforce these rights is subject to general litigation risks, as well as uncertainty as to the enforceability of our intellectual property rights in various countries. When we seek to enforce our rights, we may be subject to claims that our intellectual property rights are invalid or not enforceable. Our assertion of intellectual property rights may result in another party seeking to assert claims against us, which could harm our business. Our inability to enforce intellectual property rights under any of these circumstances would likely harm our competitive position and business. We have been issued patents in, or have patent applications pending in the United States, North America, Europe, South America, Asia and Australia. We cannot guarantee that any of our pending applications will be approved or that our existing and future intellectual property rights will be sufficiently broad to protect our proprietary technology, and any failure to obtain such approvals or finding that our intellectual property rights are invalid or unenforceable could force us to, among other things, rebrand or redesign our affected products. In countries where we have not applied for patent protection or where effective intellectual property protection is not available to the same extent as in the United States, we may be at greater risk that our proprietary rights will be misappropriated, infringed, or otherwise violated. Our intellectual property may be stolen or infringed upon **, misappropriated or otherwise violated** . Despite our implementation of security measures, our IT systems and those of our service providers are vulnerable to circumstances beyond our reasonable control which may lead to the theft of our intellectual property or trade secrets or business disruption, including inappropriate retention or disclosure of trade secrets by current or former employees. To the extent that any disruption or security breach results in a loss or damage to our data or an inappropriate disclosure of confidential information, it could cause significant damage to our reputation, affect our relationships with our customers, suppliers and employees and lead to claims against the company. Any lawsuits that we may initiate to protect our significant investment in our intellectual property also may consume management and financial resources for long periods of time and may not result in favorable outcomes, which may adversely affect our business, results of operations or financial condition. Our competitors and other third parties hold numerous patents related to technology used in our industry. From time to time, we may be subject to claims of intellectual property right infringement and related litigation, and, if we gain greater recognition in the market, we will face a higher risk of being the subject of claims that we have violated others' intellectual property rights. While we believe that our products and technology do not infringe in any material respect upon any valid intellectual property rights of third parties, we cannot be certain that we would be successful in defending against any such claims. If we do not successfully defend or settle intellectual property claims, we could be liable for significant monetary damages and could be prohibited from continuing to use certain technology, business methods, content, or brands. To avoid a prohibition, we could seek a license from the applicable third party, which could require us to pay significant royalties, increasing our operating expenses. If a license is not available at all or not available on reasonable terms, then we may be required to develop or license a non- violating alternative, either of which could require significant effort and expense. If we cannot license or develop a non- violating alternative, we would be forced to limit or stop sales of our offerings and may be unable to effectively compete. Any of these results would adversely affect our business, financial condition, and results of operations. Risks Related to Our Securities ~~To the extent that any shares of common stock are issued upon exercise of any of the warrants, the number of shares eligible for resale in the public market would increase.~~ We have ~~7, 326, 654~~ outstanding warrants exercisable to purchase ~~7, 326, 654~~ shares of common stock at ~~an~~ **certain** exercise ~~price~~ **prices** ~~of $ 11. 50~~ per share **. See Note 13- Warrants Liability for further discussion** . To the extent that any shares of common stock are issued upon exercise of any of the warrants to purchase shares of common stock, there will be an increase in the number of shares of common stock eligible for resale in the public market. Sales of a substantial number of such shares in the public market could adversely affect the market price of our common stock. Provisions in our Charter and Delaware law may have the effect of discouraging lawsuits against our directors and officers. Our Charter requires, unless we consent in writing to the selection of an alternative forum, that (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders, (iii) any action asserting a claim against us, our directors, officers or employees arising pursuant to any provision of the DGCL or our Charter or our bylaws, or (iv) any action asserting a claim against us or our directors, officers or employees governed by the internal affairs doctrine may be brought only in the Court of Chancery in the State of Delaware, except any claim (A) as to which the Court of Chancery of the State of Delaware determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within 10 days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, (C) for which the Court of Chancery does not have subject matter jurisdiction, or (D) any action arising under the Securities Act of 1933, as amended (" Securities Act"), as to which the Court of Chancery and the federal district court for the District of Delaware shall have concurrent jurisdiction. If an action is brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder' s counsel. Although we believe that this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, a court may determine that this provision is unenforceable, and to the extent it is enforceable, the provision may have the effect of discouraging lawsuits against our directors and officers, although our stockholders will not be deemed to have waived our compliance with federal securities laws and the rules and regulations thereunder. Notwithstanding the foregoing, our Charter provides that the exclusive forum provision will not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Although we believe that this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers ~~. Provisions in our Charter may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management~~ . Our Charter contains provisions that may hinder unsolicited takeover proposals that stockholders may consider to be in their best interests. We are also subject to anti- takeover provisions under Delaware law, which could delay or prevent a change of control. Together these provisions may make it more difficult to remove management and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our securities. These provisions include: • no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates; • a classified board of directors with three- year staggered terms, which could delay the ability of stockholders to change the membership of a majority of the Board; • the right of our Board to elect a director to fill a vacancy created by the expansion of our Board or the resignation, death or removal of a director in certain circumstances, which prevents stockholders from being able to fill vacancies on our Board; • a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders; • advance notice procedures that stockholders must comply with in order to nominate candidates to our Board or to propose matters to be acted upon at a meeting of stockholders, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer' s own slate of directors or otherwise attempting to obtain control of the Company; and • the requirement that a meeting of stockholders may only be called by members of our Board or the stockholders holding a majority of our shares, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors. Fluctuations in the price of our securities could contribute to the loss of part or all your investment. The trading price of our securities could be volatile and subject to wide fluctuations in response to various factors, some of which are beyond our control. Any of the factors listed below could have a material adverse effect on your investment in our securities and our securities may trade at prices significantly below the price you paid for them. In such circumstances, the trading price of our securities may not recover and may experience a further decline. Factors affecting the trading price of our securities may include: • actual or anticipated fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to us; • changes in the market' s expectations about our operating results; • success of competitors; • our operating results failing to meet the expectation of securities analysts or investors in a particular period; • changes in financial estimates and recommendations by securities analysts concerning us or the industries in which we operate in general; • operating and stock price performance of other companies that investors deem comparable to us; • our ability to market new and enhanced products on a timely basis; • changes in laws and regulations affecting our business; • commencement of, or involvement in, litigation involving us; • changes in our capital structure, such as future issuances of securities or the incurrence of additional debt; • the volume of shares of our common stock available for public sale; • any major change in our board of directors or management; • sales of substantial amounts of our common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and • general economic, political, market conditions such as recessions, inflation, interest rates, fuel prices, international currency fluctuations and acts of war or terrorism. ~~Future resales of our common stock may cause the market price of our securities to drop significantly, even if our business is doing well.~~ Broad market and industry factors may materially harm the market price of our securities irrespective of our operating performance. The stock market in general, and Nasdaq, have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the companies affected. The trading prices and valuations of these stocks, and of our securities, may not be predictable. A loss of investor confidence in the market for the stocks of other companies that investors perceive to be like us could depress our stock price regardless of our business, prospects, financial conditions, or results of operations. A decline in the market price of our securities also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future ~~. There can be no assurance that the Warrants will be in the money at the time they become exercisable, and they may expire worthless. The~~

~~exercise price for the outstanding warrants is $ 11. 50 per share of common stock. There can be no assurance that the warrants will be in the money following the time they become exercisable and prior to their expiration, and as such, the Warrants may expire worthless~~ . The shares of our common stock and warrants are listed on Nasdaq. If Nasdaq delists the common stock from trading on its exchange for failure to meet the listing standards, we and our stockholders could face significant material adverse consequences including: • a limited availability of market quotations for our securities; • a determination that our common stock is a " penny stock, " which will require brokers trading in our common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our common stock; • a limited amount of analyst coverage; and • a decreased ability to issue additional securities or obtain additional financing in the future. We ~~do not intend to pay dividends on our common stock in the foreseeable future and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock. We~~ have never declared or paid cash dividends on our common stock. We currently do not anticipate paying any cash dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on our financial condition, results of operations, capital requirements, general business conditions and other factors that our board of directors may deem relevant. ~~We are a " smaller reporting company " and, because we have opted to use the reduced reporting requirements available to us, certain investors may find investing in our securities less attractive.~~ As a smaller reporting company, we are permitted to comply with scaled- back disclosure obligations in our SEC filings compared to other issuers, including with respect to disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We have elected to adopt the accommodations available to smaller reporting companies. Until we cease to be a smaller reporting company, the scaled- back disclosure in our SEC filings will result in less information about our company being available than for other public companies. If investors consider our common stock less attractive as a result of our election to use the scaled- back disclosure permitted for smaller reporting companies, there may be a less active trading market for our common stock and our share price may be more volatile. We are also a non- accelerated filer under the Securities Exchange Act of 1934, as amended (the " Exchange Act "), and we are not required to comply with the auditor attestation requirements of Section 404 (b) of the Sarbanes- Oxley Act of 2002. Therefore, our internal controls over financial reporting will not receive the level of review provided by the process relating to the auditor attestation included in annual reports of issuers that are subject to the auditor attestation requirements. In addition, we cannot predict if investors will find our common stock less attractive because we are not required to comply with the auditor attestation requirements. We cannot predict if investors will find our securities less attractive because we rely on these available exemptions. If some investors find our securities less attractive as a result, there may be a less active trading market for our securities and the market price of our securities may be more volatile.