

Risk Factors Comparison 2024-03-28 to 2023-03-07 Form: 10-K

Legend: **New Text** ~~Removed Text~~ Unchanged Text **Moved Text Section**

Investing in our common stock involves a high degree of risk. You should carefully consider each of the following risks, together with all other information set forth in this Annual Report on Form 10-K, including the financial statements and the related notes, in evaluating an investment in our common stock. If any of the following risks actually occurs, our business could be harmed. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations.

Related to the Company's Business, Operations, and Industry Our losses from operations could continue to raise substantial doubt regarding our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations. To date we have funded operations through equity and debt offerings. As of December 31, ~~2022~~ **2023**, we have an accumulated deficit of \$ ~~75~~ **120.8 million**. **In February and March 2024, certain holders of the May 2023 Convertible Notes issued in May 2023 converted approximately \$ 7.4 million of principal to common stock. In March 2024, the holders exchanged the remaining May 2023 Convertible Notes of \$ 24.7 million for Series A convertible preferred stock with a \$ 1,000 per share value and an initial conversion price of \$ 1.33 per share for common stock. All covenants from the Convertible Notes were terminated upon this exchange.** In August ~~March~~ **2022** ~~2024~~, we ceased manufacturing the Grunt motorcycle in Round Rock, Texas and have outsourced the manufacturing of the Grunt to a third-party in Mexico. Further, we have, or plan to, outsource the manufacturing of all our future vehicles to third-parties for the foreseeable future. We have also outsourced certain **holders** design and prototype services of **the Series A convertible preferred stock converted** its vehicles to third-parties. In September 2022, management reduced headcount and employee related costs in its product development and administrative departments to reduce operating costs. Also in August 2022, we received net proceeds of approximately \$ ~~22~~ **2**. ~~3 million~~ **shares** for the issuance of convertible notes due February 2024 and warrants ("Convertible Notes and Warrants"). The Convertible Notes require us to **1** have unrestricted and unencumbered cash on deposit of \$ 10,000,000 if the outstanding principal (and interest, if any) of the Convertible Notes is \$ 15,000,000 or greater as of September 30, 2023 and December 31, 2023. **7 million shares** The cash on deposit requirement is reduced dollar for dollar to the extent the outstanding principal of **common stock** the Convertible Notes is less than \$ 15,000,000 on each of these dates. Management anticipates that our cash on hand as of December 31, ~~2022~~ **2023** plus the cash expected to be generated from operations will not be sufficient to fund planned operations and maintain required cash balances for the Convertible Notes beyond one year from the date of the issuance of the financial statements as of and for the year ended December 31, ~~2022~~ **2023**. There can be no assurance that we will not require additional funding to support our operations. There can be no assurance that such additional funding, if needed, would be available to the Company on acceptable terms, or at all. These factors raise substantial doubt regarding our ability to continue as a going concern. The material weaknesses in our internal control over financial reporting identified in our 2020 audit have not been remediated. If we are unable to remediate these material weaknesses or we or our auditor identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business and stock price. The material weaknesses identified by our independent registered public accounting firm in our internal control over financial reporting in our 2020 audit have not been remediated as of December 31, ~~2022~~ **2023**. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis. These material weaknesses are as follows: · Inadequate segregation of duties within account processes due to limited personnel · Insufficient formal written policies and procedures for accounting, IT, financial reporting and record keeping In addition to hiring more finance and accounting personnel in 2021 to improve our segregation of duties, through ~~2022~~ **2023**, we have made further progress towards remediating these material weaknesses. We have hired more experienced accounting and finance personnel. We have prepared some formal written policies and procedures for accounting, IT, and financial reporting and record keeping. We have also started the process of documenting our internal controls. However, we have not fully completed documentation or testing of these policies, procedures, and internal controls. While we believe these efforts have improved the internal control over financial reporting during ~~2022~~ **2023**, they did not fully remediate the material weaknesses as we have not fully documented all of our policies or procedures and we have not performed any testing of our internal controls. We cannot assure you that the measures we have taken to date and may take in the future, will be sufficient to remediate the control deficiencies that led to our material weaknesses in internal control over financial reporting or that they will prevent or avoid potential future material weaknesses. The effectiveness of our internal control over financial reporting is subject to various inherent limitations, including cost limitations, judgments used in decision making, assumptions about the likelihood of future events, the possibility of human error and the risk of fraud. If we are unable to remediate the material weakness, our ability to record, process and report financial information accurately, and to prepare financial statements within the time periods required of public companies could be adversely affected which, in turn, may adversely affect our reputation and business and the market price of our common stock. In addition, any such failures could result in litigation or regulatory actions by the SEC or other regulatory authorities, loss of investor confidence, delisting of our securities and harm **to** our reputation and financial condition, or diversion of financial and management resources from the operation of our business. Our transition to an outsourced manufacturing, design and development business model may not be successful, which could harm our ability to deliver products and recognize revenue. In March 2022, we signed an agreement

with a manufacturer in China to develop and manufacture the Brat, our first eBike. We provided this vendor with our specifications and design drawings, and they developed prototypes and the manufacturing process to build the Brat at a cost that was acceptable to us. **We launched the Brat in December 2022 and have sold the Brat throughout 2023 and expect to continue to sell the Brat in 2024.** In June 2022, we signed a distribution agreement with Torrot Electric Europa, S. A. (“Torrot”) to distribute their youth motorcycles through our LATAM distributors. In October 2022, we signed an exclusive distribution and co-branding agreement with Torrot, which replaces the original distribution agreement and allows Volcon to co-brand Torrot’s youth motorcycles using the Volcon name and branding in the ~~United States~~ **U. S.** and Latin America. This was expanded to Canada through a separate agreement signed in December 2022. These products are manufactured by Torrot in Spain. ~~On August 25,~~ **Due to lower than expected sales of youth motorcycles, in 2023 we have written down our inventory of these motorcycles to its estimated net realizable value and recorded an expense of \$ 2. 7 million. In December 2023 we notified Torrot that we want to terminate this agreement and we will liquidate any remaining Volcon Youth motorcycle inventory. We have agreed to give Torrot a total of 1, 000 Volcon branded Torrot motorcycles originally purchased for \$ 1. 8 million, an up front payment of \$ 370, 000 and an additional \$ 1. 7 million to be paid out at \$ 100, 000 over 17 months beginning in April 2024 in exchange for unfulfilled 2023 and 2024 unit purchases. In 2022, ~~we announced a comprehensive program and manufacturing transition aimed to improve profitability and increase cash flow (the “Program”), pursuant to which we closed our manufacturing operations in Round Rock, Texas, and initiated efforts to merge our logistics and storage operations into a single location and enter~~ **entered** into a manufacturing agreements with GLV Ventures (“GLV”) to produce the Grunt **and Grunt EVO**, as well as the Stag and the Runt **and**. ~~In connection with the implementation of the Program,~~ we have transitioned from a manufacturing model in which we manufactured and assembled the Grunt at our manufacturing facility located in Round Rock, Texas, to one where we rely on ~~our this~~ **third** ~~party manufacturer~~ **to build the Grunt EVO, Stag and, if we decide to build the Run, in Mexico. In September 2022 **As a result of moving to an outsourced design, development and manufacturing model, we also have** reduced headcount in **all** our product development and administrative departments, ~~as we have outsourced the design, development and manufacturing of our vehicles to reduce costs. We~~ **continue to evaluate further cost reductions** believe the use of third-party manufacturers will have benefits, but in the near term, while we are beginning manufacturing with GLV, and commencing design and development **developing** with third-parties, we may lose revenue, incur increased costs and potentially harm our **sales and marketing team to sell and promote our products to customer customers relationships in the U. S and to our international distributors**. We rely on third-party manufacturers, designers and developers, which subjects us to risk of product delivery delays, reduced control over product costs and quality control. ~~Effective as of August 2022, we have outsourced the manufacturing of all of our vehicles to third-party manufacturers. In September 2022, we reduced headcount in our product development and administrative departments, as we have outsourced the design, development and manufacturing of our vehicles to reduce costs. Our business success will depend in large part on our third-party vendors’ ability to economically produce our vehicles and our ability to market and sell our vehicles at sufficient capacity to meet the demands of our customers. Our reliance on third-parties for the manufacture, design and development of our vehicles exposes us to a number of risks which are outside our control, including:~~ **delays due to design and development of our products to meet our product specifications · delays due to defective parts or components · unexpected increases in manufacturing costs; · interruptions in vehicle deliveries if a third-party vendor is unable to complete production or design in a timely manner; · shipping delays due to availability of ships, trains, trucks or containers to ship products or delays at ports to ship products to us or to the U. S or our customers delays at U. S. ports; and · inability to control the** quality of finished products. Our reliance on third-parties reduces our control over the manufacturing, design and development processes, including reduced control over **timing to release products**, quality, product costs and product supply and timing. ~~We may have experienced delays in the design and development of the Stag due to mechanical and electrical components that failed or did not operate as expected. Significant time and development effort was required to address these issues which resulted in significant delays in releasing the Stag. The first Stag unit was shipped to a customer in February 2024. We can provide no assurance that we will not realize future delays in production, and until we have multiple manufacturers or manufacture our products internally, our ability to release products on the timeline we expect will be dependent on our current outside manufacturers. If any of our third party vendors suffer interruptions,~~ experience delays in shipments or issues concerning product quality ~~from our third-party vendors, and such supply chain or~~ disruptions **and delays have been exacerbated by the COVID-19 pandemic. If any of our third-party vendors suffer interruptions, delays or disruptions in manufacturing, designing or developing our products, including by reason of the COVID-19 pandemic,** natural disasters, work stoppages or capacity constraints, our ability to ship products to dealers and **our international Latin America and Caribbean** distributors would be delayed. Additionally, if any of our third-party vendors experience quality control problems in their operations, we could be required to cover the repair or replacement of any defective products. These delays or product quality issues could have an immediate and material adverse effect on our ability to fulfill orders and could have a negative impact on our operating results. In addition, such delays or issues with product quality could harm our reputation and our relationship with our dealers, distributors and customers. Our third-party manufacturers may be unable to meet our growing sales and delivery plans, which could harm our business and prospects. Our sales growth and delivery plan contemplate achieving and sustaining **significant** increases in vehicle deliveries. Our ability to achieve this plan depends upon several factors, including our ability to identify third-party manufacturers who can meet our forecasted demand while maintaining our desired quality levels and optimize design and product changes. Although we believe that the third-party manufacturers we have contracted with have the ability to meet our forecasted demand, there is no assurance that they will be successful in these efforts. In addition, as we do not have a long-term history of sales, our forecasted demand may be materially incorrect, which could cause us to fail to meet unforeseen demand **and incur higher costs for excess inventory purchased to meet our forecast**. If we are unable to realize our sales and delivery plan, our brand, business, prospects, financial condition,****

and operating results could be materially damaged. We are dependent on our third-party manufacturers, who are dependent on their suppliers, some of which could be single-source suppliers. The inability of these suppliers to deliver necessary components for our vehicles according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these third-party manufacturers and their suppliers **has in the past and could in the future** have a material adverse effect on our financial condition and operating results. Our vehicles contain numerous purchased parts that our third-party manufacturers either (a) source globally from direct suppliers, some of whom could be single-source suppliers, or (b) manufacture themselves from components or materials. Any significant unanticipated demand would require our third-party manufacturers to procure or manufacture additional components in a short amount of time. While we believe our third-party manufacturers would be able to secure additional or alternate sources of supply for most of our components and raw materials in a relatively short time frame, there is no assurance that they will be able to do so or develop their own replacements for certain highly customized components of our products. **We have in the past realized production delays due to delays in sourcing certain parts from single-source suppliers. We can provide no assurance that we will not in the future realize additional such delays.** If our third-party manufacturers encounter unexpected difficulties with key suppliers, and if they are unable to fill these needs from other suppliers, we could experience production delays and potential loss of access to important technology and parts for producing, servicing and supporting our vehicles. This limited, and in many cases single-source, supply chain exposes our third-party manufacturers and us to multiple potential sources of delivery failure or component shortages for the production of our vehicles. The loss of any single or limited source supplier or the disruption in the supply of components from these suppliers could lead to design changes and delays in product deliveries to our customers, which could hurt our relationships with our customers and result in negative publicity, damage to our brand and reputation, and a material and adverse effect on our business, prospects, financial condition and operating results. Our third-party manufacturers operate outside of the ~~United States U. S.~~, **U. S.**, subjecting us to risks of international operations. Our third-party manufacturers operate outside of the ~~United States, U. S. and~~ **U. S.** as a result we are increasingly exposed to the challenges and risks of doing business outside the ~~United States U. S.~~ **U. S.**, which could reduce our revenues or profits, increase our costs, result in significant liabilities or sanctions, or otherwise disrupt our business. These challenges include: (1) compliance with complex and changing laws, regulations and policies of governments that may impact our operations, such as foreign ownership restrictions, import and export controls, tariffs, and trade restrictions; (2) compliance with U. S. and foreign laws that affect the activities of companies abroad, such as anti-corruption laws, competition laws, currency regulations, and laws affecting dealings with certain nations; (3) the difficulties involved in managing an organization doing business in many different countries; (4) uncertainties as to the enforceability of contract and intellectual property rights under local laws; and (5) rapid changes in government policy, political or civil unrest, acts of terrorism, or the threat of international boycotts or U. S. anti-boycott legislation. Products that we have manufactured for us in Mexico, ~~Spain,~~ and China may also be subject to any uncertainty of trade relations between such countries and the ~~United States U. S.~~ **U. S.**, which could cause the cost of our products manufactured there to rise, or result in our inability to continue to use third-party manufacturers in such country, resulting in a need to find alternative sources of manufacture, which could result in the delay of manufacture and supply of our products, increase our cost of manufacture, and cause a delay in our shipments to customers and a delay or cancellation of orders. Our future operating results and financial condition could be materially affected to the extent any of these actions occur. In addition, the prosecution of intellectual property infringement and trade secret theft outside of the ~~United States U. S.~~ **U. S.** may be more difficult than in the ~~United States U. S.~~ **U. S.** Although we take precautions to protect our intellectual property, using our third-party manufacturers in Mexico and China could subject us to an increased risk that unauthorized parties will be able to copy or otherwise obtain or use our intellectual property, and we may be unsuccessful in monitoring and enforcing our intellectual property rights against them, which could harm our business. We may also have limited legal recourse in the event we encounter patent or trademark infringers, which could adversely affect our business, results of operations, and financial condition. While we take measures to protect our trade secrets, the use of third-party manufacturers may also risk disclosure of our innovative and proprietary manufacturing methodologies, which could adversely affect our business. We are utilizing a small number of vendors to assist us with the manufacturing, development and design of our vehicles, including the chassis, electrical systems, safety requirements, body components and accessories, and the inability of these vendors to complete our respective design requirements may delay our ability to release these vehicles for production, which could have a material adverse effect on our financial condition and operating results. We have entered into manufacturing, design and development agreements with vendors with experience in the manufacturing, design and development of two-wheel and four-wheel off-road vehicles to assist us with the development of certain aspects of and manufacturing of our vehicles. Although these vendors have successfully assisted other companies with manufacture, design and development of vehicles, they may not be able to successfully design, develop and manufacture our vehicles. These vendors may experience delays in fulfilling their obligations under these contracts due to the inability to source parts from other vendors, lack of employees available to work on our projects due to labor shortages or other competing projects from other customers or COVID-19-related issues impacting employees. Failure of these vendors to complete the contracted design, development and manufacture projects for our vehicles will result in delays in obtaining regulatory approvals and delay production and release of the vehicles for sale, which could have a material adverse effect on our business, reputation, results of operations or financial condition. Increases in costs, disruption of supply, or shortage of materials could harm our business. Our third-party manufacturers may experience increases in the cost or a sustained interruption in the supply or shortage of materials. Any such increase, supply interruption or shortage could materially and negatively impact our business, prospects, financial condition and operating results. The prices for these materials fluctuate, and their available supply may be unstable, depending on market conditions and global demand for these materials, including as a result of increased production of electric vehicle (EV) products by our competitors, and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to battery packs. These risks include: · an increase in the cost, or decrease in the available

supply, of materials used in the battery packs; · disruption in the supply of battery packs due to quality issues or recalls by battery cell manufacturers; · sanctions imposed by the U. S. on countries in which our products are manufactured or where parts are manufactured for our third-party manufacturers; and · tariffs on the products we source in China. Our business is dependent on the continued supply of battery cells for the battery packs used in our vehicles. Any disruption in the supply of battery cells, including those caused by the conflict between Russia and the Ukraine and sanctions imposed on Russia noted ~~above~~ **below**, could disrupt production of our vehicles. Substantial increases in the prices charged to us, such as those charged by battery cell suppliers, would increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased selling prices of our vehicles. Any attempts to increase prices in response to increased material costs could result in the cancellation of vehicle orders and therefore materially and adversely affect our brand, image, business, prospects and operating results. We have ~~and could continue to experience~~ **experienced** delays and other complications in the design, manufacture, launch and production ramp of our vehicles and our future planned vehicles, which could harm our brand, business, prospects, financial condition and operating results. We have encountered unanticipated challenges, such as supply chain constraints, that led to initial delays in producing our vehicles. We have experienced longer lead times with certain suppliers to obtain parts, especially those imported where shipping delays from outbound and inbound ports have caused delays or required us to use air freight and incur higher shipping costs. ~~We As of August 2022, we~~ have outsourced the manufacturing of all of our vehicles and plan to outsource all manufacturing of our vehicles for the foreseeable future. ~~We In September 2022, we~~ also reduced headcount in ~~all our product development and administrative~~ departments, as we have outsourced the design and development of our vehicles. Any significant delay or other complications in the production of our vehicles or the development, manufacture, and production ramp of our future vehicles, including complications associated with our third-party manufacturers' supply chains or obtaining or maintaining regulatory approvals, and / or coronavirus impacts, could materially damage our brand, business, prospects, financial condition and operating results. We are an early-stage company and we have delivered a limited number of vehicles to customers. We ~~formed our corporation in February 2020. Since formation, we have focused on designing our initial~~ **delivered a limited number of** vehicles, the Grunt and the Runt (Runt reservations were subsequently refunded due to design ~~customers~~ and ~~we~~ production delays), the Brat and the Stag, and commencing the marketing of such vehicles by ~~accepting reservations on our website. We also began taking orders for the Grunt in Latin America and started signing dealer agreements to sell our vehicles in the United States. We may never achieve commercial success.~~ We have no meaningful historical financial data upon which we may base our projected revenue and operating expenses. Our limited operating history makes it difficult for potential investors to evaluate our products or prospective operations and business prospects. We are subject to all the risks inherent in business development, financing, unexpected expenditures, and complications and delays that often occur in a new business. Investors should evaluate an investment in us in light of the uncertainties encountered by developing companies in a competitive environment. There can be no assurance that our efforts will be successful or that we will ultimately be able to attain profitability. The conflict with Russia and the Ukraine could have an impact on the availability of components used in the manufacturing of lithium ion batteries that we use to power our vehicles. The recent conflict between Russia and the Ukraine could impact the availability of nickel, an element used in the production of lithium ion cells used in batteries that power our vehicles. According to the Wall Street Journal, Russia produces 5 %- 6 % of the world's nickel supply and 17 % of the high purity nickel production. The shortage of these cells could have an impact on our ability to produce vehicles to meet our customers' demands. In addition, sanctions against Russia could impact the price of elements, including nickel, that are used in the production of batteries which would result in higher costs to produce our vehicles. These sanctions have also impacted the U. S. and global economy and could result in an economic recession which could cause a broader disruption to the Company's supply chain and distribution network and customer demand for our products. These factors would have a negative impact on our results of operations and cash flows. We are currently taking orders for the **Brat Ebike, Grunt EVO and, Brat, Volcon Kids Youth motorcycles and the Stag UTV**, and if these vehicles fail to perform as expected, our reputation could be harmed and our ability to develop, market and sell our vehicles could be harmed. If our vehicles were to contain defects in design and manufacture that cause them not to perform as expected or that require repair or take longer than expected to deliver, our ability to develop, market and sell our vehicles could be harmed. While we intend to perform internal testing on the vehicles, as a start-up company our frame of reference by which to evaluate detailed long-term quality, reliability, durability and performance characteristics of our vehicles is based on industry metrics rather than historical data. Although we have procedures to test all of our vehicles for defects, there can be no assurance that we will be able to detect and fix all defects in our products prior to their sale to consumers. Any product defects, delays, or other failure of our products to perform as expected could harm our reputation and result in delivery delays, product recalls, product liability claims, significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects. We may not succeed in establishing, maintaining and strengthening our brand, which could materially and adversely affect customer acceptance of our products, which could in turn materially affect our business, results of operations or financial condition. Our business and prospects heavily depend on our ability to develop, maintain and strengthen the Volcon brand. If we are unable to establish, maintain and strengthen our brand, we may lose the opportunity to build and maintain a critical mass of customers. Our ability to develop, maintain and strengthen our brand will depend heavily on the success of our marketing efforts. Failure to develop and maintain a strong brand would materially and adversely affect customer acceptance of our vehicles, could result in suppliers and other third-parties being less likely to invest time and resources in developing business relationships with us, and could materially adversely affect our business, results of operations or financial condition. An adverse determination in any significant product liability claim against us could materially adversely affect our business, results of operations or financial condition. The development, production, marketing, sale and usage of our vehicles will expose us to significant risks associated with product liability claims. The powersports vehicles industry in particular is vulnerable to significant product liability claims, and we may face inherent risk of exposure to claims in the event our vehicles do not perform

or are claimed to not have performed as expected. If our products are defective, malfunction or are used incorrectly by our customers, it may result in bodily injury, property damage or other injury, including death, which could give rise to product liability claims against us. Any losses that we may suffer from any liability claims and the effect that any product liability litigation may have upon the brand image, reputation and marketability of our products could have a material adverse impact on our business, results of operations or financial condition. No assurance can be given that material product liability claims will not be made in the future against us, or that claims will not arise in the future in excess or outside of our insurance coverage and contractual indemnities with suppliers and manufacturers. We believe we have adequate product liability insurance; however, as we release new products and expand our sales channels, we may not be able to obtain adequate product liability insurance or the cost of doing so may be prohibitive. Adverse determinations of material product liability claims made against us could also harm our reputation and cause us to lose customers and could have a material adverse effect on our business, results of operations or financial condition. The markets in which we operate are in their infancy and highly competitive, and we may not be successful in competing in these industries as the industry further develops. We currently face competition from new and established competitors and expect to face competition from others in the future, including competition from companies with new technology. The EV market is in its infancy, and we expect it will become more competitive in the future. There is no assurance that our vehicles will be successful in the respective markets in which they compete. A significant and growing number of established and new companies, as well as other companies, have entered or are reported to have plans to enter the EV market, including the off-road market that we intend to pursue. Most of our current and potential competitors have significantly greater financial, technical, manufacturing, marketing, sales networks, and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. Increased competition could result in lower vehicle sales, price reductions, revenue shortfalls, loss of customers and loss of market share, which could harm our business, prospects, financial condition, and operating results. We may need to defend ourselves against intellectual property infringement claims, which may be time-consuming and could cause us to incur substantial costs. Others, including our competitors, may hold or obtain patents, copyrights, trademarks or other proprietary rights that could prevent, limit or interfere with our ability to make, use, develop, sell or market our products and services, which could make it more difficult for us to operate our business. From time to time, the holders of such intellectual property rights may assert their rights and may bring suits alleging infringement or misappropriation of such rights. In addition, if we are determined to have infringed upon a third-party's intellectual property rights, we may be required to cease making, selling or incorporating certain components or intellectual property into the products we offer, to pay substantial damages and / or license royalties, to redesign our products, and / or to establish and maintain alternative branding for our products. We have a registration registrations for the trademark trademarks VOLCON and GRUNT in the United States U. S. We have also applied to register additional marks trademarks including VOLCON, VOLCON BRAT, VOLCON STAG, GRUNT EVO, EMPOWERING ADVENTURE, RUNT, VOLCON RUNT, STAG, and VOLCON STAG- in the U. S., Canada, New Zealand, Australia and certain additional countries in including the United States, Latin America, and Canada, and many of these marks trademarks are now allowed or registered in some of these countries. While we previously We have resolved some conflicts and potential conflicts that have arisen with regard to the use and registration of our trademarks through coexistence agreements and the submission of arguments. We have received notice from two entities an entity in Brazil who has opposed our applications for trademarks including the word VOLCON mark in the United States, but we believe Mexico, and elsewhere due to the alleged similarity of the mark VOLCON to their the trademarks and, we have resisted these the goods being sold under efforts because we believe that the them marks are not similar and there is no potential for confusion. We are have also identified that in the process of resolving these matters Australia, VOLCON is similar to another trademark that does not appear to be in use. We have obtained filed a coexistence agreement providing removal application to remove the use of the other trademark so that our we can use VOLCON trademark can coexist with one party's trademark. The However, other there party's opposition was unsuccessful is no guarantee that our application to remove will be accepted. Our efforts to secure trademark registrations for VOLCON and other trademarks referenced above are ongoing and we may encounter resistance from other companies, though particularly as we expand into additional territories have received no such notice from any other companies at this time. If we receive objections from other entities and are unsuccessful in obtaining agreements or otherwise resolving the matters with these entities, we will need to consider the use of different trademarks for our Company and our products. In the event that we were required to take one or more such actions, our business, prospects, operating results and financial condition could be materially adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs, negative publicity and diversion of resources and management attention. Potential tariffs or a global trade war could increase our costs and could further increase the cost of our products, which could adversely impact the competitiveness of our products and our financial results. The Grunt EVO, Runt and LT (if we decide to begin production) Brat depend on materials from China, namely batteries, which are among the main components of our vehicles. In addition, components for the Stag, mainly wiring harnesses, are also sourced from China. We cannot predict what actions may be taken with respect to tariffs or trade relations between the United States U. S. and China, what products may be subject to such actions, or what actions may be taken by China in retaliation. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs, trade agreements or related policies have the potential to adversely impact our supply chain and access to equipment, our costs and our product margins. Any such cost increases or decreases in availability could slow our growth and cause our financial results and operational metrics to suffer. We primarily sell our vehicles and accessories through a network of third parties, and there is no assurance that we will be able to successfully build out this network. Initially As of March 15, 2024 in the United States, we intended have 103 active dealers to sell our vehicles and accessories directly to the consumer via our website. We ceased selling vehicles and accessories directly to consumers in November 2021. In November 2021 we began negotiating dealer agreements to sell our

vehicles and accessories in the United States to powersport vehicle dealers. As of December 31, 2022, we have signed agreements with 151 dealers to sell our vehicles and accessories. We hired our first regional sales manager in Canada to begin developing our dealer network for Canadian powersports vehicle dealers **but in 2023 we determined we would defer selling our products in Canada and as of December 31, 2023 and we no longer have any Canadian employees**. We are required to comply with manufacture / dealer laws in each state in which we sell our vehicles through dealers. Dealer laws vary by state and although our dealer agreements are intended to comply with these laws, we may be required to amend our agreements if these laws are changed or are challenged by dealers or other OEMs. Our dealer and distribution agreements are generally short-term in nature and the dealer, distributor or we may cancel these agreements under certain circumstances and we may not be able to retain or expand the scope of our dealer and / or distribution network in the future. ~~Many dealers~~ **We have entered into an accounts receivable factoring arrangement to allow the Company the ability to generate cash for working capital. We will require us to incur financing costs under this arrangement. On a longer term basis we intend to identify obtain a “flooring” financing arrangement to allow** financing sources for **our** dealers to purchase vehicle inventory **and to identify financing sources for the dealers’ customers to finance their purchase**. We will ~~may~~ incur costs under these financing arrangements to incentivize dealers to buy our vehicles including free dealer financing for certain periods or based on purchase volumes, interest rate buydowns on the dealers’ customer financing to incentivize their customers’ purchase of our vehicles. Because we are a young company with limited sales history and recurring losses, we may not be able to obtain these inventory financing sources which may result in dealers not wanting to sell our vehicles. In the U. S., we ~~will began to~~ sell the Brat **and Volcon youth motorcycles** on our website **in 2023**, in addition to our dealer network **and bicycle retailers**. Customers can request that ~~the these Brat vehicles~~ be delivered to a local Volcon dealer or directly to a location they can designate. We **do not intend to compete with dealers who sell these products and we provide for price protection to them in the event we are selling these products below the retail price they are selling them for in order for them to maintain their margin. We also intend to** sell our vehicles and accessories internationally through international distributors. ~~We~~ **As of December 31, 2023, we** have signed distribution agreements with ~~five six~~ **distributors in Latin America and, one distributor in New Zealand and one distributor in** the Caribbean region **and in January 2024 we signed an agreement with a distributor in Australia**. We are relying on these distributors to market, promote, sell and service our vehicles and sell accessories in their designated countries / territories. We believe our success will be highly dependent on our ability to build out this network in the major markets in which we intend to compete for customers, and to maintain this network in the future. Our business model is dependent not only on our ability to create the foregoing network, but also on the commitment and motivation of these third parties to promote our brand and products. Orders for vehicles are cancelable and there can be no assurance that all orders will result in revenue being recognized. Orders from U. S. dealers do not require an upfront payment and are cancelable prior to shipment with no penalty. Orders from U. S. consumers for the Stag required a minimal reservation fee and all orders are cancelable prior to shipment, although the reservation fee is forfeited **unless it must be refunded in accordance with state laws**. Most ~~Latin American~~ importers must pay for orders in advance of shipment but can cancel an order prior to shipment and receive a refund without penalty. The estimated fulfillment of all orders we have received assumes our third ~~party~~ manufacturers can successfully increase their production capacity in the future, of which there is no assurance. If we are unable to satisfy pending orders on a timely basis, customers may cancel their orders. In some cases, there will be significant time between a customer ordering a vehicle and the eventual delivery of the vehicle, which creates a heightened risk that a customer that ordered a vehicle may change his or her mind and not ultimately take delivery of the vehicle, and accessories, ~~if purchased,~~ in their order. Any cancellations could harm our financial condition, business, prospects and operating results. We may be unable to improve our existing products and develop and market new products that respond to customer needs and preferences and achieve market acceptance. We may not be able to compete as effectively with our competitors, and ultimately satisfy the needs and preferences of our customers, unless we can successfully enhance current products, develop new innovative products, **maintain or lower product costs** and distinguish our products from our competitors’ products through innovation and design. Product development requires significant financial, technological, and other resources. There can be no assurance that we will be able to incur a level of investment in research and development that will be sufficient to successfully make us competitive in product innovation and design. In addition, even if we are able to successfully enhance existing products and develop new products, there is no guarantee that the markets for our existing products and new products will progress as anticipated. If any of the markets in which our existing products compete do not develop as expected, our business, results of operations or financial condition could be materially adversely affected. We have limited experience servicing our vehicles, we intend to primarily utilize third parties to service our vehicles, and if we are unable to address the service requirements of our customers, our business could be materially and adversely affected. We have limited experience servicing or repairing our vehicles and we are developing our service manuals and service procedures to repair our vehicles. We are in the process of developing a network of service providers who will also be our dealers as many states require that only dealers can provide warranty service on vehicles. For our international distributors, they will be service providers or will identify third ~~parties~~ who will be service providers to service our vehicles. Servicing electric vehicles is different ~~than from~~ servicing vehicles with internal combustion engines and requires specialized skills, including high voltage training and servicing techniques. If we are unable to successfully address the service requirements of our customers, our business and prospects will be materially and adversely affected. If we are unable to successfully address the servicing requirements of our customers or establish a market perception that we maintain high-quality support, our reputation could be harmed, we may be subject to claims from our customers, and our business, results of operations or financial condition may be materially and adversely affected. Significant product repair and / or replacement due to product warranty claims or product recalls could have a material adverse impact on our business, results of operations or financial condition. We provide a one-year warranty against defects for the Grunt ~~and EVO, Brat,~~ **and Volcon youth motorcycles** and a two-year warranty on the battery. **The manufacturers of the Brat and Volcon youth motorcycles provide**

the warranty for these products and we are reimbursed for warranty claims provided we obtain approval of the claim from the manufacturer. We currently expect to provide a similar warranty for all our motorcycles as they are Runt LT when it is released for sale. **Our** We are in the process of developing our warranty for the Stag **is also** and we expect it to be consistent with other UTVs currently on **one - year against defects and two years for the market batteries**. Our warranty will generally require us to repair or replace defective products during such warranty periods at no cost to the consumer. **Some of the parts are warrantied by the part manufacturer where others are no.** We record provisions based on an estimate of product warranty claims, but there is the possibility that actual claims may exceed these provisions and therefore negatively impact our results of operations or financial condition. In addition, we may in the future be required to make product recalls or could be held liable in the event that some of our products do not meet safety standards or statutory requirements on product safety, even if the defects related to any such recall or liability are not covered by our limited warranty. The repair and replacement costs that we could incur in connection with a recall could have a material adverse effect on our business, results of operations or financial condition. Product recalls could also harm our reputation and cause us to lose customers, particularly if recalls cause consumers to question the safety or reliability of our products, which could have a material adverse effect on **its our** business, results of operations or financial condition. Our success is dependent upon the success of the off- road vehicle industry and upon consumers' willingness to adopt electric vehicles. Our success is dependent upon the success of the off- road vehicle industry as a whole, and in particular upon consumers' willingness to adopt electric vehicles as an alternative to combustion vehicles. If the market for electric off- road vehicles does not develop at the rate or in the manner or to the extent that we expect, our business, results of operations or financial condition may be adversely materially affected. The market for electric vehicles is relatively new, rapidly evolving, characterized by rapidly changing technologies, price competition, additional competitors, evolving government regulation and industry standard, frequent new vehicle announcements and changing consumer demands and behaviors. Factors that may influence the adoption of electric vehicles include: · perceptions about electric vehicle quality, safety, design, performance and costs; · the limited range over which electric vehicles may be driven on a single battery charge, and the decline of an electric vehicle' s range resulting from deterioration over time in the battery' s ability to hold a charge; · the ability to easily charge electric vehicles · volatility in the cost of oil and gasoline, and improvements in the fuel economy of combustion engines; and · the environmental consciousness of off- road vehicles customers. The influence of any of the factors described above may cause our customers not to purchase our vehicles and may otherwise materially adversely affect our business, results of operations or financial condition. Higher inflation and interest rates, volatile financial markets, unemployment and consumer confidence may cause consumers to defer or not purchase our products. Globally inflation and interest rates **have been rising throughout rose in 2023 compared to** 2022 and could continue to rise **or remain at current levels** in the future. Our vehicles represent a discretionary purchase. Many consumers finance the purchase of an off- road vehicle and higher interest rates will result in higher monthly payments which some consumers may not qualify for or consumers may elect to defer their purchase until interest rates decline. In addition, global financial markets overall have seen **sharp declines in valuations and significant volatility in 2022 2023** and could continue to experience **additional declines and volatility in the future and could**. **Consumer confidence in the US has declined decline**. A number of large companies have announced layoffs. **Public companies in the EV sector have seen significant declines and volatility in 2023. Consumer confidence in the U. S. has declined.** We currently operate in an area **of the vehicle sector** that is not heavily regulated, and future changes in government oversight may subject us to increased regulations, which may increase our expenses. The off- road vehicle market is not heavily regulated, as compared to on- road vehicles, and, as such, we are not currently subject to significant government regulations. As this market develops and grows, it may come under increased regulatory scrutiny, which may result in increased regulations. This increase in regulations may result in increased costs and expenses, which may materially and adversely affect our business, results of operations or financial condition. **The duration and scope of the impacts of the COVID-19 pandemic remain uncertain and have adversely affected our supply chain and may continue to affect our operations, distribution, and demand for our products.** If we were to encounter a significant disruption due to COVID- 19 at our third- party manufacturers, designers or developers or one or more of our suppliers, we may not be able to satisfy customer demand for a period of time. We have recently experienced delays and extended delivery dates with respect to the components we utilize for our vehicles. Although we believe these delays will not affect our ability to deliver our initial vehicles, they may restrict our third- party manufacturers', designers', developers' and suppliers' ability to deliver vehicles in the future. Furthermore, the impact of COVID- 19 on the economy, demand for our products and impacts to our operations, including the measures taken by governmental authorities to address it, may precipitate or exacerbate other risks and /or uncertainties, including specifically many of the risk factors set forth herein, which may have a significant impact on our operating results and financial condition, although we are unable to predict the extent or nature of these impacts at this time. We could be negatively impacted by cybersecurity attacks and are subject to evolving privacy laws in the U. S. and other jurisdictions that could adversely impact our business and require that we incur substantial costs. We use a variety of information technology systems in the ordinary course of business, which are potentially vulnerable to unauthorized access, computer viruses, ransomware software viruses and other similar types of malicious activities and cyber- attacks, including cyber- attacks to our information technology infrastructure and attempts by others to gain access to our proprietary or sensitive information, and ranging from individual attempts to advanced persistent threats. Additionally, our vendors and potentially our customers, such as federal, state and local governments, require us to maintain and protect our information technology infrastructure to specified standards in order to protect not only our sensitive information, but also their sensitive information. Further, ransomware attacks are becoming increasingly prevalent and severe. To alleviate the financial, operational, and reputational impact of a ransomware attack, it may be preferable to make extortion payments, but we may be unwilling or unable to do so, including, for example, if applicable laws or regulations prohibit such payments. The procedures and controls we use to monitor these threats and mitigate our exposure may not be sufficient to prevent cybersecurity incidents. The results of these incidents could include misstated

financial data, theft of trade secrets or other intellectual property, liability for disclosure of confidential customer, supplier or employee information, increased costs arising from the implementation of additional security protective measures, litigation and reputational damage, which could materially adversely affect our financial condition, business or results of operations. Any remedial costs or other liabilities related to cybersecurity incidents may not be fully insured or indemnified by other means. Moreover, we or our third-party vendors or business partners may be more vulnerable to such attacks in remote work environments, which have increased in response to the COVID-19 pandemic. Additionally, security breaches could result in a violation of applicable U. S. and international privacy and other laws and subject us to governmental investigations and proceedings, which could result in our exposure to material civil or criminal liability. Risks Related to our Common Stock

Our founders **In March 2024**, directors **we exchanged our outstanding convertible notes for Preferred Stock** and a executive officers will continue to exercise significant **number** control over us, which will limit your ability to influence corporate matters and could delay or prevent a change in corporate control. The existing holdings of the outstanding shares of our common stock **by could be issued upon conversion. In March 2024, we issued Series A Preferred Stock (the "Preferred Stock") at \$ 1, 000 per share in exchange for \$ 24. 7 million principal of convertible notes. The initial conversion price for the Preferred Stock is \$ 1. 33 and is convertible at any time. On March 5, 2024, certain holders of the Preferred Stock converted approximately \$ 2. 3 million for approximately 1. 7 million shares of common stock. The total number of shares of common stock that could be issued as of March 27, 2024 for the outstanding Preferred Stock on this date is approximately 16. 8 million shares. The conversion price of the Preferred Stock is subject to adjustment if certain events such as a stock split, reverse stock split, our or stock dividend occurs, or if we issue equity or convertible instruments at offering prices below the conversion price. In addition, in the event of a change of control or sale of substantially all of the Company's assets, the Preferred Stock agreement provides for distributions that are either based on the number of common stock shares issuable** founders --- **under**, directors and executive officers, assuming full exercise of the **these warrants agreements or based on other valuations as defined in the agreement. The Preferred Stock holders may resell all, or some of the shares of common stock underlying the Preferred Stock after conversion, at any time or from time to time at their discretion. Resales of our common stock may cause the market price of our securities to drop significantly, regardless of the performance of our business. The adjustment of the conversion price for the Preferred Stock held by such individuals** these investors based on the price of future issuances of securities could also limit our ability to raise capital as potential investors may not make **and** an investment in a new issuance of securities if their investment could be immediately diluted due to adjustments in the conversion price or warrant of outstanding Convertible Notes and exercise of all remaining prices. We have issued Series B warrants, represent, in connection with the aggregate, approximately 22. 9 % **public offering completed in November 2023 that have provisions that can increase the number of warrants and reduce the exercise price if we complete certain transactions. Our public offering completed in November 2023 included Series A and Series B warrants ("Series A Warrants" and "Series B Warrants") to purchase our outstanding common stock with initial exercise prices of \$ 24. 75 and \$ 37. 80, respectively. As a of March 27, 2023, approximately 42, 000 and 14. 5 million Series A Warrants and Series B Warrants, respectively, remain outstanding and the Series A Warrants have an exercise price of \$ 1. 8636 and the Series B Warrants have an exercise price of \$ 0. 9059. Series A Warrants may be exercised on an alternative cash basis where each warrant exercised will result, in the Company issuing these three stockholders shares of common stock. The Series B Warrants provide, subject to certain exemptions, that if we sell or issue, any common stock or convertible securities, at an effective price per share less than the exercise price of the Series B Warrant then in effect, or a Dilutive Issuance, the exercise price of the Series B Warrant will be able reduced to influence our management and an amount equal** affairs and control the outcome of matters submitted to our stockholders for approval, including the election of directors and any sale, merger, consolidation, or sale of all or substantially all of our assets. These stockholders acquired their **the lowest daily volume weighted average** shares of common stock for substantially less than the price of the shares of common stock acquired in our public offerings, and these stockholders may have interests, with respect to their common stock, that are different from those of other investors and the concentration of voting power among one or more of these stockholders may have an adverse effect on the price of our common stock. In addition, this concentration of ownership might adversely affect the market price of our common stock by: (1) delaying, deferring or preventing a change of control of our company; (2) impeding a merger, consolidation, takeover or other business combination involving our company; or (3) discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of our company. We are party to certain agreements with our founders that may create a conflict of interest for our board of directors in evaluating a potential change of control transaction. We have entered into consulting agreements with Pink Possum, LLC ("VWAP Pink Possum") **during**, an entity controlled by Mr. Okonsky, who is the chairman of our board of directors and Chief Technology Officer, and Highbridge Consultants, LLC ("Highbridge"), an entity controlled by Mr. James, who is a former member of our board of directors and a significant shareholder, pursuant to which Messrs. Okonsky and James provide us with services. Pursuant to the consulting agreements, upon the occurrence of a Fundamental Transaction (as contemplated by such agreements), which generally includes a business combination, merger, or sale of all or substantially all of our assets (or similar events), for an aggregate gross sales price of \$ 100. 0 million or more, each entity will receive a cash payment equal to 1 % of such gross sales price. Since Messrs. Okonsky and James are entitled to these payments, they **the** may have a conflict of interest in determining whether a particular Fundamental Transaction is in the best interests of our stockholders. Furthermore, these payments upon the consummation of a Fundamental Transaction may make our company less attractive to a potential acquirer or may reduce the valuation we receive in connection with a Fundamental Transaction. Furthermore, if our market capitalization exceeds \$ 300. 0 million for a period of 21 **commencing five** consecutive trading days **following**, each of the **Dilutive Issuance** entities will receive an **and** additional cash payment equal to \$ 15. 0 million; provided **the number of shares issuable upon exercise of the Series B Warrant shall be proportionally adjusted so** that we will have the right **aggregate**

exercise price of the Series B Warrant shall remain unchanged. Further, in-if at any time on our- or after sole discretion, to make the (date of foregoing \$ 15. 0 million payment by the issuance of there occurs any shares- share of split, share dividend, share combination, recapitalization or other similar transaction involving our common stock -Since Messrs. Okonsky and James are entitled to these payments, they- the lowest daily VWAP during the five consecutive trading days prior to the date of such event and the five consecutive trading days after the date of such event is less than the exercise price then in effect, then the exercise price shall be reduced to the lowest daily VWAP during such period and the number of warrant shares issuable shall be increased such that the aggregate exercise price payable thereunder, after taking into account the decrease in the exercise price, shall be equal to the aggregate exercise price on the date of issuance. As a result of the 1 for 45 reverse stock split we completed on February 5, 2024, the exercise price of approximately 15. 8 million Series B Warrants were reset to \$ 1. 8646 based on the lowest VWAP over the course of the five day trading period through February 12, 2024 and the new amount of Series B Warrants as of this date became approximately 7. 1 million. As a result of the exchange of the Convertible Notes for Preferred Stock (convertible at \$ 1. 33 per share of common stock) in March 2024 noted above, the exercise price of the Series B warrants adjusted to \$ 0. 91 per share based on the lowest VWAP in the five day trading period through March 12, 2024 and the total number of Series B Warrants adjusted to approximately 14. 5 million. Further adjustments to the Series B Warrant exercise price and number of warrants may occur if we complete any additional transactions or complete another reverse stock split per the terms of the Series B Warrants. Although some of the holders of Series A and Series B Warrants have a conflict of interest ownership limitations, if and when evaluating we do issue shares of common stock to holders of other-- the transactions that Series A Warrants and Series B Warrants upon the exercise by the holder, such stockholders may have an impact on resell all, some our- or none of those shares of common stock at any time or from time to time at their discretion. Resales of our common stock may cause the market price capitalization. Additionally, if we elect to make any payments to the entities in the form of stock, it would reduce the ownership percentage of our securities to drop significantly, regardless of other-- the performance stockholders. In December 2022, the Company entered into an employment agreement with Mr. Okonsky which provided him with an annual salary of our business \$ 170, 000 and allowed him to participate in the Company's benefits which are available to all employees. The consulting agreement with Pink Possum was terminated but the provisions related to the occurrence of a Fundamental Transaction and the market capitalization thresholds and related cash payments remain in effect. Your ownership may be diluted if additional capital stock is issued to raise capital, to finance our operations, to complete acquisitions or in connection with strategic transactions. We may seek will need to raise additional funds -to finance our operations, to complete acquisitions or to develop strategic relationships by issuing equity or convertible debt securities, which would reduce the percentage ownership of our existing stockholders. Our board of directors has the authority, without action or vote of the stockholders, to issue all or any part of our authorized but unissued shares of common or preferred stock. Our certificate of incorporation authorizes us to issue up to 100-250, 000, 000 shares of common stock and 5, 000, 000 shares of preferred stock. Future issuances of common or preferred stock would reduce your influence over matters on which stockholders vote and would be dilutive to earnings per share. In addition, any newly issued preferred stock could have rights, preferences and privileges senior to those of the common stock. Those rights, preferences and privileges could include, among other things, the establishment of dividends that must be paid prior to declaring or paying dividends or other distributions to holders of our common stock or providing for preferential liquidation rights. These rights, preferences and privileges could negatively affect the rights of holders of our common stock, and the right to convert such preferred stock into shares of our common stock at a rate or price that would have a dilutive effect on the outstanding shares of our common stock. If our stock price fluctuates, you could lose a significant part of your investment. Since our initial public offering through March 3-27, 2023 2024 our share price has fluctuated from a high of \$ 17-3, 933 . 96-00 to a low of \$ 0. 95-565, (as adjusted for the 1 for 5 and 1 for 45 reverse stock splits completed in October 2023 and February 2024, respectively) and closed at \$ 1-0. 73-68 on March 3-27, 2023-2024. The market price of our common stock is subject to wide fluctuations in response to, among other things, the risk factors described in this filing and other factors beyond our control, such as fluctuations in the valuation of companies perceived by investors to be comparable to us. Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political, and market conditions, such as recessions, interest rate changes or international currency fluctuations, may negatively affect the market price of our common stock. In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business. We are party The terms of the Convertible Notes and Warrants impose additional challenges on our ability to certain raise capital. The agreements with related to the sale of the Convertible Notes and Warrants contain a number founder of restrictive covenants the Company and certain executive officers that may impose significant operating create a conflict of interest for our board of directors in evaluating a potential change of control transaction. We had previously entered into a consulting agreement Highbridge Consultants, LLC (" Highbridge "), and- an financial restrictions on entity controlled by Mr. Adrian James, who is a former member of our board of directors and current stockholder, pursuant to which Mr. James would provide us while with services. Pursuant to the consulting agreements Convertible Notes and Warrants remain outstanding, unless upon the restrictions are waived occurrence of a Fundamental Transaction (as contemplated by such agreement) consent of each holder, including which generally includes a business combination, merger but not limited to, restrictions on our- or sale of ability to incur additional indebtedness and guarantee indebtedness; incur liens or allow -- all mortgages or other encumbrances; redeem, or repurchase certain other debt; pay dividends or make other distributions or repurchase or redeem our-

or capital stock; sell substantially all of our assets or enter into or effect certain other transactions; issue additional equity (outside of the Convertible Notes and Warrants, issuances under our ~~or similar events~~ equity compensation plan and other limited exceptions); and enter into variable rate transactions, among other restrictions. A breach of the covenants or ~~for~~ restrictions under the agreements related to the sale of the Convertible Notes and Warrants and related agreements governing our indebtedness could result in an event of default under such agreements. As a result of these restrictions, we may be limited in how we conduct our business, unable to finance our operations through additional debt or equity financings and /or unable to compete effectively or to take advantage of new business opportunities. Further, while we could potentially receive up to an aggregate gross sales price of \$ 29-100. 2-0 million or more, Highbridge will receive a cash payment equal to 1 % of such gross sales price. This payment upon the consummation of a Fundamental Transaction may make our company less attractive to a potential acquirer or may reduce the valuation we receive in connection with a Fundamental Transaction. Furthermore, if our market capitalization exceeds \$ 300. 0 million for a period of 21 consecutive trading days, Highbridge will receive an additional cash payment equal to \$ 15. 0 million; provided that we will have the right, in our sole discretion, to make the foregoing \$ 15. 0 million payment by the issuance of shares of our common stock. If we elect to make any payments to the entities in the form of stock, it would reduce the ownership percentage of our other stockholders. In January 2024, the Company entered into an employment agreement with John Kim, a member of the board of directors of the Company, to become the Company' s CEO and President. Also in January 2024, the Company entered into an employment agreement with Greg Endo, the Company' s CFO and Executive Vice President. As part of the employment agreements with Mr. Kim and Mr. Endo, they are each entitled to a payment of 5 % of the gross proceeds from any merger, sale or change of control transaction (as determined by the board of directors) entered by the Company for a period of up to 6 months after termination of employment; provided that the they exercise are not terminated for Cause (as defined in the employment agreement). In March 2024, the Company entered into a consulting agreement with Christian Okonsky, a founder of the Company, chairman of the board of directors and former Chief Technology Officer. As part of the consulting agreement Mr. Okonsky is entitled to a payment of 1 % of the gross proceeds from any merger, sale or change of control transaction (as determined by the board of directors) entered by the Company for a period of up to 6 months following the termination of the consulting agreement. These change of control payments may create a conflict of interest for the these directors Warrants, the Placement Agent Warrant and the officers in evaluating any future change of control transactions. If we agree to complete additional warrant inducements to the holders of warrants issued to Aegis in in our August connection with Company' s 2022 public and May 2023 convertible note offering offerings (the " Investors 2022 Underwriter Warrant "), assuming we may reduce the exercise price in full of warrants held by Investors and we may issue additional warrants to the Investors to replace some or all of the Warrants warrants , the Placement Agent Warrant and 2022 Underwriter Warrant, no assurances can be made that were exercised. In September and October 2023, in an effort to raise cash, we entered into warrant inducement agreements with certain investors where we reduced the holders exercise price of such certain warrants will elect to induce them to these exercise warrants. To the extent we complete similar warrant inducements in the future, our stockholders may experience substantial dilution. We do not intend to pay dividends in the foreseeable future. We have never declared or paid any cash dividends on or our capital stock. We do all of such warrants and, accordingly, no not expect to pay assurance that we will receive any proceeds from the exercise of the Warrants, Placement Agent Warrant and 2022 Underwriter Warrant. We believe the likelihood that the holders will exercise the Warrants, the Placement Agent Warrant and the 2022 Underwriter Warrant, and therefore the amount of cash dividends on proceeds that we would receive, is dependent upon the trading price of our common stock in which as of the foreseeable future date this filing was below the exercise price of \$ 2. 85 for the Warrants, the exercise price of \$ 3. 5625 for the Placement Payment Agent Warrant and the exercise price of future dividends \$ 3. 75 for the 2022 Underwriter Warrant. If the trading price for our common stock is less than the exercise price for either the Warrants, if any the Placement Agent Warrant or the 2022 Underwriter Warrant, we believe the holders of such warrants will be at unlikely to exercise their the discretion of warrants. Accordingly, we may not receive cash proceeds with respect to either the Warrants, Placement Agent Warrant or our 2022 Underwriter Warrant board of directors and will depend on we are restricted in our ability to conduct additional debt or our equity financial condition, results of operations, capital requirements, restrictions contained in any financings financing instruments . The issuance of our common stock in connection with the Company' s outstanding warrants, provisions including the Warrants, the Placement Agent Warrant and the 2022 Underwriter Warrant, and the Convertible Notes, could cause substantial dilution, which could materially affect the trading price of our common stock. The Warrants, the Convertible Notes, the Placement Agent Warrant, and the 2022 Underwriter Warrant are exercisable or convertible, as applicable law , for up to 22, 072, 464 shares of the Company' s common stock. The additional shares of common stock issued upon the exercise or conversion, as applicable, of the Warrants, the Convertible Notes, the Placement Agent Warrant and the 2022 Underwriter Warrant will result in dilution to the then existing holders of common stock of the Company and increase the number of shares 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. The sale of our common stock by our stockholders, or the perception that stock sales may occur, could cause the price of our common stock to decline. On August 22, 2022 we entered into the Securities Purchase Agreement, pursuant to which we agreed to issue and sell to the investors in the private placement (i) the Convertible Notes in an and aggregate principal amount of \$ 27, 173, 913, at an initial conversion price of \$ 2. 25 per share of the Company' s common stock and subject to adjustment upon the occurrence of specified events, and (ii) the Warrants to purchase up to 9, 057, 971 shares of common stock with an initial exercise price of \$ 2. 85 per share of common stock. Contemporaneously, we entered into the Placement Agent Agreement, pursuant to which we agreed to issue the Placement Agent Warrant to purchase up to 603, 864 shares of the Company' s common stock at an exercise price of \$ 3. 5625. On February 1, 2022, we entered into an Underwriting Agreement, dated February 1, 2022, between the

Company and Aegis Capital Corp., pursuant to which we agreed to issue the 2022 Underwriter Warrant to purchase up to 333,334 shares of the Company's common stock at an exercise price of \$ 3.75. Therefore, up to 22,072,464 shares of the Company's common stock have been registered for resale. The sale of our common stock in the public market or otherwise, including sales of the common stock issuable upon the exercise or conversion of the Warrants, Convertible Notes, Placement Agent Warrant or the 2022 Underwriter Warrant, as applicable, by the holders of the Warrants, Convertible Notes, Placement Agent Warrant or the 2022 Underwriter Warrant, or the perception that such sales could occur, could harm the prevailing market price of our common stock. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate (which ability to sell equity securities is also subject to restrictions under the terms of the Securities Purchase Agreement and related agreements). If and when we do issue shares of common stock to holders of the Warrants, Convertible Notes, Placement Agent Warrant or the 2022 Underwriter Warrant, upon the exercise or conversion, as applicable, of the Warrants, Convertible Notes, Placement Agent Warrant or 2022 Underwriter Warrant, such stockholders may resell all, some or none of those shares of common stock at any time or from time to time at their discretion. Resales of our common stock may cause the market price of our securities to drop significantly, regardless of the performance of our business. We may not be able to maintain our listing on the Nasdaq, which could have a material adverse effect on us and our stockholders. The standards for continued listing on Nasdaq include, among other factors things, that the minimum bid price for the listed securities not fall below \$ 1.00 for a period in excess of thirty consecutive business days. During the months of May 2022, December 2022 and January 2023 our common stock traded at levels below \$ 1.00 per share, but never for thirty consecutive days. However, if the closing bid price of our common stock were to fail to meet Nasdaq's minimum closing bid price requirement, or if we otherwise fail to meet any other applicable requirements of Nasdaq and we are unable to regain compliance, Nasdaq may make a determination to delist our common stock. The delisting of our common stock from Nasdaq could negatively impact us by (i) reducing the liquidity and market price of our common stock; (ii) reducing the number of investors willing to hold or acquire our common stock, which could negatively impact our ability to raise equity financing; (iii) impacting our ability to use a registration statement to offer and sell freely tradable securities, thereby preventing or limiting us from accessing the public capital markets; and (iv) impairing our ability to provide equity incentives to our employees. If securities or industry analysts do not publish research or reports about us, or if they adversely change their recommendations regarding our common stock, then our stock price and trading volume could decline. The trading market for our common stock is influenced by the research and reports that industry or securities analysts publish about us, our industry and our market. If no analyst elects to cover us and publish research or reports about us, the market for our common stock could be severely limited and our stock price could be adversely affected. As a small-cap company, we are more likely than our larger competitors to lack coverage from securities analysts. In addition, even if we receive analyst coverage, if one or more analysts ceases coverage of us or fails to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. If one or more analysts who elect to cover us issue negative reports or adversely change their recommendations regarding our common stock, our stock price could decline.

If we fail to satisfy all applicable continued listing requirements of the Nasdaq Capital Market our common stock may be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock. Our common stock is currently listed on the Nasdaq Capital Market. In order to maintain that listing, we must satisfy minimum financial and other continued listing requirements and standards, including those regarding director independence and independent committee requirements, minimum stockholders' equity, minimum bid price, and certain corporate governance requirements. There can be no assurances that we will be able to comply with the applicable listing standards. On July 5, 2023, we received a notice from Nasdaq that we were not in compliance with Nasdaq's Listing Rule 5550 (b) (2), which requires that we maintain a market value of listed securities ("MVLS") of \$ 35 million. MVLS is calculated by multiplying our shares outstanding by the closing price of our common stock. On July 6, 2023, we received a notice from Nasdaq that we were not in compliance with Nasdaq's Listing Rule 5550 (a) (2), (the "Bid Price Rule") as the minimum bid price of our common stock had been below \$ 1.00 per share for 30 consecutive business days. On October 30, 2023, the Company received a notice from Nasdaq that it has now regained compliance with Rule 5550 (a) (2), as the minimum bid price of its common stock was above \$ 1.00 for 10 consecutive business days. On December 19, 2023, the Company received a notice from the Nasdaq that we were not in compliance with Nasdaq's Listing Rule 5550 (a) (2), (the "Bid Price Rule") as the minimum bid price of our common stock had been below \$ 1.00 per share for 30 consecutive business days. On December 26, 2023, the Company was notified by Nasdaq that we that we were not in compliance with Nasdaq's Listing Rule 5810 (c) (3) (A) (iii) as the closing bid price of our common stock had been below \$ 0.10 for ten consecutive trading days from December 11, 2023 through December 22, 2023 (the "Low Priced Stocks Rule") and was subject to delisting on January 2, 2024. On January 4, 2024 we received notice from Nasdaq that we did not meet the MVLS requirement and we were subject to delisting. The Company submitted a hearing request to Nasdaq's Hearings Department for both of these matters, which stayed the suspension of the Company's common stock. We participated in the hearing on March 26, 2024 and we were informed that we may be provided with a decision two weeks from this date, although the timing of the decision is at the discretion of Nasdaq. In the event that our common stock is delisted from Nasdaq and is not eligible for quotation or listing on another market or exchange, trading of our common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such an event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, and there would likely also be a reduction in our coverage by securities analysts and the news media, which could cause the price of our common stock to decline further. Also, it may be difficult for us to raise additional capital if we are not listed on a major exchange. In an effort to regain compliance with Nasdaq listing rules, we completed a reverse stock

split on October 13, 2023 and a reverse stock split on February 5, 2024. We cannot predict whether we will need to complete an additional reverse stock split and the effect that such reverse stock split will have on the market price for shares of our common stock. As noted in the risk factor above, we were out of compliance with the Bid Price Rule and the Low Priced Stocks Rule in December 2023. In an effort to regain compliance with these rules our board of directors authorized a reverse stock split of one for forty- five (1 for 45) on January 27, 2024 and we completed the reverse stock split on February 5, 2024. The Company’ s stock price as of March 27, 2024 is below \$ 1. 00 and we may complete another reverse stock split before June 17, 2024 in order to regain compliance with the Bid Price Rule. We cannot predict the effect that the reverse stock split will have on the market price for shares of our common stock, and the history of previous reverse stock splits has not resulted in our share price remaining above \$ 1. 00. Some investors may have a negative view of a reverse stock split. Even if the reverse stock split has a positive effect on the market price for shares of our common stock, performance of our business and financial results, general economic conditions and the market perception of our business, and other adverse factors which may not be in our control could lead to a decrease in the price of our common stock following the reverse stock split. Furthermore, even if the reverse stock split does result in an increased market price per share of our common stock, the market price per share following the reverse stock split may not increase in proportion to the reduction of the number of shares of our common stock outstanding before the implementation of the reverse stock split. Accordingly, even with an increased market price per share, the total market capitalization of shares of our common stock after a reverse stock split could be lower than the total market capitalization before the reverse stock split. Also, even if there is an initial increase in the market price per share of our common stock after a reverse stock split, the market price may not remain at that level. If the market price of shares of our common stock declines following the reverse stock split, the percentage decline as an absolute number and as a percentage of our overall market capitalization may be greater than would occur in the absence of the reverse stock split due to decreased liquidity in the market for our common stock. Accordingly, the total market capitalization of our common stock following the reverse stock split could be lower than the total market capitalization before the reverse stock split. If we complete a reverse stock split, the conversion price of our Preferred Stock and some of our outstanding warrants will adjust and some of the warrants will be adjusted to increase the number of warrants outstanding which will result in additional dilution to shareholders . As an “ emerging growth company ” under the Jumpstart Our Business Startups Act, or JOBS Act, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements. As an “ emerging growth company ” under the JOBS Act, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements. We are an emerging growth company until the earliest of: · the last day of the fiscal year during which we have total annual gross revenues of \$ 1. 235 billion or more; · the last day of the fiscal year following the fifth anniversary of our initial public offering; · the date on which we have, during the previous 3- year period, issued more than \$ 1 billion in non- convertible debt; or · the date on which we are deemed a “ large accelerated issuer ” as defined under the federal securities laws. For so long as we remain an emerging growth company, we will not be required to: · have an auditor report on our internal control over financial reporting pursuant to the Sarbanes- Oxley Act of 2002; · comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’ s report providing additional information about the audit and the financial statements (auditor discussion and analysis); · submit certain executive compensation matters to ~~shareholders~~ **stockholders** advisory votes pursuant to the “ say on frequency ” and “ say on pay ” provisions (requiring a non- binding ~~shareholder~~ **stockholder** vote to approve compensation of certain executive officers) and the “ say on golden parachute ” provisions (requiring a non- binding ~~shareholder~~ **stockholder** vote to approve golden parachute arrangements for certain executive officers in connection with mergers and certain other business combinations) of the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010; and · include detailed compensation discussion and analysis in our filings under the Securities Exchange Act of 1934, as amended, and instead may provide a reduced level of disclosure concerning executive compensation. Additionally, for so long as we remain an emerging growth company, we: · may present only two years of audited financial statements and only two years of related Management’ s Discussion and Analysis of Financial Condition and Results of Operations, or MD & A; and · are eligible to claim longer phase- in periods for the adoption of new or revised financial accounting standards under § 107 of the JOBS Act. We intend to take advantage of all of these reduced reporting requirements and exemptions, other than the longer phase- in periods for the adoption of new or revised financial accounting standards under § 107 of the JOBS Act. Certain of these reduced reporting requirements and exemptions were already available to us due to the fact that we also qualify as a “ smaller reporting company ” under SEC rules. For instance, smaller reporting companies are not required to obtain an auditor attestation and report regarding management’ s assessment of internal control over financial reporting; are not required to provide a compensation discussion and analysis; are not required to provide a pay- for- performance graph or CEO pay ratio disclosure; and may present only two years of audited financial statements and related MD & A disclosure.