

REFINITIV

# DELTA REPORT

## 10-K

WATT - ENERGOUS CORP

10-K - DECEMBER 31, 2023 COMPARED TO 10-K - DECEMBER 31, 2022

The following comparison report has been automatically generated

TOTAL DELTAS 4038

 CHANGES 164

 DELETIONS 1997

 ADDITIONS 1877

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**  
**FORM 10-K**

**(Mark One)**

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

For the Fiscal Year Ended December 31 2022, 2023

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

For the transition period from to

Commission file number: 001-36379

**ENERGOUS CORPORATION CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

Delaware

46-1318953

(State or Other Jurisdiction of Incorporation or Organization)

(I.R.S. Employer Identification No.)

3590 North First Street, Suite 210, San Jose, CA

95134

(Address of Principal Executive Offices)

(Zip Code)

(408) (408) 963-0200

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.00001 par value	WATT	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12 (g) of the Act: Common Stock, par value \$0.00001 per share None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C.7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act): Yes  No

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter was **\$76,236,739**, **\$21,787,566**. Solely for the purposes of this calculation, shares held by directors, executive officers and 10% owners of the registrant have been excluded. Such exclusion should not be deemed a determination or an admission by the registrant that such individuals are, in fact, affiliates of the registrant.

As of **March 28, 2023** **March 25, 2024**, there were **91,032,030** **6,082,686** shares of the registrant's common stock outstanding.

#### DOCUMENTS INCORPORATED BY REFERENCE

The registrant intends to file a definitive proxy statement pursuant to Regulation 14A within 120 days after the end of the fiscal year ended **December 31, 2022** **December 31, 2023**. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

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## ENERGOUS CORPORATION

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## PART I

As used in this Annual Report on Form 10-K ("Report"), unless the context otherwise requires the terms "we," "us," "our," and "Energous" refer to Energous Corporation, a Delaware corporation.

### FORWARD-LOOKING STATEMENTS

This Report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that are intended to be covered by the "safe harbor" created by those sections. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, can generally be identified by the use of forward-looking terms such as "believe," "expect," "may," "will," "should," "could," "seek," "intend," "plan," "estimate," "anticipate" or other comparable terms. All statements other than statements of historical facts included in this Report regarding our strategies, prospects, financial condition, operations, costs, plans and objectives are forward-looking statements. Examples of forward-looking statements include, among others, statements we make regarding proposed business strategy; market opportunities; regulatory approval; expectations for current and potential business relationships; expectations for revenues, cash flows and financial

performance; payment of future dividends; use of our at-the-market ("ATM") offering program; our liquidity position and capital resources; the impact of certain market risk exposures on our financial condition, results of operations or cash flows; and anticipated results of research and development efforts. These forward-looking statements are based on our current information and beliefs. Because forward-looking statements relate to the future, they are subject to inherent uncertainties, risks and changes in circumstances that are unpredictable and many of which are outside of our control. Actual results may differ materially from what is anticipated, so you should not rely on these forward-looking statements. Important factors that could cause actual outcomes to differ materially from those indicated in the forward-looking statements include, among others, the following: our ability to successfully execute our commercialization strategy for our products that have received regulatory certification; receipt of necessary regulatory approval; our ability to find and maintain development partners; market acceptance of our technology; competition in our industry; protection of our intellectual property; and other risks and uncertainties described in the Risk Factors and Management's Discussion and Analysis of Financial Condition and Results of Operations sections of this Report and our subsequently filed Quarterly Reports on Form 10-Q. We undertake no obligation to update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise.

## Item 1. Business

### Overview

We have developed our WattUp® wireless power networks technology ("WPNT"), consisting of semiconductor chipsets, software controls, hardware designs and antennas, that enables enable radio frequency-frequency ("RF") based charging for electronic Internet of Things ("IoT") devices. The WattUp technology Our WPNT has a broad spectrum of capabilities to enable the next generation of wireless power networks, delivering power and data in a seamless device portfolio. This includes near field and at-a-distance wireless charging, with multiple power levels at various distances. We believe our WattUp technologies WPNTs will help facilitate the deployment of the growing universe of Internet of Things ("IoT") IoT applications. According to Statista 2024, the International Data Corporation (IDC) August 2022 Market Forecast, the number of IoT market connected devices worldwide is forecasted to grow to approximately \$1.1 trillion in spending 29.4 billion units by 2026, 2030. The initial IoT applications that we are targeting are in the areas of RF tags for asset tracking and cold chain applications, electronic shelf labeling ("ESL"), and IoT sensors for retail, industrial, healthcare, and smart home/office logistics markets.

We believe our technology is innovative in its approach, in that we are developing solutions that charge electronic IoT devices using RF. To-date, RF technology. To date, we have developed and released to production multiple transmitters and receivers, including prototypes as well as and partner production designs. The transmitters vary based on form factor and power specifications and frequencies, while the receivers are designed to support a myriad of wireless charging applications, including Bluetooth tracking tags, IoT sensors, ESLs, beacons, stock management devices, security cameras, handheld devices, smart automation, wearables and hearables. including:

Device Type	Application
RF Tags	Cold Chain, Asset Tracking, Medical IoT
IoT Sensors	Cold Chain, Logistics, Asset Tracking
Electronic Shelf Labels	Retail and Industrial IoT

The first end product featuring our technology entered the market in 2019. We started shipping our first at-a-distance WattUp PowerBridge enabled transmitters wireless PowerBridges for commercial IoT applications in the fourth quarter of 2021, and we expect additional WattUp-enabled wireless power enabled products to be announced released as we move our business forward.

Our common stock is quoted on The Nasdaq Capital Market under the symbol "WATT". "WATT." We were incorporated in Delaware in 2012. Our corporate headquarters is located at 3590 North First Street, Suite 210, San Jose, CA 95134. Our website can be accessed at [www.energous.com](http://www.energous.com). The information contained on, or that may be obtained from our website, is not, and shall not be deemed to be, part of this Report.

## Our Business Strategy

We believe that a large market opportunity lies in wire-free low-power charging at-a-distance, which might develop as the Wi-Fi ecosystem developed. The goal is to ensure interoperability between transmitters and receivers that are based on our technology, regardless of who made them, installed them into finished goods, or marketed them. The implementation of previous ubiquitous solutions, such as Wi-Fi and Bluetooth, illustrates our goal. For example, Wi-Fi routers, regardless of their designer or manufacturer, work with Wi-Fi receivers installed in consumer electronics, regardless of manufacturer. We endeavor to:

- Build multiple integrated circuits ("ICs") to advance our technology;
- Build multiple integrated circuits ("ICs") to advance our technology;
- Develop, license, and manufacture a complete transmitter system solution to enable wireless power network growth;
- Develop reference designs to reduce early adopter risks, enable easier integration at lower costs, and foster adoption;
- Continue to build additional

value by converging networking, power, and data to provide smarter vertical solutions in the retail, industrial, healthcare, and logistic markets through our PowerBridge products designed for powering next generation IoT. Our first applications include RF tags, ESLs, and IoT sensors;

• Partner with leading technology providers, systems integrators and value-added resellers ("VARs");

• Provide cost effective benefits to customers in terms of utility and convenience;

• Develop and execute a strategy to gain global regulatory approval for ubiquitous and unlimited

distance  
charging;  
and  
• Support the  
AirFuel™  
Alliance  
("AFA"),  
which  
recently  
announced  
that AirFuel  
RF, the radio  
frequency-  
based  
wireless  
charging  
technology  
from AirFuel  
Alliance, is  
now an  
industry  
standard,  
underpinning  
the  
compatibility  
of our WPNT  
across a  
variety of  
vendors and  
development  
of a common  
user  
experience at  
the  
application  
level.

- Develop, license and manufacture a complete transmitter solution to enable wireless power network growth;
- Develop reference designs to reduce early adopter risks, enable easier integration at lower costs and foster adoption;
- Continue to build additional value by converging networking, power and data to provide smarter vertical solutions in the retail, industrial, healthcare and smart/home office markets through our WattUp PowerBridge products designed for powering next generation IoT. First target applications include RF tags, ESLs and IoT sensors;
- Partner with leading technology and systems companies;
- Provide game-changing benefits to the consumer in terms of utility and convenience;
- Develop and execute on a strategy to gain global regulatory approval for ubiquitous unlimited distance charging; and

- Support the AirFuel™ Alliance (AFA), which recently announced that AirFuel RF, the radio frequency-based wireless charging technology from AirFuel Alliance, is now an industry standard, underpinning the compatibility of our WattUp technology across vendors and develop a common user experience at the application level.

For our technology to become a ubiquitous solution for charging at-a-distance, we intend to pursue and build an ecosystem strategy, for our technology, engaging not only potential customers for our transmitter, receiver, and power amplifier IC's but also their upstream and downstream value chain partners. We intend to capitalize on our first-to-market advantage and prioritize protection of our intellectual property portfolio, as we believe this strategy will make it less likely that increase the barrier to entry for a competing platform will be able to gain a solid foothold in the RF-based wireless charging market and compete with our technology in a meaningful way.

To engage with potential customers, of the WattUp IC's, we offer the Evaluation Kits several evaluation kits consisting of a transmitter and a receiver along with the enabling a custom software to allow application ("WattUp"), allowing potential strategic partners to test the technology in their labs. The kits form a base "building block" component that is scalable to meet the needs of specific applications. We are developing processes and support capabilities to assist potential customers as they evaluate the technology and develop specific designs to incorporate it.

To validate our technology, we originally sought out engaged with customers that were smaller, more nimble early adopters with relatively short product cycles, with the aim of shipping fully integrated WattUp enabled WPNT devices to the consumer customers as quickly as possible. At As the same time, market and our technology reaches a more mature phase, we began are now engaging larger, top-tier customers able to engage with larger, top tier customers with the ability to ship WattUp enabled consumer and IoT devices use our WPNT in mass quantities. We are also engaged working with companies that have with much longer product cycles in multiple vertical markets.

Since we are developing a new electronics charging paradigm, we expect many operational details of our strategy markets to continue to evolve as integrate our technology matures, engineering breakthroughs occur and new partner collaborations are formed. into a cost-effective strategic solution specific to their respective use cases.

### Impact of Current Global Economic Conditions on Our Business

Uncertainty in the global economy presents significant risks to our business. We are subject to continuing risks and uncertainties in connection with exposure relating to the current macroeconomic environment, including as a result of inflation and rising interest rates, geopolitical factors, including the ongoing conflict between Russia and Ukraine as well as in the Middle East and the responses thereto and supply chain disruptions and the remaining effects of the COVID-19 pandemic. disruptions. We are closely monitoring the impact of these factors on all aspects of our business, including their impact on our operations, financial position, cash flows, inventory, supply chains, global regulatory approvals, purchasing trends, customer payments, and the industry in general, in addition to the impact on our employees.

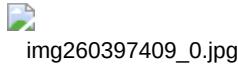
We believe that the COVID-19 pandemic delayed adoption of our technology by potential customers who have experienced workforce and supply chain disruptions, and who continue to evaluate their future prospects and business models, including partnerships with us. Further delays in the adoption of our current or future products could result from the ongoing pandemic and other macroeconomic events. At times,

certain of our outsourcing partners, component suppliers and logistical service providers have experienced disruptions, resulting in supply shortages that have affected and may continue to affect our sales. Similar disruptions could occur in the future.

## Our Technology

Our WattUp® technology award-winning, RF-based, scalable WPNT enables wireless charging, ranging from contact-based applications to at-a-distance applications, which charge over the air. An award-winning, RF-based, scalable technology, WattUp transforms air, transforming the way electronic devices are charged and powered.

Figure 1 below shows the current IC product line for Energous:



Our small form factor antennas and one transmitter to many multiple receivers capabilities represent produce significant advantages over RF-beamforming transmitters, which are larger, and higher cost wireless power technology implementations. Our current generation ICs have significantly reduced the size and cost of both transmitter technology and our receiver technology, and products under development are designed to further reduce size and cost. In addition, our ICs are designed for both lower-power and higher-power applications, efficiency and faster synchronization, while working within the constraints of multiple international regulatory environments.

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In 2022 2023 we continued to leverage the growing ecosystem of investments made by a number of IoT leaders. While participating exhibiting at the CES 2023, we demonstrated the world's first smart football in partnership with Catapult. Catapult, a global sports science and analytics company. We also demonstrated the world's first battery-free CO2 sensor in partnership with Sensirion, a leader in sensor technology, and a full battery-free sensor for a lighting application targeting vertical farming in partnership with ams Osram. We Osram AG, a global leader in intelligent sensors and emitters. During 2023, we also upgraded our IoT Wireless power network WPNT, connecting Juniper Mist WiFi Access Points to multiple WattUp PowerBridge transmitters at 1W, 2W, and 5W. We showed demonstrated charging receiver device interoperability by simultaneously powering RF tags from Wiliot controlled by their Sensing as a Service Cloud Software, ESL tags using e-Peas devices, an IoT Device using Atmotic's BLE chips, and network edge computing, driven by Syntiant's Artificial Intelligence voice recognition technology, all of which were managed by WattUp our WPNT Software.

Figure 2 below shows the block diagram for our 1W WattUp PowerBridge Transmitter



## Our Competition

Competing methods for charging battery-powered devices include wall plug-in charging, inductive charging, magnetic resonance charging and more. To our knowledge, almost all consumer electronics equipped with a rechargeable battery come bundled with a charging method, such as a power cord. We believe the advantages of our WattUp wireless power network technology including size, cost, mobility,

foreign object detection, and portability - coupled with the unique capability to charge devices both on contact as well as at-a-distance in a fully compatible ecosystem, will foster broad adoption of the technology over time.

A variety of wireless charging technologies are on the market or under development today. These competitive technologies fall into the following **short-range** categories:

**Inductive Coil Charging.** Inductive coil charging uses a magnetic coil to create resonance, which can transmit energy over very short distances. Essentially this is a contact technology whereby the transmitter and receiver need to be closely aligned to charge. Power is delivered as a function of coil size (the larger the coil, the more power), and coils must be directly paired (one receiver coil to one transmitter coil = directly coupled pair). Products utilizing magnetic induction have been available for 10+ years in products such as rechargeable electronic toothbrushes.

**Magnetic Resonance.** Magnetic resonance is similar to magnetic induction, as it uses magnetic coils to transmit energy. This technology uses coils that range in size depending on the power levels being transmitted. It has the ability to transmit power at distances up to ~11 inches (30cm) which can be increased with the use of resonance repeaters. It also has more flexibility of placement than magnetic induction.

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**Energy Harvesting.** There are multiple companies looking at harvesting energy that may be present in certain environments. The energy harvested may come from a variety of sources, including Solar, Kinetic and Passive RF. Passive RF harvesting refers to using antennas and devices to harvest RF that may already be present in an environment, such as Wi-Fi, mobile phones, cordless phones and other RF emitting devices.

**Laser.** Laser charging technology uses very short wavelengths of light to create a collimated beam that maintains its size over distance, using what is described as distributed resonance to deliver power to an optical receiver.

## Our Target Markets

We categorize our target markets as transmitter markets and receiver markets.

### Transmitter System Target Markets

Transmitters are devices that broadcast RF energy that can be accessed by WattUp-enabled WPNT enabled receivers in consumer electronics for IoT applications. We believe our transmitter target market can be divided into three distinct applications for our technology:

- Stand-alone transmitters that are either sold independently or bundled as part of a pairing with WattUp-enabled receiver devices;
- Stand-alone transmitters that are either sold independently or bundled as part of a pairing with WattUp-enabled receiver devices;
- Stand-alone transmitters that are either sold independently or bundled as part of a pairing with WattUp-enabled receiver devices;

part of a pairing with wireless power technology-enabled receiver devices;

- Transmitters that are integrated into third party industrial, medical and enterprise devices; and

- Transmitters that can be integrated into Bridge and Wi-Fi routers to form a single device that provides both connectivity and wire-free power for a particular area.

To date we have released stand-alone transmitters in both near field and far field applications.

Our plan in the future is to integrate our WPNT in third party devices:

- Transmitters that are integrated into third party industrial, medical and enterprise devices; and

- Transmitters that could be integrated into Bridge and Wi-Fi routers to form a single device that provides both connectivity and wire-free power for a particular area.

We plan to release stand-alone and integrated transmitter technology in three categories:

#### **WattUp Near Field Transmitters:**

Because of its advantages over other forms of contact-based wireless charging, including incorporation into multiple form factors and potential compatibility with future distance transmitters, we expect transmitters using our WattUp Near Field wireless power technology to be the first WattUp enabled wireless transmitter products on the market. These contact-based charging solutions are ideally suited for many electronic devices in both consumer and industrial markets such as wearables, IoT devices and other small electronics that require a small form factor receiver and a low-cost charging solution. They are also suitable for larger, more power-hungry devices such as smart watches and tablets. Initially these transmitters will be one-to-one (one transmitter to one receiver), with future versions being single transmitters for multiple receivers.

#### **WattUp**

#### **Far Field Transmitters:**

Transmitters based on WattUp the Energous Far Field technology, which we refer to as the WattUp Wireless PowerBridge, are expected to provide low power charging for multiple devices with the capability of extending the range through the deployment of multiple WattUp PowerBridges. We expect that WattUp our PowerBridge transmitters transmitter systems will have the ability to broadcast wireless power to WattUp wireless power enabled receiving devices for charging. WattUp PowerBridge transmitters may play a significant role in the charging of low power IoT devices—such as ESLs, RF tags, security cameras and IoT sensors.

#### **Transmitters Integrated into Third Party Devices:**

The “building block” core architecture developed for the WattUp wireless power network technology is suited to a broad range of third party third-party devices in both industrial and consumer markets. The flexibility of the architecture in terms of size, power, distance, and cost affords Energous customers the opportunity to match our technology with specific requirements and limitations typically found with complex integrations. For example, the WattUp transmit wireless power transmitter technology could be integrated into a WiFi Wi-Fi router on the ceiling of a manufacturing floor or hospital ward, providing both internet connectivity and wireless power to any devices within range.

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#### **WattUp PowerBridges:**

We see the combination of wireless power router routers and the wireless bridges as a natural integration point and a synergistic application of both technologies. WattUp PowerBridges provide the bridge to Wi-Fi, 5G and other Wide Area network technologies while also providing wireless power to in-range receiver devices. WattUp PowerBridges share a number of technical characteristics with Wi-Fi routers in that: (1) both devices operate in the airwaves in the unlicensed industrial, scientific and medical bands, (2) both devices owe their success to the utility and convenience they bring to the consumer, (3) both devices rely on antennas, and (4) both devices “pair” or provide hand off capabilities which allow for networks to provision large sites.

## Receiver Target Markets

We believe there are many potential uses for our receiver technology, including:

- IOT devices including asset trackers, sensors, retail displays, security devices • IOT devices including asset trackers, sensors, retail displays, security devices
- Smart Home, Medical, Industrial, and other Sensors • Smart home, medical, industrial, and other sensors
- ESLs • ESLs
- Logistics and asset tracking tags and sensors
- Peripheral devices such as computer mice and keyboards
  - Rechargeable lights • Gaming lights
  - Hearing aids • Rechargeable batteries
  - Remote controls • controllers
  - Gaming consoles and controllers
  - Hearing aids
  - Rechargeable batteries
  - Auton-  
Rech-  
acces-  
batte
- Smart textiles
- Wearables
- Medical devices
- Wearables
- Medical devices

This list is meant to be illustrative only; we cannot guarantee that we will address any of these markets, and we may decide to address a market that is not on the list. We intend to continue to evaluate our target markets and **choose** **identify** new markets based on factors including (but not limited to) time-to-market, market size and growth, and the strength of our value proposition for a specific application.

## **Our Intellectual Property**

Our most valuable asset is our intellectual property. This includes U.S. and foreign patents, patent applications and know-how. We have implemented an aggressive intellectual property strategy and are continuing to pursue patent protection for new innovations. As of **March 10, 2023** **March 1, 2024**, the Energous IP portfolio contained over **200** **250** issued patents organized along five (5) critical paths to implementation that we believe a competitor may have to navigate to commercialize wireless power technology. The paths are: Processing Algorithms, Antenna Designs, Transmitter and Receiver ASICs, Other Software Controls (e.g., Bluetooth Management and Hardware (e.g., Board Layout). Further, we have additional pending patent applications in the U.S. and abroad. We intend to file for patent protection for the most valuable of our inventions, as well as for other new inventions that we expect to develop. This is a significant annual expense and we continually monitor the costs and benefits of each patent application and issued patent to ensure we pursue those that we believe are most protective for our business and expand our core value. So long as we make the business decision to continue paying maintenance and/or annuity fees, our issued patents have terms that would not expire earlier than 2030.

## Government Regulation

Our wire-free charging technology involves the transmission of power using RF energy, which is subject to regulation by the FCC, international regulators and may be subject to regulation by other federal, state, local and international agencies. Our technology has been tested against U.S. and international safety requirements which has consistently demonstrated that our technology is safe. We continue to work with regulatory bodies to establish processes, standards and spectrum allocation to ensure devices incorporating WattUp our technology can secure required domestic and international approvals.

As part of the regulatory approval process, devices incorporating the WattUp our technology must obtain approvals under FCC Part 15 and/or FCC Part 18 in the U.S., depending on the specific application. Energous has received Part 15 and Part 18 FCC approvals for WattUp enabled our products and has received regulatory approvals from many international agencies.

### Current FCC Approvals for WattUp Energous Technology

FCC ID	Description	Grant Date
2ADNG-MLA1599	Digital Transmission System Bluetooth Accessory 2.4GHz	12/30/2014
2ADNG-MT100	Close Coupled 5.8 GHz Charger Pad	05/24/2016
2ADNG-NF130	RF Wireless Charger and Receiver 5.8 GHz	05/02/2017
2ADNG-NF130	Digital Transmission System for Bluetooth 2.4 GHz	05/02/2017
2ADNG-MS300	Wireless Charger 913 MHz	12/26/2017
2ADNG-MS300	Digital Transmission System for Bluetooth 2.4 GHz	12/26/2017
2ADNG-MS300A	WPT Client Device 913 MHz	01/05/2018
2ADNG-MS300A	Digital Transmission System WPT Client Device with BLE 2.4 GHz	01/05/2018
2ADNG-NF230	RF Wireless Charger 918 MHz	04/09/2018
2ADNG-NF230	Digital Transmission System for Bluetooth 2.4 GHz	04/09/2018
2ADNG-NF330	RF Wireless Charger 918MHz	07/29/2019
2ADNG-NF330	Digital Transmission System for Bluetooth 2.4 GHz	07/29/2019
2ADNG-MS550	RF Wireless Charger 918MHz	04/21/2020
2ADNG-MS550	Digital Transmission System for Bluetooth 2.4 GHz	04/21/2020
2ADNG-MS550	RF Wireless Charger 918MHz	09/30/2020
2ADNG-MS550	Digital Transmission System for Bluetooth 2.4 GHz	09/30/2020
2ADNG-VN15	RF Wireless Charger 918MHz	10/19/2021
2ADNG-VN15	Digital Transmission System for Bluetooth 2.4 GHz	10/19/2021
2ADNG-VN1810	RF Wireless Charger 918MHz	11/30/2021
2ADNG-VN1810	Digital Transmission System for Bluetooth 2.4 GHz	11/30/2021
2ADNG-VN25	RF Wireless Charger 918MHz	01/14/2022

2ADNG-VN25	Digital Transmission System for Bluetooth 2.4 GHz	01/14/2022
2ADNG-VN55	RF Wireless Charger 918MHz	06/02/2022
2ADNG-VN55	Digital Transmission System for Bluetooth/Zigbee 2.4 GHz	06/02/2022
2ADNG-VN1820	RF Wireless Charger 918MHz	08/10/2022
2ADNG-VN1820	Digital Transmission System for Bluetooth 2.4 GHz	08/10/2022
2ADNG-VN55	RF Wireless Charger 918MHz	11/14/2023
2ADNG-VN55	Digital Transmission System for Bluetooth/Zigbee 2.4 GHz	11/14/2023

As of **December 31, 2022** **December 31, 2023**, we announced completion of the regulatory process for our **WattUp** PowerBridge wireless charging technology in US, Canada, Europe, India, China, UK, Korea, Australia and New Zealand, for unlimited distance wireless charging. As of **March 20, 2023** **March 1, 2024**, products integrating **WattUp®** **this** technology had received international regulatory approvals in over 110 countries.

#### Manufacturing

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#### Manufacturing

As a fabless semiconductor company in the research and development stage, we foresee our manufacturing strategy to follow an outsourced manufacturing process. We are engaged with contract manufacturing partners in the United States and internationally.

#### Human Capital

As of **March 20, 2023** **March 1, 2024**, we had **43** **37** full-time employees, **33** **30** of whom are Engineers. None of these employees are covered by a collective bargaining agreement, and we believe our relationship with our employees is good. We also employ consultants, including technical advisors, on an as-needed basis, for their technical expertise. Consultants and technical advisors provide us with expertise in electrical engineering, software development, market research and accounting.

We are committed to maintaining a workplace free from discrimination and harassment on the basis of color, race, gender, age, disability, sexual orientation, religion, expression, or any other status protected by applicable law. Our management and employees are expected to exhibit and promote honest, ethical and respectful conduct in the workplace.

#### Seasonality

##### Seasonality

The industrial markets in which we are involved have minimal seasonal impact. The consumer markets for the commercial products that we anticipate our technology can be used in, including the markets in which we currently have proof of concept deployments, vary in their seasonal impact. Overall, we do not foresee a material seasonal impact to our revenue at this time.

#### Available Information

We file annual, quarterly and current reports, proxy statements and other documents with the Securities and Exchange Commission, or SEC, under the Securities Exchange Act of 1934, as amended, or Exchange Act. The SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at [www.sec.gov](http://www.sec.gov). Copies of each of our filings with the SEC can also be viewed and downloaded free of charge at our website, <https://ir.energous.com/>, after the reports and amendments are electronically filed with or furnished to the SEC.

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#### Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information set forth in this Report.

We are subject to many risks and uncertainties that may harm our business, prospects, results of operations and financial condition. This discussion highlights some of the risks and uncertainties that might adversely affect our business, prospects, future operating results of operations and financial condition in material ways. We believe these are the risks and uncertainties that these are the most important risks and uncertainties that ones we face. We cannot be certain that we will successfully address these risks, and uncertainties, and if we are unable to address them, our business may not grow, our stock price may suffer and you could lose all or part the value of your investment in us, the Company. Other risks and uncertainties that we have not yet identified, that we do not currently consider to be recognize as material risks, or that are similar to risks faced by other companies in our industry, may also impair our business, prospects, results of operations and financial condition. The risks discussed below include forward-looking statements, and our actual results may differ substantially from what is in these forward-looking statements.

#### Summary of Risk Factors

##### Risks Related to Our Financial Condition

- We have no history of generating meaningful product revenue, and we may never achieve or maintain profitability.
- We will need additional financings to achieve our long-term business plans, and there is no guarantee that it will be available on acceptable terms, or at all.
- We may be adversely affected by the effects of inflation.

##### Risks Related to Our Technology and Products

- We may not be able to develop all the features we seek to include in our technology.
- We make significant investments in our products and may be unable to demonstrate the commercial feasibility of the full capability our technology or achieve profitability.
- Expanding our business operations as we intend will impose new demands on our financial, technical, operational and management resources.
- If products incorporating our technology are launched commercially but do not achieve widespread market acceptance, we will not be able to generate the revenue necessary to support our business.

- Our products, or the products of our licensing partners, could be susceptible to errors, defects, or unintended performance problems that could result in lost revenue, liability or delayed or limited market acceptance.
- As products incorporating our technology are launched commercially, we may experience seasonality or other unevenness in our financial results in consumer markets or a long and variable sales cycle in enterprise markets.
- Future products based on our technology may require the user to purchase additional products to use with existing devices. To the extent these additional purchases are inconvenient or costly, the adoption of our technology under development or other future products could be slowed, which would harm our business.
- Laboratory conditions differ from field conditions, which could reduce the effectiveness of our technology under development or of future products. Failures to move from laboratory to the field effectively would harm our business.
- Safety concerns and legal action by private parties may affect our business.
- Our industry is subject to intense competition and rapid technological change, which may result in technology that is more advanced or superior to ours. If we do not keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our technology and products may become less useful or obsolete and our operating results will suffer.

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- If the quality of our products does not meet the expectations of our licensing partners or the end users of our licensing partners' products or regulatory or industry standards, then our sales and operating earnings, and ultimately our reputation, could be negatively impacted.
- If our products do not effectively interoperate with wireless networks and the wireless devices that integrate them, future sales of our products could be negatively affected.
- We require third-party components, including components from limited or sole source suppliers, to build our products. The unavailability of these components could substantially disrupt our ability to manufacture our products and fulfill sales orders.
- Our dependence on commodities and certain components subjects us to cost volatility and potential availability constraints.
- Our products rely on the availability of unlicensed RF spectrum and if such spectrum were to become unavailable through overuse or licensing, the performance of our products could suffer and our revenues from their sales could decrease.
- Reliance upon a few major customers may adversely affect our revenue and operating results.
- If our licensing partners do not effectively manage inventory of their products which integrate our technology, fail to timely resell such products or overestimate expected future demand, they may reduce purchases in future periods, causing our revenues and operating results to fluctuate or decline.
- If we are not able to effectively forecast demand or manage our inventory, we may be required to record write-downs for excess or obsolete inventory.

#### **Risks Related to Our Intellectual Property and Other Legal Risks**

- It is difficult and costly to protect our intellectual property and our proprietary technologies, and we may not be able to ensure their protection.
- We depend upon a combination of patents, trade secrets, copyright and trademark laws to protect our intellectual property and technology.
- We may be subject to patent infringement or other intellectual property lawsuits that could be costly to defend.

- We could become subject to product liability claims, product recalls, and warranty claims that could be expensive, divert management's attention and harm our business.
- Our business is subject to data security risks, including security breaches.
- If we are not able to satisfy data protection, security, privacy and other government- and industry-specific requirements or regulations, our business, results of operations and financial condition could be harmed.
- If we are not able to secure advantageous license agreements for our technology, our business and results of operations will be adversely affected.

#### **Risks Related to Regulation of Our Business**

- Domestic and international regulators may deny approval for our technology, and future legislative or regulatory changes may impact our business.

#### **Risks Related to Personnel**

- We are highly dependent on key members of our executive management team. Our inability to retain these individuals could impair our business plan and growth strategies, which could have a negative impact on our business and the value of your investment.
- Our success and growth depend on our ability to attract, integrate and retain high-level engineering talent.

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- We are subject to risks associated with our utilization of engineering consultants.

#### **Risks Related to Ownership of Our Common Stock**

- We are a "smaller reporting company," and the reduced disclosure requirements applicable to smaller reporting companies could make our common stock less attractive to investors.
- If we are unable to maintain effective internal control over financial reporting, investors may lose confidence in the accuracy of our financial reports.
- You might lose all or part of your investment.
- Our stock price is likely to continue to be volatile.
- We have not paid dividends in the past and have no immediate plans to pay dividends.
- We expect to continue to incur significant costs as a result of being a public reporting company and our management will be required to devote substantial time to meet our compliance obligations.
- We may be subject to securities litigation, which is expensive and could divert management attention.
- Our ability to use Federal net operating loss carry forwards to reduce future tax payments may be limited if our taxable income does not reach sufficient levels.
- Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable.
- Our warrants that are accounted for as liabilities and the changes in value of our warrants could have a material effect on the market price of our common stock or our financial results.

#### **General Risk Factors**

- If we fail to comply with the requirements for continued listing on Nasdaq, our common stock will be subject to delisting. Our ability

publicly or privately sell equity securities and the liquidity of our common stock could be adversely affected if our common stock is delisted.

- Adverse macroeconomic conditions, natural disasters or reduced technology spending could adversely affect our business, opera results, and financial condition.
- If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our busi our stock price and trading volume could decline.

## Risks Related to Our Financial Condition

***We have no history of generating meaningful product revenue, and we may never achieve or maintain profitability.***

We have a limited operating history upon which investors may rely in evaluating our business and prospects. We have generated limited revenues to date, and as of **December 31, 2022** **December 31, 2023**, we had an accumulated deficit of approximately **\$363** **\$382 million**. Our ability to generate revenues and achieve profitability will depend on our ability to execute our business plan, complete the development and approval of our technology, incorporate the technology into products that customers wish to buy, and, if necessary, secure additional financing. There can be no assurance that our technology will be adopted widely, that we will ever earn revenues sufficient to support our operations, or that we will ever be profitable. Furthermore, there can be no assurance that we will be able to raise capital as and when we need it to continue our operations. If we are unable to raise sufficient additional capital, we may be required to delay, reduce or severely curtail our research and development or other operations, which could have a material adverse effect on our business, operating results, financial condition, long-term prospects and ability to continue as a viable business. If we are unable to generate revenues of sufficient scale to cover our costs of doing

business, our losses will continue and we may not achieve profitability, which could negatively impact the value of your investment in our securities.

***We will likely need additional financings to achieve our long-term business plans, and there is no guarantee that it will be available on acceptable terms, or at all.***

We may not have sufficient funds to fully implement our long-term business plans. **It is likely that we** **We** will need to raise additional capital through new financings, even if we begin to generate meaningful commercial revenue. For example, new product development for business partners may require considerable expense in advance of any substantial revenue being earned for such products. Such financings could include equity financing, which may be dilutive to our current stockholders, and debt financing, which could restrict our operations and ability to

borrow from other sources. In addition, such securities may contain rights, preferences or privileges senior to those of current stockholders. As a result of current macroeconomic conditions and general global economic uncertainty (including as a result of the remaining effects of **COVID-19, the ongoing conflict between Russia and the Ukraine and the global response thereto, health pandemic, regional conflicts around the world, increases in inflation, fluctuating interest rates, and disruptions to global supply chains**) **chains**, recent turmoil in the global banking sector, volatile global financial markets, the potential for government shutdowns and uncertainty regarding the federal budget and debt ceiling), political change, labor market shortages and other factors, we do not know whether additional capital will be available when needed,

or that, if available, we will be able to obtain additional capital on reasonable terms. If we are unable to raise additional capital due to the volatile global financial markets, recent turmoil in the global banking sector, general economic uncertainty or any other factor, we may be required to curtail development of our technology or reduce operations as a result, or to sell or dispose of assets. Any inability to raise adequate funds on commercially reasonable terms or at all could have a material adverse effect on our business, results of operations and financial condition, including the possibility that a lack of funds could cause our business to fail and liquidate with little or no return to investors.

***We may be adversely affected by the effects of inflation.***

Inflation has the potential to adversely affect our liquidity, business, financial condition and results of operations by increasing our overall cost structure. The U.S. capital markets have experienced and continue to experience extreme volatility and disruption. Inflation rates in the U.S. have increased significantly since 2022 resulting in federal action to increase interest rates, adversely affecting capital markets activity. We expect certain inflationary elements to ease, with a moderate increase in 2024. However, the existence of inflation in the economy has resulted in, and may continue to result in, higher interest rates and capital costs, shipping costs, supply shortages, increased costs of labor, labor shortages, weakening exchange rates and other similar effects. As a result of inflation, we have and may continue to experience cost increases, including increases in our supply chain costs. 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, there could be a difference between the timing of when these beneficial actions any positive impact on our results of operations could be delayed and when the cost of inflation is incurred, not immediately apparent. Additionally, because we purchase component parts from our suppliers, we may be adversely impacted by their inability to adequately mitigate inflationary, industry, or economic pressures. Similarly, inflationary pressures may also negatively impact consumer purchasing power, which could result in reduced demand for our products.

**Risks Related to Our Technology and Products**

***We may not be able to develop all the features we seek to include in our technology.***

We have developed commercial products, as well as working prototypes, that utilize our technology. Additional features and performance specifications we seek to include in our technology have not yet been developed. For example, some customer applications may require specific combinations of cost, footprint, efficiencies and capabilities at various frequencies, charging power levels and distances. We believe our research and development efforts will yield additional functionality and capabilities for our products over time. However, there can be no assurance that we will be successful in achieving all the features we are targeting, and our inability to do so may limit the appeal of our technology to consumers.

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***We make significant investments in our products and may be unable to demonstrate the commercial feasibility of the full capability of our technology, technology or achieve profitability.***

We have developed both commercial products and working prototypes that use our technology at differing power levels and charging distances, but additional research and development is required to realize the potential of our technology for applications at increasing power levels and distances that can be successfully integrated into commercial products. Research and development of new technologies is, by its nature, unpredictable. We could encounter unanticipated technical problems, the inability to identify products utilizing our technology that will be in demand with customers, getting our technology designed into those products, designing new products for

manufacturability, regulatory hurdles and achieving acceptable price points for final products. Although we intend to undertake development efforts with commercially reasonable diligence, there can be no assurance that our available resources will be sufficient to enable us to develop our technology to the extent needed to create future revenues to sustain our operations.

Our technology must satisfy customer expectations and be suitable for use in consumer applications. Any delays in developing our technology that arise from factors of this sort would aggravate our exposure to the risk of having inadequate capital to fund the research and development needed to complete development of these products. Technical problems leading to delays would cause us to incur additional expenses that would increase our operating

losses. If we experience significant delays in developing our technology and products based on it for use in potential commercial applications, particularly after incurring significant expenditures, our business may fail, and you could lose all or part of the value of your investment in the Company.

In addition, we have made and will continue to make significant investments in the research and development of new and existing technologies and products. Investments in new technologies and enhancements to our existing technologies are speculative and technological feasibility may not be achieved. Commercial success depends on many factors including demand for innovative technology, availability of materials and equipment, selling price the market is willing to bear, competition and effective licensing or product sales. We may not achieve significant revenue from our product investments for a number of years, if at all. Moreover, new technologies and products may not be profitable, and even if they are profitable, operating margins for new products may not be as high as the margins we originally anticipated. If we fail to develop practical and economical commercial products based on our technology, or are unable to achieve profitability in commercializing those products, our business may fail and you could lose all or part of the value of your investment in our stock.

***Expanding our business operations as we intend will impose new demands on our financial, technical, operational and management resources.***

Our ability to grow our business involves various risks, including the need to invest significant resources in unfamiliar and new markets and the possibility that we may not realize a return on our investments in the near future or at all. To date we have operated primarily in the research and development phase of our business. If we are To be successful in commercializing our product offerings, we will need to expand our business operations, which will require us to incur significant expenses before we generate any material revenue and will impose new demands on our financial, technical, operational and management resources. If For example, if we do not upgrade invest in developing and upgrading our technical, administrative, operating and financial control systems, or if unexpected expansion difficulties arise, including issues relating to our research and development activities, then retention of experienced scientists, managers and engineers could become more challenging and have a material adverse effect on our business, results of operations and financial condition. ***If products incorporating our technology are launched commercially but do not achieve widespread market acceptance, we will not be able to generate the revenue necessary to support our business.***

We may successfully complete the technical development of our products, but still fail to develop a commercially successful product. Market acceptance of a an RF-based charging system as a preferred method for

charging electronic devices will be crucial to our success. The following factors, among others, may affect the level of market acceptance of our products:

- the price of products incorporating our technology relative to other products or competing technologies;
- the rate of innovation of competing technologies;
- user perceptions of the convenience, safety, efficiency and benefits of our technology;
- the effectiveness of sales and marketing efforts of our commercialization partners and of our competitors;
- the support and rate of acceptance of our technology and solutions with our development partners;
- press and blog coverage, social media coverage, and other publicity factors that are not within our control; and
- regulatory developments and the failure to obtain any required regulatory approvals for the

use of our products or the products of our licensing partners.

- user perceptions of the convenience, safety, efficiency and benefits of our technology;
- the effectiveness of sales and marketing efforts of our commercialization partners;
- the support and rate of acceptance of our technology and solutions with our development partners;
- press and blog coverage, social media coverage, and other publicity factors that are not within our control; and
- regulatory developments.

If we are unable to successfully commercialize, including to achieve or maintain market acceptance of our technology, and if related products do not win widespread market acceptance, our business will be significantly harmed.

***Our products, or the products of our licensing partners, could be susceptible to errors, defects, or unintended performance problems that could result in lost revenue, liability or delayed or limited market acceptance.***

Despite our quality assurance testing, our technology may contain undetected defects or errors that may affect the proper use of our products or the products of our licensing partners' which incorporate them. Because our products are embedded in other end-use products and rely on stable transmissions, the performance of our products could unintentionally jeopardize the performance of our licensing partners' product performance. Defects or errors in our technology may discourage existing and future partners from using our technology to develop a range of commercial products. These defects or errors could also result in product liability, service level agreement claims or warranty claims. Any such defects, errors, or unintended performance problems in our products, and any inability to meet the expectations of our licensing partners or retail consumers in a timely manner, could adversely impact our sales and result in loss of revenue or market share, failure to achieve market acceptance, diversion of development resources, injury to our reputation, increased insurance costs and increased service costs, any of which could materially harm our business.

***As products incorporating our technology are launched commercially, we may experience seasonality or other unevenness in our financial results in consumer markets or a long and variable sales cycle in enterprise markets.***

Our strategy depends on our customers developing successful commercial products using our technology and selling them into the retail, industrial, healthcare and smart/home office markets. We need to understand procurement and buying cycles to be successful in licensing our technology. We anticipate it is possible that demand for our technology may vary in different segments of the consumer electronics market, such as hearing aids, wearables, toys, watches, accessories, laptops, tablet, mobile phones and gaming systems. Such consumer markets are often seasonal, with peaks in and around the December holiday season and the August-September back-to-school season. Enterprises and commercial customers may have annual or other budgeting and buying cycles that could affect us, and, particularly if we are designated as a capital improvement project, we may have a long or unpredictable sales cycle.

***Future products based on our technology may require the user to purchase additional products to use with existing devices. To the extent these additional purchases are inconvenient or costly, the adoption of our technology under development or other future products could be slowed, which would harm our business.***

For rechargeable devices that utilize our receiver technology, the technology may be embedded in a sleeve, case or other enclosure. For example, products such as remote controls or toys equipped with replaceable AA size or

other batteries would need to be outfitted with enhanced batteries and other hardware enabling the devices to be rechargeable by our system. In each case, an end user would be required to retrofit the device with a receiver and may be required to upgrade the battery technology used with the device (unless, for example, compatible battery technology and a receiver are built into the device). These additional steps and expenses may offset the convenience of our products for users and discourage customers from licensing our technology. Such factors may inhibit adoption of our technology, which could harm our business. We have not developed an enhanced battery for use in devices with our technology, and our ability to enable use of our technology with devices that require an enhanced battery will depend on our ability to develop a commercial version of such a battery that could be manufactured at a reasonable cost. If a commercially practicable enhanced battery of this nature is not developed, our business could be harmed, and we may need to change our strategy and target markets, which could have a material adverse impact on our financial condition and results of operations.

**Laboratory conditions differ from field conditions, which could reduce the effectiveness of our technology under development or other future products. Failures to move from laboratory to the field effectively would harm our business.**

When used in the field, our technology may not perform as expected based on performance under controlled laboratory conditions. For example, in the case of distance charging, a laboratory configuration of transmission obstructions will be arranged for testing, but in consumer use receivers may be obstructed in many different and unpredictable ways. These conditions may significantly diminish the power received at the receiver or the effective range of the transmitter. The failure of products using our technology to meet the expectations of users in the field could harm our business.

**Safety concerns and legal action by private parties may affect our business.**

We believe that our technology is safe. However, it is possible that we could discover safety issues with our technology or that third-parties may raise concerns relating to RF-based charging in a similar manner as has occurred with some other wireless technologies as they were put into residential and commercial use, such as the safety concerns that were raised by some regarding the use of cellular telephones and other devices to transmit data wirelessly in close proximity to the human body. In addition, while we believe our technology is safe, users of our technology under development or other future products who suffer from medical ailments may blame the use of products incorporating our technology for the triggering or worsening of those ailments, as occurred with a small number of users of cellular telephones. A discovery of safety issues relating to our technology could have a material adverse effect on our business and any legal action against us claiming that our technology caused harm could be expensive, divert management attention and adversely affect us or cause our business to fail, whether or not such legal actions were ultimately successful.

Even if they are not real, perceived safety issues could result in reduced sales, as could safety incidents or reports occurring solely with respect to the products of our competitors or licensing partners, which could negatively impact attitudes towards our technology and similar technologies. Any real or perceived safety issues relating to our products, our licensing partners' products or competing technologies in the marketplace could negatively affect our business, revenue, and profits.

**Our industry is subject to intense competition and rapid technological change, which may result in technology that is more advanced or superior to ours. If we do not keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our technology and products may become less useful or obsolete and our operating results will suffer.**

The consumer electronics industry in general, and the charging segments in particular, are subject to intense competition and rapidly evolving technologies. Because technologies, evolving regulations and industry standards and frequent introductions of new products and services. If, among other things, our products are not cost effective, brought to market in a timely manner, compliant with evolving

industry standards, accepted in the market or recognized as meeting our licensing partners' or retail consumers' requirements, we could experience a material adverse effect on our business, financial condition, results of operations and cash flows.

In addition, because products incorporating our technology are expected to have long development cycles, we must anticipate changes in the marketplace and the direction of technological innovation and customer demands. To compete successfully, we will need to demonstrate the advantages of our products and technologies over established alternatives and other emerging methods of power delivery. Traditional wall plug-in recharging remains an inexpensive alternative to our technology. Directly competing technologies such as inductive charging, magnetic resonance charging, conductive charging, ultrasound and other yet unidentified solutions may have greater consumer acceptance than the technology we have developed. Furthermore, some competitors may have greater resources than we have and may be better established in the market than we are. We cannot be certain which other companies may have already decided to or may in the future choose to enter our markets. For example, consumer electronics products companies may invest substantial resources in wireless power or other recharging technologies and may decide to enter our target markets. Successful developments of competitors that result in new approaches for recharging could reduce the attractiveness of our products and technologies or render them obsolete.

Our future success will depend in large part on our ability to establish and maintain a competitive position in current and future technologies. Rapid technological development may render our technology or future products

based on our technology obsolete. Many of our competitors have more corporate, financial, operational, sales and marketing resources than we have, as well as more experience in research and development. We cannot assure you that our competitors will not develop or market technologies that are more effective, economical or commercially attractive than our products or that would render our technologies and products obsolete. ~~We~~ In addition, we may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. ~~Our success will depend in large part on our ability to maintain a competitive position with our technologies.~~

Our competitive position also depends on our ability to:

- generate widespread awareness, acceptance and adoption by the consumer and enterprise markets of our technology under development and future products;

development  
and future  
products;

•design a  
product that  
may be sold at  
an acceptable  
price point;

•develop new  
or enhanced  
technologies  
or features  
that improve  
the  
convenience,  
efficiency,  
safety or  
perceived  
safety, and  
productivity of  
our technology  
under  
development  
and future  
products;

•properly  
identify  
existing and  
evolving  
customer  
needs and  
deliver new  
products or  
product  
enhancements  
to address  
those needs;

•limit the time  
required from  
proof of  
feasibility to  
routine  
production;

•limit the timing  
and cost of  
regulatory  
approvals;

•adapt to  
evolving

regulatory requirements;

• attract and retain qualified personnel;

• protect our inventions with patents or otherwise develop proprietary products and processes; and

• secure sufficient capital resources to expand both our continued research and development, and sales and marketing efforts.

- design a product that may be sold at an acceptable price point;
- develop new or enhanced technologies or features that improve the convenience, efficiency, safety or perceived safety, and productivity of our technology under development and future products;
- properly identify customer needs and deliver new products or product enhancements to address those needs;
- limit the time required from proof of feasibility to routine production;
- limit the timing and cost of regulatory approvals;
- attract and retain qualified personnel;
- protect our inventions with patents or otherwise develop proprietary products and processes; and
- secure sufficient capital resources to expand both our continued research and development, and sales and marketing efforts.

If our technology does not compete well based on these or other factors, our business could be materially and adversely harmed.

*If the quality of our products does not meet the expectations of our licensing partners or the end users of our licensing partners' products or regulatory or industry standards, then our sales and operating earnings, and ultimately our reputation, could be negatively impacted.*

Some of the products we sell, and some of the products our licensing partners sell which integrate our products, may have quality issues resulting from the design or manufacture of our products, or from the software, hardware or components used in those products.

Sometimes, these issues may be caused by components we purchase from our suppliers. Any such issues identified prior to the shipment of the products may cause delays in

shipping products to customers, or even the cancellation of orders by customers. If quality issues are discovered in our products after they have been shipped to our customers, we would be required to resolve such issues in a timely manner that is the least disruptive to our customers. Such pre-shipment and post-shipment quality issues can have legal, financial and reputational ramifications, including: (i) delays in the recognition of revenue, loss of revenue or future orders, (ii) customer-imposed penalties for failure to meet contractual requirements, (iii) increased costs associated with repairing or replacing products, and (iv) a negative impact on our reputation.

In some cases, if the quality issue affects the product's performance, safety or regulatory compliance, then such a "defective" product may need to be "stop-shipped" or recalled. Depending on the nature of the quality issue and the number of products in the field, it could cause us to incur substantial recall or corrective field action costs, in addition to the costs associated with the potential loss of future orders and the damage to our reputation. In addition, we may be required, under certain customer contracts, to pay damages for failed performance that might exceed the revenue that we receive from the contracts. Recalls and field actions involving regulatory non-compliance could also result in fines and additional costs. Recalls and field actions could result in third-party litigation by persons or companies alleging harm or economic damage as a result of the use of the products. In addition, privacy advocacy groups and other technology and industry groups have established or may establish various new or different self-regulatory standards that may place additional obligations on us. Our customers may expect us to meet voluntary certifications or adhere to other standards established by third-parties. If we are unable to maintain these certifications or meet these standards, it could reduce demand for our products and adversely affect our business.

***If our products do not effectively interoperate with wireless networks and the wireless devices that integrate them, future sales of our products could be negatively affected.***

Our products are designed to interoperate with wireless networks using Wi-Fi technology and certain wireless devices produced by our licensing partners. These networks and devices have varied and complex specifications. As a result, we must ensure that our products interoperate effectively with these existing and planned networks and devices. To meet these requirements, we must continue development and testing efforts that require significant capital and employee resources. We may not accomplish these development efforts quickly or cost-effectively, or at all. If our products do not interoperate effectively, orders for our products could be delayed or cancelled, which would harm our revenue, operating results and reputation, potentially resulting in the loss of existing and potential licensing partners. The failure of our products to interoperate effectively with wireless devices may result in significant warranty, support and repair costs, divert the attention of our engineering personnel from our product development efforts and cause significant customer relations problems. In addition, our licensing partners may require our products to comply with new and rapidly evolving security or other certifications and standards. If our products are late in achieving or fail to achieve compliance with these certifications and standards, or our competitors first achieve compliance with these certifications and standards, such end customers may not purchase our products, which would harm our business, operating results, financial condition and cash flows.

***We require third-party components, including components from limited or sole source suppliers, to build our products. The unavailability of these components could substantially disrupt our ability to manufacture our products and fulfill sales orders.***

We rely on third-party components to build our products, and we generally rely on our third-party manufacturers to obtain the components necessary for the manufacture of our products. We use our forecast of expected demand to determine our material requirements. Lead times for materials and components we order vary significantly, and depend on factors such as the specific supplier, contract terms and demand for a component at a given time. If forecasts exceed orders, we may have excess and/or obsolete inventory,

which could have a material adverse effect on our business, operating results and financial condition. If orders exceed forecasts, or available supply, we may have inadequate supplies of certain materials and components, which could have a material adverse effect on our ability to meet customer delivery requirements and to recognize revenue. If we underestimate our requirements or our third-party suppliers are not able to timely deliver components, our third-party manufacturers may have inadequate materials and components required to produce our products. This could result in an interruption in the manufacture of our products, delays in shipments and fulfillment of customer orders, and deferral or loss of revenues.

Our third-party manufacturers may not be able to secure sufficient components at reasonable prices or of acceptable quality to build our products in a timely manner, adversely impacting our ability to meet demand for our products. In addition, if our component suppliers cease manufacturing needed components, we could be required to redesign our products to incorporate components from alternative sources or designs, a process which could cause significant delays in the manufacture and delivery of our products. Unpredictable price increases for such components may also occur. The unavailability of these components could substantially disrupt our ability to manufacture our products and fulfill sales orders.

We currently depend on a limited number of suppliers for several critical components for our products, and in some instances, we use sole or single source suppliers for our components to simplify design and fulfillment logistics. Neither we nor our third-party manufacturers carry substantial inventory of our product components. Many of these components are also widely used in other product types. Shortages are possible and our ability to predict the availability of such components may be limited. In the event of a shortage or supply interruption from our component suppliers, we may not be able to develop alternate or second sources in a timely manner, on commercially reasonable terms or at all, and the development of alternate sources may be time-consuming, difficult and costly. Any resulting failure or delay in shipping products could result in lost revenues and a material and adverse effect on our operating results. If we are unable to pass component price increases along to our end customers or maintain stable pricing, our gross margins could be adversely affected and our business, financial condition, results of operations and prospects could suffer.

***Our dependence on commodities and certain components subjects us to cost volatility and potential availability constraints.***

Our profitability may be materially affected by changes in the market price and availability of certain raw materials and components, some of which are linked to the commodity markets. The principal raw materials and components used in our products are aluminum, copper, steel, bimetals, optical fiber, plastics and other polymers, capacitors, memory devices and silicon chips. Prices for some of these materials have experienced significant volatility as a result of changes in the levels of global demand, supply disruptions, including port, transportation and distribution delays or interruptions, and other factors. As a result, we have seen a significant increase in costs that has negatively impacted our results of operations. We have adjusted our prices for our products, but we may have to adjust prices again in the future. Delays in implementing price increases or a failure to achieve market acceptance of price increases could have a material adverse impact on our results of operations. Conversely, in an environment of falling commodities prices, we may be unable to sell higher-cost inventory before implementing price decreases, which could have a material adverse impact on our business, financial condition and results of operations.

***Our products rely on the availability of unlicensed RF spectrum and if such spectrum were to become unavailable through overuse or licensing, the performance of our products could suffer and our revenues from their sales could decrease.***

Our products are designed to operate in unlicensed RF spectrum, which is used by a wide range of consumer devices and is becoming increasingly crowded. If such spectrum usage continues to increase through the proliferation of consumer electronics and products competitive with our products, the resultant higher levels of noise in the bands of operation our products use could decrease the effectiveness of our products, which could adversely affect our ability to sell our products, including as a result of reduced sales of our licensing partners' products. Our business could be further harmed if currently unlicensed RF spectrum becomes licensed in the United States or elsewhere. We and our licensing partners that use our products in manufacturing their own may be unable to obtain licenses for RF spectrum. Even if the unlicensed spectrum remains unlicensed, existing and new governmental regulations may require we make changes in our products. The operation of our products in the United States or elsewhere in a manner not in compliance with local law could result in fines, operational disruption, or harm to our reputation.

***Reliance upon a few major customers may adversely affect our revenue and operating results.***

We rely on a relatively small number of customers for a significant portion of our revenue. Our top three customers represented approximately 70% of our revenue for the year ended December 31, 2023. It is possible that we will continue to derive a significant portion of our revenue from a concentrated group of customers in the

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future. If, among other things, a major customer fails to pay us or reduces their order volume, our revenue would be impacted and our operating results and financial condition could be materially harmed. Additionally, if we were to lose any material customer or our customers were to consolidate or merge with other companies, we may not be able to maintain product sales at similar volume or pricing levels and such loss or reduced sales volume or pricing could have a material adverse effect on our business, cash flows and results of operations.

***If our licensing partners do not effectively manage inventory of their products which integrate our technology, fail to timely resell such products or overestimate expected future demand, they may reduce purchases in future periods, causing our revenues and operating results to fluctuate or decline.***

Our licensing partners purchase and maintain inventories of their products, which integrate our products, to meet future demand and have only limited rights to return the products they have purchased from us. If our licensing partners purchase more product from us than is required to meet demand in a particular period, causing their inventory levels to grow, they may delay or reduce additional future purchases, causing our quarterly results to fluctuate and adversely impacting our ability to accurately predict future earnings.

***If we are not able to effectively forecast demand or manage our inventory, we may be required to record write-downs for excess or obsolete inventory.***

We maintain inventory of our products and, to a lesser extent, raw materials that we believe are sufficient to allow timely fulfillment of sales, subject to the impact of supply shortages. Growth in our sales and new product launches may require us to build inventory in the future. Higher levels of inventory expose us to a greater risk of carrying excess or obsolete inventory, which may in turn lead to write-downs. We may also record write-downs in connection with the end-of-life for specific products. Decisions to increase or maintain higher inventory levels are typically based upon uncertain forecasts or other assumptions. Because the markets in which we compete are volatile, competitive and subject to rapid technology and price changes, if the assumptions on which we base these decisions turn out to be incorrect, our financial performance could suffer and we could be required to write-off the value of excess products or components inventory. In addition, in order to manage manufacturing lead times and help ensure adequate component supply, we enter into agreements with suppliers that allow them to procure inventory based upon criteria as defined by us, such as forecasted demand. We may be liable to purchase excess product

or aged material from our suppliers following reasonable mitigation efforts, resulting in an adverse impact on our cash flows, operating expenses, results of operation and financial condition.

#### Risks Related to Our Intellectual Property and Other Legal Risks

*It is difficult and costly to protect our intellectual property and our proprietary technologies, and we may not be able to ensure their protection.*

Our success depends significantly on our ability to obtain, maintain and protect our proprietary rights to the technologies used in products incorporating our technologies. Patents and other proprietary rights provide uncertain protections, and we may be unable to protect our intellectual property. For example, we may be unsuccessful in defending our patents and other proprietary rights against third party challenges. If we do not have the resources to defend our intellectual property, the value of our intellectual property and our licensed technology will decline. In addition, some companies that integrate our technology into their products may acquire rights in the technology that limit our business or increase our costs. If we are not successful in protecting our intellectual property effectively, our financial results may be adversely affected and the price of our common stock could decline.

**We depend upon a combination of patent, patents, trade secrets, copyright and trademark laws to protect our intellectual property and technology.**

We rely on a combination of patents, trade secrets, copyright and trademark laws in the United States and similar laws in other countries, nondisclosure agreements, noncompetition covenants and other contractual provisions and technical security measures to protect our intellectual property rights. These measures rights and proprietary information. However, these protections may not be adequate available in all jurisdictions and may be inadequate to safeguard prevent our technology. If they do not protect our rights adequately, third parties could use

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competitors or other third-party manufacturers from copying, reverse engineering or otherwise obtaining and using our technology, and proprietary rights or products, which would adversely affect our ability to compete in the market would be reduced. market.

Although we are attempting to obtain patent coverage for our technology where available and where we believe appropriate, there are aspects of the technology for which patent coverage may never be sought or received. We may not possess the resources to or may not choose to pursue patent protection outside the United States or any or every country other than the United States where we may eventually decide to sell our future products. Our ability to prevent others from making or selling

duplicate or similar technologies will be impaired in those countries in which we would have no patent protection. Although we have patent applications on file in the United States and elsewhere, the patents might not issue, might issue only with limited coverage, or might issue and be subsequently successfully challenged by others and held invalid or unenforceable.

Similarly, even if patents are issued based on our applications or future applications, any issued patents may not provide us with any competitive advantages. There can be no assurance that our competitors will not independently develop technologies that are substantially equivalent or superior to our technology or design around our proprietary rights. Competitors may be able to design around our patents or develop products that provide outcomes comparable or superior to ours. Our patents may be held invalid or unenforceable as a result of legal challenges or claims of prior art by third parties, and others may challenge the inventorship or ownership of our patents and

pending patent applications. In addition, if we secure protection in countries outside the United States, the laws of some foreign countries may not protect our intellectual property rights to the same extent as do the laws of the United States. In the event a competitor infringes upon our patent or other intellectual property rights, enforcing those rights may be difficult and time consuming. Even if successful, litigation to enforce our intellectual property rights or to defend our patents against challenge could be expensive and time consuming and could divert our management's attention. We may not have sufficient resources to enforce our intellectual property rights or to defend our patents against a challenge.

Our strategy is to deploy our technology into the market by licensing patent and other proprietary rights to third parties and customers. Disputes with our licensees may arise regarding the scope and content of these licenses. Further, our ability to expand into additional fields with our technologies may be restricted by existing licenses or licenses we may grant to third parties in the future.

The policies we use to protect our trade secrets might not be effective in preventing misappropriation of our trade secrets by others. In addition, confidentiality and other restrictive agreements executed by our customers, employees, consultants and advisors might not be enforceable or might not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. Litigating a trade secret claim is expensive and time consuming, and the outcome is unpredictable. Moreover, our competitors may independently develop equivalent knowledge methods and know-how. If we are unable to protect our intellectual property rights, we may be unable to prevent competitors from using our own inventions and intellectual property to compete against us, and our business may be harmed.

***We may be subject to patent infringement or other intellectual property lawsuits that could be costly to defend.***

Because our industry is characterized by competing intellectual property, we may become involved in litigation based on claims that we have violated the intellectual property rights of others. Determining whether a product infringes a patent involves complex legal and factual issues, and the outcome of patent litigation actions is often uncertain. No assurance can be given that third party patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been filed, or could not be filed or issued. Because of the number of patents issued and patent applications filed in our technical areas or fields (including some pertaining specifically to wireless charging technologies), our competitors or other third parties have currently and may in the future assert that our products and technology and the methods we employ in the use of our products and technology are covered by United States or foreign patents held by them. In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending which may result in issued patents that our technology under development or other future products would infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There could also be existing patents that one or more of our technologies, products or parts may infringe and of

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which we are unaware. As the number of competitors in the market for wire-free power and alternative recharging solutions increases, and as the number of patents issued in this area grows, the possibility of patent infringement claims against us increases. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

If we become subject to a patent infringement or other intellectual property lawsuit and if the relevant patents or other intellectual property are upheld as valid and enforceable and we are found to have infringed or violated the terms of a license to which we are a party, we could be prevented from selling any infringing products of ours unless we could obtain a license or were able to redesign the product to avoid infringement. If we are unable to obtain a license or successfully redesign, we might be prevented from selling our technology under development or other future products. If there is a determination that we have infringed the intellectual property rights of a competitor or other person, we may be required to pay damages, pay a settlement, or pay ongoing royalties, or be enjoined. In these circumstances, we may be unable to sell our products or license our technology at competitive prices or at all, and our business and operating results could be harmed. Even if there is a determination that we have not infringed the intellectual property rights of a competitor or other person, litigation can be a significant distraction to management and could subject us to significant legal costs, adversely affecting our cash flows and operating results.

***We could become subject to product liability claims, product recalls, and warranty claims that could be expensive, divert management's attention and harm our business.***

Our business exposes us to potential liability risks that are inherent in the marketing and sale of products used by consumers. We may be held liable if our technology causes injury or death or is found otherwise unsuitable. While we believe our technology is safe, users could allege and possibly prove defects (some of which could be alleged or proved to cause harm to users or others) because we design our technology to perform complex functions involving RF energy in close proximity to users. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. costs and reduced demand for our products. The coverage limits of the insurance policies we may choose to purchase to cover related risks may not be adequate to cover future claims. If sales of products incorporating our technology increase or we suffer future product liability claims, we may be unable to maintain product liability insurance in the future at satisfactory rates or with adequate amounts. A product liability claim, any product recalls or excessive warranty claims, whether arising from defects in design or manufacture or otherwise, could negatively affect our sales or require a change in the design or manufacturing process, any of which could harm our reputation, harm our relationship with licensors of our products, result in a decline in revenue and harm our business.

In addition, if a product that we or a strategic licensing partner design is defective, whether due to design or manufacturing defects, improper use of the product or other reasons, we or our strategic licensing partner may be required to notify regulatory authorities and/or to recall the product. A required notification to a regulatory authority or recall could result in an investigation by regulatory authorities into the products incorporating our technology, which could in turn result in required recalls, restrictions on the sale of such products or other penalties. The adverse publicity resulting from any of these actions could adversely affect the perceptions of our customers and potential customers. These investigations or recalls, especially if accompanied by unfavorable publicity, could result in our incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

The ability of our products to operate effectively can be negatively impacted by many different elements unrelated to our products. Although certain technical problems experienced by consumers of the products incorporating our products may not be caused by our products, users may perceive them to be the underlying cause of poor performance of the wireless network. This perception, even if incorrect, could harm our business.

***Our business is subject to data security risks, including security breaches.***

We collect, process, store and transmit substantial amounts of information, including information about our customers. We take steps to protect the security and integrity of the information we collect, process, store and transmit, but there is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third

parties will not gain unauthorized access to this information despite such efforts. Security breaches, computer malware, computer hacking attacks and other compromises of information security measures have become more prevalent in the business world and may occur on our systems or those of our vendors in the future. Large Internet companies and websites have from time to time disclosed sophisticated and targeted attacks on portions of their websites, and an increasing number have reported such attacks resulting in breaches of their information security. We and our third-party vendors are at risk of suffering from similar attacks and breaches. Although we take steps to maintain confidential and proprietary information on our information systems, these measures and technology may not adequately prevent security breaches and we rely on our third-party vendors to take appropriate measures to protect the security and integrity of the information on those information systems. Because techniques used to obtain unauthorized access to or to sabotage information systems change frequently and may not be known until launched against us, we may be unable to anticipate or prevent these attacks. In addition, a party that is able to illicitly obtain a customer's identification and password credentials may be able to access our customer's accounts and certain account data.

**Any actual or suspected security breach or other compromise of our security measures or those of our third-party vendors, whether as a result of hacking efforts, denial-of-service attacks, viruses, malicious software, break-**

**ins, phishing attacks, social engineering or otherwise, could harm our reputation and business, damage our brand and make it harder to retain existing customers or acquire new ones, require us to expend significant capital and other resources to address the breach, and result in a violation of applicable laws, regulations or other legal obligations. Our insurance policies may not be adequate to reimburse us for direct losses caused by any such security breach or indirect losses due to resulting customer attrition.**

We rely on email and other electronic means of communication to connect with our existing and potential customers. Our customers may be targeted by parties using fraudulent spoofing and phishing emails to misappropriate passwords, payment information or other personal information or to introduce viruses through Trojan horse programs or otherwise through our customers' computers, smartphones, tablets or other devices. Despite our efforts to mitigate the effectiveness of such malicious email campaigns through product improvements, spoofing and phishing may damage our brand and increase our costs.

**Any actual, perceived or suspected security breach or other compromise of our security measures or those of our third-party vendors, whether as a result of hacking efforts, denial-of-service attacks, viruses, malicious software, break-ins, phishing attacks, social engineering or otherwise, could harm our reputation and business, damage our brand and make it harder to retain existing customers or acquire new ones, require us to expend significant capital and other resources to address the breach, and result in a violation of applicable laws, regulations or other legal obligations. We could also be exposed to a risk of loss or litigation and potential liability under laws, regulations and contracts that protect the privacy and security of personal information. Our insurance policies may not be adequate to reimburse us for direct losses caused by any such security breach or indirect losses due to resulting customer attrition. Any of these events or circumstances could materially adversely affect our business, financial condition and operating results.**

**If we are not able to satisfy data protection, security, privacy and other government- and industry-specific requirements or regulations, our business, results of operations and financial condition could be harmed.**

The regulatory frameworks relating to privacy, data protection and information security matters are rapidly evolving and are likely to remain uncertain for the foreseeable future. The cost of compliance with, and other burdens imposed by new privacy and data security laws may limit the use and adoption of our products and could have an adverse impact on our business, results of operations and financial condition. Although we work to comply with applicable privacy and data security laws and regulations, industry standards, contractual obligations and other legal obligations, those laws, regulations, standards and obligations are evolving and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another. As such, we cannot assure ongoing compliance with all such laws, regulations, standards and obligations. Any failure or perceived failure by us to comply with applicable laws,

regulations, standards or obligations, or any actual or suspected security incident, whether or not resulting in unauthorized access to, or acquisition, release or transfer of personally identifiable information or other data, may result in governmental enforcement actions and prosecutions, private litigation, fines and penalties or adverse publicity, and could cause our licensing partners to lose trust in us, which could have an adverse effect on our reputation and business.

***If we are not able to secure advantageous license agreements for our technology, our business and results of operations will be adversely affected.***

We pursue the licensing of our technology as a primary means of revenue generation. Creating a licensing business relationship often takes substantial effort, as we expect to have to convince the counterparty of the efficacy of our technology, meet design and manufacturing requirements, satisfy marketing and product needs, and comply with selection, review, and contracting requirements. It is critical that we continue to evolve our intellectual property

portfolio, particularly in 5G. If we do not maintain a strong portfolio that is applicable to current and future standards, products and services, our future licensing revenues could be negatively impacted. There can be no assurance that we will be able to gain access to potential licensing partners, or that they will ultimately decide to integrate our technology with their products. We also cannot guarantee that existing licensing partners will continue their relationships with us. We may not be able to secure license agreements with customers on advantageous terms, and the timing and volume of revenue earned from license agreements will be outside of our control. If the license agreements we enter into do not prove to be advantageous to us, our business and results of operations will be adversely affected.

#### **Risks Related to Regulation of Our Business**

***Domestic and international regulators may deny approval for our technology, and future legislative or regulatory changes may impair our business.***

Our charging technology involves power transmission using RF energy, which is subject to regulation by the Federal Communications Commission (the "FCC") in the United States and by comparable regulatory agencies worldwide. It may also be subject to regulation by other agencies. Regulatory concerns include whether human exposure to RF emissions falls below specified thresholds. Higher levels of exposure require separate approval. For example, transmitting more power over a certain distance or transmitting power over a greater distance may require separate regulatory approvals. In addition, we design our technology to operate in a RF band that is also used for Wi-Fi routers and other wireless consumer electronics, and we also design it to operate at different frequencies as demanded for some customer applications. Applications at different frequencies may require separate regulatory approvals. Efforts to obtain regulatory approval for devices using our technology are costly and time consuming, and there can be no assurance that requisite regulatory approvals will be forthcoming. If approvals are not obtained in a timely and cost-efficient manner, our business and operating results could be materially adversely affected. In addition, legal or regulatory developments could impose additional restrictions or costs on us that could require us to redesign our technology or future products, or that are difficult or impracticable to comply with, all of which would adversely affect our revenues and financial results.

#### **Risks Related to Personnel**

***We are highly dependent on key members of our executive management team. Our inability to retain these individuals could impede our business plan and growth strategies, which could have a negative impact on our business and the value of your investment.***

Our ability to implement our business plan depends, to a critical extent, on the continued efforts and services of a very small number of key executives. If we lose the services of any of the key members of our executive management team, we could be required to expend significant time and money in the pursuit of replacements, which may result in a delay in the implementation of our business plan and plan of operations. If it becomes necessary to replace any key executives, we can give no

assurance that we could find satisfactory permanent replacements for these individuals at all or on terms that would not be unduly expensive or burdensome to us. We do not currently carry any key-person life insurance that would help us recoup our costs in the event of the death or disability of any of these executives.

***Our success and growth depend on our ability to attract, integrate and retain high-level engineering talent.***

Because of the highly specialized and complex nature of our business, our success depends on our ability to attract, hire, train, integrate and retain high-level engineering talent. Competition for such personnel is intense because we compete for talent against many large profitable companies and our inability to adequately staff our operations with highly qualified and well-trained engineers could render us less efficient and impede our ability to develop and deliver a commercial product. Further, in recent years, the increased availability of hybrid or remote working arrangements has expanded the pool of companies that can compete for our employees and employment candidates. A number of such competitors for talent are significantly larger than us and/or offer compensation in excess of what we offer or other benefits that we do not offer. Such a competitive market could put upward pressure on labor costs for engineering talent. We may incur significant costs to attract and retain highly qualified talent, and we may lose new employees to our competitors or other technology companies before we realize the benefit of our

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investment in recruiting and training them. Volatility or lack of performance in our stock price may also affect our ability to attract and retain qualified personnel.

***We are subject to risks associated with our utilization of engineering consultants.***

To improve productivity and accelerate our development efforts while we build out our own engineering team, we use experienced consultants to assist in selected development projects. We take steps to monitor and regulate the performance of these independent third parties. However, arrangements with third party service providers may make our operations vulnerable if these consultants fail to satisfy their obligations to us as a result of their performance, changes in their own operations, financial condition, or other matters outside of our control. Effective management of our consultants is important to our business and strategy. The failure of our consultants to perform as anticipated could result in substantial costs, divert management's attention from other strategic activities, or create other operational or financial problems for us. Terminating or transitioning arrangements with key consultants could result in additional costs and a risk of operational delays, potential errors and possible control issues as a result of the termination or during the transition.

**Risks Related to Ownership of Our Common Stock**

***We are a "smaller reporting company," and the reduced disclosure requirements applicable to smaller reporting companies could make our common stock less attractive to investors.***

We are a "smaller reporting company," meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a "smaller reporting company," and have either: (i) a public float of less than \$250 million or (ii) annual revenues of less than \$100 million during the most recently completed fiscal year and a

public float of less than \$700 million. As a "smaller reporting company," we are subject to reduced 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. Until such time as we cease to be a "smaller reporting company," such reduced disclosure in our SEC filings may make it harder for investors to analyze our operating results and financial prospects.

If some investors find our common stock less attractive as a result of any choices to reduce future disclosure we may make, there may be a less active trading market for our common stock and our stock price may be more volatile.

***If we are unable to maintain effective internal control over financial reporting, investors may lose confidence in the accuracy of our financial reports.***

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Although our management has determined that our internal control over financial reporting was effective as of **December 31, 2022** **December 31, 2023**, we cannot assure you that we will not identify any material weakness in our internal control in the future.

We qualify as a "smaller reporting company" and are therefore not required to file an auditor attestation report. If we experience a material weakness in our internal controls, we may fail to detect errors in our financial

accounting, which may require a financial statement restatement or otherwise harm our operating results, cause us to fail to meet our SEC reporting obligations or listing requirements of The Nasdaq Stock Market, or Nasdaq, ("Nasdaq"), adversely affect our reputation, cause our stock price to decline or result in inaccurate financial reporting or material misstatements in our annual or interim financial statements. Further, if there are material weaknesses or failures in our ability to meet any of the requirements related to the maintenance and reporting of our internal controls over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports and that could cause the price of our common stock to decline. We could become subject to investigations by Nasdaq, the SEC or other regulatory authorities, which could require additional management attention and financial resources which could adversely affect our business.

In addition, our internal control over financial reporting will not prevent or detect all errors and fraud. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance

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that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

***You might lose all or part of your investment.***

Investing in our common stock involves a high degree of risk. As an investor, you might never recoup all, or even part of, your investment and you may never realize any return on your investment. You must be prepared to lose all your investment.

***Our stock price is likely to continue to be volatile.***

The market price of our common stock has fluctuated significantly since our initial public offering in 2014. The price of our common stock is likely to continue to fluctuate significantly in response to many factors that are beyond our control, including:

- regulatory announcements;

regulatory  
announcements  
and approvals;

•actual or  
anticipated  
variations in our  
operating  
results;

•general  
macroeconomic,  
political, industry  
and market  
conditions,  
including  
increases in  
inflation,  
fluctuating  
interest rates,  
volatile global  
financial  
markets, the  
potential of  
government  
shutdowns and  
uncertainty  
regarding the  
federal budget  
and debt ceiling,  
disruptions to  
global supply  
chains and  
transportation,  
and perceptions  
of future  
economic  
growth  
prospects in the  
economy at  
large;

•recent  
uncertainty in  
the global  
banking sector;

•regional conflicts  
around the  
world, terrorist  
acts, acts of war  
or periods of  
widespread civil  
unrest;

- natural disasters and other calamities, including global pandemics such as the COVID-19 pandemic;
- changes in the economic performance and/or market valuations of other technology companies;
- our announcements of significant strategic partnerships, regulatory developments and other events;
- announcements, innovations and other developments by other companies in our industry;
- articles published or rumors circulated by third parties regarding our business, technology or licensing partners;
- additions or departures of key personnel; and
- sales or other transactions involving our capital stock.

- actual or anticipated variations in our operating results;

- general economic, industry and market conditions, including increases in inflation or fluctuating interest rates and disruptions to global supply chains, and perceptions of future economic growth prospects in the economy at large;
- terrorist acts, acts of war or periods of widespread civil unrest, such as the ongoing conflict between Russia and the Ukraine and the response thereto;
- natural disasters and other calamities, including global pandemics such as the COVID-19 pandemic;
- changes in the economic performance and/or market valuations of other technology companies;
- our announcements of significant strategic partnerships, regulatory developments and other events;
- announcements by other companies in our industry;
- articles published or rumors circulated by third parties regarding our business, technology or development partners;
- additions or departures of key personnel; and
- sales or other transactions involving our capital stock.

***We have not paid dividends in the past and have no immediate plans to pay dividends.***

We plan to reinvest all of our earnings, to the extent we have earnings, in order to market our products and technology and to cover operating costs and to otherwise become and remain competitive. We do not plan to pay any cash dividends with respect to our securities in the foreseeable future. We cannot assure you that we would, at any time, generate sufficient surplus cash that would be available for distribution to the holders of our common stock as a dividend.

***We expect to continue to incur significant costs as a result of being a public reporting company and our management will be required to devote substantial time to meet our compliance obligations.***

As a public reporting company, we incur significant legal, accounting and other expenses. We are subject to reporting requirements of the Exchange Act and rules subsequently implemented by the SEC that require us to establish and maintain effective disclosure controls and internal controls over financial reporting, as well as some specific corporate governance practices. Our management and other personnel are expected to devote a substantial amount of time to compliance initiatives associated with our public reporting company status. Those costs can be expected to increase as we emerged from emerging growth company status and will increase significantly if we no longer cease to qualify as a smaller reporting company.

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***We may be subject to securities litigation, which is expensive and could divert management attention.***

Our stock price has fluctuated in the past, reacting to news such as our past announcements of FCC approvals and it may be volatile in the future. In the past, companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation, and we may be the target of litigation of this sort in the future. Securities litigation is costly and can divert

management attention from other business concerns, which could seriously harm our business and the value of your investment in our company.

**Our ability to use Federal net operating loss carry forwards to reduce future tax payments may be limited if our taxable income does not reach sufficient levels.**

As of December 31, 2022 December 31, 2023, we had Federal net operating loss ("NOL") carry forwards of approximately \$273,056,000. \$297,696,000. Under the Internal Revenue Code of 1986, as amended, NOLs arising in tax years ending on or before December 31, 2017 can generally be carried forward to offset future taxable income for a period of 20 years, and NOLs arising in tax years ending after December 31, 2017 can generally be carried forward indefinitely. Our ability to use our NOLs will be dependent on our ability to generate taxable income, and the NOLs that arose in tax years ending on or before December 31, 2017 could expire before we generate sufficient taxable income to take advantage of the NOLs. As of December 31, 2022 December 31, 2023, based on our history of operating losses it is possible that a portion of our NOLs will not be fully realizable.

**Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable.**

Provisions of our certificate of incorporation and bylaws, and applicable Delaware law, may delay or discourage transactions involving an actual or potential change in control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. The provisions in our certificate of incorporation and bylaws:

- authorize our Board to issue preferred stock without stockholder approval and to designate the rights, preferences and privileges of each class; if issued, such preferred stock would increase the number of outstanding shares of our capital stock and could include terms that may deter an acquisition of us;
- limit who

may call  
stockholder  
meetings;

do not  
permit  
stockholders  
to act by  
written  
consent;

do not  
provide for  
cumulative  
voting rights;  
and

provide that  
all vacancies  
may be filled  
by the  
affirmative  
vote of a  
majority of  
directors  
then in  
office, even  
if less than a  
quorum.

- limit who may call stockholder meetings;
- do not permit stockholders to act by written consent;
- do not provide for cumulative voting rights; and
- provide that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

In addition, Section 203 of the Delaware General Corporation Law may limit our ability to engage in any business combination with a person who beneficially owns 15% or more of our outstanding voting stock unless certain conditions are satisfied. This restriction lasts for a period of three years following the share acquisition. These provisions may have the effect of entrenching our management team and may deprive you of the opportunity to sell your shares to potential acquirers at a premium over prevailing prices. This potential inability to obtain a control premium could reduce the price of our common stock.

#### General Risk Factors

**The Our warrants that are accounted for as liabilities and the changes in value of our warrants could have a material effect on the market price of our common stock may or our financial results.**

We account for the 2023 Warrants in accordance with the guidance contained in Accounting Standards Codification ("ASC") 815, Derivatives and Hedging. Such guidance provides that, because the 2023 Warrants do not meet the criteria for equity treatment thereunder, each 2023 Warrants must be recorded as a liability. Accordingly, we classify each 2023 Warrants as a liability at its fair value. This liability is subject to re-measurement at each balance sheet date, with a resulting non-cash gain or loss related to the change in the fair value being recognized in earnings in the statements of operations. With each such remeasurement, the warrant liability is adjusted to fair value, with the change in fair value recognized in our statement of operations and therefore our

reported earnings. As a result of the recurring fair value measurement, our financial statements and results of operations may fluctuate quarterly based on factors which are outside of our control. Due to the recurring fair value measurement, we expect that we will recognize non-cash gains or losses on the 2023 Warrants each reporting period and that the amount of such gains or losses could be material. The impact of changes in fair value on earnings may have an adverse effect on the market price of our common stock.

#### General Risk Factors

**If we fail to comply with the requirements for continued listing on Nasdaq. If we fail to regain compliance with the minimum listing requirements, Nasdaq, our common stock will be subject to delisting. Our ability to publicly or privately sell equity securities and the liquidity of our common stock could be adversely affected if our common stock is delisted.**

The continued listing standards of Nasdaq require, among other things, that the minimum bid price of a listed company's stock be at or above \$1.00. If the closing minimum bid price is below \$1.00 for a period of more than 30 consecutive trading days, the listed company will fail to be in compliance with Nasdaq's listing rules and, if it does not regain compliance within the grace period, will be subject to delisting. As previously reported, on January 20, 2023, we received a notice from the Nasdaq Listing Qualifications Department notifying us that for 30 consecutive trading days, the bid price of our common stock had closed below the minimum \$1.00 per share requirement. In accordance with Nasdaq's listing rules, we were afforded a grace period of 180 calendar days, or until July 19, 2023, to regain compliance with the bid price requirement. In order to regain compliance, the bid price of our common stock must would need to close at a price of at least \$1.00 per share for a minimum of 10 consecutive trading days.

If

On July 20, 2023, Nasdaq notified us that we fail to did not regain compliance by July 19, 2023, but that Nasdaq had granted us an additional 180-day period to regain compliance because we may be eligible for a second 180 day compliance period, provided that we, among other things, meet met the continued listing requirement for market value of publicly held shares as well as and all other standards for initial applicable Nasdaq listing on The Nasdaq Capital Market, with the exception of requirements (other than the minimum closing bid price requirement, requirement) and provide we provided written notice to Nasdaq of our intention to cure the bid price deficiency during the second compliance period by effecting a reverse stock split. On August 15, 2023, we executed a reverse stock split if necessary. Such extension of our common stock at a ratio of 1-for-20. As a result of the grace period would be subject to Nasdaq's discretion, and there can be no guarantee reverse stock split, on August 30, 2023 we received notification from the Nasdaq Listing Qualifications Staff that we would be granted an extension.

We cannot provide any guarantee that we will regain compliance during the grace period or be able to maintain were in compliance with Nasdaq's its minimum bid price requirement and the matter was closed.

If our common stock is delisted from Nasdaq and is not eligible for quotation or listing requirements in the future. If we are not able to regain compliance during the grace period, on another market or any extension of the grace period for which we may be eligible, exchange, our common stock will be subject to delisting and "penny stock" rules. rules and trading of our shares of common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities. Delisting from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our common stock. Delisting could also have other

negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities.

**Adverse economic macroeconomic conditions, natural disasters or reduced technology spending could adversely affect our business, operating results, and financial condition.**

Our business depends on the overall demand for our technology and on the economic health of our current and prospective customers. In addition, the purchase of our products is often discretionary and may involve a significant commitment of capital and other resources. Weak global and regional economic macroeconomic conditions, including labor shortages, supply chain and transportation disruptions, rising interest rates and inflation, low spending environments, geopolitical instability, warfare and uncertainty, weak economic conditions in certain regions or a reduction in technology spending regardless of macroeconomic conditions, including as a result of the remaining effects of COVID-19 and the ongoing conflict between Russia and the Ukraine and the global response thereto, could adversely affect our business, operating results, and financial condition, including resulting in longer sales cycles, a negative impact on our ability to attract and retain new customers or expand our platform or sell additional products and services

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to our existing customers, lower prices for our products, higher default rates among our current suppliers and customers and reduced sales to new or existing customers.

Moreover, there has

There have been recent turmoil disruptions and uncertainty in the global banking system. For example, on March 10, 2023, Silicon Valley Bank (SVB) ("SVB"), was closed by the California Department of Financial Protection and Innovation, which appointed Innovation. On March 12, 2023, Signature Bank was closed by the New York State Department of Financial Services. On May 1, 2023, First Republic was closed by the California Department of Financial Protection and Innovation. In each case, the Federal Deposit Insurance Corporation ("FDIC" (the "FDIC"), was appointed as receiver for SVB, receiver. While we do not have any exposure to SVB, Signature Bank, or First Republic, we do maintain our cash at financial institutions, often in balances that exceed the current FDIC has since stated that all depositors of SVB will be made whole, there is no guarantee that the federal government would similarly guarantee all depositors insurance limits. If other banks and financial institutions enter receivership or become insolvent in the event of future bank closures. While due to financial conditions affecting the Company does not banking system and financial markets, our ability to access our cash and cash equivalents, including transferring funds, making payments or receiving funds, may be threatened and could have a banking relationship with SVB, continued instability in the global banking system may negatively impact us or our customers, including our customers' ability to pay for our products, and adversely impact material adverse effect on our business and financial

condition. Moreover, events such as the closure of SVB, events, in addition to the global macroeconomic conditions discussed above, may cause further turbulence and uncertainty in the capital markets, markets, which may adversely affect the trading price of our common stock and potentially our results of operations. Further, deterioration of the global macroeconomic environment and any regulatory action taken in response thereto may also adversely affect our business, operating results, and financial condition.

The outbreak Further, natural disasters or other catastrophic events may cause damage or disruption to our operations, international commerce, and the global economy, and thus could have an adverse effect on us. Our business operations are also subject to,

among other things, interruption by fire, power shortages, flooding, and other events beyond our control. In the event of health epidemics, a natural disaster, including a major earthquake, blizzard, or hurricane, or a catastrophic event such as COVID-19, has a fire, power loss, cyberattack, or telecommunications failure, we may be unable to continue our operations, the products which embody our technology may not function properly or at all, and we may further adversely affect endure system interruptions, reputational harm, delays in development of our business, results products, lengthy interruptions in service, breaches of operations data security, loss of critical data, and financial condition.

Any outbreaks reduced sales, all of contagious diseases and other adverse public health developments in countries where we, our customers and suppliers operate which could have a material and an adverse effect on our business, results operating results. Climate change could result in an increase in the frequency or severity of operations and financial condition such natural disasters. For example, the COVID-19 pandemic resulted our corporate offices are located in significant governmental measures being implemented to control the spread of the virus, including quarantines, travel restrictions, manufacturing restrictions, declarations of states of emergency California, a state that frequently experiences earthquakes, wildfires, heatwaves and business shutdowns. A majority of our potential customers have a significant dependence on the Chinese manufacturing and supply chain infrastructure. We believe the COVID-19 pandemic delayed adoption of our technology by potential customers who temporarily shut down their workforces and supply chains based in China and elsewhere around the world. At times, certain of our outsourcing partners, component suppliers and logistical service providers have experienced disruptions, resulting in supply shortages that have affected and may continue to affect our sales. Similar disruptions could occur in the future. droughts.

In addition, COVID-19 has resulted and may continue to result in a widespread health crisis that could contribute to increased market volatility and adversely affect the economies and financial markets of many countries, resulting in a global economic downturn that could affect interest in our products or demand by potential customers. Any of these events could materially and adversely affect our business, results of operations and financial condition. The extent of the impact will depend on future developments, which are highly uncertain and cannot be predicted.

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

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. There can be no assurance that analysts will continue to cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline.

#### **Item 1B. Unresolved Staff Comments**

Not applicable.

#### **Item 1C. Cybersecurity**

## Risk Management and Strategy

We believe cybersecurity is critical to supporting our vision and enabling our strategy. We face a multitude of cybersecurity threats that are common to most industries, such as ransomware and denial-of-service. Our customers, suppliers, and partners face similar cybersecurity threats and, while we have not been materially affected to date, a cybersecurity incident impacting us or any of these entities could materially adversely affect our operations, performance, and results of operations. These cybersecurity threats and related risks make it imperative that we maintain a strong focus on cybersecurity.

We assess, identify and manage material risks from cybersecurity threats through various policies, procedures and processes of our information technology ("IT") department, which include 1) review of IT security policy and change management policy review, 2) IT control procedures, 3) firewall reviews, 4) system backups and 5) procurement of cyber liability insurance.

The Company also engages an IT consultant to frequently review and monitor policies, procedures and processes designed to mitigate the risk of cybersecurity threats. The IT consultant has regular communication with the Company's Chief Financial Officer to address any issues or concerns that may arise.

## Governance

The Board of Directors oversees the risks of cybersecurity threats and communicates with the Chief Executive Officer and Chief Financial Officer regarding controls in place. Any cybersecurity threats, breaches or other concerns are immediately communicated to the Board of Directors.

## Item 2. Properties

In 2014, we entered into a lease agreement for our corporate headquarters located at Northpointe Business Center, 3590 North First Street in San Jose, California. A new lease on this same property was signed in May 2022 for a term of three years starting from October 1, 2022. This space, with a total of 21,188 square feet, is used for our headquarters and for research and development efforts. In September 2021, we entered into a lease agreement for office space in Costa Mesa, CA, starting from October 1, 2021, which is was utilized by our engineers residing in Southern California and has had a total of 1,387 square feet. This lease expired on September 30, 2023 and was not renewed.

## Item 3. Legal Proceedings

We are not currently a party to any pending legal proceedings that we believe will have a material adverse effect on our business or financial conditions. We may, however, be subject to various claims and legal actions arising in the ordinary course of business from time to time.

## Item 4. Mine Safety Disclosures

Not applicable.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

#### Market Information for Common Stock

Our common stock began trading on The Nasdaq Capital Market under the symbol "WATT" on March 31, 2014. Prior to that date, there was no public trading market for our common stock.

#### Holders of Record

As of **March 20, 2023** **March 15, 2024**, there were **105** stockholders of record of our common stock, and we believe we have significantly more beneficial **holders** **owners** of our common stock.

#### Dividend Policy

We have never paid cash dividends on our securities and we do not anticipate paying any cash dividends on our shares of common stock in the foreseeable future. We intend to retain any future earnings for reinvestment in our business. Any future determination to pay cash dividends will be at the discretion of our **board** **Board** of directors, **Directors**, and will be dependent upon our financial condition, results of operations, capital requirements and such other factors as our **board** **Board** of **directors** **Directors** deems relevant.

#### Securities Authorized for Issuance under Equity Compensation Plans

The information regarding the securities authorized for issuance under our equity compensation plans will be included in an amendment to this Report or incorporated by reference from our Proxy Statement to be filed with the SEC for our 2023 Annual Meeting of Stockholders.

#### Issuer Purchases of Equity Securities

None

#### Unregistered Sales of Equity Securities

For the purchase periods ended June 30, 2023 and December 31, 2023, the Company issued an aggregate of 20,336 shares of common stock to employees under the Company's Employee Stock Purchase Plan. The shares were issued pursuant to the exemption set forth in Section 4(a)(2) of the Securities Act on the basis that the shares were issued in a transaction not involving any public offering.

#### Item 6. Reserved

Not applicable.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

### Overview

We have developed our WattUp® wireless power networks technology ("WPNT"), consisting of semiconductor chipsets, software controls, hardware designs and antennas, that enables RF enable radio frequency ("RF") based charging for electronic Internet of Things ("IoT") devices. The WattUp technology Our WPNT has a broad spectrum of capabilities to enable the next generation of wireless power networks, delivering power and data in a seamless device portfolio. This includes near field and at-a-distance wireless charging, with multiple power levels at various distances. We believe our WattUp technologies will help facilitate the deployment of the growing IoT applications. According to the International Data Corporation (IDC) August 2022 Market Forecast, the IoT market is forecasted to grow to approximately \$1.1 trillion in spending by 2026. The initial IoT applications that we are targeting are in the area of RF tags ESL for asset tracking and cold chain applications, electronic shelf labeling ("ESL"), and IoT sensors for the retail, industrial, healthcare, and smart home/office logistics markets.

We believe our technology is innovative in its approach, in that we are developing solutions that charge electronic IoT devices using RF. To-date, RF technology. To date, we have developed and released to production multiple transmitters and receivers, including prototypes as well as and partner production designs. The transmitters vary based on form factor and power specifications and frequencies, while the receivers are designed to support a myriad of wireless charging applications including Bluetooth tracking tags, IoT sensors, ESLs, beacons, stock management devices, security cameras, handheld devices, smart automation, wearables and hearables, including:

Device Type	Application
RF Tags	Cold Chain, Asset Tracking, Medical IoT
IoT Sensors	Cold Chain, Logistics, Asset Tracking
Electronic Shelf Labels	Retail and Industrial IoT

The first end product featuring our technology entered the market in 2019. We started shipping our first at-a-distance WattUp PowerBridge enabled transmitters wireless PowerBridges for commercial IoT applications in the fourth quarter of 2021, and we expect additional WattUp-enabled wireless power enabled products to be announced released as we move our business forward.

### Impact of Current Global Economic Conditions on Our Business

Uncertainty in the global economy presents significant risks to our business. We are subject to continuing risks and uncertainties in connection with exposure relating to the current macroeconomic environment, including as a result of inflation and rising interest rates, geopolitical factors, including the ongoing conflict between Russia and Ukraine as well as in the Middle East and the responses thereto and supply chain disruptions and the remaining effects of the COVID-19 pandemic. We are closely monitoring the impact of these factors on all aspects of our business, including their impact on our operations, financial position, cash flows, inventory, supply chains, global regulatory approvals, purchasing trends, customer payments, and the industry in general, in addition to the impact on our employees.

We believe that

### Recent Developments

Effective March 24, 2024, Cesar Johnston is no longer serving as President and Chief Executive Officer of the COVID-19 pandemic delayed adoption Company. Mr. Johnston will remain a member of our technology by potential customers who have experienced workforce the Company's Board of Directors. The Board has initiated a search to identify a permanent successor as chief executive officer of the Company. In addition, as of March 24, 2024, the Board appointed Mallorie Burak to also serve as interim principal executive officer until the appointment of a permanent replacement chief executive officer for the Company. The Board also established an Office of the Chair, composed of Reynette Au, Chair of the Board, and supply chain disruptions, Ms. Burak. The Office of the Chair will oversee strategic planning and who continue to evaluate their future prospects and business models, including partnerships direction of the Company, working closely with us. Further delays in the adoption of our current or future products could result from Board, the ongoing pandemic senior leadership team, and other macroeconomic events. At times, certain stakeholders to deliver the strategic mission of our outsourcing

partners, component suppliers and logistical service providers have experienced disruptions, resulting in supply shortages that have affected and may continue to affect our sales. Similar disruptions could occur in the future. Company.

## Critical Accounting Estimates and Policies

The following discussion and analysis of financial condition and results of operations is based upon our financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States of America. Certain accounting policies and estimates are particularly important to the understanding of our financial position and results of operations and require the application of significant judgment by our management or can be materially affected by changes from period to period in economic factors or conditions that are outside of our control. As a result, they are subject to an inherent degree of uncertainty. In applying these policies, our management uses their judgment to determine the appropriate assumptions to be used in the determination of certain estimates. Those estimates are based on our historical operations, our future business plans and projected financial results, the terms of existing contracts, our observance of trends in the industry, information provided by our customers and information available from other outside sources, as appropriate. Please see Note 3 to our financial statements for a more complete description of our significant accounting policies.

**Basis Use of Presentation, Estimates.** The accompanying audited preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and footnotes for assumptions that affect the years ended December 31, 2022 and 2021 have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP") and applicable rules and regulations of the SEC regarding financial information.

**Revenue Recognition.** We follow Accounting Standards Codification ("ASC") 606, "Revenue from Contracts with Customers" (Topic 606).

In accordance with Topic 606, we recognize revenue using the following five-step approach:

1. Identify the contract with a customer.
2. Identify the performance obligations in the contract.
3. Determine the transaction price of the contract.
4. Allocate the transaction price to the performance obligations in the contract.
5. Recognize revenue when the performance obligations are satisfied.

We record revenue associated with product development projects that we enter into with certain customers. In general, these product development projects are complex, and we do not have certainty about our ability to achieve the project milestones. The achievement of a milestone is dependent on our performance obligation and requires acceptance by the customer. We recognize this revenue at a point in time based on when the performance obligation is met. The payment associated with achieving the performance obligation is generally

commensurate with our effort or the value of the deliverable and is nonrefundable. We record the expenses related to these product development projects in research and development expense, in the periods such expenses were incurred.

We record revenue associated with the sale of production-level systems once control over the product is transferred to the customer. We record the expense related to the sales of these systems as cost of revenue during the period delivered.

*Research and Development.* Research and development expenses are charged to operations as incurred. For internally developed patents, all patent application costs are expensed as incurred as research and development expense. Patent application costs, generally legal costs, are expensed as research and development costs until such time as the future economic benefits of such patents become more certain. Also included in research and development costs are payroll costs and stock-based compensation for employees within the department. We incurred research and development costs of \$12,497,781 and \$20,572,580 for 2022 and 2021, respectively.

*Income Taxes.* We recognize deferred tax assets and liabilities for the expected future tax consequences of items that have been included in or excluded from our financial statements or tax returns. Deferred tax assets and liabilities are determined on the basis of the difference between the tax basis reported amounts of assets and liabilities and their respective financial reporting amounts ("temporary differences") the disclosure of contingent liabilities at enacted tax rates in effect for the years in which the temporary differences are expected to reverse.

For 2022 and 2021, we had \$12,954,895 and \$13,820,144, respectively, of research and development expenses capitalized for federal income tax purposes, with amortization commencing upon our receiving an economic benefit from the related research. As of December 31, 2022, we had approximately \$273,056,000 gross federal net operating loss carryforwards ("NOLs") and federal and state research and development tax credit carryforwards of approximately \$6,373,000 and \$5,258,000, respectively. As of December 31, 2022 and 2021, deferred tax assets consisted principally of net operating loss and tax credit carryforwards, the research and development costs and stock-based compensation, and such deferred tax assets were fully reserved. Accordingly, our effective tax rate for 2022 and 2021 was nil.

Internal Revenue Code Section 382 imposes limitations on the use of net operating loss carryforwards when the stock ownership of one or more 5% stockholders (stockholders owning 5% or more of our outstanding capital stock) has increased on a cumulative basis by more than 50 percentage points. Accordingly, an ownership change could trigger a limitation date of the use of financial statements as well as the loss carryforward. We completed a Section 382 analysis as of December 31, 2022 and determined that none of our federal net operating loss carryforwards or federal research and development tax credits are limited.

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that all or some portion of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the future generation of taxable income reported expenses during the periods reporting periods.

Some of these judgments can be subjective and complex, and, consequently, actual results may differ from these estimates. Although we believe that its estimates and assumptions are reasonable, they are based upon information available at the time the estimates and assumptions were made. Actual results could differ from those estimates.

*Going Concern.* ASC 205-40 *Presentation of Financial Statements - Going Concern*, requires management to assess our ability to continue as a going concern. In accordance with this guidance, we have evaluated whether there are conditions and events, considered in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and taxing strategies in making this assessment. Based on this assessment, management has established aggregate, that raise substantial doubt about our ability to continue as a full valuation allowance against all of going concern within one year after the net

deferred tax assets for each period, since it is more likely than not that all of the deferred tax assets will not be realized. Financial Statements are issued.

Tax benefits are recognized only for tax positions. Determining the extent to which conditions or events raise substantial doubt about our ability to continue as a going concern requires significant judgment and estimation by us. Our significant estimates related to this analysis may include identifying business factors used in the forecasted financial results and liquidity. We believe that are more likely than not to be sustained upon examination by tax authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely to be realized upon settlement. A liability for "unrecognized tax benefits" is recorded for any tax benefits claimed estimated values used in our tax returns that do not meet these recognition going concern analysis are based on reasonable assumptions. However, such assumptions are inherently uncertain and measurement standards. As of December 31, 2022 and 2021, no liability for unrecognized tax benefits was required to be reported. The guidance also discusses the classification of related interest and penalties on income taxes. Our policy is to record interest and penalties on uncertain tax positions as a component of income tax expense. No interest or penalties were recorded for 2022 and 2021. actual results could differ materially from those estimates.

## Results of Operations

### Operating Expenses

Cost of revenue consists of direct materials, direct labor and overhead for our production-level wireless charging systems. Research and development expenses include costs associated with our efforts to develop our technology, including personnel compensation, consulting, engineering supplies and components, intellectual property costs, regulatory expense and general office expenses specifically related to the research and development department. Sales and marketing expenses include costs associated with selling and marketing our technology to our customers, including personnel compensation, public relations, graphic design, tradeshow, engineering supplies utilized by the sales team and general office expenses specifically related to the sale and marketing department. General and administrative expenses include costs for general and corporate functions, including personnel compensation, facility fees, travel, telecommunications, insurance, professional fees, consulting fees, general office expenses, and other overhead.

#### For the Years Ended December 31, 2022 December 31, 2023 and 2021

Revenues. During 2022 2023 and 2021, 2022, we recorded revenue of \$851,321 \$474,184 and \$756,793, \$851,321, respectively. The increase decrease in revenue in 2023 is primarily from an increase due to a decrease in production-level systems sales volume.

#### Operating Expenses and Loss from Operations.32

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Expenses. Costs and expenses are made up of cost of revenue, research and development, sales and marketing, general and administrative and severance expense. Operating expenses for 2023 and 2022 were \$22,573,929 and 2021 were \$27,537,646, and \$42,189,578, respectively.

Cost of Revenue. Cost of revenue was \$1,277,565 \$279,083 and \$0, \$1,277,565, respectively, for 2022 2023 and 2021. For 2022, cost 2022. The decrease of revenue \$998,482 is for production-level systems that are sold primarily due to customers. We did not incur any

cost of revenue during 2021, a decrease in sales volume.

***Research and Development Expenses.*** Research and development costs for 2023 and 2022 were \$10,810,570 and 2021 were \$12,497,781, and \$20,572,580, respectively. The \$8,074,799 \$1,687,211 decrease in research and development expenses in 2023 is primarily due to a \$7,110,400 decrease in compensation, consisting of a \$5,448,767 \$476,065 decrease in stock-based compensation primarily from the recognition of PSU award expense during 2021 and the transfer of older awards becoming fully expensed prior to the current CEO to the General and Administrative department towards the end of 2021 after his promotion and year, a \$1,661,633 decrease in payroll costs from a lower headcount within the department, a \$708,682 \$368,844 decrease in engineering supplies, components and chip development due to project timing, a \$205,721 \$208,929 decrease in consulting and third-party services, a \$147,763 decrease in patent legal fees, a \$143,700 decrease in recruiting expense, a \$101,972 decrease in postage, a \$93,430 decrease in regulatory testing and a \$113,167 \$77,992 decrease in regulatory legal fees, partially offset by a \$152,400 increase in recruiting expense fees.

***Sales and Marketing Expenses.*** Sales and marketing expenses for 2023 and 2022 were \$3,852,393 and 2021 were \$4,884,959, and \$8,598,343, respectively. The \$3,713,384 \$1,032,566 decrease in sales and marketing expenses in 2023 is primarily due to a \$3,364,533 \$366,181 decrease in compensation, consisting of a \$2,650,885 \$286,222 decrease in stock-based compensation primarily from the recognition of PSU award expense during 2021 and payroll costs due to a lower headcount within the department and a \$713,648 \$79,959 decrease in payroll costs from stock-based compensation, a lower headcount within the department, a \$359,870 decrease in public relations, consulting and third-party services expense, a \$225,805 decrease in marketing and promotional expense, a \$96,451 \$188,879 decrease in engineering supplies and components used by sales and marketing staff for customer demonstrations, partially offset by a \$250,941 increase an \$85,280 decrease in tradeshow costs, an \$80,720 decrease in recruiting expense, a \$65,384 decrease in legal fees, a \$61,882 decrease in depreciation, a \$53,237 decrease in bad debt expense and a \$93,720 increase \$43,886 decrease in recruiting supplies and general office expense.

***General and Administrative Expenses.*** General and administrative costs for 2023 and 2022 were \$7,272,464 and 2021 were \$8,078,950, and \$9,001,483, respectively. The \$922,533 \$806,486 decrease in general and administrative expense in 2023 is primarily due to a \$710,041 \$722,294 decrease in compensation, consisting of an \$880,314 \$432,254 decrease in stock-based compensation primarily from the recognition due to reduced expense recorded for Board of PSU award expense during 2021, offset by Directors and executive equity awards and a \$170,273 increase \$290,040 decrease in payroll costs primarily due to the departure of the former Acting Chief Financial Officer during 2023, a \$184,018 \$151,844 decrease in recruiting expense, a \$141,489 \$144,729 decrease in insurance premiums, a \$101,972 decrease in postage, a \$62,772 decrease in supplies and general corporate legal fees, office expense, a \$57,258 decrease in training, dues and subscriptions, a \$25,285 decrease in travel costs and a \$75,806 \$23,110 decrease in annual meeting expense, Board of Director fees, partially offset by \$109,204 a \$263,781 increase in travel expense legal fees, a \$156,037 increase in investor relations, consulting and a \$99,485 third party services expenses, an \$83,107 increase in accounting and audit fees fees and a \$41,857 increase in annual meeting expense.

***Severance Expense.*** Severance expense for 2023 and 2022 was \$359,419 and 2021 \$798,391, respectively. During 2023, severance expense was \$798,391 incurred in connection with the resignation of the former Acting Chief Financial Officer and \$4,017,172, respectively, the departure of six other employees. During 2022, severance expense was incurred in connection with the separation agreement with our former Senior Vice President of Marketing and Business Development, Neeraj Sahejpal and consisted of \$545,782 in cash payments and estimated payroll taxes and \$252,609 from the early vesting of certain stock award grants. During 2021, severance expense was incurred in connection with the separation agreement with our former President and Chief Executive Officer, Stephen Rizzone, consisting of cash payments and estimated payroll taxes of \$3,732,178 and stock-based compensation of \$284,994 from the extension of the exercise period for his stock options. Development.

*Loss from Operations.* Loss from operations for 2023 and 2022 was \$22,099,745 and 2021 was \$26,686,325, and \$41,432,785, respectively, respectively, primarily due to the factors described above.

*Offering Costs from Warrant Liability.* Offering costs related to warrant liability were \$591,670 during 2023. We did not have a warrant liability as of December 31, 2022.

*Change in Fair Value of Warrant Liability.* Other income resulting from the change in fair value of the warrant liability was \$2,515,425 during 2023. We did not have a warrant liability as of December 31, 2022.

*Interest Income.* Interest income for 2022 2023 was \$411,065, \$809,227, compared to \$5,492 \$411,065 for 2021, 2022, primarily due to higher interest rates for the savings our money market account.

*Net Loss.* As a result of the factors described above, net loss for 2022 2023 was \$26,275,260, \$19,366,763, compared to \$41,427,293 \$26,275,260 for 2021. 2022.

#### **Liquidity and Capital Resources**

During 2022 2023 and 2021, 2022, we recorded revenue of \$851,321 \$474,184 and \$756,793, \$851,321, respectively. We incurred a net loss of \$19,366,763 and \$26,275,260 for 2023 and \$41,427,293 for 2022, and 2021, respectively. Net cash used in operating activities was \$19,248,510 and \$23,636,747 for 2023 and \$28,720,389 for 2022, and 2021, respectively. We are currently meeting our liquidity requirements through the proceeds of securities offerings that raised net proceeds of \$27,043,751 during 2021, and \$744,787 during 2022 and \$6,916,775 during 2023, along with proceeds of \$94,640 from the sale of stock to our CEO Cesar Johnston during 2023, contributions to the employee stock purchase plan ("ESPP"), along with ESPP of \$72,930 during 2023 and payments received from customers.

We believe our current cash on hand, together with proceeds from the underwritten expected sale of common stock through registered offerings and pursuant to our ATM offering conducted program during the first quarter 2024, implementation of 2023 cost and expense reductions and anticipated revenues, (See Note 12 – Subsequent Events), will be sufficient to fund our operations through March 2024. 2025.

Although we intend to continue our research and development activities, there can be no assurance that our available resources will be sufficient to enable us to generate revenues sufficient to sustain operations. Accordingly, we may pursue additional financing, which could include offerings of equity or debt securities, bank financings, commercial agreements with customers or strategic partners, and other alternatives, depending upon market conditions. There is no assurance that such financing would be available on terms that we would find acceptable, or at all.

During 2023, cash flows used in operating activities were \$19,248,510, consisting of a net loss of \$19,366,763, less adjustments to reconcile net loss to net cash used in operating activities aggregating \$816,144 (principally stock-based compensation of \$1,677,950, amortization of operating lease ROU assets of \$719,827, issuance costs allocated to warrant liability of \$591,670, depreciation and

amortization expense of \$187,209 and inventory net realizable adjustment of \$167,413, partially offset by a decrease in fair value of the warrant liability of \$2,515,425), a \$705,895 decrease in operating lease liabilities, a \$536,477 decrease in accrued expenses, a \$491,230 increase in inventory and a \$282,918 decrease in accrued severance, partially offset by a \$978,569 increase in accounts payable, a \$288,406 increase in prepaid expenses and other current assets and a \$54,299 decrease in accounts receivable. During 2022, cash flows used in operating activities were \$23,636,747, consisting of a net loss of \$26,275,260, less non-cash expenses aggregating \$3,936,182 (representing principally stock-based compensation of \$2,918,817, decrease in right-of-use lease assets of \$730,452 and depreciation and amortization expense of

\$246,156) \$246,156), a \$770,031 decrease in operating lease liabilities, a \$558,923 decrease in accrued severance, a \$305,192 decrease in accounts payable and a \$105,821 increase in inventory, partially offset by a \$267,097 increase in accrued expense and a \$99,512 decrease in accounts receivable. During 2021, cash flows used in operating activities were \$28,720,389, consisting of a net loss of \$41,427,293, less non-cash expenses aggregating \$12,874,593 (representing principally stock-based compensation of \$11,931,188, decrease in right-of-use lease assets of \$674,306 and depreciation and amortization expense of \$258,249), a \$733,473 decrease in operating lease liabilities, a \$238,184 increase in prepaid expenses and other current assets and a \$218,602 increase in accounts receivable, partially offset by a \$975,439 increase in accrued severance and a \$109,118 increase in accounts payable.

During 2022 2023 and 2021, 2022, cash flows used in investing activities were \$164,994 \$187,078 and \$365,735, \$164,994, respectively. The cash used in 2022 primarily consisted of the purchases of new testing equipment and website redesign. The cash used in 2022 primarily consisted of purchases of components to build new testing equipment and the purchases of engineering software licenses. The

During 2023, cash used in 2021 primarily flows provided by financing activities were \$7,084,345, which consisted of \$4,239,584 in net proceeds from the purchases sale of components shares of our common stock pursuant to build new testing equipment, new lab equipment purchases, as well as costs incurred for designing a new corporate website.

our ATM offering program, \$2,677,191 in net proceeds from the issuance and sale of common stock and warrants in registered offerings, \$94,640 in net proceeds from the sale of common stock to the Chief Executive Officer and \$72,930 in proceeds from the ESPP. During 2022, cash flows provided by financing activities were \$1,017,620, which consisted of \$744,787 in net proceeds from the sale of shares of our common stock pursuant to the public in an at-the-market ("ATM") our ATM offering program and proceeds from contributions to the ESPP of \$272,833. During 2021, cash flows provided by financing activities were \$27,427,877, which consisted of \$27,043,751 in net proceeds from the sale of shares of our common stock to the public in an ATM offering and proceeds from contributions to the ESPP of \$384,126.

Research and development of new technologies is, by its nature, unpredictable. Although we intend to continue our research and undertake development activities, there can be no assurance that our available resources will be sufficient to enable us to generate revenues sufficient to sustain operations.

Furthermore, since we have no committed source of financing, there can be no assurance that we will be able to raise capital as and when we need it to continue our operations.

#### Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

In the ordinary course of business, we may be exposed to certain market risks, such as interest rates. The annual impact of our results of operations of a 100 basis point interest rate change on December 31, 2022 would be minimal. After However, after an assessment of these risks to our operations, we do not believe that the primary market risk exposures (within the meaning of Regulation S-K Item 305)

are not material and are not expected to will have any material adverse impact on our financial position, results of operations or cash flows for the next fiscal year.

**Item 8. Financial Statements and Supplementary Data.**

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Energous Corporation

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Stockholders and Board of Directors of  
Energous Corporation

**Opinion on the Financial Statements**

We have audited the accompanying balance sheets of Energous Corporation (the "Company") as of December 31, 2022 December 31, 2023 and 2021, 2022, the related statements of operations, changes in stockholders' equity and cash flows for each of the two years in the period ended December 31, 2022 December 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 December 31, 2023 and 2021, 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022 December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

## Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

## Critical Audit Matter Matters

**Critical**The critical audit **matters are matters** matter communicated below is a **matter** arising from the current period audit of the financial statements that **are was** communicated or required to be communicated to the audit committee and that: (1) **relate relates** to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. **We determined that there are no** The communication of critical audit **matters.** **matters** does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

## Going Concern – Refer to Note 2 to the financial statements

### Critical Audit Matter Description

The Company has incurred operating losses and negative cash flows from operations. As the Company is dependent on its ability to raise funds in the future, to continue as a going concern, it places higher reliance on projected financial information in ascertaining that no substantial doubt exists for it to continue as a going concern.

In evaluating management's assessment of whether substantial doubt exists, and the projected financial information used in such an evaluation, we identified assessing the reasonableness of management's such evaluation of the Company's ability to continue as a going concern and related disclosures as a critical audit matter. This matter

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required a high degree of auditor judgment and increased effort when performing audit procedures to evaluate (1) the reasonableness of management's forecasted revenues, operating expenses, and projected ending cash balance as of March 31, 2025, and (2) the adequacy of the consolidated financial statements disclosure related to the going concern assessment.

### How the Critical Audit Matter was Addressed in the Audit

The primary audit procedures we performed to address this critical audit matter included the following:

- We evaluated the design of the internal control related to the Company's going concern assessment.
- We evaluated the reasonableness of the Company's forecasted revenues, operating expenses, and the projected cash balance as of March 31, 2025 (collectively, "forecasts"), by (1) inquiring of the senior management to gain an understanding of the Company's operations and strategy, and (2) testing the forecasts by challenging the significant assumptions used by management in calculating such forecasts.
- We also assessed management's ability to forecast revenue and cash flows by comparing prior year forecasts to actual financial results.
- We assessed the adequacy of the consolidated financial statements' disclosure related to the going concern assessment by comparing it to the audit evidence obtained.

/s/ Marcum LLP

Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2013.

San Jose, CA

March 28, 2024

Melville, NY

March 30, 2023

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### Energous Corporation

#### BALANCE SHEETS

ASSETS	As of		As of	
	December 31,		December 31,	
	2022	2021	2023	2022
Current assets:				
Cash and cash equivalents	\$ 26,287,293	\$ 49,071,414	\$ 13,936,050	\$ 26,287,293
Accounts receivable, net	143,353	283,602	101,554	143,353
Inventory	105,821	—	429,638	105,821
Prepaid expenses and other current assets	827,551	874,886	539,145	827,551
Total current assets	27,364,018	50,229,902	15,006,387	27,364,018
Property and equipment, net	429,035	510,197	428,904	429,035
Operating right-of-use lease assets	1,959,869	618,985	1,240,042	1,959,869
Other assets	—	11,991		

Total assets	\$ 29,752,922	\$ 51,371,075	\$ 16,675,333	\$ 29,752,922
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Current liabilities:				
Accounts payable	\$ 900,765	\$ 1,205,957	\$ 1,879,334	\$ 900,765
Accrued expenses	1,790,414	1,523,317	1,253,937	1,790,414
Accrued severance	416,516	975,439	133,598	416,516
Warrant liability			619,575	—
Operating lease liabilities, current portion	705,894	628,307	707,251	705,894
Deferred revenue	29,727	13,364	27,082	29,727
<b>Total current liabilities</b>	<b>3,843,316</b>	<b>4,346,384</b>	<b>4,620,777</b>	<b>3,843,316</b>
Long-term liabilities:				
Operating lease liabilities, long-term portion	1,264,131	40,413	556,879	1,264,131
<b>Total liabilities</b>	<b>5,107,447</b>	<b>4,386,797</b>	<b>5,177,656</b>	<b>5,107,447</b>
Commitments and contingencies				
Stockholders' equity:				
Preferred Stock, \$0.00001 par value, 10,000,000 shares authorized at December 31, 2022 and December 31, 2021; no shares issued or outstanding	—	—		
Common Stock, \$0.00001 par value, 200,000,000 shares authorized at December 31, 2022 and December 31, 2021; 78,944,954 and 76,667,205 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively.	789	767		
Preferred Stock, \$0.00001 par value, 10,000,000 shares authorized at December 31, 2023 and December 31, 2022; no shares issued or outstanding	—	—		
Common Stock, \$0.00001 par value, 200,000,000 shares authorized at December 31, 2023 and December 31, 2022; 5,471,121 and 3,947,267 shares issued and outstanding at December 31, 2023 and December 31, 2022, respectively.	930	789		

Additional paid-in capital	387,319,985	383,383,550	393,538,809	387,319,985
Accumulated deficit	(362,675,299)	(336,400,039)	(382,042,062)	(362,675,299)
Total stockholders' equity	24,645,475	46,984,278	11,497,677	24,645,475
Total liabilities and stockholders' equity	\$ 29,752,922	\$ 51,371,075	\$ 16,675,333	\$ 29,752,922

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

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<b>Energous Corporation</b>				
<b>STATEMENTS OF OPERATIONS</b>				
	For the Year Ended December 31,		For the Year Ended December 31,	
	2022	2021	2023	2022
	\$ 851,321	\$ 756,793	\$ 474,184	\$ 851,321
Revenue				
Operating expenses:				
Expenses:				
Cost of revenue	1,277,565	—	279,083	1,277,565
Research and development	12,497,781	20,572,580	10,810,570	12,497,781
Sales and marketing	4,884,959	8,598,343	3,852,393	4,884,959
General and administrative	8,078,950	9,001,483	7,272,464	8,078,950
Severance expense	798,391	4,017,172	359,419	798,391
Total operating expenses	27,537,646	42,189,578		
Total expenses			22,573,929	27,537,646
Loss from operations	(26,686,325)	(41,432,785)	(22,099,745)	(26,686,325)
Other income:				
Other (expense) income:				
Offering costs related to warrant liability			(591,670)	—
Change in fair value of warrant liability			2,515,425	—
Interest income	411,065	5,492	809,227	411,065
Total other income	411,065	5,492	2,732,982	411,065
Net loss	\$ (26,275,260)	\$ (41,427,293)	\$ (19,366,763)	\$ (26,275,260)
Basic and diluted loss per common share	\$ (0.34)	\$ (0.64)	\$ (4.15)	\$ (6.78)
Weighted average shares outstanding, basic and diluted	77,485,729	64,926,524	4,663,594	3,874,295

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

**Energous Corporation**

	Common Stock		Additional		Total							
			Paid-in	Accumulated	Stockholders'							
	Shares	Amount	Capital	Deficit	Equity	Common Stock		Additional			Total	
Balance, January 1, 2021	61,292,412	\$ 614	\$ 344,024,638	\$ (294,972,746)	\$ 49,052,506							
						Paid-in	Accumulated	Stockholders'				
						Shares	Amount	Capital	Deficit	Equity		
Balance, January 1, 2022						3,833,360	\$ 767	\$ 383,383,550	\$ (336,400,039)	\$ 46,984,278		
Stock-based compensation												
- stock options	—	—	284,994	—	284,994	—	—	74,771	—	74,771		
Stock-based compensation												
- restricted stock units ("RSUs")	—	—	5,561,698	—	5,561,698	—	—	2,581,726	—	2,581,726		
Stock-based compensation												
- employee stock purchase plan ("ESPP")	—	—	252,568	—	252,568	—	—	124,053	—	124,053		
Stock-based compensation												
- performance share units ("PSUs")	—	—	5,831,928	—	5,831,928	—	—	138,287	—	138,287		
Issuance of shares for												
RSUs	1,431,532	14	(14)	—	—	51,162	10	(10)	—	—		
Issuance of shares for PSUs	1,420,938	14	(14)	—	—							
Issuance of shares for PSUs						6,779	1	(1)	—	—		
Shares purchased from contributions to the ESPP	292,890	3	384,123	—	384,126	17,297	3	272,830	—	272,833		
Issuance of shares in an at-the-market ("ATM") placement, net of \$868,122 in issuance costs	12,229,433	122	27,043,629	—	27,043,751							

Issuance of shares in an at-the-market ("ATM") placement, net										
of \$73,403 in issuance costs										
						38,669	8	744,779	—	744,787
Net loss	—	—	—	(41,427,293)	(41,427,293)	—	—	—	(26,275,260)	(26,275,260)
Balance, December 31, 2021	76,667,205	767	383,383,550	(336,400,039)	46,984,278	3,947,267	789	387,319,985	(362,675,299)	24,645,475
Balance, December 31, 2022										
Stock-based compensation										
- stock options	—	—	74,771	—	74,771	—	—	84,741	—	84,741
Stock-based compensation										
- RSUs	—	—	2,581,726	—	2,581,726	—	—	1,532,911	—	1,532,911
Stock-based compensation										
- ESPP	—	—	124,053	—	124,053	—	—	43,831	—	43,831
Stock-based compensation										
- PSUs	—	—	138,287	—	138,287	—	—	16,467	—	16,467
Issuance of shares for RSUs	1,022,920	10	(10)	—	—	64,062	9	(9)	—	—
Issuance of shares for PSUs	135,575	1	(1)	—	—	1,125	—	—	—	—
Issuance of shares for PSUs										
Shares purchased from contributions to the ESPP	345,929	3	272,830	—	272,833	20,366	3	72,927	—	72,930
Issuance of shares in an ATM placement, net										
of \$73,403 in issuance costs										
	773,325	8	744,779	—	744,787					
Cash in lieu of shares from reverse stock split						(1,857)	—	—	—	—
Issuance of shares in an ATM placement, net										
of \$197,647 in issuance costs						975,658	45	4,239,539	—	4,239,584
Issuance of shares in a sale of common stock, net										
of \$3,166,139 in issuance costs and fair value of liability warrant						412,500	83	133,778	—	133,861
Issuance of shares in a sale of common stock to Chief Executive Officer						52,000	1	94,639	—	94,640
Net loss	—	—	—	(26,275,260)	(26,275,260)	—	—	—	(19,366,763)	(19,366,763)
Balance, December 31, 2022	78,944,954	\$ 789	\$ 387,319,985	\$ (362,675,299)	\$ 24,645,475					

Balance, December 31, 2023	5,471,121	\$ 930	\$ 393,538,809	\$ (382,042,062)	\$ 11,497,677
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The accompanying notes are an integral part of these financial statements.

**Energous Corporation**  
**STATEMENTS OF CASH FLOWS**

	For the Year Ended December 31,		For the Year Ended December 31,	
	2022		2021	
<b>Cash flows from operating activities:</b>				
Net loss	\$ (26,275,260)	\$ (41,427,293)	\$ (19,366,763)	\$ (26,275,260)
<b>Adjustments to reconcile net loss to:</b>				
Net cash used in operating activities:				
Depreciation and amortization	246,156	258,249	187,209	246,156
Stock based compensation	2,918,837	11,931,188	1,677,950	2,918,837
Change in operating lease right-of-use assets	730,452	674,306	719,827	730,452
Bad debt expense	40,737	10,850		
Inventory net realizable value adjustment			167,413	—
Bad debt (recovered) expensed			(12,500)	40,737
Change in fair value of warrant liability			(2,515,425)	—
Offering costs allocated to warrant liability			591,670	—
<b>Changes in operating assets and liabilities:</b>				
Accounts receivable	99,512	(218,602)	54,299	99,512
Inventory	(105,821)	—	(491,230)	(105,821)
Prepaid expenses and other current assets	47,335	(238,184)	288,406	47,335
Other assets	11,991	(10,381)	—	11,991
Accounts payable	(305,192)	109,118	978,569	(305,192)
Accrued expenses	267,097	(52,970)	(536,477)	267,097
Accrued severance	(558,923)	975,439	(282,918)	(558,923)
Operating lease liabilities	(770,031)	(733,473)	(705,895)	(770,031)
Deferred revenue	16,363	1,364	(2,645)	16,363
Net cash used in operating activities	(23,636,747)	(28,720,389)	(19,248,510)	(23,636,747)
<b>Cash flows from investing activities:</b>				

Purchases of property and equipment	(164,994)	(365,735)	(187,078)	(164,994)
Net cash used in investing activities	(164,994)	(365,735)		
Net cash from investing activities			(187,078)	(164,994)
Cash flows from financing activities:				
Net proceeds from an at-the-market ("ATM") offerings	744,787	27,043,751		
Net proceeds from an ATM offering			4,239,584	744,787
Net proceeds from a registered offering of common stock and warrants			2,677,191	—
Proceeds from a sale of common stock to the Chief Executive Officer			94,640	—
Proceeds from contributions to employee stock purchase plan	272,833	384,126	72,930	272,833
Net cash provided by financing activities	1,017,620	27,427,877	7,084,345	1,017,620
Net decrease in cash and cash equivalents	(22,784,121)	(1,658,247)	(12,351,243)	(22,784,121)
Cash and cash equivalents - beginning	49,071,414	50,729,661	26,287,293	49,071,414
Cash and cash equivalents - ending	\$ 26,287,293	\$ 49,071,414	\$ 13,936,050	\$ 26,287,293
Supplemental disclosure of non-cash financing activities:				
Increase in operating lease right-of-use assets and operating lease liabilities	\$ 2,071,336	\$ —	\$ —	\$ 2,071,336
Common stock issued for RSUs	\$ 10	\$ 14	\$ 9	\$ 10
Common stock issued for PSUs	\$ 1	\$ 14	\$ —	\$ 1

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

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**ENERGOUS CORPORATION**  
**Notes to Financial Statements**

**Note 1 – Business Organization, Nature of Operations**

**Description of Business**

Energous Corporation (the "Company" ("the Company") was incorporated in Delaware on October 30, 2012. The Company has developed its WattUp® wireless power networks technology ("WPNT"), consisting of proprietary semiconductor chipsets, software controls, hardware designs and antennas, that enables enable radio frequency ("RF") based charging for electronic Internet of Things ("IoT") devices. The WattUp technology WPNT has a broad spectrum of capabilities including near-field to enable the next generation of wireless charging power networks, delivering power and data in a seamless device portfolio. This includes near field and at-a-distance wireless charging with multiple power levels at various distances.

The Company believes its proprietary WattUp technologies technology is innovative in its approach, in that the Company is developing solutions that charge IoT devices using RF technology. To date, the Company has developed and released to production multiple transmitters and receivers, including prototypes and partner production designs. The transmitters vary based on form factor and power specifications and frequencies, while the receivers are well suited designed to support a myriad of wireless charging applications including:

Device Type	Application
RF Tags	Cold Chain, Asset Tracking, Medical IoT
IoT Sensors	Cold Chain, Logistics, Asset Tracking
Electronic Shelf Labels	Retail and Industrial IoT

The first end product featuring the Company's technology entered the market in 2019. The Company started shipping its first at-a-distance wireless PowerBridges for many commercial IoT applications including building in the fourth quarter of 2021 and home automation, electronic shelf labels, industrial IoT sensors, surface expects additional wireless power enabled products to be released as the Company's business moves forward.

#### **Reverse Stock Split**

On June 14, 2023, at the Company's 2023 annual meeting of stockholders, the Company's stockholders approved a proposal to effect a reverse stock split of the Company's common stock by a ratio not to exceed 1-for-20.

On August 15, 2023, the Company announced that its Board of Directors had determined to set the reverse stock split ratio at 1-for-20 and implanted medical devices, tracking devices, hearables, wearables, consumer electronics that the Company's common stock would begin trading at the split-adjusted price beginning August 16, 2023. Upon effectiveness of the reverse stock split, every twenty shares of issued and public safety applications. Potential future applications include smartphones, commercial outstanding common stock held were converted into one share of common stock. No fractional shares were distributed as a result of the reverse stock split and industrial robotics, as well as automotive solutions stockholders were entitled to a cash payment in lieu of fractional shares. Additionally, the par value of the Company's common stock did not change.

All information presented herein, unless otherwise indicated herein, reflects the 1-for-20 reverse stock split of the Company's outstanding shares of common stock, and other devices with charging requirements that would unless otherwise require battery replacement indicated, all such amounts and corresponding conversion price or a wired power connection, exercise price data set forth herein have been adjusted to give effect to such reverse stock split.

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#### **Note 2 – Liquidity and Management Plans**

During the years ended December 31, 2022 December 31, 2023 and 2021, 2022, the Company has recorded revenue of \$851,321 \$474,184 and \$756,793 \$851,321, respectively. The Company incurred a net loss of \$26,275,260 \$19,366,763 and \$41,427,293 \$26,275,260 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively. Net cash used in operating activities was \$23,636,747 \$19,248,510 and \$28,720,389 \$23,636,747 for the years ended December 31, 2022 December 31,

2023 and 2021, 2022, respectively. The Company is currently meeting its liquidity requirements through the proceeds of securities offerings that raised net proceeds of \$27,043,751 during 2021, and \$744,787 during 2022 and \$6,916,775 during 2023, along with proceeds from the sale of the Company's common stock to Cesar Johnston, the Company's President and Chief Executive Officer, contributions to the employee stock purchase plan ("ESPP"), along with and payments received from customers.

As of December 31, 2022 December 31, 2023, the Company had cash on hand of \$26,287,293, \$13,936,050. The Company expects that cash on hand and cash equivalents as of December 31, 2022 December 31, 2023, together with anticipated additional proceeds from the underwritten ATM financing during 2024, proceeds from the Company's securities offering conducted during the first quarter of 2023 (See Note 12 – Subsequent Events) that closed on February 20, 2024, continued cost and expense reductions and collections generated by anticipated revenues, will be sufficient to fund the Company's operations into through March 2024. 2025.

Research and development of new technologies is by its nature unpredictable. Although the Company intends to continue its research and development activities, there can be no assurance that its available resources and revenue generated from its business operations will be sufficient to sustain its operations. Accordingly, the Company expects to pursue additional cost and expense reductions in addition to financing, which could include offerings of equity or debt securities, bank financings, commercial agreements with customers or strategic partners, and other alternatives, depending upon market conditions. There is no assurance that such cost and expense reductions and financing would be available on terms that the Company would find acceptable, or at all. If the Company is unsuccessful in implementing this plan, the Company will be required to make further cost and expense reductions or modifications to its on-going and strategic plans.

The market for products using the Company's technology is broad and evolving, but remains nascent and unproven, so the Company's success is dependent upon many factors, including customer acceptance of its existing products, technical feasibility of future products, regulatory approvals, the development of complementary technologies, competition and global market fluctuations.

### **Note 3 – Summary of Significant Accounting Policies**

#### ***Basis of Presentation***

The accompanying financial statements are presented in U.S. dollars and have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"), and pursuant to the accounting and disclosure rules and regulations of the U.S. Securities and Exchange Commission (the "SEC").

**Note 3 – Summary of Significant Accounting Policies, continued**

#### ***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent liabilities at the date of the financial statements as well as the reported expenses during the reporting periods.

The Company's significant estimates and assumptions include the valuation of stock-based compensation awards, recognition of revenue, the lower of cost or net realizable value of inventory and valuation of deferred tax assets. Some of these judgments can be subjective and complex, and, consequently, actual results may differ from these estimates. Although the Company believes that its estimates and assumptions are reasonable, they are based upon information available at the time the estimates and assumptions were made. Actual results could differ from those estimates.

#### ***Cash and Cash Equivalents***

The Company considers all short-term, highly liquid investments with an original maturity at the date of purchase of three months or less to be cash equivalents. The Company maintains cash balances that may be uninsured or in deposit accounts that exceed Federal

Deposit Insurance Corporation limits. The Company maintains its cash deposits with major financial institutions.

### **Note 3 – Summary of Significant Accounting Policies, continued**

#### ***Warrants***

The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 480, "Distinguishing Liabilities from Equity" ("ASC 480"), and ASC 815, "Derivatives and Hedging" ("ASC 815"). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company's common stock, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding.

For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded as a liability at their initial fair value on the date of issuance, and each balance sheet date thereafter. Changes in the estimated fair value of the warrants are recognized as a non-cash gain or loss on the statements of operations. The fair value of the warrants is estimated using an appropriate valuation model. Such warrant classification is also subject to re-evaluation at each reporting period.

Offering costs associated with warrants classified as liabilities are expensed as incurred and are presented as offering cost related to warrant liability in the statement of operations. Offering costs associated with the sale of warrants classified as equity are charged against proceeds.

#### ***Fair Value***

The Company follows ASC 820, Fair Value Measurements ("ASC 820"), which establishes a common definition of fair value to be applied when US GAAP requires the use of fair value, establishes a framework for measuring fair value, and requires certain disclosure about such fair value measurements.

ASC 820 establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about what market participants would use in pricing the asset or liability based on the best information available in the circumstances. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

- Level 1: Observable inputs such as quoted prices in active markets for identical assets or liabilities to which the Company has access at a measurement date.

- Level 2: Observable inputs other than Level 1 quoted prices that are observable for the asset or liability, either directly or indirectly. These include quoted prices for similar assets or liabilities in an active market, quoted prices for identical assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially full term of the assets or liabilities.
- Level 3: Unobservable inputs for which little or no market data exists and for which the Company must develop its own assumptions regarding the assumptions that market participants would use in pricing the asset or liability, including assumptions regarding risk.

Because of the uncertainties inherent in the valuation of assets or liabilities for which there are no observable inputs, those estimated fair values may differ significantly from the values that may have been used had a ready market for the assets or liabilities existed.

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### Note 3 – Summary of Significant Accounting Policies, continued

The carrying amounts of the Company's financial assets and liabilities, such as cash, cash equivalents, prepaid expenses, other current assets, and accounts payable & accrued expenses, are an approximate of their fair values because of the short maturity of these instruments. The Company's derivative liabilities recognized at fair value on a recurring basis are a level 3 measurement (see Note 11 – Fair Value Measurement).

#### **Revenue Recognition**

The Company follows Accounting Standards Codification ("ASC") Topic 606, "Revenue from Contracts with Customers" ("Topic 606").

In accordance with Topic 606, the Company recognizes revenue using the following five-step approach:

1. Identify the contract with the customer.
  1. Identify the contract with the customer.
  2. Identify the performance obligations in the contract.
  3. Determine the transaction price of the contract.
  4. Allocate the transaction price to the performance obligations of the contract.
  5. Recognize revenue when or as the performance obligations are satisfied.

2. Identify the performance obligations in the contract.

3. Determine the transaction price of the contract.

4. Allocate the transaction price to the performance obligations of the contract.

5. Recognize revenue when the performance obligations are met or delivered.

The Company's revenue consists of its single segment of wireless charging system solutions. The wireless charging system revenue consists of revenue from product development projects and production-level systems. During the years ended December 31, 2022 December 31, 2023 and 2021, 2022, the Company recognized \$851,321 \$474,184 and \$756,793 \$851,321 in revenue, respectively.

The Company records revenue associated with product development projects that it enters into with certain customers. In general, these product development projects are complex, and the Company does not have certainty about its ability to achieve the project milestones. The achievement of a milestone is dependent on the Company's performance obligation and requires acceptance by the customer. The Company recognizes this revenue at the point in time at which the performance obligation is met. The payment associated with achieving the performance obligation is generally commensurate with the Company's effort or the value of the deliverable and is nonrefundable. The Company records the expenses related to these product development projects in research and development expense, in the periods such expenses were incurred.

## Inventory

### Revenue Recognition

The Company records revenue associated with the sale of production-level systems at the point in time at which control over the product is transferred to the customer. The Company records the expense related to the sales of these systems as cost of revenue during the period that the product is transferred to the customer.

### **Note 3 – Summary of Significant Accounting Policies, continued**

#### **Inventory**

The Company follows ASC Topic 330, *Inventory* ("Topic 330") to account for its inventory, which includes finished goods ready for sale, work in process and raw materials, at the lower of cost or net realizable value. Net realizable value is calculated at the end of each reporting period and adjustment, if needed, is made. Cost is determined by the first-in, first-out ("FIFO") method.

#### **Research and Development**

Research and development expenses are charged to operations as incurred. For internally developed patents, all patent application costs are expensed as incurred as research and development expense. Patent application costs, which are generally legal costs, are expensed as research and development costs until such time as the future economic benefits of such patents become more certain. The Company incurred research and development costs of \$12,497,781 \$10,810,570 and \$20,572,580 \$12,497,781 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively.

### **Note 3 – Summary of Significant Accounting Policies, continued**

#### **Stock-Based Compensation**

The Company accounts for equity instruments issued to employees in accordance with accounting guidance that requires awards to be recorded at their fair value on the date of grant and are amortized over the vesting period of the award. The Company recognizes compensation costs on a straight-line basis over the requisite service period of the award, which is typically the vesting term of the equity instrument issued. Forfeitures are recognized as they occur.

Under the Company's Employee Stock Purchase Plan ("ESPP"), employees may purchase a limited number of shares of the Company's stock at a 15% discount from the lower of the closing market prices measured on the first and last days of each half-year period. The Company recognizes stock-based compensation expense for the fair value of the purchase options, as measured on the grant date.

#### **Income Taxes**

Tax benefits are recognized only for tax positions that are more likely than not to be sustained upon examination by tax authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely to be realized upon settlement. A liability for "unrecognized tax benefits" is recorded for any tax benefits claimed in the Company's tax returns that do not meet these

recognition and measurement standards. As of December 31, 2022 December 31, 2023, no liability for unrecognized tax benefits was required to be reported. The guidance also discusses the classification of related interest and penalties on income taxes. The Company's policy is to record interest and penalties on uncertain tax positions as a component of income tax expense. No interest or penalties were recorded during the years ended December 31, 2022 December 31, 2023 and 2021. The Company files income tax returns with the United States and California governments.

#### **Property and Equipment**

The Company currently uses the following expected life terms for depreciating property and equipment: computer software – 1-2 years, computer hardware – 3 years, furniture and fixtures – 7 years, leasehold improvements – remaining life of the lease.

#### **Accounting for Reverse Stock Split**

During the year ended December 31, 2023, the Company effected a reverse stock split of its common stock at a ratio of 1-for-20 (See Note 1 - Business Organization, Nature of Operations, Reverse Stock Split). On August 15, 2023, the Company had 92,069,632 shares of common stock issued and outstanding prior to the reverse stock split taking effect. On August 16, 2023, the Company had 4,601,654 shares of outstanding common stock after the reverse stock split became effective. No fractional shares were issued in connection with the reverse stock split, and stockholders of record who would have otherwise been entitled to receive a fractional share received a cash payment in lieu thereof. The Company paid approximately \$6,250 for cash in lieu of fractional shares. The par value of the Company's common stock did not change and no adjustments to historical par value were made. All information presented in the accompanying financial statements, unless otherwise indicated herein, reflects the 1-for-20 reverse stock split of the Company's outstanding shares of common stock, and unless otherwise indicated, all such amounts and corresponding conversion price or exercise price data set forth herein have been adjusted to give effect to such reverse stock split.

#### **Net Loss Per Common Share**

Basic net loss per share is computed by dividing net loss available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is computed using the weighted average number of common shares and, if dilutive, potential common shares outstanding during the period. Potential common shares consist of the incremental common shares issuable upon the exercise of stock options and warrants (using the treasury stock method), the vesting of restricted stock units ("RSUs") and performance stock units ("PSUs") and the enrollment of employees in the ESPP. The computation of diluted loss per share excludes potentially dilutive securities of 4,132,060 582,567 and 5,519,068 206,603 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively, because their inclusion would be antidilutive.

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#### **Note 3 – Summary of Significant Accounting Policies, continued**

##### **Net Loss Per Common Share, continued**

Potentially dilutive securities outlined in the table below have been excluded from the computation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive.

	For the Years Ended December 31,		For the Years Ended December 31,	
	2022		2021	
	2023	2022	2023	2022
Warrants issued to private investors	1,666,666		3,284,789	
Options to purchase common stock	300,262		525,006	
RSUs	2,165,132		1,709,273	
Total potentially dilutive securities	4,132,060		5,519,068	

The table above includes 1,666,666 83,333 warrants expiring March 1, 2024, with an exercise price of \$10.00. During the year ended December 31, 2022, 1,618,123 \$200.00 and 412,500 warrants with expiring on March 28, 2029, which have an exercise price of \$23.00 expired. \$1.66.

## Leases

### Leases

The Company determines if an arrangement is a lease at the inception of the arrangement. The Company applies the short-term lease recognition exemption and recognizes lease payments in profit or loss at lease commencement for facility or equipment leases that have a lease term of 12 months or less and do not include a purchase option whose exercise is reasonably certain. Operating leases are included in operating lease right-of-use ("ROU") assets and operating lease liabilities.

ROU assets represent the right to use an underlying asset for the lease term, and lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are measured and recorded at the service commencement date based on the present value of lease payments over the lease term. The Company uses the implicit interest rate when readily determinable; however, most leases do not establish an implicit rate, so the Company uses an estimate of the incremental borrowing rate based on the information available at the time of measurement. Lease expense for lease payments is recognized on a straight-line basis over the lease term. See Note 6 – Commitments and Contingencies, *Operating Leases* for further discussion of the Company's operating leases.

### Management's Evaluation of Subsequent Events

The Company evaluates events that have occurred after the balance sheet date of December 31, 2022, through the date which the financial statements are issued.

## Note 4 – Property and Equipment

Property and equipment are as follows:

	As of December 31,	
	2022	2021
Computer software	\$ 978,147	\$ 916,498
Computer hardware	2,144,364	2,211,490
Furniture and fixtures	488,465	484,186
Leasehold improvements	782,538	782,538
	4,393,514	4,394,712
Less – accumulated depreciation	(3,964,479)	(3,884,515)
Total property and equipment, net	\$ 429,035	\$ 510,197

The Company currently uses the following expected life terms for depreciating property and equipment: computer software – 1-2 years, computer hardware – 3 years, furniture and fixtures – 7 years, leasehold improvements – remaining life of the lease.

#### Note 4 – Property and Equipment **continued**

Property and equipment are as follows:

	As of December 31,	
	2023	2022
Computer software	\$ 900,641	\$ 978,147
Computer hardware	2,283,837	2,144,364
Furniture and fixtures	488,465	488,465
Leasehold improvements	782,538	782,538
	<hr/> 4,455,481	<hr/> 4,393,514
Less – accumulated depreciation	(4,026,577)	(3,964,479)
Total property and equipment, net	<hr/> \$ 428,904	<hr/> \$ 429,035

The Company disposed of \$166,192 \$125,112 and \$130,341 \$166,192 in property and equipment during the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively. Total depreciation and amortization expense of the Company's property and equipment was \$246,156 \$187,209 and \$258,249 \$246,156 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively.

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#### Note 5 – Accrued Expenses

Accrued expenses consist of the following:

	As of December 31,	
	2023	2022
Accrued compensation	\$ 992,743	\$ 1,306,503
Accrued legal expenses	147,506	298,546
Other accrued expenses	113,688	185,365
Total	<hr/> \$ 1,253,937	<hr/> \$ 1,790,414

	As of December 31,	
	2022	2021
Accrued compensation	\$ 1,306,503	\$ 1,217,176
Accrued legal expenses	298,546	178,236

Other accrued expenses	185,365	127,905
Total	<u>\$ 1,790,414</u>	<u>\$ 1,523,317</u>

## Note 6 – Commitments and Contingencies

### ***Operating Leases***

#### San Jose Lease

On May 20, 2022, the Company signed a lease amendment to the existing lease of its office space at its corporate headquarters in San Jose, California, extending the term of the lease for an additional three years. Upon signing the lease amendment, the Company recorded a new ROU lease asset of \$2,071,336 and operating lease liability of \$2,071,336, using a present value discount rate of 3.0% which was used as an incremental borrowing rate for a hypothetical fully collateralized real estate transaction. Upon expiration of the original lease on September 30, 2022, the new monthly lease payment starting October 1, 2022 was \$58,903, subject to annual escalations up to a maximum monthly lease payment of \$62,490.

#### Costa Mesa Lease

On July 15, 2019, the Company signed a new lease agreement for the lease of office space in Costa Mesa, California for an additional two years. Upon expiration of the original lease on September 30, 2019, the new monthly lease payment starting October 1, 2019 was \$9,773, subject to an annual escalation up to a maximum monthly lease payment of \$10,200.

On September 22, 2021, the Company signed a new Costa Mesa lease to lease a new, distinct office space in a different building with the same landlord. Per the lease, the stated commencement date was October 1, 2021 with the lease running through September 30, 2023, and the Company did not take control of the new office space until October 2021, at which time the Company recorded a new right-of-use asset of \$104,563 and operating lease liability of \$104,563. The new Costa Mesa lease had an initial monthly lease payment of \$4,369 which started on October 1, 2021, subject to an annual escalation up to a maximum monthly lease payment of \$4,522. The lease expired on September 30, 2023 and was not renewed.

#### Operating Lease Commitments

The Company follows ASC 842, *Leases*, ("Topic 842") and recognizes the required ROU assets and operating lease liabilities on its balance sheet. The Company anticipates having future total lease payments of \$2,048,733 \$1,295,905 during the period from the first quarter of 2023 to the third quarter of 2025. As of December 31, 2022 December 31, 2023, the Company has total operating lease right-of-use assets of \$1,959,869, \$1,240,042, current portion operating lease liabilities of \$705,894 \$707,251 and long-term portion of operating lease liabilities of \$1,264,131. \$556,879. The weighted average remaining lease term is 2.71.75 years as of December 31, 2022 December 31, 2023.

## Note 6 – Commitments and Contingencies, continued

### ***Operating Leases, continued***

## Operating Lease Commitments, continued

The future minimum lease payments for leased locations are as follows:

<u>For the Year Ended December 31,</u>	<u>Amount</u>	<u>Amount</u>
2023	\$ 752,828	
2024	733,497	733,497
2025	562,408	562,408
Total future lease payments	2,048,733	1,295,905
Present value discount (2.9% weighted average)	(78,708)	
Present value discount (3.0% weighted average)		(31,775)
Total operating lease liabilities	\$ 1,970,025	\$ 1,264,130

### **Hosted Design Solution Agreement**

In June 2021, the Company entered into an electronic design automation software in a hosted environment license agreement with a term of three years under which the Company is required to remit quarterly payments of approximately \$233,000 through the second quarter of 2024.

### **Litigations, Claims, and Assessments**

The Company is from time to time involved in various disputes, claims, liens and litigation matters arising in the normal course of business. While the outcome of these disputes, claims, liens and litigation matters cannot be predicted with certainty, after consulting with legal counsel, management does not believe that the outcome of these matters will have a material adverse effect on the Company's combined financial position, results of operations or cash flows.

### **MBO Bonus Plan**

On March 15, 2018, the Company's Board of Directors ("Board"), on the recommendation of the Board's Compensation Committee ("Compensation Committee"), approved the Energous Corporation MBO Bonus Plan ("Bonus Plan") for executive officers of the Company. To be eligible to receive a bonus under the Bonus Plan, an executive officer must be continuously employed throughout the applicable performance period, in good standing, and achieve the performance objectives selected by the Compensation Committee.

Under the Bonus Plan, the Compensation Committee is responsible for selecting the amounts of potential bonuses for executive officers, the performance metrics used to determine whether any such bonuses will be paid and determining whether those performance metrics have been achieved.

During the years ended December 31, 2022 December 31, 2023 and 2021, 2022, the Company recognized a total of \$1,293,875 \$698,842 and \$1,433,990, \$1,293,875, respectively, in expense under the Bonus Plan. As of December 31, 2022 December 31, 2023, \$688,364 \$530,888 of the 2022 2023 amount was not yet paid and is included in accrued expenses. The expense under the Bonus Plan is recorded under operating expenses on the Company's Statement of Operations within each executive's department.

### **Severance and Change in Control Agreement**

On March 15, 2018, the Compensation Committee approved a form of Severance and Change in Control Agreement ("Severance Agreement") that the Company may enter into with executive officers (each, an "Executive").

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## Note 6 – Commitments and Contingencies, continued

### ***Severance and Change in Control Agreement, continued***

Under the Severance Agreement, if an Executive is terminated in a qualifying termination, the Company agrees to pay the Executive six to 12 months of that Executive's monthly base salary. If Executive elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") the Company will pay the full amount of Executive's premiums under the Company's health, dental and vision plans, including coverage for the Executive's eligible dependents, for the six to 12 month period following the Executive's termination.

### **Executive Employee Agreement – Cesar Johnston**

On December 9, 2021, the Company announced that Cesar Johnston had been appointed as the Company's Chief Executive Officer. In connection with Mr. Johnston's appointment as Chief Executive Officer, the Company and Mr. Johnston executed an offer letter dated as of December 6, 2021.

Under the offer letter, Mr. Johnston will receive an annual base salary of \$400,000 per year. Beginning in year 2022, he is eligible to receive a discretionary annual bonus of up to 100% of his base salary, at the recommendation of the Company's Compensation Committee, with the approval of the Company's Board of Directors. In addition, as an inducement to accept his appointment as Chief Executive Officer, Mr. Johnston received, subject to continued employment, (a) a special one-time sign-on bonus in the amount of \$120,000, payable in two equal installments of \$60,000 each on the first payroll date in 2022 and the first payroll date after December 6, 2022, (b) a grant of 7,500 restricted stock units to acquire shares of the Company's common stock, one third of which vested on December 6, 2022 and the remaining two thirds of which will vest in eight equal installments of 625 each on each quarterly anniversary thereafter and (c) a grant of an option to purchase 15,000 shares of the Company's common stock at an exercise price equal to the fair market value of the Company's common stock on the grant date, half of which shall vest on December 31, 2023, a quarter of which shall vest on December 31, 2024 and the remainder of which shall vest on December 31, 2025.

addition, as an inducement to accept this appointment as Chief Executive Officer, Mr. Johnston received, subject to continued employment, (a) a special one-time sign-on bonus in the amount of \$120,000, payable in two equal installments of \$60,000 each on the first payroll date in 2022 and the first payroll date after December 6, 2022, (b) a grant of 150,000 restricted stock units to acquire shares of the Company's common stock, one third of which vested on December 6, 2022 and the remaining two thirds of which will vest in eight equal installments of 12,500 each on each quarterly anniversary thereafter and (c) a grant of an option to purchase 300,000 shares of the Company's common stock at an exercise price equal to the fair market value of the Company's common stock on the grant date, half of which shall vest on December 31, 2023, a quarter of which shall vest on December 31, 2024 and the remainder of which shall vest on December 31, 2025.

Also pursuant to the terms of his offer letter, Mr. Johnston is eligible for (a) an additional equity award in the amount of 287,000 PSUs to acquire shares of the Company's common stock, to vest at various amounts to be agreed upon by the Board per year over a three year period commencing January 1, 2022 and ending December 31, 2024, upon the achievement of performance criteria to be mutually established by Mr. Johnston and the Compensation Committee, and (b) an additional equity award of up to 1,250 PSUs per calendar year for each of 2022, 2023 and 2024, based on outperformance of agreed upon goals per calendar year, as determined by the Compensation Committee with approval of the Board. On July 20, 2022, the Board approved, by unanimous written consent, the grant to Mr. Johnston of up to 287,000 PSUs pursuant to the terms of Mr. Johnston's offer letter. The 287,000 PSUs that have been approved shall vest as follows: (a) up to 187,000 PSUs shall vest on December

31, 2022, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics previously determined by the Compensation Committee and approved by the Board, and (b) up to an additional 50,000 PSUs shall vest on each of December 31, 2023 and December 31, 2024, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics to be recommended by the Compensation Committee and approved by the Board at a subsequent date. As of December 31, 2022, the Company accrued \$360,000 in bonus expense for Mr. Johnston's annual discretionary bonus and recorded \$120,000 in bonus expense for Mr. Johnston's one-time sign-on bonus. As of December 31, 2022, only 187,000 PSUs have approved performance criteria. As of December 31, 2022, 135,575 PSU shares were earned and deemed delivered on that date. As of December 31, 2022 December 31, 2023, the Board has not approved any additional equity awards based on outperformance of agreed upon goals. As of December 31, 2022, the Board has not yet approved the goals for performance criteria applicable to the additional 50,000 up to 2,500 PSU shares for vesting that will vest on each of December 31, 2023 and 2024; December 31, 2024; therefore, these 2,500 PSUs have not been considered granted.

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#### Note 6 – Commitments and Contingencies, continued

##### Executive Employee Agreement – Cesar Johnston, continued

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connection with Mr. Johnston's appointment as Chief Executive Officer, the Company and Mr. Johnston additionally entered into an amended In connection with Mr. Johnston's appointment as Chief Executive Officer, the Company and restated severance Mr. Johnston additionally entered into and change amended and restated severance and change in control agreement, dated as of December 6, 2021 control agreement, dated as of December 6, 2021. In the event of In the event of a termination that is not not a change-in-control qualifying termination, Mr. Johnston is entitled to (a) a one-time lump sum payment by the Company in an amount equal to 18 months of his monthly base salary plus an amount equal to 100% of his target bonus plus, if agreed by the Compensation Committee, a discretionary bonus for the year in which the termination occurs, (b) any outstanding unvested equity awards held by Mr. Johnston that would vest in the next 18 months of continuing employment (other than any equity awards that vest upon satisfaction of performance criteria) will accelerate and become vested and (c) if Mr. Johnston timely elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company or its successor will pay the full amount of Mr. Johnston's COBRA premiums on his behalf for 18 months.

(a)

a one-time lump sum payment by the Company in an amount equal to 18 months of his monthly base salary plus an amount equal to 100% of his target bonus plus, if agreed by the Compensation Committee, a discretionary bonus for the year in which the termination occurs, (b) any outstanding unvested equity awards held by Mr. Johnston that would vest in the next 18 months of continuing employment (other than any equity awards that vest upon satisfaction of performance criteria) will accelerate and become vested and (c) if Mr. Johnston timely elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company or its successor will pay the full amount of Mr. Johnston's COBRA premiums on his behalf for 18 months.

Mr. Johnston's agreement additionally provides that, in the event of a change-in-control qualifying termination, Mr. Johnston is entitled to (a) a one-time lump sum payment by the Company in an amount equal to 18 months of his monthly base salary plus an amount equal to a 150% one-time lump sum payment by the Company in an amount equal to 18 months% of his monthly base salary target bonus plus an amount equal to 150% of his target bonus plus a prorated bonus for the year in which the termination occurs, (b) any outstanding unvested equity awards held by Mr. Johnston (including any equity awards that vest upon satisfaction of performance criteria) will accelerate in full and become vested and (c) if Mr. Johnston timely elects continued coverage under COBRA, the Company or its successor will pay the full amount of Mr. Johnston's COBRA premiums on his behalf for 18 months.

~~if Mr. Johnston timely elects continued coverage under COBRA, the Company or its successor will pay the full amount of Mr. Johnston's COBRA premiums on his behalf for 18 months.~~

Mr. Johnston is also eligible to receive all customary and usual benefits generally available to senior executives of the Company.

#### **Executive Transition Agreement – Stephen Rizzone**

On April 3, 2015, the Company entered into an Amended and Restated Executive Employment Agreement with Stephen R. Rizzone, the Company's President and Chief Executive Officer ("Employment Agreement").

The Employment Agreement effective as of ~~January 1, 2015~~ January 1, 2015, has had an initial term of four years and automatically renews ~~renewed~~ each year after the initial term. The Employment Agreement provides ~~provided~~ for an annual base salary of \$365,000, \$365,000, and Mr. Rizzone is was eligible to receive quarterly cash bonuses from the MBO Bonus Plan with a total target amount equal to ~~100%~~ 100% of his base salary based upon achievement of performance-based objectives established by the Board.

On July 9, 2021, the Company announced that Stephen R. Rizzone has had retired from his position as the Company's President and Chief Executive Officer and as a member of the Board.

In connection with Mr. Rizzone's retirement, the Company and Mr. Rizzone entered into an Executive Transition Agreement ("Separation Agreement"), providing for continued employment through August 31, 2021. Upon his termination of employment, the Separation Agreement provides severance payments and benefits to Mr. Rizzone consistent with the terms of his existing employment agreement with the Company, including without limitation: compensation-based payments of ~~\$1,460,000~~ \$1,460,000 in the aggregate, payable under a certain payment scheme as set forth therein, an additional lump sum cash payment of ~~\$2,000,000~~ \$2,000,000, a pro-rated bonus payment for the two months of employment during the current quarterly bonus period payable at the same time bonus payments are made to other executives of the Company, settlement of deferred vested restricted stock units and an extension of the exercise periods of all stock options held by Mr. Rizzone until the one year anniversary of his termination date, and additional benefits related to Mr. Rizzone's medical insurance. In addition, the Company will pay-off all amounts owed under a lease agreement relating to a Company Car and Mr. Rizzone will receive the title to the vehicle. All compensation under the Separation Agreement will be subject to applicable withholding.

~~During the year ended December 31, 2021, the Company recorded \$4,017,172 in severance expense associated with the separation agreement, including \$284,994 in additional stock-based compensation as a result of the extension of the exercise periods on the stock options. As of December 31, 2022, December 31, 2023 and 2022, the Company had \$0 and \$411,607, respectively, in unpaid accrued severance expense of \$411,607 which is expected pertaining to be paid by August 2023. Mr. Rizzone's Separation Agreement.~~

## Note 6 – Commitments and Contingencies, continued

### **Executive Transition Agreement – Neeraj Sahejpal**

On April 29, 2022, the Company announced the departure of Neeraj Sahejpal, former Senior Vice President of Marketing and Business Development, effective April 30, 2022. Pursuant to the terms of Mr. Sahejpal's severance and change of control agreement with the Company, Mr. Sahejpal received payments and benefits including compensation equal to 12 months of Mr. Sahejpal's then-current salary of \$261,250, 12 months of maximum potential bonus of \$261,250, and 12 months of COBRA reimbursements. In addition, all RSUs held by Mr. Sahejpal that were due to vest in the 12 months after his departure, totaling RSUs covering 85,943 shares, were accelerated.

The Company recorded \$798,391 in total severance expense pertaining to Mr. Sahejpal's departure for the year ended December 31, 2022, including \$252,609 in stock-based compensation as a result of accelerated vesting of RSUs. As of December 31, 2022, the Company had unpaid accrued severance expense of \$4,909 pertaining to Mr. Sahejpal's agreement.

### **Executive Transition Agreement – William Mannina**

On July 20, 2023, the Company announced the departure of William Mannina, former Acting Chief Financial Officer, effective August 16, 2023. Pursuant to the terms of a letter agreement which is expected between Mr. Mannina and the Company, Mr. Mannina will receive payments and benefits including cash severance payments equivalent to nine months of his then-current salary of \$265,825 and premium payments for continued healthcare coverage for nine months following his resignation effective date. Mr. Mannina's restricted stock units continued to vest through April 30, 2023.

As of December 31, 2023, the Company had accrued unpaid severance expense of \$127,593 pertaining to Mr. Mannina's agreement.

### **Strategic Alliance Agreement**

In November 2016, the Company and Dialog Semiconductor plc ("Dialog"), a related party (see Note 10—Related Party Transactions), entered into a Strategic Alliance Agreement ("Alliance Agreement") for the manufacture, distribution and commercialization of products incorporating the Company's wire-free charging technology ("Licensed Products"). Pursuant to the terms of the Alliance Agreement, the Company agreed to engage Dialog as the exclusive supplier of the Licensed Products for specified fields of use, subject to certain exceptions (the "Company Exclusivity Requirement"). Dialog agreed to not distribute, sell or work with any third party to develop any competing products without the Company's approval (the "Dialog Exclusivity Requirement"). In addition, both parties agreed on a revenue sharing arrangement and will collaborate on the commercialization of Licensed Products based on a mutually-agreed upon plan. Each party will retain all of its intellectual property.

The Alliance Agreement has an initial term of seven years, with automatic renewal annually thereafter unless terminated by either party upon 180 days' prior written notice. Under the terms of the Alliance Agreement, the Company could terminate the Alliance Agreement at any time after the third anniversary of the Agreement upon 180 days' prior written notice to Dialog, or if Dialog breaches certain exclusivity obligations. Dialog could terminate the Alliance Agreement if sales of Licensed Products did not meet specified targets. The Company Exclusivity Requirement had a termination date of the earlier of January 1, 2021 or the occurrence of certain events relating to the Company's pre-existing exclusivity obligations. The Company Exclusivity Requirement renewed automatically on an annual basis unless the Company and Dialog agree to terminate the requirement.

On September 20, 2021, the Company was notified by Dialog, then recently acquired by Renesas Electronics Corporation, that it was terminating the Alliance Agreement. There is a wind down period included in the Alliance Agreement which will conclude in September 2024. During the wind down period, the Alliance Agreement's terms will continue to apply to the Company's products that are covered by certain existing customer relationships, except that the parties' respective exclusivity rights have terminated.

## Note 7 – Stockholders' Equity

### *Authorized Capital*

The holders of the Company's common stock are entitled to one vote per share. Holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the board **Board** of **directors** **Directors** out of legally available funds. Upon the liquidation, dissolution or winding up of the Company, holders of common stock are entitled to share ratably in all assets of the Company that are legally available for distribution.

### *Financing*

On September 15, 2020, the Company filed a shelf registration statement on Form S-3 with the SEC, which became effective on September 24, 2020 (the "Prior Shelf"), and contains two prospectuses: a base prospectus, which covers the offering, issuance and sale by the Company of up to **\$75,000,000** **\$75,000,000** of its common stock, preferred stock, debt securities, warrants to purchase our common stock, preferred stock or debt securities, subscription rights to purchase its common stock, preferred stock or debt securities and/or units consisting of some or all of these securities; and an at-the-market sales agreement prospectus supplement covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of **\$40,000,000** **\$40,000,000** of its common stock that may be issued and sold under the At Market Issuance Sales Agreement, as amended, between the Company and B. Riley Securities, Inc., Roth Capital Partners LLC and Ladenburg Thalmann & Co. Inc. (the "ATM Program"). The **\$40,000,000** **\$40,000,000** of common stock to be offered, issued and sold under the ATM Program is included in the **\$75,000,000** **\$75,000,000** of securities that may be offered, issued and sold by the Company under the base prospectus. Pursuant to this shelf registration statement, the Prior Shelf, the Company sold shares which raised net proceeds of **\$38,832,711** **\$38,832,711** (net of **\$1,167,289** **\$1,167,289** in issuance costs) during the third and fourth quarters of 2020 under the ATM Program.

On October 4, 2021, the Company filed a prospectus supplement covering the offering, issuance and sale of up to an additional **\$35,000,000** **\$35,000,000** of shares of the Company's common stock pursuant to the ATM Program. The Company raised net proceeds of **\$27,043,751** **\$27,043,751** (net of **\$868,122** **\$868,122** in issuance costs), during 2021 under the ATM Program. During 2022, the Company raised an additional **\$744,787** **\$744,787** (net of **\$73,403** **\$73,403** in issuance costs). During 2023, the Company raised an additional **\$3,555,563** (net of **\$162,799** in issuance costs). As of December 31, 2022 December 31, 2023, there is no amount remaining in the Company has **\$6,269,937** of common stock registered for sale under the ATM Program. Prior Shelf due to its expiration on September 24, 2023.

On November 15, 2021, the Company filed a shelf registration statement on Form S-3 with the SEC, which became effective on December 16, 2021 (the "Current Shelf"). This shelf registration statement allows the Company to sell, from time to time, any combination of debt or equity securities described in the registration statement up to aggregate proceeds of \$100,000,000. Pursuant to this registration statement, on March 28, 2023, the Company completed an underwritten offering pursuant to which it issued and sold an aggregate of (i) 412,500 shares of its common stock (the "Shares") and (ii) warrants to purchase up to 412,500 shares of its common stock (the "2023 Warrants"), for net proceeds of \$2,677,191, after deducting underwriting discounts, commission and expenses payable by the Company. The 2023 Warrants were immediately exercisable upon issuance and have a term of six years and an exercise price of \$8.00. The Company allocated the proceeds received first to the 2023 Warrants based on the fair value of the 2023 Warrants as determined at initial measurement, with the remaining proceeds allocated to the Shares (see Note 7 – Warrant Liability and Note 8 – Fair Value Measurements). Pursuant to the terms of the 2023 Warrants, the exercise price was adjusted to \$1.66 as of December 31, 2023.

On August 30, 2023, the Company filed a prospectus supplement to the Current Shelf covering the offering, issuance and sale of up to an additional \$25,000,000 of shares of the Company's common stock pursuant to the ATM Program. During 2023, the Company raised \$684,021 (net of \$34,848 in issuance costs) under the ATM Program. As of December 31, 2023, the Company has \$24,281,132 remaining available under the ATM Program.

#### **Common Stock Outstanding**

Our outstanding shares of common stock typically include shares that are deemed delivered under U.S. GAAP. Shares that are deemed delivered currently include shares that have vested, but have not yet been delivered, under tax-deferred equity awards, as well as shares purchased under the ESPP where actual transfer of shares normally occurs a few days after the completion of the purchase periods. There are no voting rights for shares that are deemed delivered under U.S. GAAP until the actual delivery of shares takes place. There are currently 200,000,000 shares of common stock authorized for issuance.

#### **Note 8 – Stock Based Compensation**

##### ***Equity Incentive Plans***

###### **2013 Equity Incentive Plan**

Effective on June 16, 2021 June 14, 2023, the Company's stockholders approved the amendment and restatement of the 2013 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 1,500,000 50,000 shares, bringing to 8,785,967 489,298 the total number of shares approved for issuance under that plan.

As of December 31, 2022 December 31, 2023, 1,294,884 118,877 shares of common stock remain eligible to be issued through equity-based instruments under the 2013 Equity Incentive Plan.

###### **2014 Non-Employee Equity Compensation Plan**

Effective on May 26, 2020, the Company's stockholders approved the amendment and restatement of the 2014 Non-Employee Equity Compensation Plan to increase the number of shares reserved for issuance through equity-based instruments thereunder by 800,000~~40,000~~ shares, bringing to 1,650,000~~82,500~~ the total number of shares approved for issuance under that plan.

As of December 31, 2022~~December 31, 2023~~, 670,690~~29,137~~ shares of common stock remain eligible to be issued through equity-based instruments under the 2014 Non-Employee Equity Compensation Plan.

#### 2015 Performance Share Unit Plan

Effective on June 16, 2021, the Company's stockholders approved the amendment and restatement of the 2015 Performance Share Unit Plan to increase the number of shares reserved for issuance through equity-based instruments thereunder by 1,700,000~~85,000~~ shares, bringing to 5,110,104~~255,505~~ the total number of shares approved for issuance under that plan.

As of December 31, 2022~~December 31, 2023~~, 2,275,438~~108,897~~ shares of common stock remain eligible to be issued through equity-based instruments under the 2015 Performance Share Unit Plan.

#### 2017 Equity Inducement Plan

On December 28, 2017, the Board approved the 2017 Equity Inducement Plan ("2017 Plan"). Under the 2017 Plan, the Board reserved 600,000~~30,000~~ shares for the grant of RSUs. These grants will be administered by the Board or a committee of the Board. These awards will be granted to individuals who (a) are being hired as an employee by the Company or any subsidiary and such award is a material inducement to such person being hired; (b) are being rehired as an employee following a bona fide period of interruption of employment with the Company or any subsidiary; or (c) will become an employee of the Company or any subsidiary in connection with a merger or acquisition.

On July 20, 2022, the Board increased the number of shares of common stock reserved and available for issuance under the 2017 Plan by 2,000,000 shares to a total of 2,600,000 shares approved.100,000 shares. As of December 31, 2022~~December 31, 2023~~, 1,566,170~~51,084~~ shares of common stock remain available to be issued through equity-based instruments under the 2017 Plan.

#### Employee Stock Purchase Plan

In April 2015, the Company's Board approved the ESPP, under which 600,000~~30,000~~ shares of common stock have been reserved for purchase by the Company's employees, subject to approval by the Company's stockholders. On May 21, 2015, the Company's stockholders approved the ESPP. Effective on June 16, 2021~~June 14, 2023~~, the Company's stockholders approved the amendment and restatement of the ESPP to increase the number of shares reserved for issuance through equity-based instruments thereunder by 700,000~~25,000~~ shares, bringing to 1,550,000~~102,500~~ the total number of shares approved for issuance under that plan. Under the ESPP, employees may designate an amount not less than 1%~~1%~~ but not more than 10%~~10%~~ of their annual compensation for the purchase of Company shares. An offering period shall be six months in duration commencing on or about January 1 and July 1 of each year. The exercise price of the option will be the lesser of 85%~~85%~~ of the fair market of the common stock on the first business day of the offering period and 85%~~85%~~ of the fair market value of the common stock on the applicable exercise date which is typically the last market date of the offering period.

## Note 8 – Stock Based Compensation, continued

### ***Equity Incentive Plans, continued***

#### Employee Stock Purchase Plan, continued

As of December 31, 2022 December 31, 2023, 201,619 14,716 shares of common stock remain eligible to be issued under the ESPP. For the year ended December 31, 2022 December 31, 2023, eligible employees contributed \$272,833 \$72,930 through payroll deductions to the ESPP and 345,929 20,336 shares were deemed delivered for the year ended December 31, 2023. For the year ended December 31, 2022, eligible employees contributed \$272,833 through payroll deductions to the ESPP and 17,297 shares were deemed delivered for the year ended December 31, 2022. For the year ended December 31, 2021, eligible employees contributed \$384,126 through payroll deductions to the ESPP and 292,890 shares were deemed delivered for the year ended December 31, 2021.

#### ***Stock Option Award Activity***

During the year ended December 31, 2022, In February 2022, the Board granted our Chief Executive Officer 300,000 15,000 stock options under the 2013 Equity Incentive Plan at an exercise price of \$1.27 \$25.40 per share with half of the options vesting on the second anniversary of the vesting start date and a quarter of the options vesting on each of the next two anniversaries of the vesting start date. No options were granted during the years year ended December 31, 2022 and 2021, December 31, 2023.

The Company estimated the fair value of stock options granted during 2022 using the Black-Scholes option pricing model. The fair values of stock options granted during 2022 were estimated using the following assumptions:

	<b>Year Ended</b>	
	<b>December 31, 2022</b>	
Stock price	\$	25.40
Dividend yield		0%
Expected volatility		108%
Risk-free interest rate		1.92%
Expected life		5.6 years

	<b>Year Ended</b>	
	<b>December 31, 2022</b>	
Stock price	\$	1.27
Dividend yield		0%
Expected volatility		108%
Risk-free interest rate		1.92%
Expected life		5.6 years

The following is a summary of the Company's stock option activity during the year ended December 31, 2022 December 31, 2023:

Number of Options	Weighted			
	Weighted	Average		
	Average	Remaining		
	Exercise Price	Life In Years	Intrinsic Value	

Outstanding at January 1, 2022	525,006	\$ 5.77	0.7	\$ —		
					Weighted	
					Number	Weighted
					Average	Average
					of	Remaining
					Options	Exercise
					Price	Life In
Outstanding at January 1, 2023					Years	Intrinsic
Granted	300,000	1.27	—	—	15,013	\$ 25.42
Exercised	—	—	—	—	—	—
Forfeited	(524,744)	5.77	—	—	(13)	49.80
Outstanding at December 31, 2022	<u>300,262</u>	<u>\$ 1.27</u>	<u>8.9</u>	<u>\$ —</u>		
Exercisable at December 31, 2022	<u>262</u>	<u>\$ 2.49</u>	<u>1.0</u>	<u>\$ —</u>		
Outstanding at December 31, 2023					15,000	\$ 25.40
Exercisable at January 1, 2023					13	\$ 49.80
Vested					7,500	25.40
Exercised					—	—
Forfeited					(13)	49.80
Exercisable at December 31, 2023					7,500	\$ 25.40
					7.9	\$ —

As of December 31, 2022 December 31, 2023, the unamortized value of options was \$233,689. \$148,948. The unamortized amount will be expensed over a weighted average period of 2.61.9 years.

The aggregate intrinsic value of options exercised was \$0 \$0 for the years ended December 31, 2022 December 31, 2023 and 2021. 2022.

#### Note 8 – Stock Based Compensation, continued

##### Restricted Stock Units (“RSUs”)

During the year ended December 31, 2022 December 31, 2023, the Compensation Committee granted various employees RSUs under which the holders have the right to receive an aggregate of 1,038,700 covering 3,439 shares of common stock. The majority of these awards, granted stock under the 2013 Equity Incentive Plan. The awards vest over terms ranging from two to four years.

#### Note 8 – Stock Based Compensation, continued five years.

##### Restricted Stock Units (“RSUs”), continued

During the year ended December 31, 2022 December 31, 2023, the Compensation Committee granted various directors and consultants non-employees RSUs under which the holders have the right to receive an aggregate 290,055 covering 6,223 shares of common stock.

These awards were granted stock under the 2014 Non-Employee Equity Compensation Plan. The awards granted vest over terms ranging from one year to two years.<sup>four years</sup>.

During the year ended December 31, 2022 December 31, 2023, the Compensation Committee granted employees RSUs under which the holders have the right to receive 608,500 covering 30,750 shares of common stock. The awards, granted stock under the 2017 Equity Inducement Plan, Plan. The awards vest over four years beginning on the anniversary of the grant date.

At December 31, 2022 December 31, 2023, the unamortized value of the RSUs was \$2,475,986 \$1,130,709. The unamortized amount will be expensed over a weighted average period of 1.8 years. A summary of the activity related to RSUs for the year ended December 31, 2022 December 31, 2023 is presented below:

	Total	Weighted Average Grant	
		Date	Fair Value
Unvested at January 1, 2023	108,251	\$	32.67
RSUs granted	40,412	\$	12.81
RSUs forfeited	(12,902)	\$	25.40
RSUs vested	(64,027)	\$	30.58
Unvested at December 31, 2023	71,734	\$	24.65

	Total	Weighted Average Grant	
		Date	Fair Value
Unvested at January 1, 2022	1,709,273	\$	3.72
RSUs granted	1,937,255	\$	1.21
RSUs forfeited	(458,476)	\$	1.98
RSUs vested	(1,022,920)	\$	4.16
Unvested at December 31, 2022	2,165,132	\$	1.63

#### Performance Share Units ("PSUs")

Performance share units ("PSUs") are grants that vest upon the achievement of certain performance goals. The goals are commonly related to the Company's revenue and achievement of sales and marketing goals.

On July 20, 2022, the Board granted the Company's Chief Executive Officer, Cesar Johnston, up to 287,000<sup>14,350</sup> PSUs under the Company's 2015 Performance Share Unit Plan pursuant to the terms of Mr. Johnston's offer letter with the Company (See Note 46 – Commitments and Contingencies). The up to 287,000<sup>14,350</sup> PSUs that have been approved shall vest as follows: (a) up to 187,000<sup>9,350</sup> PSU shares shall vest on December 31, 2022, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics previously determined by the Compensation Committee and approved by the Board, and (b) up to an additional 50,000<sup>2,500</sup> PSU shares shall vest on each December 31, 2023, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of December 31, 2023 certain performance metrics determined and granted by the Board on May 17, 2023, and (c) up to an additional 2,500 PSU shares shall vest on December 31, 2024, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics to be recommended by the Compensation Committee and approved by the Board at a subsequent date. As of December 31, 2022, only 187,000<sup>6,779</sup> PSUs have approved performance criteria. As of December 31, 2022, 135,575 PSUs have been<sup>were</sup> achieved, and<sup>were</sup> vested and<sup>were</sup> deemed delivered on that date. As of December 31, 2022, December 31, 2023, an

additional 1,125 PSUs were achieved, vested and deemed delivered on that date. As of December 31, 2023, the performance criteria for the additional 100,000 PSUs that shall vest on December 31, 2024 have not been approved by the Board.

#### Note 8 – Stock Based Compensation, continued

##### *Performance Share Units (“PSUs”), continued*

At December 31, 2022 December 31, 2023, the unamortized value of all PSUs was \$0. \$0. A summary of the activity related to PSUs for the year ended December 31, 2022 December 31, 2023 is presented below:

	Total	Weighted Average Grant Date Fair Value
Unvested at January 1, 2023	—	\$ —
PSUs granted	2,500	\$ 6.16
PSUs forfeited	(1,375)	\$ 6.16
PSUs vested	(1,125)	\$ 6.16
Unvested at December 31, 2023	—	\$ —

	Total	Weighted Average Grant Date Fair Value
Unvested at January 1, 2022	—	\$ —
PSUs granted	187,000	\$ 1.02
PSUs forfeited	(51,425)	\$ 1.02
PSUs vested	(135,575)	\$ 1.02
Unvested at December 31, 2022	—	\$ —

##### *Employee Stock Purchase Plan (“ESPP”)*

During the years ended December 31, 2022 December 31, 2023 and 2021, 2022, there were two offering periods per year for the ESPP. The first offering period started on January 1 of each year and concluded on June 30 of each year. The second offering period started on July 1 of each year and concluded on December 31 of each year.

The weighted-average grant-date fair value of the purchase option for each designated share purchased under the ESPP was approximately \$0.37 \$4.66 and \$1.10 \$7.29 during the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively, which represents the fair value of the option, consisting of three main components: (i) the value of the discount on the enrollment date, (ii) the proportionate value of the call option for 85% 85% of the stock and (iii) the proportionate value of the put option for 15% 15% of the stock.

The Company **recognized** **recorded** stock-based compensation expense for the plan of **\$124,053** **\$43,831** and **\$252,568** **\$124,053** for the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022**, respectively.

The Company estimated the fair value of the purchase options granted during the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022** using the Black-Scholes option pricing model. The fair values of the purchase options granted were estimated using the following assumptions:

	For the Year Ended	
	December 31, 2022 2023	
Stock price range	\$ 0.964.80 – 1.25	16.72
Dividend yield		0 %
Expected volatility range	6159 – 6867 %	
Risk-free interest rate range	0.064.42 – 2.52	5.47 %
Expected life		6 months

	For the Year Ended	
	December 31, 2021 2022	
Stock price range	1.80 – 2.78	19.20 - 25.00
Dividend yield		0 %
Expected volatility range	9561 – 143	68 %
Risk-free interest rate range	0.050.06 – 0.09	2.52 %
Expected life		6 months

## Note 8 – Stock Based Compensation, continued

### **Stock-Based Compensation Expense**

The following tables summarize total stock-based compensation costs recognized for years ended **December 31, 2022** **December 31, 2023** and **2021** **2022**:

	For the Years Ended December 31,	
	2023	2022
Options	\$ 84,741	\$ 74,771
RSUs	1,532,911	2,581,726

PSUs	16,467	138,287
ESPP	43,831	124,053
Total	<u>\$ 1,677,950</u>	<u>\$ 2,918,837</u>
	For the Years Ended December 31,	
	2022	2021
Options	\$ 74,771	\$ 284,994
RSUs	2,581,726	5,561,698
PSUs	138,287	5,831,928
ESPP	124,053	252,568
Total	<u>\$ 2,918,837</u>	<u>\$ 11,931,188</u>

The total amount of stock-based compensation was reflected within the statements of operations as:

	For the Years Ended December 31,	
	2023	2022
Research and development	\$ 658,041	\$ 1,134,106
Sales and marketing	368,388	448,347
General and administrative	651,521	1,083,775
Severance expense	—	252,609
Total	<u>\$ 1,677,950</u>	<u>\$ 2,918,837</u>
	For the Years Ended December 31,	
	2022	2021
Research and development	\$ 1,134,106	\$ 6,582,873
Sales and marketing	448,347	3,099,232
General and administrative	1,083,775	1,964,089
Severance expense	252,609	284,994
Total	<u>\$ 2,918,837</u>	<u>\$ 11,931,188</u>

#### Note 9 – Income Taxes

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security (CARES) Act was signed into law. The CARES Act includes provisions relating to refundable payroll tax credits, net operating loss carryback periods, alternative minimum tax refunds, modifications to the net interest deduction limitations and technical corrections to the tax depreciation methods for qualified improvement property. The CARES Act has an immaterial impact on the Company's income taxes.

The Company accounts for income taxes in accordance with ASC 740, "Income Taxes" ("ASC 740"). ASC 740 requires that the tax benefit of net operating losses, temporary differences and credit carryforwards be recorded as an asset to the extent that management assesses that realization is "more likely than not." Realization of the future tax benefits is dependent on the Company's ability to generate sufficient taxable income within the carryforward period. Because of the Company's recent history of operating losses, management believes that recognition of the deferred tax assets arising from the above-mentioned future tax benefits is currently not likely to be realized and, accordingly, has provided a valuation allowance as of December 31, 2022 December 31, 2023.

## Note 9 – Income Taxes, continued

As of December 31, 2022 December 31, 2023 and 2021, 2022, the Company's deferred tax assets (liabilities) consisted of the effects of temporary differences attributable to the following:

	December 31,	
	2023	2022
<b>Deferred tax assets:</b>		
Research and development tax credits	\$ 11,638,252	\$ 10,526,768
Net operating loss carryovers	83,393,532	76,477,629
Property and equipment	147,008	162,698
Research and development costs	8,652,830	9,829,326
Start-up and organizational costs	9,884	9,275
Stock-based compensation	118,807	283,285
Operating lease liability	353,749	551,284
Other accruals	351,214	464,948
<b>Total gross deferred tax assets</b>	<b>104,665,276</b>	<b>98,305,213</b>
Less: valuation allowance	(104,318,267)	(97,756,771)
<b>Total deferred tax assets</b>	<b>347,009</b>	<b>548,442</b>
<b>Deferred tax liabilities:</b>		
Operating lease right-of-use asset	(347,009)	(548,442)
<b>Total deferred tax liabilities</b>	<b>(347,009)</b>	<b>(548,442)</b>
<b>Total deferred taxes, net</b>	<b>\$ —</b>	<b>\$ —</b>
<b>December 31,</b>		
	<b>2022</b>	<b>2021</b>
<b>Deferred tax assets:</b>		
Research and development tax credits	\$ 10,526,768	\$ 9,475,588
Net operating loss carryovers	76,477,629	67,785,680
Property and equipment	162,698	189,271
Research and development costs	9,829,326	10,923,959
Start-up and organizational costs	9,275	462
Stock-based compensation	283,285	4,659,555
Operating lease liability	551,284	187,132
Other accruals	464,948	670,065
<b>Total gross deferred tax assets</b>	<b>98,305,213</b>	<b>93,891,712</b>
Less: valuation allowance	(97,756,771)	(93,718,497)

Total deferred tax assets	548,442	173,215
Deferred tax liabilities:		
Operating lease right-of-use asset	(548,442)	(173,215)
Total deferred tax liabilities	(548,442)	(173,215)
Total deferred taxes, net	\$ —	\$ —

The change in the Company's valuation allowance is as follows:

	2022	2021	2023	2022
January 1,	\$ 93,718,497	\$ 82,929,675	\$ 97,756,771	\$ 93,718,497
Increase in valuation allowance	4,038,274	10,788,822	6,561,496	4,038,274
December 31,	<u>\$ 97,756,771</u>	<u>\$ 93,718,497</u>	<u>\$ 104,318,267</u>	<u>\$ 97,756,771</u>

The Company has federal and state net operating loss carryforwards of approximately \$273,056,000 \$297,696,000 and \$274,011,000, \$298,948,000, respectively, available to offset future taxable income. The federal and state NOL carryforwards will expire at various dates beginning in 2033. The Company has federal and state research and development tax credit carryforwards of approximately \$6,373,000 \$7,152,000 and \$5,258,000, \$5,678,000, respectively. The federal R&D credit carryforwards will expire beginning in 2032 and state R&D credit carryforwards do not expire. The ultimate realization of the net operating loss is dependent upon future taxable income, if any, of the Company. Although management believes that the Company may have sufficient future taxable income to absorb the net operating loss carryforwards and research and development tax credit carryforwards before the expiration of the carryforward period, there may be circumstances beyond the Company's control that limit such utilization. Accordingly, management has determined that a full valuation allowance of the deferred tax asset is appropriate at December 31, 2022 December 31, 2023 and 2021, 2022.

The Inflation Reduction Act (IRA) of 2022 was signed into law by President Joe Biden on August 16, 2022. The IRA provides several tax incentives, including the expanded Internal Revenue Code (IRC) Section 179D deduction, increased ability to leverage the R&D credit to offset payroll taxes for eligible start-up businesses, and 15% alternative minimum tax (AMT) for corporations with average income more than \$1 billion for the past three tax period. The provisions do not have material impact to the Company for the 2023 tax year and the Company will continue to monitor the effect of this legislation.

## Note 9 – Income Taxes, continued

Internal Revenue CodeIRC Section 382 imposes limitations on the use of net operating loss carryforwards when the stock ownership of one or more 5% stockholders (stockholders owning 5% or more of the Company's outstanding capital stock) has increased on a cumulative basis by more than 50 percentage points. Management cannot control the ownership changes occurring as a result of public trading of the Company's Common Stock. Accordingly, there is a risk of an ownership change beyond the control of the Company that could trigger a limitation of the use of the loss carryforward. The Company completed a Section 382 analysis as of December 31, 2022 December 31, 2023 and determined that none of its NOLs or R&D credits would be limited.

	For the Year Ended December 31,		For the Year Ended December 31,	
	2022	2021	2023	2022
Tax benefit at federal statutory rate	(21.0)%	(21.0)%	(21.0)%	(21.0)%
State income taxes	(4.4)	(5.8)	(8.8)	(4.4)
Permanent differences:				
Stock-based compensation	12.4	1.8	0.1	12.4
Executive compensation	—	1.6	—	—
Research and development tax credits	(2.4)	(2.7)	(4.0)	(2.4)
Increase in valuation allowance	15.4	26.1	33.9	15.4
Mark-to-market warrant liability			(2.1)	—
Other			1.9	—
Effective income tax rate	0.0%	0.0%	0.0%	0.0%

#### Note 10 - Warrant Liability

##### 2023 Warrants

In March 2023, the Company issued 412,500 warrants to purchase up to 412,500 shares of its common stock. The 2023 Warrants have a six-year term and were exercisable upon issuance on March 28, 2023. At issuance, each 2023 Warrant was exercisable for one share of the Company's common stock at a price of \$8.00 per share. As of December 31, 2023, the exercise price of the 2023 Warrants was adjusted to \$1.66 per share (subject to further adjustment in certain circumstances, including in the event of stock dividends and splits; recapitalizations; change of control transactions; and issuances or sales of, or agreements to issue or sell, shares of common stock or common stock equivalents at a price per share less than the then-applicable exercise price for the 2023 Warrants, including sales under the ATM, the "Exercise Price").

In the event of certain transactions such as a merger, consolidation, tender offer, reorganization, or other change in control, if holders of common stock are given any choice as to the consideration to be received, the holder of each 2023 Warrant shall be given the same choice of alternate consideration. In the event of certain transactions that are not within the Company's control, such as a merger, consolidation, tender offer, reorganization, or other change in control of the Company, each holder of a 2023 Warrant shall be entitled to receive the same form of consideration at the Black Scholes value of the unexercised portion of the 2023 Warrant that is being offered and paid to holders of common stock, including the option to exercise the 2023 Warrants on a "cashless basis".

If the Company issues additional shares of common stock or equity-linked securities for a consideration per share less than the Exercise Price, then such Exercise Price will be reduced to a new lower price pursuant to the terms of the 2023 Warrants. Additionally, if the Exercise Price of any outstanding derivative securities is modified by the Company such that such security's modified exercise price is below the Exercise Price, the Exercise Price will adjust downward pursuant to the terms of the 2023 Warrant. This provision would not apply for stock or stock equivalents which fall under shares that qualify for exempt issuance, such as if the Company adjusted the option exercise price for an option granted to an employee, officer, or director.

#### Note 10 - Warrant Liability, continued

The Company accounted for the 2023 Warrants in accordance with the derivative guidance contained in ASC 815-40, as the warrants did not meet the criteria for equity treatment. The Company believes that the adjustments to the Exercise Price is based on a variable that is not an input to the fair value of a "fixed-for-fixed" option as defined under ASC 815-40, and thus the 2023 Warrants are not eligible for an exception from derivative accounting. As such, the 2023 Warrants were initially measured at fair value and recorded as a liability in the amount of \$3,135,000. As of December 31, 2023, all 2023 Warrants were outstanding. As of December 31, 2023, the fair value of the warrant liability was \$619,575. The Company recorded a change in fair value of the warrant liability of \$2,515,425 for the year ended December 31, 2023.

#### Note 11 - Fair Value Measurements

The following tables present information about the Company's assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2023 and December 31, 2022 and indicate the fair value hierarchy of the valuation inputs utilized to determine such fair value:

	Balance as of December 31, 2023				
	Level 1	Level 2	Level 3	Total	
<b>Assets:</b>					
Cash and cash equivalents	\$ 13,936,050	\$ —	\$ —	\$ —	\$ 13,936,050
<b>Liabilities:</b>					
Warrant liability	\$ —	\$ —	\$ 619,575	\$ 619,575	\$ 619,575
<b>Balance as of December 31, 2022</b>					
	Level 1	Level 2	Level 3	Total	
	\$ 26,287,293	\$ —	\$ —	\$ —	\$ 26,287,293
<b>Assets:</b>					
Cash and cash equivalents	\$ 26,287,293	\$ —	\$ —	\$ —	\$ 26,287,293
<b>Liabilities:</b>					
Warrant liability	\$ —	\$ —	\$ —	\$ —	\$ —

There were no transfers among Level 1, Level 2, or Level 3 categories during the periods presented.

#### 2023 Warrants

The Company utilizes a Monte Carlo simulation model for the 2023 Warrants at each reporting period, with changes in fair value recognized in the statements of operations. The estimated fair value of the 2023 Warrant liability is determined using Level 3 inputs. Inherent in a Monte Carlo simulation model are assumptions related to expected share-price volatility, expected life, risk-free interest rate, and dividend yield.

The key inputs into the Monte Carlo simulation model for the 2023 Warrants are as follows:

	At March 31, 2023	At June 30, 2023	At September 30, 2023	At December 31, 2023
Share price	\$ 10.80	\$ 4.80	\$ 1.60	\$ 1.83
Exercise price	\$ 8.00	\$ 8.00	\$ 1.66	\$ 1.66
Term (in years)	6.0	5.7	5.5	5.2
Volatility	65 %	65 %	75 %	85 %

Risk-free rate	3.6 %	4.1 %	4.6 %	3.8 %
Dividend yield	0 %	0 %	0 %	0 %

The decrease in the fair value of the 2023 Warrant liability was determined to be \$2,515,425 during the year ended December 31, 2023, respectively (see Note 10 – Warrant Liability).

## Note 12 – Related Party Transactions

In November 2016, the Company and Dialog entered into the Alliance Agreement for the manufacture, distribution and commercialization of products incorporating the Company's wire-free charging technology (See Note 6 – Commitments and Contingencies, *Strategic Alliance Agreement*). On November 7, 2016 and June 28, 2017, the Company and Dialog entered into securities purchase agreements under which Dialog acquired a total of 1,739,691 186,985 shares and received warrants to purchase up to 1,417,565 70,878 shares. As of December 31, 2022 December 31, 2023, none of the warrants remain outstanding. Dialog presently owns approximately 2.2% 1.6% of the Company's outstanding common shares. The Company did not record any revenue under the Alliance Agreement during the years ended December 31, 2023 and 2022. The Company incurred \$0 \$87,701 and \$408,000 \$0 in chip development expense from Renesas Electronics Corporation, which acquired Dialog in August 2021 ("Renesas"), during the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively.

On September 20, 2021, the Company was notified by Dialog, then acquired by Renesas Electronics Corporation, that it was terminating the Alliance Agreement between the Company and Dialog.

## Note 11 13 – Customer Concentration

One customer Three customers accounted for approximately 50% 70% of the Company's revenue for the year ended December 31, 2022 December 31, 2023 and three customers one customer accounted for approximately 42% 50% of the Company's revenue for the year ended December 31, 2021 December 31, 2022. Two customers accounted for approximately 88% of the Company's accounts receivable balance as of December 31, 2023. One customer accounted for approximately 87% 87% of the Company's accounts receivable balance as of December 31, 2022. Four customers accounted

## Note 14 – Subsequent Events

The Company evaluates events that have occurred after the balance sheet date of December 31, 2023, through the date which the financial statements are issued.

On February 15, 2024, the Company entered into a securities purchase agreement with an institutional investor, providing for approximately 68% the issuance and sale by the Company, in a registered direct offering (the "Offering"), of (i) 570,000 shares of the Company's accounts receivable balance as of December 31, 2021.

## Note 12 – Subsequent Events

During the period from January 1, 2023 through March 1, 2023, the Company raised net proceeds of \$2,674,683 (net of \$68,651 in issuance costs) under its ATM Program. As of March 1, 2023, the Company had \$3,526,605 remaining on the ATM Program.

On February 28, 2023, the Company committed to purchase products that will be produced by a contract manufacturer during the second and third quarters of 2023. The total amount of the committed orders is \$510,000, and the products produced by the contract manufacturer will be held for future sales.

On March 24, 2023, the Company completed an underwritten offering of its securities (the "Offering") pursuant to which it sold an aggregate of (i) 8,250,000 shares of its common stock, and par value \$0.00001 ("Common Stock"), (ii) pre-funded warrants to purchase up to 8,250,000450,409 shares of common stock, for Common Stock (referred to individually as a "Pre-Funded Warrant" and collectively as the "Pre-Funded Warrants"), and (iii) warrants to purchase up to an aggregate of 1,020,409 shares of Common Stock (referred to individually as a "Warrant" and collectively as the "Warrants"). Each share of Common Stock and Pre-Funded Warrant was offered and sold together with an accompanying Warrant at a combined price of \$1.96 per share of Common Stock or Pre-Funded Warrant, as applicable. Each Pre-Funded Warrant and Warrant is exercisable at any time on or after the date of issuance to purchase one share of Common Stock at a price of either \$0.001 per share, in the case of the Pre-Funded Warrants, or \$1.84 per share, in the case of the Warrants. The Pre-Funded Warrants expire when they are exercised in full, and the Warrants expire five years from the date of issuance.

The Offering closed on February 20, 2024. The Company received net proceeds of approximately \$2,689,000, net \$1.8 million from the Offering, after deducting placement agent fees and estimated offering expenses payable by the Company.

On March 26, 2024, the Company announced that effective March 24, 2024 Cesar Johnston is no longer serving as President and Chief Executive Officer. Mr. Johnston will remain a member of commissions and professional fees of approximately \$611,000. The warrants issued the Board. No agreement pertaining to Mr. Johnston's departure has yet been signed.

Except for the events stated above, no events have occurred that would require adjustment to the amounts, or disclosures, in the Offering were immediately exercisable and have a term of six years and a per share exercise price of \$0.40. financial statements.

## Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

## Item 9A. Controls and Procedures.

### Evaluation of Disclosure Controls and Procedures

We have established maintain disclosure controls and procedures, to ensure that material information relating to us as such term is made known to the officers who certify our financial reports and the board of directors.

Based on their evaluation as of December 31, 2022, our principal executive and principal financial officers have concluded that these disclosure controls and procedures (as defined in Rules 13a-15(e) 13a 15(e) and 15d-15(e) 15d 15(e) under the Exchange Act) were effective as of December 31, 2022 Act, that are designed to provide reasonable assurance that information required to be disclosed by us in

the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms regulations, and that material such information relating to the Company is accumulated and communicated to our management, including our principal executive officer and our principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on their evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of December 31, 2023.

#### Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Exchange Act Rule 13a-15(f). Internal control over financial reporting is a process used to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our financial statements for external purposes in accordance with generally accepted accounting principles in the United States. Internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets; provide reasonable assurance that transactions are recorded as necessary to permit preparation of our financial statements in accordance with generally accepted accounting principles in the United States, and that our receipts and expenditures are being made only in accordance with the authorization of our board Board of directors Directors and management; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

An internal control system over financial reporting has inherent limitations and may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

The Company's Our management, under the supervision of and with the participation of the our principal executive officer and principal financial officers, officer, have assessed the effectiveness of the Company's our internal control over financial reporting as of December 31, 2022 December 31, 2023 based on criteria for effective control over financial reporting described in Internal Control — Integrated Framework (2013) created by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, the Company's management concluded that the Company's our internal control controls over financial reporting was were effective as of December 31, 2022 December 31, 2023.

#### Changes in Internal Control Over Financial Reporting

For During the year three months ended December 31, 2022 December 31, 2023, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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## **Limitations on the Effectiveness of Controls**

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving its objectives. Our principal executive and principal financial and accounting officer concluded that our disclosure controls and procedures are effective at that reasonable assurance level.

### **Item 9B. Other Information.**

**None.** Our officers (as defined by Rule 16-1(f) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) ("Section 16 Officers") and directors from time to time enter into contracts, instructions or written plans for the purchase or sale of our securities that are intended to satisfy the conditions specified in Rule 10b5-1(c) under the Exchange Act for an affirmative defense against liability for trading in securities on the basis of material nonpublic information. We refer to these contracts, instructions and written plans as "Rule 10b5-1 trading plans" and each one as a "Rule 10b5-1 trading plan." During the fiscal quarter ended December 31, 2023, no Section 16 officer or director adopted, modified or terminated a Rule 10b5-1 trading plan.

### **Item 9C. Disclosures Regarding Foreign Jurisdictions That Prevent Inspections.**

Not Applicable.

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## **PART III**

### **Item 10. Directors, Executive Officers and Corporate Governance.**

The information required by Item 10 will be included in our definitive proxy statement relating to our **2023** **2024** Annual Meeting of Stockholders, to be filed no later than 120 days after **December 31, 2022** **December 31, 2023**, and is incorporated herein by reference.

### **Item 11. Executive Compensation**

The information required by Item 11 will be included in our definitive proxy statement relating to our **2023** **2024** Annual Meeting of Stockholders, to be filed no later than 120 days after **December 31, 2022** **December 31, 2023**, and is incorporated herein by reference.

### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholders Matters.**

The information required by Item 12 will be included in our definitive proxy statement relating to our 2023 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after December 31, 2022 December 31, 2023, and is incorporated herein by reference.

#### **Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by Item 13 will be included in our definitive proxy statement relating to our 2023 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after December 31, 2022 December 31, 2023, and is incorporated herein by reference.

#### **Item 14. Principal Accountant Fees and Services**

The information required by Item 14 will be included in our definitive proxy statement relating to our 2023 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after December 31, 2022 December 31, 2023, and is incorporated herein by reference.

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#### **PART IV**

#### **Item 15. Exhibits, Financial Statements and Schedules**

(a) List of documents filed as part of this report:

1. Financial Statements (see "Financial Statements and Supplementary Data" at Part II, Item 8 and incorporated herein by reference).
2. Financial Statement Schedules (Schedules to the Financial Statements have been omitted because the information required to be set forth therein is not applicable or is shown in the accompanying Financial Statements or notes thereto)
3. Exhibit Index.

#### **EXHIBIT INDEX**

<b>(a) Exhibit</b>	L
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1. Financial Statements (see "Financial Statements and Supplementary Data" at Part II, Item 8 and incorporated herein by reference).
2. Financial Statement Schedules (Schedules to the Financial Statements have been omitted because the information required to be set forth therein is not applicable or is shown in the accompanying Financial Statements or notes thereto)
3. Exhibit Index.

#### EXHIBIT INDEX

Exhibit	No.	Description of Document
3.1		<a href="#">Second Amended and Restated Certificate of Incorporation of Energous Corporation, as amended (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on August 10, 2020)</a>
3.2		<a href="#">Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Energous Corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on August 15, 2023)</a>
3.3		<a href="#">Amended and Restated Bylaws of Energous Corporation (incorporated by reference to Exhibit 3.1 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1/A (File No. 333-193522) filed on March 13, 2014)</a>
4.1		<a href="#">Specimen Certificate representing shares of common stock of Energous Corporation (incorporated by reference to Exhibit 4.1 to Amendment No. 2 to the Registrant's Registration Statement on Form S-1/A (File No. 333-193522) filed on March 21, 2014)</a>
4.2		<a href="#">Common Stock Purchase Warrant (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on May 10, 2019)</a>

4.3 [Description of The the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 1934+](#)

4.4 [Form of Common Warrant \(incorporated by reference to Exhibit 4.5 to 4.1 of the Registrant's Annual Report on Form 10-K filed on March 13, 2020\) March 27, 2023.](#)

10.14.5 [Form of Pre-Funded Warrant \(incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K filed on February 20, 2024\).](#)

10.1 [Form of Indemnity Agreement \(incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on August 10, 2021\)\\*](#)

10.2 [Energous Corporation 2013 Equity Incentive Plan, as amended and restated June 16, 2021 \(incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on August 10, 2021\)\\*](#)

10.3 [Form of stock option award under 2013 Equity Incentive Plan, as amended and restated on June 16, 2021 \(incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form S-1 \(File No. 333-193522\) filed on January 24, 2014\)\\*](#)

10.4 [Form of Non-Statutory Option Award \(incorporated by reference to Exhibit 10.19 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1/A \(File No. 333-193522\) filed on March 13, 2014\)\\*](#)

**Exhibit**

No.	Description of Document
10.5	<a href="#">2014 Non-Employee Equity Compensation Plan, as amended and restated May 26, 2020 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on May 28, 2020)*</a>
10.6	<a href="#">Form of stock option award under 2014 Non-Employee Equity Compensation Plan (incorporated by reference to Exhibit 10.22 to Amendment No. 2 to the Registrant's Registration Statement on Form S-1/A (File No. 333-193522) filed on March 21, 2014)*</a>

**Exhibit**

No.	Description of Document
10.7	<a href="#">Offer Letter effective as of December 6, 2021 between Energous Corporation and Cesar Johnston (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on December 9, 2021)*</a>
10.8	<a href="#">Form of Restricted Stock Unit Award Agreement effective as of August 14, 2014 between Energous Corporation and Cesar Johnston (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed on November 10, 2014)*</a>

10.9 [Energous Corporation Form of Restricted Stock Unit Award Agreement under the 2013 Equity Incentive Plan, as amended and restated on June 16, 2021 \(incorporated by reference to Exhibit 10.21 to the Registrant's Annual Report on Form 10-K filed on March 30, 2015\)\\*](#)

10.10 [Form of Inducement Restricted Stock Unit Award Agreement \(incorporated by reference to Exhibit 10.22 to the Registrant's Annual Report on Form 10-K filed on March 30, 2015\)\\*](#)

10.11 [Energous Corporation Employee Stock Purchase Plan, as amended June 16, 2021 \(incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed on August 10, 2021\)\\*](#)

10.12 [Energous Corporation Performance Share Unit Plan, as amended June 16, 2021 \(incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed on August 10, 2021\)\\*](#)

10.13 [Energous Corporation Director Compensation Policy \(incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed on August 13, 2015\)](#)

10.14 [Securities Purchase Agreement between the Company and Dialog Semiconductor plc, dated November 6, 2016 \(incorporated by reference to Exhibit 10.25 to the Registrant's Annual Report on Form 10-K filed on March 16, 2017\)](#)

10.15 [Securities Purchase Agreement between the Company and Dialog Semiconductor plc, dated June 28, 2017 \(incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on August 9, 2017\)](#)

10.16 [Amended and Restated Warrant to Purchase Common Stock between the Company and Emily T Fairbairn Roth IRA, dated October 6, 2017 \(incorporated by reference to Exhibit 10.27 to the Registrant's Annual Report on Form 10-K filed on March 16, 2018\)](#)

10.17 [Amended and Restated Warrant to Purchase Common Stock between the Company and Malcom P Fairbairn Roth IRA, dated October 6, 2017 \(incorporated by reference to Exhibit 10.28 to the Registrant's Annual Report on Form 10-K filed on March 16, 2018\)](#)

10.18 [Energous Corporation 2017 Equity Inducement Plan \(incorporated by reference to Exhibit 10.29 to the Registrant's Annual Report on Form 10-K filed on March 16, 2018\)](#)

10.19 [Offer Letter effective as of October 9, 2014 between Energous Corporation and Neeraj Sahejpal\\* Sahejpal \(incorporated by reference to Exhibit 10.30 to the Registrant's Annual Report on Form 10-K filed on March 16, 2018\)\\*](#)

10.20 [Form of Severance and Change in Control Agreement\\* Agreement \(incorporated by reference to Exhibit 10.31 to the Registrant's Annual Report on Form 10-K filed on March 16, 2018\)\\*](#)

10.21 [Energous Corporation MBO Bonus Plan\\* Plan \(incorporated by reference to Exhibit 10.32 to the Registrant's Annual Report on Form 10-K filed on March 16, 2018\)\\*](#)

Exhibit	Description of Document
No.	
10.22	<a href="#">Securities Purchase Agreement among Energous Corporation and certain purchaser identified on the signature pages thereto, dated as of February 27, 2019 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on February 27, 2019)</a>
Exhibit	Description of Document
No.	
10.23	
10.23	<a href="#">Second Amendment to lease dated September 22, 2021 by and between Energous Corporation and the Irvine Company, LLC (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 15, 2021)</a>
21.110.24	<a href="#">2013 Equity Incentive Plan, as amended and restated on June 14, 2023 (incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement on Form DEF 14A filed on May 1, 2023).*</a>
10.25	<a href="#">Energous Corporation Employee Stock Purchase Plan, as amended on June 14, 2023 (incorporated by reference to Appendix B to the Registrant's Definitive Proxy Statement on Form DEF 14A filed on May 1, 2023).*</a>
10.26	<a href="#">Letter Agreement by and between Energous Corporation and William Mannina dated July 28, 2023 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on August 1, 2023).*</a>
10.27	<a href="#">Burak Offer Letter by and between Energous Corporation and Mallorie Burak, dated December 1, 2023 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on January 16, 2024).*</a>
21.1	<a href="#">Subsidiaries of the Registrant (incorporated by reference to Exhibit 21.1 to the Registrant's Annual Report on Form 10-K filed on March 16, 2018)</a>
23.1	<a href="#">Consent of Marcum LLP</a>  
24.1	
24.1	<a href="#">Power of Attorney (included on signature page)</a> :-
31.1	<a href="#">Certification Pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934</a>  
32.1	
32.1	<a href="#">Certification Pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934</a> 
32.1	<a href="#">Certification Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>  
97.1	<a href="#">Clawback Policy</a> 
101.INS	
101.INS	Inline XBRL Instance Document 
101.SCH	Inline XBRL Taxonomy Extension Schema Document 
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document 
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document 
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document 
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document 

104 Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibit 101)

\* Indicates a management contract or any compensatory plan, contract or arrangement.

+ Filed herewith.

++Furnished herewith.

\*\* Registrant has omitted portions of the referenced exhibit and submitted such exhibit separately with a request for confidential treatment under Rule 24b-2 promulgated under the Exchange Act.

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\* Indicates a management contract or any compensatory plan, contract or arrangement.

+ Filed herewith.

\*\* Registrant has omitted portions of the referenced exhibit and submitted such exhibit separately with a request for confidential treatment under Rule 24b-2 promulgated under the Exchange Act.

#### Item 16. Form 10-K Summary

None.

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#### SIGNATURES

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

Energous Corporation **ENERGEOUS CORPORATION**

Dated: **March 30, 2023** **March 28, 2024**

By: **/s/ Cesar Johnston** **Mallorie Burak**

**Cesar Johnston** **Mallorie Burak**

**Chief Executive Officer (Principal Executive Officer)**

Dated: **March 30, 2023**

By: **/s/ William Mannina**

**William Mannina**

Acting Chief Financial Officer (Principal Executive Officer,  
Principal Financial Officer and Principal Accounting  
Officer)

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#### POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that the undersigned officers and directors of Energous Corporation, a Delaware corporation, do hereby constitute and appoint **Cesar Johnston and William Mannina** **Mallorie Burak, and each of them individually**, as his or her true and lawful **attorneys-in-fact** **attorney-in-fact** and **agents, agent**, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said **attorneys-in-fact** **attorney-in-fact** and **agents, and each of them individually, agent** full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming that **all said attorneys-in-fact** **attorney-in-fact** and **agents, agent**, or any of them or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
/s/ Cesar Johnston Cesar Johnston/s/ Mallorie Burak	Chief Executive Officer (Principal Executive Officer)	March 30, 2023
/s/ William Mannina	Acting Chief Financial Officer	March 30, 2023
William ManninaMallorie Burak	(Principal Executive Officer, Principal	March 30, 2023

		Financial
		Officer
		and
		Principal
		Accounting
		Officer)
/s/ Reynette Au	Director and Board Chair	March 30, 2023 28, 2024
Reynette Au		
/s/ Rahul Patel	Director	March 30, 2023 28, 2024
Rahul Patel		
/s/ Sheryl Wilkerson	Director	March 30, 2023
Sheryl Wilkerson		
/s/ J. Michael Dodson	Director	March 30, 2023 28, 2024
J. Michael Dodson		
/s/ David Roberson	Director	March 30, 2023 28, 2024
David Roberson		
/s/ Cesar Johnston	Director	March 28, 2024
Cesar Johnston		

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## EXHIBIT 4.3

**DESCRIPTION OF THE REGISTRANT'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES  
EXCHANGE ACT OF 1934**

*Energous Corporation (the "Company," "we" or "our") has one class of securities registered under Section 12 of the Securities Exchange Act of 1934: our common stock, \$0.00001 par value per share.*

**DESCRIPTION OF CAPITAL STOCK**

The following description of our capital stock is intended as a summary only. This description is based upon, and is qualified by reference to, our amended and restated certificate of incorporation and our amended and restated bylaws. The summary is not

complete, and is qualified by reference to our amended and restated certificate of incorporation and our amended and restated bylaws, which are filed as exhibits to this Annual Report on Form 10-K and are incorporated by reference herein. We encourage you to read our amended and restated certificate of incorporation, our amended and restated bylaws and the applicable provisions of the Delaware General Corporation Law, for additional information.

### **General**

Our authorized capital stock consists of 200,000,000 shares of common stock, \$0.00001 par value per share, and 10,000,000 shares of undesignated preferred stock, \$0.00001 par value per share.

### **Common Stock**

Holders of our common stock are entitled to such dividends as may be declared by our board of directors out of funds legally available for such purpose. The shares of common stock are neither redeemable nor convertible. Holders of common stock have no preemptive or subscription rights to purchase any of our securities.

Each holder of our common stock is entitled to one vote for each such share outstanding in the holder's name. No holder of common stock is entitled to cumulate votes in voting for directors.

In the event of our liquidation, dissolution or winding up, the holders of our common stock are entitled to receive pro rata our assets, which are legally available for distribution, after payments of all debts and other liabilities. All of the outstanding shares of our common stock are fully paid and non-assessable.

### **Preferred Stock**

Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue from time to time up to 10,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each series and to fix the designation, powers, preferences and rights of the shares of each series and any of their qualifications, limitations or restrictions, in each case without further vote or action by our stockholders. Our board of directors is also able to increase or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may be able to authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of our company and

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might adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock.

### **Registration Rights**

The holder of shares of our common stock that were acquired pursuant to those certain Securities Purchase Agreements, or SPAs, with the Company dated November 6, 2016 and June 28, 2017, is entitled to rights with respect to the registration of those shares, or Registrable Securities, under the Securities Act. These registration rights terminate when the stockholder can sell its shares publicly under Rule 144 of the Securities Act without a volume limitation.

### **Demand Registration Rights**

Under the SPAs, we are required, as soon as reasonably practicable following the request of a stockholder with registration rights, prepare and file with the Securities and Exchange Commission a registration statement under the Securities Act covering the resale of such portion of the Registrable Securities requested by the stockholder. The Company shall not be obligated to file and have declared effective more than two registration statements per year, each including not less than 100,000 shares of Common Stock (as adjusted by any stock split, dividend or other distribution, recapitalization or similar event).

#### **Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Charter Documents**

The following is a summary of certain provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws. This summary does not purport to be complete and is qualified in its entirety by reference to the corporate law of Delaware and our certificate of incorporation and bylaws.

#### **Effect of Delaware Anti-Takeover Statute.**

We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination (defined below) with any interested stockholder (defined below) for a period of three years following the date that the stockholder became an interested stockholder, unless:

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

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Section 203 defines "business combination" to include:

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

In general, Section 203 defines an "interested stockholder" as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation, or who beneficially owns 15% or more of the outstanding voting stock of the

corporation at any time within a three-year period immediately prior to the date of determining whether such person is an interested stockholder, and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

#### **Our Charter Documents**

Our certificate of incorporation and bylaws include provisions that may have the effect of discouraging, delaying or preventing a change in control or an unsolicited acquisition proposal that a stockholder might consider favorable, including a proposal that might result in the payment of a premium over the market price for the shares held by our stockholders. Certain of these provisions are summarized in the following paragraphs.

- **Effects of Authorized but Unissued Common Stock.** One of the effects of the existence of authorized but unissued common stock may be to enable our board of directors to make more difficult or to discourage an attempt to obtain control of our Company by means of a merger, tender offer, proxy contest or otherwise, and thereby to protect the continuity of management. If, in the due exercise of its fiduciary obligations, the board of directors were to determine that a takeover proposal was not in our best interest, such shares could be issued by the board of directors without stockholder approval in one or more transactions that might prevent or render more difficult or costly the completion of the takeover transaction by diluting the voting or other rights of the proposed acquirer or insurgent stockholder group, by putting a substantial voting block in institutional or other hands that might undertake to support the position of the incumbent board of directors, by effecting an acquisition that might complicate or preclude the takeover, or otherwise.
- **Action by Written Consent.** Our certificate of incorporation provides that our stockholders may not act by written consent.
- **Advanced Notice.** Our bylaws provide that stockholders who wish to bring nominations or other business before an annual meeting of the stockholders or a special meeting of the stockholders must provide us with notice of such proposed nomination or business within specified time frames and must provide us with information regarding the potential nominee or proposal.

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- **Blank Check Preferred Stock.** As noted above, our certificate of incorporation allows our Board to fix the designation, powers, preferences and rights of the shares of each series of preferred stock and any of their qualifications, limitations or restrictions, in each case without further vote or action by our stockholders.
- **Bylaw Amendment.** Our certificate of incorporation provides our Board the ability to amend our bylaws without further vote or action by our stockholders.
- **Cumulative Voting.** Our certificate of incorporation does not provide for cumulative voting in the election of directors, which would allow holders of less than a majority of the stock to elect some directors.
- **Exclusive Venue.** Our certificate of incorporation provides that unless the Company consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed to the Company or the Company's stockholders by any director, officer or other employee of the Company, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Delaware Court of Chancery, or if the Delaware Court of Chancery determines

that it does not have subject matter jurisdiction, the U.S. District Court for the District of Delaware or any court of the State of Delaware having subject matter jurisdiction regarding the matter.

- **Special Meeting of Stockholders.** Our certificate of incorporation provides that a special meeting of stockholders may only be called by the President, the Chief Executive Officer, or the board of directors at any time and for any purpose or purposes as shall be stated in the notice of the meeting.
- **Vacancies.** Our certificate of incorporation provides that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum. acancies. Our certificate of incorporation provides that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

## 59 Transfer Agent and Registrar

The transfer agent and registrar for our common stock is EQ Shareowner Services.

### Exchange Listing

Our common stock is listed on The Nasdaq Stock Market under the symbol "WATT."

## DESCRIPTION OF WARRANTS

### Pre-Funded Warrants issued in February 2024

On February 20, 2024, we issued pre-funded warrants to purchase up to 450,409 shares of common stock. The following summary of certain terms and provisions of the pre-funded warrants is not complete and is subject to, and qualified in its entirety by, the provisions of pre-funded warrants, the form of which are

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filed as an exhibit to our Annual Report on Form 10-K. Pre-funded warrants will be issued in certificated form only.

#### Duration and Exercise Price

Each pre-funded warrants has an exercise price of \$0.001 per share. The pre-funded warrants are immediately exercisable and may be exercised until they are exercised in full. The exercise price of the pre-funded warrants is subject to adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock.

#### Exercisability

The pre-funded warrants are exercisable, at the option of each holder, in whole or in part, by delivering a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). The holder (together with its affiliates) may not exercise any portion of such holder's pre-funded warrants to the extent that the holder would own more than 9.99% of the outstanding common stock immediately after exercise.

#### Cashless Exercise

If, at the time the holder exercises the pre-funded warrants, a registration statement registering the issuance or resale of the shares of common stock underlying the pre-funded warrants under the Securities Act is not then available for the issuance of

such shares, then the holder may elect instead to receive upon such exercise (either in whole or in part) the net number of shares of common stock determined according to a formula set forth in the pre-funded warrants.

#### *Fundamental Transactions*

In the event of a fundamental transaction, as described in the pre-funded warrants and generally including any reorganization, recapitalization or reclassification of our shares of common stock, the sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of our assets, our consolidation or merger with or into another person, the acquisition of 50% or more of our outstanding shares of our common stock or 50% or more of the voting power of our common equity, any purchase offer, tender offer or exchange offer that has been accepted by the holders of 50% or more of our outstanding common stock or 50% or more of the voting power of our common equity, then upon any subsequent exercise of the pre-funded warrants, the holder will have the right to receive as alternative consideration, for each share of our common stock that would have been issuable upon such exercise immediately prior to the occurrence of such fundamental transaction, the number of shares of common stock of the successor or acquiring corporation or of our company, if it is the surviving corporation, and any additional consideration receivable as a result of such transaction by a holder of the number of shares of our common stock for which the pre-funded warrants are exercisable immediately prior to such event.

#### *Transferability*

Subject to applicable laws, a pre-funded warrant may be transferred at the option of the holder upon surrender of the pre-funded warrant to us together with the appropriate instruments of transfer and any transfer taxes payable upon making such transfer.

#### *Fractional Shares*

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No fractional shares of common stock will be issued upon the exercise of the pre-funded warrants. Rather, the number of shares of common stock to be issued will, at our election, either be rounded up to the next whole share or we will pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price.

#### *Right as a Stockholder*

Except as otherwise provided in the pre-funded warrants or by virtue of the holder's ownership of shares of our common stock, the holder of the pre-funded warrants does not have the rights or privileges of a holder of our common stock, including any voting rights, until the holder exercises its pre-funded warrants. The pre-funded warrants provide that the holder of the pre-funded warrants has the right to participate in distributions or dividends paid on our shares of common stock.

#### *Waivers and Amendments*

The pre-funded warrants may be modified or amended or the provisions of such pre-funded warrants waived with the written consent of the Company and the holder of the pre-funded warrants.

#### **Warrants issued in February 2024**

On February 20, 2024, we issued warrants to purchase up to an aggregate of 1,020,409 shares of common stock. The following summary of certain terms and provisions of the warrants is not complete and is subject to, and qualified in its entirety by, the provisions of pre-funded warrants, the form of which are filed as an exhibit to our Annual Report on Form 10-K. Warrants will be issued in certificated form only.

#### **Duration and Exercise Price**

Each warrant has an exercise price of \$1.84 per share. The warrants are exercisable commencing on the date of issuance and may be exercised until 5:00 p.m. (New York City time) five years from the issuance date. The exercise price of the warrants is subject to adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock.

#### **Exercisability**

The warrants are exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). The holder (together with its affiliates) may not exercise any portion of its warrants to the extent that the holder would own more than 4.99% of the outstanding common stock immediately after exercise, except that upon at least 61 days' prior notice from the holder to us, the holder may increase the amount of ownership of outstanding stock after exercising the holder's warrants up to 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the warrants.

#### **Cashless Exercise**

If, at the time the holder exercises the warrants, a registration statement registering the issuance or resale of the shares of common stock underlying the warrants under the Securities Act is not then available for the issuance of such shares, then the holder may elect instead to receive upon such exercise (either in

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whole or in part) the net number of shares of common stock determined according to a formula set forth in the warrants.

#### **Fundamental Transactions**

In the event of a fundamental transaction, as described in the warrants and generally including any reorganization, recapitalization or reclassification of our shares of common stock, the sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of our assets, our consolidation or merger with or into another person, the acquisition of 50% or more of our outstanding shares of our common stock or 50% or more of the voting power of our common equity, any purchase offer, tender offer or exchange offer that has been accepted by the holders of 50% or more of our outstanding common stock or 50% or more of the voting power of our common equity, then upon any subsequent exercise of the warrants, the holder will have the right to receive as alternative consideration, for each share of our common stock that would have been issuable upon such exercise immediately prior to the occurrence of such fundamental transaction, the number of shares of common stock of the successor or acquiring corporation or of our company, if it is the surviving corporation, and any additional consideration receivable as a result of such transaction by a holder of the number of shares of our common stock for which the warrants are exercisable immediately prior to such event. Notwithstanding the foregoing, in the event of a fundamental transaction (subject to certain exclusions), the holder of the warrants has the right to require us or a successor entity to purchase the warrants from them for cash in the amount of the Black-Scholes Value (as defined in the warrants) of the remaining unexercised portion of the warrants concurrently with or within 30 days following the consummation of a fundamental transaction.

However, in the event of a fundamental transaction which is not in our control, including a fundamental transaction not approved by our board of directors, the holder of the warrants will only be entitled to receive from us or our successor entity, as of the date of consummation of such fundamental transaction the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of the warrants that is being offered and paid to the holders of our common stock in connection with the fundamental transaction, whether that consideration is in the form of cash, stock or any combination of cash and stock, or whether the holders of our common stock are given the choice to receive alternative forms of consideration in connection with the fundamental transaction.

#### *Transferability*

Subject to applicable laws, a warrant may be transferred at the option of the holder upon surrender of the warrant to us together with the appropriate instruments of transfer and any transfer taxes payable upon making such transfer.

#### *Fractional Shares*

No fractional shares of common stock will be issued upon the exercise of the warrants. Rather, the number of shares of common stock to be issued will, at our election, either be rounded up to the next whole share or we will pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price.

#### *Right as a Stockholder*

Except as otherwise provided in the warrants or by virtue of the holder's ownership of shares of our common stock, the holder of the warrants does not have the rights or privileges of a holder of our common stock, including any voting rights, until the holder exercises its warrants. The warrants provide

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that the holder of the warrants has the right to participate in distributions or dividends paid on our shares of common stock.

#### *Waivers and Amendments*

The warrants may be modified or amended or the provisions of such warrants waived with the written consent of the Company and the holder of the warrants.

#### **Warrants issued in March 2023**

On March 28, 2023, we issued warrants to purchase up to 412,500 shares of common stock. The following summary of certain terms and provisions of the warrants is not complete and is subject to, and qualified in its entirety by, the provisions of pre-funded warrants, the form of which are filed as an exhibit to our Annual Report on Form 10-K. Warrants will be issued in certificated form only.

Each warrant will enable the holder to purchase one share of our common stock at a price equal to \$8.00 per share at any time for up to six years after the date of issuance. Subject to limited exceptions, a holder of warrants will not have the right to exercise any portion of its warrants if the holder (together with such holder's affiliates, and any persons acting as a group together with such holder or any of such holder's affiliates) would beneficially own a number of shares of common stock in excess of 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of the shares of our common stock then outstanding after giving effect to such exercise.

The exercise price and the number of shares issuable upon exercise of the warrants is subject to appropriate adjustment in the event of recapitalization events, stock dividends, stock splits, stock combinations, reclassifications, reorganizations or similar

events affecting our common stock. The warrant holders must pay the exercise price in cash upon exercise of the warrants, unless such warrant holders are utilizing the cashless exercise provision of the warrants. Subject to certain exemptions outlined in the warrants, if we shall sell, enter into an agreement to sell, or grant any option to purchase, or sell, enter into an agreement to sell, or grant any right to reprice, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any shares of our common stock or Common Stock Equivalents (as defined in the warrants), at an effective price per share less than the exercise price of the warrants then in effect, the exercise price of the warrants shall be reduced to equal the effective price per share in such dilutive issuance. Additionally, the warrants contain a one-time reset of the exercise price to a price equal to the lesser of (i) the then exercise price and (ii) 100% of the lowest VWAP on any trading day during the five (5) trading day period immediately prior to the sixth (6th) trading date immediately following the approval of a reverse stock split of the Company's common stock.

In addition, in the event we consummate a merger or consolidation with or into another person or other reorganization event in which our common shares are converted or exchanged for securities, cash or other property, or we sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of our assets or we or another person acquire 50% or more of our outstanding shares of common stock, then following such event, the holders of the warrants will be entitled to receive upon exercise of such warrants the same kind and amount of securities, cash or property which the holders would have received had they exercised their warrants immediately prior to such fundamental transaction. Any successor to us or surviving entity shall assume the obligations under the warrants. Additionally, as more fully described in the warrants, in the event of certain fundamental transactions, the holders of the warrants will be entitled to receive consideration in an amount equal to the Black Scholes value of the warrants on the date of consummation of such transaction.

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Upon the holder's exercise of a warrant, we will issue the shares of common stock issuable upon exercise of the warrant within two trading days following our receipt of a notice of exercise, provided that payment of the exercise price has been made (unless exercised via the "cashless" exercise provision). Prior to the exercise of any warrants to purchase common stock, holders of the warrants will not have any of the rights of holders of the common stock purchasable upon exercise, including the right to vote, except as set forth therein.

Warrant holders may exercise warrants only if the issuance of the shares of common stock upon exercise of the warrants is covered by an effective registration statement, or an exemption from registration is available under the Securities Act and the securities laws of the state in which the holder resides. The warrant holders must pay the exercise price in cash upon exercise of the warrants unless there is not an effective registration statement or, if required, there is not an effective state law registration or exemption covering the issuance of the shares underlying the warrants (in which case, the warrants may only be exercised via a "cashless" exercise provision).

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**EXHIBIT 23.1**

**INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT**

We consent to the incorporation by reference in the Registration Statement of Energous Corporation on Forms S-3 (No. (File No. 333-248832 and 333-261087) and Forms S-8 (No. (File No. 333-196360, 333-204690, 333-214785, 333-223747, 333-225396, 333-248536, 333-259621 and 333-266923) of our report dated March 30, 2023 March 28, 2024, with respect to our audits of the financial statements of Energous Corporation as of December 31, 2022 December 31, 2023 and 2021 December 31, 2022 and for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, which report is included in this Annual Report on Form 10-K of Energous Corporation for the year ended December 31, 2022 December 31, 2023.

/s/ Marcum LLP

Marcum LLP

Melville, NY San Jose, CA

March 30, 2023 28, 2024

**EXHIBIT 31.1**

**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Cesar Johnston, Mallorie Burak, certify that:

1. I have reviewed this Annual Report on Form 10-K of Energous Corporation; 1. I have reviewed this Annual Report on Form 10-K of Energous Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the pe

covered by this report;

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

3Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 30, 2023

Date: March 28, 2024

/s/ Cesar Johnston Mallorie Burak

Name: Cesar Johnston Mallorie Burak

Title: Chief Financial Officer (Principal Executive Officer,

Principal Financial Officer and Principal Accounting

Officer)

**EXHIBIT 31.2**

**CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER**  
**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, William Mannina, certify that:

1. I have reviewed this Annual Report on Form 10-K of Energous Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

- b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 30, 2023

/s/ William Mannina

Name: William Mannina

Title: Acting Chief Financial Officer

EXHIBIT 32.1

**CERTIFICATION PURSUANT TO**  
**18 U.S.C. SECTION 1350,**  
**AS ADOPTED PURSUANT TO**  
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Energous Corporation (the "Company") on Form 10-K for the year ended December 31, 2022 December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Cesar Johnston, Chief Executive Officer of the Company, and William Mannina, Acting I, Mallorie Burak, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report

fully  
complies  
with the  
requirements  
of section  
13(a) or  
15(d) of the  
Securities  
Exchange  
Act of 1934;

and (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934

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

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

A signed original of this written statement required by Section 906 has been provided to Energous Corporation and will be retained by Energous Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Cesar Johnston

/s/ William Mannina

Name

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Mallorie Burak

n : William Mannina

Title: Chief Financial Officer (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)

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3 March 30, 2023

March 28, 2024

## ENERGUS CORPORATION

## COMPENSATION RECOVERY POLICY

(Adopted November 30, 2023)

The Board has determined that it is in the best interests of the Company and its stockholders to adopt this Policy enabling the Company to recover from specified current and former Company executives certain incentive-based compensation in the event of an accounting restatement resulting from material noncompliance with any financial reporting requirements under the federal securities laws. Capitalized terms are defined in Section 13.

This Policy is designed to comply with Rule 10D-1 of the Exchange Act and shall become effective on the Effective Date and shall apply to Incentive-Based Compensation Received by Covered Persons on or after the Listing Rule Effective Date.

## 1. Administration

This Policy shall be administered by the Administrator. The Administrator is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. The Administrator may retain, at the Company's expense, outside legal counsel and such compensation, tax or other consultants as it may determine are advisable for purposes of administering this Policy.

## 2. Covered Persons and Applicable Compensation

This Policy applies to any Incentive-Based Compensation Received by a person (a) after beginning service as a Covered Person; (b) who served as a Covered Person at any time during the performance period for that Incentive-Based Compensation; and (c) was a Covered Person during the Clawback Period.

However, recovery is not required with respect to:

- i. Incentive-Based Compensation Received prior to an individual becoming a Covered Person, even if the individual served as a Covered Person during the Clawback Period.
- ii. Incentive-Based Compensation Received prior to the Listing Rule Effective Date.
- iii. Incentive-Based Compensation Received prior to the Clawback Period.
- iv. Incentive-Based Compensation Received while the Company did not have a class of listed securities on a national securities exchange or a national securities association, including the Exchange.

The Administrator will not consider the Covered Person's responsibility or fault or lack thereof in enforcing this Policy with respect to recoupment under the Final Rules.

### 3. Triggering Event

Subject to and in accordance with the provisions of this Policy, if there is a Triggering Event, the Administrator shall require a Covered Person to reimburse or forfeit to the Company the Recoupment Amount applicable to such Covered Person. A Company's obligation to recover the Recoupment Amount is not dependent on if or when the restated financial statements are filed.

### 4. Calculation of Recoupment Amount

The Recoupment Amount will be calculated in accordance with the Final Rules, as provided in the Calculation Guidelines attached hereto as Exhibit A.

### 5. Method of Recoupment

Subject to compliance with the Final Rules and applicable law, the Administrator will determine, in its sole discretion, the method for recouping the Recoupment Amount hereunder which may include, without limitation:

- i. Requiring reimbursement or forfeiture of the pre-tax amount of cash Incentive-Based Compensation previously paid;
- ii. Offsetting the Recoupment Amount from any compensation otherwise owed by the Company to the Covered Person, including without limitation, any prior cash incentive payments, executive retirement benefits, wage equity grants or other amounts payable by the Company to the Covered Person in the future;
- iii. Seeking recovery of any gain realized on the vesting, exercise, settlement, cash sale, transfer, or other disposition of any equity-based awards; and/or
- iv. Taking any other remedial and recovery action permitted by law, as determined by the Administrator.

### 6. Arbitration

To the fullest extent permitted by law, any disputes under this Policy shall be submitted to mandatory binding arbitration (the "**Arbitrable Claims**"), governed by the Federal Arbitration Act (the "**FAA**"). Further, to the fullest extent permitted by law, no class or collective actions can be asserted in arbitration or otherwise. All claims, whether in arbitration or otherwise, must be brought solely in the Covered Person's individual capacity, and not as a plaintiff or class member in any purported class or collective proceeding.

SUBJECT TO THE ABOVE PROVISO, ANY RIGHTS THAT A COVERED PERSON MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS ARE WAIVED. ANY RIGHTS THAT A COVERED PERSON MAY HAVE TO PURSUE OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION PERTAINING TO ANY CLAIMS BETWEEN A COVERED PERSON AND THE COMPANY ARE WAIVED.

The Covered Person is not restricted from filing administrative claims that may be brought before any government agency where, as a matter of law, the Covered Person's ability to file such claims may not be restricted. However, to the fullest extent permitted by law, arbitration shall be the exclusive remedy for the subject matter of such administrative claims. The arbitration shall be conducted in San Jose, California through JAMS before a single neutral arbitrator, in accordance with the JAMS Comprehensive Arbitration Rules and Procedures then in effect, provided however, that the FAA, including its procedural provisions for compelling arbitration, shall govern and apply to this Arbitration provision. The arbitrator shall issue a written decision that contains the essential findings and conclusions on which the decision is based. If, for any reason, any term of this Arbitration provision is held to be invalid or unenforceable, all other valid terms and conditions herein shall be severable in nature and remain fully enforceable.

## 7. Recovery Process; Impracticability

Actions by the Administrator to recover the Recoupment Amount will be reasonably prompt.

The Administrator must cause the Company to recover the Recoupment Amount unless the Administrator shall have previously determined that recovery is impracticable and one of the following conditions is met:

- i. The direct expense paid to a third party to assist in enforcing this Policy would exceed the amount recovered; before concluding that it would be impracticable to recover any amount of erroneously awarded Incentive-Based Compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded Incentive-Based Compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange;
- ii. Recovery would violate home country law where that law was adopted prior to November 28, 2022; concluding that it would be impracticable to recover any amount of erroneously awarded Incentive-Based Compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide that opinion to the Exchange; or
- iii. Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are typically available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

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## 8. Non-Exclusivity

The Administrator intends that this Policy will be applied to the fullest extent of the law. Without limitation to any broader or alternate clawback authorized in any written document with a Covered Person, (i) the Administrator may require that any employment agreement, equity award agreement, or similar agreement entered into on or after the Effective Date shall, as a condition to the grant of any benefit thereunder, require a Covered Person to agree to abide by the terms of this Policy, and (ii) this Policy will nonetheless apply to Incentive-Based Compensation as required by the Final Rules, whether or not specifically referenced in those arrangements. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any other clawback policy of the Company as then in effect, or any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies or regulations available or applicable to the Company (including SOX 304). If recovery is required under both SOX 304 and this Policy, any amounts recovered pursuant to SOX 304 may, in the Administrator's discretion, be credited toward the amount recovered under this Policy, or vice versa.

## 9. No Indemnification

The Company shall not indemnify any Covered Persons against (i) the loss of erroneously awarded Incentive-Based Compensation or any adverse tax consequences associated with any incorrectly awarded Incentive-Based Compensation or any recoupment hereunder, or (ii) any claims relating to the Company enforcement of its rights under this Policy. For the avoidance of doubt, this prohibition on indemnification will also prohibit the Company from reimbursing or paying any premium or payment of any third-party insurance policy to fund potential recovery obligations obtained by the Covered Person directly. No Covered Person will seek or retain any such prohibited indemnification or reimbursement.

Further, the Company shall not enter into any agreement that exempts any Incentive-Based Compensation from the application of this Policy or that waives the Company's right to recovery of any erroneously awarded Incentive-Based Compensation and this Policy shall supersede any such agreement (whether entered into before, on or after the Effective Date).

## 10. Successors

This Policy shall be binding and enforceable against all Covered Persons and their beneficiaries, heirs, executors, administrators or other legal representatives and shall inure to the benefit of any successor to the Company.

## 11. Interpretation of Policy

To the extent there is any ambiguity between this Policy and the Final Rules, this Policy shall be interpreted so that it complies with the Final Rules. If any provision of this Policy, or the application of such provision to any Covered

Person or circumstance, shall be held invalid, the remainder of this Policy, or the application of such provision to Covered Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

In the event any provision of this Policy is inconsistent with any requirement of any Final Rules, the Administrator, in its sole discretion, shall amend and administer this Policy and bring it into compliance with such rules.

Any determination under this Policy by the Administrator shall be conclusive and binding on the applicable Covered Person. Determinations of the Administrator need not be uniform with respect to Covered Persons or from one payment or grant to another.

## **12. Amendments; Termination**

The Administrator may make any amendments to this Policy as required under applicable law, rules and regulations, or as otherwise determined by the Administrator in its sole discretion.

The Administrator may terminate this Policy at any time.

## **13. Definitions**

**"Administrator"** means the Compensation Committee of the Board, or in the absence of a committee of independent directors responsible for executive compensation decisions, a majority of the independent directors serving on the Board.

**"Board"** means the Board of Directors of the Company.

**"Clawback Measurement Date"** is the earlier to occur of:

- i. The date the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in this Policy; or
- ii. The date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in this Policy.

**"Clawback Period"** means the three (3) completed fiscal years immediately prior to the Clawback Measurement Date and any transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year (that results from a change in the Company's fiscal year) within or immediately following such three

(3)-year period; provided that any transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of 9 to 12 months will be deemed a completed fiscal year.

**"Company"** means Energous Corporation, a Delaware corporation, or any successor corporation.

**"Covered Person"** means any Executive Officer (as defined in the Final Rules), including, but not limited to, those persons who are or have been determined to be "officers" of the Company within the meaning of Section 16 of Rule 16a-1(f) of the rules promulgated under the Exchange Act, and "executive officers" of the Company within the meaning of Item 401(b) of Regulation S-K, Rule 3b-7 promulgated under the Exchange Act, and Rule 405 promulgated under the Securities Act of

1933, as amended; provided that the Administrator may identify additional employees who shall be treated as Covered Persons for the purposes of this Policy with prospective effect, in accordance with the Final Rules.

**"Effective Date"** means \_\_\_\_\_, 2023, the date the Policy was adopted by the Board.

**"Exchange"** means The Nasdaq Stock Market or any other national securities exchange or national securities association in the United States on which the Company has listed its securities for trading.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Final Rules"** means the final rules promulgated by the SEC under Section 954 of the Dodd-Frank Act, Rule 10D-1 and Exchange listing standards, as may be amended from time to time.

**"Financial Reporting Measure"** are measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and TSR are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the SEC.

**"Incentive-Based Compensation"** means compensation that is granted, earned or vested based wholly or in part on the attainment of any Financial Reporting Measure. Examples of "Incentive-Based Compensation" include, but are not limited to: non-equity incentive plan awards that are earned based wholly or in part on satisfying a Financial Reporting Measure performance goal; bonuses paid from a "bonus pool," the size of which is determined based wholly or in part on satisfying a Financial Reporting Measure performance goal; other cash awards based on satisfaction of a Financial Reporting Measure performance goal; restricted stock, restricted stock units, performance

share units, stock options, and SARs that are granted or become vested based wholly or in part on satisfying a Financial Reporting Measure goal; and proceeds received upon the sale of shares acquired through an incentive plan that were granted or vested based wholly or in part on satisfying a Financial Reporting Measure goal. "Incentive-Based Compensation" excludes, for example, time-based awards such as stock options or restricted stock units that are granted or vest *solely* upon completion of a service period; awards based on non-financial strategic or operating metrics such as the consummation of a merger or achievement of non-financial business goals; service-based retention bonuses; discretionary compensation; and salary.

**"Listing Rule Effective Date"** means the effective date of the listing standards of the Exchange on which the Company's securities are listed.

**"Policy"** means this Compensation Recovery Policy.

Incentive-Based Compensation is deemed "**Received**" in the Company's fiscal period during which the relevant Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, irrespective of whether the payment or grant occurs on a later date or if there are additional vesting or payment requirements, such as time-based vesting or certification or approval by the Compensation Committee or Board, that have not yet been satisfied.

**"Recoupment Amount"** means the amount of Incentive-Based Compensation Received by the Covered Person based on the financial statements prior to the restatement that exceeds the amount such Covered Person would have received had the Incentive-Based Compensation been determined based on the financial restatement, computed without regard to any taxes paid (i.e., gross of taxes withheld).

**"SARs"** means stock appreciation rights.

**"SEC"** means the U.S. Securities and Exchange Commission.

**"SOX 304"** means Section 304 of the Sarbanes-Oxley Act of 2002.

**"Triggering Event"** means any event in which the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

"**TSR**" means total stockholder return.

## EXHIBIT A

### Calculation Guidelines

For purposes of calculating the Recoupment Amount:

- i. For cash awards not paid from bonus pools, the erroneously awarded compensation is the difference between the amount of the cash award (whether payable as a lump sum or over time) that was received and the amount that should have been received applying the restated Financial Reporting Measure.
- ii. For cash awards paid from bonus pools, the erroneously awarded compensation is the pro rata portion of a deficiency that results from the aggregate bonus pool that is reduced based on applying the restated Financial Reporting Measure.
- iii. For equity awards, if the shares, options, restricted stock units, or SARs are still held at the time of recovery, the erroneously awarded compensation is the number of such securities received in excess of the number that should have been received applying the restated Financial Reporting Measure (or the value of the excess number). If the options or SARs have been exercised, but the underlying shares have not been sold, the erroneously awarded compensation is the number of shares underlying the excess options or SARs (or the value thereof). If the underlying shares have been sold, the Company may recoup proceeds received from the sale of shares.
- iv. For Incentive-Based Compensation based on stock price or TSR, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:
  - a. The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or TSR upon which the Incentive-Based Compensation was Received; and
  - b. The Company must maintain documentation of the determination of that reasonable estimate and the Company must provide such documentation to the Exchange in all cases.



## DISCLAIMER

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