

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2024

OR

☐ 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: 1-34392

**PLUG POWER INC.**  
(Exact name of registrant as specified in its charter)

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

**22-3672377**  
(I.R.S. Employer  
Identification Number)

**125 VISTA BOULEVARD, SLINGERLANDS, NEW YORK 12159**  
(Address of Principal Executive Offices, including Zip Code)

**(518) 782-7700**  
(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, par value \$.01 per share	PLUG	The NASDAQ Capital Market

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, smaller reporting company, or an emerging growth company. See the 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares of common stock, par value of \$.01 per share, outstanding as of November 7, 2024 was 911,196,936 shares.

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**PART 1. FINANCIAL INFORMATION**
**Item 1 — Interim Financial Statements (Unaudited)**

**Plug Power Inc. and Subsidiaries**  
**Condensed Consolidated Balance Sheets**  
(In thousands, except share and per share amounts)  
(Unaudited)

	September 30, 2024	December 31, 2023
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 93,940	\$ 135,033
Restricted cash	216,772	216,552
Accounts receivable, net of allowance of \$ 7,340 as of September 30, 2024 and \$ 8,798 as of December 31, 2023	167,222	243,811
Inventory, net	885,764	961,253
Contract assets	145,499	126,248
Prepaid expenses and other current assets	124,824	104,068
Total current assets	1,634,021	1,786,965
Restricted cash	689,483	817,559
Property, plant, and equipment, net	1,534,056	1,436,177
Right of use assets related to finance leases, net	52,947	57,281
Right of use assets related to operating leases, net	361,009	399,969
Equipment related to power purchase agreements and fuel delivered to customers, net	142,238	111,261
Contract assets	30,333	29,741
Intangible assets, net	175,006	188,886
Investments in non-consolidated entities and non-marketable equity securities	92,767	63,783
Other assets	13,014	11,116
Total assets	\$ 4,724,874	\$ 4,902,738
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 207,224	\$ 257,828
Accrued expenses	107,402	200,544
Deferred revenue and other contract liabilities	132,345	204,139
Operating lease liabilities	66,973	63,691
Finance lease liabilities	10,822	9,441
Finance obligations	83,305	84,031
Current portion of convertible senior notes, net	58,163	—
Current portion of long-term debt	3,232	2,716
Contingent consideration, loss accrual for service contracts, and other current liabilities	117,479	142,410
Total current liabilities	786,945	964,800
Deferred revenue and other contract liabilities	59,529	84,163
Operating lease liabilities	249,191	292,002
Finance lease liabilities	27,134	36,133
Finance obligations	278,250	284,363
Convertible senior notes, net	149,214	195,264
Long-term debt	2,341	1,209
Contingent consideration, loss accrual for service contracts, and other liabilities	142,937	146,679
Total liabilities	1,695,541	2,004,613
Stockholders' equity:		
Common stock, \$.01 par value per share; 1,500,000,000 shares authorized; Issued (including shares in treasury): 900,281,573 as of September 30, 2024 and 625,305,025 as of December 31, 2023	9,003	6,254
Additional paid-in capital	8,388,930	7,494,685
Accumulated other comprehensive loss	(1,634)	(6,802)
Accumulated deficit	(5,259,021)	(4,489,744)
Less common stock in treasury: 19,831,594 as of September 30, 2024 and 19,169,366 as of December 31, 2023	(107,945)	(106,268)
Total stockholders' equity	3,029,333	2,898,125
Total liabilities and stockholders' equity	\$ 4,724,874	\$ 4,902,738

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

**Plug Power Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Operations**  
(In thousands, except share and per share amounts)  
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Net revenue:				
Sales of equipment, related infrastructure and other	\$ 107,141	\$ 145,130	\$ 252,224	\$ 543,510
Services performed on fuel cell systems and related infrastructure	14,148	9,290	40,205	27,088
Power purchase agreements	20,459	20,068	58,437	44,135
Fuel delivered to customers and related equipment	29,791	19,371	77,964	47,391
Other	2,191	4,852	8,514	7,055
Net revenue	173,730	198,711	437,344	669,179
Cost of revenue:				
Sales of equipment, related infrastructure and other	149,912	158,989	414,948	504,717
Services performed on fuel cell systems and related infrastructure	9,086	17,916	35,773	53,586
Provision for loss contracts related to service	6,036	41,581	38,265	55,801
Power purchase agreements	51,782	56,981	161,322	157,773
Fuel delivered to customers and related equipment	55,538	59,012	172,428	177,963
Other	1,401	2,197	4,963	4,843
Total cost of revenue	273,755	336,676	827,699	954,683
Gross loss	(100,025)	(137,965)	(390,355)	(285,504)
Operating expenses:				
Research and development	19,712	27,651	63,932	83,437
Selling, general and administrative	91,586	105,451	254,689	310,621
Restructuring	514	—	8,154	—
Impairment	4,185	665	8,406	11,734
Change in fair value of contingent consideration	146	2,239	(5,286)	26,316
Total operating expenses	116,143	136,006	329,895	432,108
Operating loss	(216,168)	(273,971)	(720,250)	(717,612)
Interest income	7,423	10,369	24,495	44,392
Interest expense	(9,148)	(11,802)	(29,984)	(33,717)
Other income/(expense), net	15,510	4,987	(566)	(4,866)
Realized gain on investments, net	—	—	—	263
Other-than-temporary impairment of available-for-sale securities	—	(10,831)	—	(10,831)
Change in fair value of equity securities	—	70	—	8,987
Loss on equity method investments	(8,690)	(7,030)	(29,043)	(19,970)
Loss on extinguishment of convertible senior notes	—	—	(14,047)	—
Loss before income taxes	\$ (211,073)	\$ (288,208)	\$ (769,395)	\$ (733,354)
Income tax (expense)/benefit	(95)	4,729	118	6,916
Net loss	\$ (211,168)	\$ (283,479)	\$ (769,277)	\$ (726,438)
Net loss per share:				
Basic and diluted	\$ (0.25)	\$ (0.47)	\$ (1.03)	\$ (1.22)
Weighted average number of common stock outstanding	858,442,951	599,465,146	745,827,431	593,417,595

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

**Plug Power Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Comprehensive Loss**  
(In thousands)  
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Net loss	\$ (211,168)	\$ (283,479)	\$ (769,277)	\$ (726,438)
Other comprehensive income/(loss):				
Foreign currency translation gain/(loss)	315	(3,021)	5,168	1,711
Change in net unrealized gain on available-for-sale securities	—	4,333	—	11,841
Amounts reclassified from accumulated other comprehensive income/(loss):				
Other-than-temporary impairment of available-for-sale securities	—	10,831	—	10,831
Comprehensive loss attributable to the Company, net of tax	<u>\$ (210,853)</u>	<u>\$ (271,336)</u>	<u>\$ (764,109)</u>	<u>\$ (702,055)</u>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

**Plug Power Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Stockholders' Equity**  
(In thousands, except share amounts)  
(Unaudited)

	Common Stock		Additional	Accumulated	Treasury Stock		Accumulated	Total
	Shares	Amount	Paid-in Capital	Other Comprehensive Gain/(Loss)	Shares	Amount	Deficit	Stockholders' Equity
<b>December 31, 2023</b>	<b>625,305,025</b>	<b>\$ 6,254</b>	<b>\$ 7,494,685</b>	<b>\$ (6,802)</b>	<b>19,169,366</b>	<b>\$ (106,268)</b>	<b>\$ (4,489,744)</b>	<b>\$ 2,898,125</b>
Net loss	—	—	—	—	—	—	(295,776)	(295,776)
Other comprehensive loss	—	—	—	(2,231)	—	—	—	(2,231)
Stock-based compensation	923,027	9	13,695	—	—	—	—	13,704
Public offerings, common stock, net of issuance costs	79,553,175	796	304,550	—	—	—	—	305,346
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	(176,678)	(2)	43	—	—	—	—	41
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	72,849	(278)	—	(278)
Provision for common stock warrants	—	—	10,236	—	—	—	—	10,236
<b>March 31, 2024</b>	<b>705,604,549</b>	<b>\$ 7,057</b>	<b>\$ 7,823,209</b>	<b>\$ (9,033)</b>	<b>19,242,215</b>	<b>\$ (106,546)</b>	<b>\$ (4,785,520)</b>	<b>\$ 2,929,167</b>
Net loss	—	—	—	—	—	—	(262,333)	(262,333)
Other comprehensive income	—	—	—	7,084	—	—	—	7,084
Stock-based compensation	1,252,258	13	26,296	—	—	—	—	26,309
Public offerings, common stock, net of issuance costs	96,812,695	968	265,806	—	—	—	—	266,774
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	698,280	6	20	—	—	—	—	26
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	118,242	(324)	—	(324)
Earnouts from acquisitions paid in stock	2,625,628	26	18,215	—	—	—	—	18,241
Provision for common stock warrants	—	—	3,636	—	—	—	—	3,636
<b>June 30, 2024</b>	<b>806,993,410</b>	<b>\$ 8,070</b>	<b>\$ 8,137,182</b>	<b>\$ (1,949)</b>	<b>19,360,457</b>	<b>\$ (106,870)</b>	<b>\$ (5,047,853)</b>	<b>\$ 2,988,580</b>
Net loss	—	—	—	—	—	—	(211,168)	(211,168)
Other comprehensive income	—	—	—	315	—	—	—	315
Stock-based compensation	1,299,404	13	24,094	—	—	—	—	24,107
Public offerings, common stock, net of issuance costs	91,785,729	918	220,211	—	—	—	—	221,129
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	203,030	2	27	—	—	—	—	29
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	471,137	(1,075)	—	(1,075)
Provision for common stock warrants	—	—	7,416	—	—	—	—	7,416
<b>September 30, 2024</b>	<b>900,281,573</b>	<b>\$ 9,003</b>	<b>\$ 8,388,930</b>	<b>\$ (1,634)</b>	<b>19,831,594</b>	<b>\$ (107,945)</b>	<b>\$ (5,259,021)</b>	<b>\$ 3,029,333</b>
<b>December 31, 2022</b>	<b>608,421,785</b>	<b>\$ 6,084</b>	<b>\$ 7,297,306</b>	<b>\$ (26,004)</b>	<b>18,076,127</b>	<b>\$ (96,261)</b>	<b>\$ (3,120,911)</b>	<b>\$ 4,060,214</b>
Net loss	—	—	—	—	—	—	(206,561)	(206,561)
Other comprehensive income	—	—	—	6,970	—	—	—	6,970
Stock-based compensation	228,954	2	43,300	—	—	—	—	43,302
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	620,250	6	668	—	—	—	—	674
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	169,787	(2,590)	—	(2,590)
Exercise of warrants	2,680,637	28	(28)	—	—	—	—	—
Provision for common stock warrants	—	—	19,641	—	—	—	—	19,641
<b>March 31, 2023</b>	<b>611,951,626</b>	<b>\$ 6,120</b>	<b>\$ 7,360,887</b>	<b>\$ (19,034)</b>	<b>18,245,914</b>	<b>\$ (98,851)</b>	<b>\$ (3,327,472)</b>	<b>\$ 3,921,650</b>
Net loss	—	—	—	—	—	—	(236,398)	(236,398)
Other comprehensive income	—	—	—	5,270	—	—	—	5,270
Stock-based compensation	338,328	3	39,915	—	—	—	—	39,918
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	246,717	3	55	—	—	—	—	58
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	39,349	(364)	—	(364)
Exercise of warrants	6,623,794	66	(66)	—	—	—	—	—
Provision for common stock warrants	—	—	951	—	—	—	—	951
Earnouts from acquisitions paid in stock	927,042	9	7,991	—	—	—	—	8,000
<b>June 30, 2023</b>	<b>620,087,507</b>	<b>\$ 6,201</b>	<b>\$ 7,409,733</b>	<b>\$ (13,764)</b>	<b>18,285,263</b>	<b>\$ (99,215)</b>	<b>\$ (3,563,870)</b>	<b>\$ 3,739,085</b>
Net loss	—	—	—	—	—	—	(283,479)	(283,479)
Other comprehensive income	—	—	—	12,143	—	—	—	12,143
Stock-based compensation	361,162	4	45,850	—	—	—	—	45,854
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	3,818,384	38	543	—	—	—	—	581
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	594,104	(4,968)	—	(4,968)
Provision for common stock warrants	—	—	70	—	—	—	—	70
<b>September 30, 2023</b>	<b>624,267,053</b>	<b>\$ 6,243</b>	<b>\$ 7,456,196</b>	<b>\$ (1,621)</b>	<b>18,879,367</b>	<b>\$ (104,183)</b>	<b>\$ (3,847,349)</b>	<b>\$ 3,509,286</b>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

**Plug Power Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Cash Flows**  
(In thousands)  
(Unaudited)

	Nine months ended September 30,	
	2024	2023
<b>Operating activities</b>		
Net loss	\$ (769,277)	\$ (726,438)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of long-lived assets	51,639	37,810
Amortization of intangible assets	14,194	14,158
Lower of cost or net realizable value inventory adjustment and provision for excess and obsolete inventory	67,768	33,889
Stock-based compensation	64,120	129,074
Loss on extinguishment of convertible senior notes	14,047	—
(Recoveries)/provision for losses on accounts receivable	(1,458)	948
Amortization of (premium)/discount of debt issuance costs on convertible senior notes and long-term debt	(1,731)	1,699
Provision for common stock warrants	16,294	12,737
Deferred income tax benefit	(118)	(621)
Impairment	8,406	11,734
(Recovery)/loss on service contracts	(558)	35,893
Loss on sale of long-lived assets	2,519	—
Fair value adjustment to contingent consideration	(5,286)	26,316
Net realized gain on investments	—	(263)
Other-than-temporary impairment of available-for-sale securities	—	10,831
Accretion of premium on available-for-sale securities	—	(5,144)
Lease origination costs	(3,508)	(7,665)
Change in fair value for equity securities	—	(8,987)
Loss on equity method investments	29,043	19,970
Change in fair value of derivative financial instruments	100	—
Changes in operating assets and liabilities that provide/(use) cash:		
Accounts receivable	78,047	(34,685)
Inventory	30,868	(411,737)
Contract assets	(14,849)	(39,040)
Prepaid expenses and other assets	(42,835)	(6,423)
Accounts payable, accrued expenses, and other liabilities	(29,183)	21,221
Payments of contingent consideration	(9,216)	(2,895)
Deferred revenue and other contract liabilities	(96,428)	23,699
Net cash used in operating activities	(597,402)	(863,919)
<b>Investing activities</b>		
Purchases of property, plant and equipment	(253,148)	(484,030)
Purchases of equipment related to power purchase agreements and equipment related to fuel delivered to customers	(41,513)	(26,094)
Proceeds from maturities of available-for-sale securities	—	961,160
Proceeds from sales of equity securities	—	76,263
Proceeds from sale of long-lived assets	500	—
Cash paid for non-consolidated entities and non-marketable equity securities	(64,368)	(66,811)
Net cash (used in)/provided by investing activities	(358,529)	460,488
<b>Financing activities</b>		
Payments of contingent consideration	(1,841)	(10,105)
Proceeds from public and private offerings, net of transaction costs	793,249	—
Payments of tax withholding on behalf of employees for net stock settlement of stock-based compensation	(1,677)	(7,922)
Proceeds from exercise of stock options	96	1,313
Principal payments on long-term debt	(726)	(5,710)
Proceeds from finance obligations	54,416	90,265
Principal repayments of finance obligations and finance leases	(64,342)	(53,394)
Net cash provided by financing activities	779,175	14,447
<b>Effect of exchange rate changes on cash</b>	7,807	2,130
<b>Decrease in cash and cash equivalents</b>	(41,093)	(579,821)
<b>(Decrease)/increase in restricted cash</b>	(127,856)	192,967
<b>Cash, cash equivalents, and restricted cash beginning of period</b>	<u>1,169,144</u>	<u>1,549,344</u>
<b>Cash, cash equivalents, and restricted cash end of period</b>	<u>\$ 1,000,195</u>	<u>\$ 1,162,490</u>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid for interest, net of capitalized interest of \$8.3 million as of September 30, 2024 and \$6.0 million as of September 30, 2023	<u>\$ 26,946</u>	<u>\$ 29,207</u>
<b>Summary of non-cash activity</b>		
Recognition of right of use asset - finance leases	\$ 163	\$ 5,338
Recognition of right of use asset - operating leases	6,835	77,500
Net transfers between inventory and long-lived assets	22,411	725
Earnouts from acquisitions paid in common stock and warrants	18,241	8,000
Purchases of long-lived asset from financing agreement	2,000	—
Accrued purchase of fixed assets, cash to be paid in subsequent period	51,033	131,774

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

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## 1. Nature of Operations

Plug Power Inc. (the “Company”, “Plug”, “we” or “our”) is facilitating the paradigm shift to an increasingly electrified world by innovating cutting-edge hydrogen and fuel cell solutions. While we continue to develop commercially viable hydrogen and fuel cell product solutions, we have expanded our offerings to support a variety of commercial operations that can be powered with clean hydrogen. We provide electrolyzers that allow customers — such as refineries, producers of chemicals, steel, fertilizer and commercial refueling stations — to generate hydrogen on-site. We are focusing our efforts on (a) industrial mobility applications, including electric forklifts and electric industrial vehicles, at multi shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility, and environmental benefits; (b) production of hydrogen; and (c) stationary power systems that will support critical operations, such as data centers, microgrids, and generation facilities, in either a backup power or continuous power role, and replace batteries, diesel generators or the grid for telecommunication logistics, transportation, and utility customers. Plug expects to support these products and customers with an ecosystem of vertically integrated products that produce, transport, store and handle, dispense, and use hydrogen for mobility and power applications.

### Liquidity and Capital Resources

The Company's working capital was \$847.1 million as of September 30, 2024, which included unrestricted cash and cash equivalents of \$93.9 million and restricted cash of \$906.3 million. On January 17, 2024, the Company entered into the At Market Issuance Sales Agreement (the “Original ATM Agreement”) with B. Riley Securities, Inc. (“B. Riley”), pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company's common stock, having an aggregate gross sales price of up to \$1.0 billion. As of February 23, 2024, the Company had \$697.9 million remaining authorized for issuance under the Original ATM Agreement. On February 23, 2024, the Company and B. Riley entered into Amendment No. 1 to the Original ATM Agreement (“Amendment No. 1” and, together with the Original ATM Agreement, the “ATM Agreement”) to increase the aggregate gross sales price of shares of the Company's common stock available for future issuance under the Original ATM Agreement to \$1.0 billion. Under the ATM Agreement, the Company has the right at its sole discretion to direct B. Riley to act on a principal basis and purchase directly from the Company up to \$11.0 million of shares of its common stock on any trading day (the “Maximum Commitment Advance Purchase Amount”) if the Company's market capitalization is more than \$1.0 billion (or up to \$10.0 million if the Company's market capitalization is less than \$1.0 billion) and up to \$55.0 million of shares in any calendar week (the “Maximum Commitment Advance Purchase Amount Cap”) if the Company's market capitalization is more than \$1.0 billion (or up to \$30.0 million if the Company's market capitalization is less than \$1.0 billion). As of November 7, 2024, the Company had offered and sold 219,835,221 shares of common stock having an aggregate gross sales price of approximately \$677.2 million under the ATM Agreement and shares of the Company's common stock having an aggregate gross sales price of approximately \$624.8 million remained available for issuance and sale under the ATM Agreement.

On November 7, 2024, the Company entered into Amendment No. 2 to the Original ATM Agreement (“Amendment No. 2” and together with the ATM Agreement, the “Amended ATM Agreement”) with B. Riley. Amendment No. 2 increased the aggregate gross sales price of the Company's common stock the Company may offer and sell pursuant to the Amended ATM Agreement by approximately \$375.2 million to \$1.0 billion. From and after November 7, 2024, through and including February 7, 2025, the Company has the right at its sole discretion to direct B. Riley to act on a principal basis and purchase from the Company up to the Maximum Commitment Advance Purchase Amount of \$11.0 million and up to the Maximum Commitment Advance Purchase Amount Cap of \$55.0 million (including any shares sold by B. Riley in agency transactions) in any calendar week. If the Company's market capitalization is less than \$1.0 billion on and after February 8, 2025, the Maximum Commitment Advance Purchase Amount shall be decreased to \$10.0 million and the Maximum Commitment Advance Purchase Amount Cap shall be decreased to \$30.0 million.

On November 11, 2024, the Company entered into a Debenture Purchase Agreement with YA II PN, Ltd. under which the Company agreed to sell and issue to the Investor an unsecured convertible debenture in aggregate principal amount of \$200.0 million in exchange for the payment by the Investor to the Company of \$190.0 million. The Company

expects to close the issuance of the Convertible Debenture on or about November 12, 2024, subject to customary closing conditions. For more information, see Note 24, "Subsequent Events".

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$ 2.54 per share for net proceeds of \$191.0 million after deducting the underwriting discount and related offering expenses.

The Company believes that its working capital and cash position, together with its right to direct B. Riley to purchase shares directly from the Company under the Amended ATM Agreement, will be sufficient to fund its on-going operations for a period of at least 12 months subsequent to the issuance of the accompanying unaudited interim condensed consolidated financial statements.

## **2. Summary of Significant Accounting Policies**

### **Principles of Consolidation**

The unaudited interim condensed consolidated financial statements include the financial statements of the Company and its wholly-owned subsidiaries. Intercompany balances and transactions have been eliminated in consolidation. In addition, we include our share of the results of our joint ventures with Renault SAS ("Renault") named HyVia SAS, a French société par actions simplifiée ("HyVia"), AccionaPlug S.L. ("AccionaPlug"), and SK Plug Hyverse Co., Ltd. ("SK Plug Hyverse"), and our investment in Clean H2 Infra Fund, using the equity method based on our economic ownership interest and our ability to exercise significant influence over the operating and financial decisions of HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund.

### **Interim Financial Statements**

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). In the opinion of management, all adjustments, which consist solely of normal recurring adjustments, necessary to present fairly, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position, results of operations and cash flows for all periods presented, have been made. The results of operations for the interim periods presented are not necessarily indicative of the results that may be expected for the full year.

Certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted. These unaudited interim condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the "2023 Form 10-K").

The information presented in the accompanying unaudited interim condensed consolidated balance sheets as of December 31, 2023 has been derived from the Company's 2023 audited consolidated financial statements.

The unaudited interim condensed consolidated financial statements contained herein should be read in conjunction with our 2023 Form 10-K.

### **Clean Hydrogen Production Tax Credit**

Beginning in the second quarter of 2024, the Company determined that it qualifies for the clean hydrogen production tax credit ("PTC") under Section 45V as part of the Inflation Reduction Act of 2022 ("IRA") resulting from operation of the Company's hydrogen production plant located in Georgia. The PTC is available for qualified clean hydrogen produced and sold during the 10-year period beginning on the date the qualified clean hydrogen production facility was originally placed in service. The Company has chosen elective pay, also referred to as direct pay, for the 2024 taxable year. This election makes the PTC refundable, as the Company can receive the full value of the credit from the Internal Revenue Service. This election will apply to the 2024 taxable year and the four subsequent taxable years unless

revoked. During the remaining five years of the 10-year period to receive the PTC, the Company can elect to transfer all or a portion of the PTC to a third party buyer in exchange for cash. The Company has analogized the accounting of the PTC to accounting for government grants due to the ability to receive payment for the credit regardless of whether the Company has an income tax liability. As a result, the Company recorded approximately \$1.6 million and \$2.9 million for the three and nine months ended September 30, 2024, respectively, as a reduction to the “fuel delivered to customers and related equipment” costs of revenue financial statement line item in the unaudited interim condensed consolidated statement of operations and \$3.3 million as of September 30, 2024 as an increase to the “other assets” financial statement line item in the unaudited interim condensed consolidated balance sheet.

### Recent Accounting Pronouncements

#### *Recently Adopted Accounting Guidance*

There have been no significant changes in our reported financial position or results of operations and cash flows resulting from the adoption of new accounting pronouncements.

#### *Recent Accounting Guidance Not Yet Effective*

Other than the standards mentioned in our 2023 Form 10-K, all issued but not yet effective accounting and reporting standards as of September 30, 2024 are either not applicable to the Company or are not expected to have a material impact on the Company.

### 3. Extended Maintenance Contracts

On a quarterly basis, we evaluate any potential losses related to our extended maintenance contracts for sales of equipment, related infrastructure and other that have been sold. The following table shows the roll forward of balances in the accrual for loss contracts, including changes due to the provision for loss accrual, releases to service cost of sales, increase to loss accrual related to customer warrants, and foreign currency translation adjustment (in thousands):

	Nine months ended September 30, 2024	Year ended December 31, 2023
Beginning balance	\$ 137,853	\$ 81,066
Provision for loss accrual	37,997	85,375
Releases to service cost of sales	(38,823)	(29,713)
Increase to loss accrual related to customer warrants	268	971
Foreign currency translation adjustment	214	154
Ending balance	<u>\$ 137,509</u>	<u>\$ 137,853</u>

### 4. Earnings Per Share

Basic earnings per common stock are computed by dividing net loss by the weighted average number of common stock outstanding during the reporting period. Since the Company is in a net loss position, all common stock equivalents would be considered anti-dilutive and are therefore not included in the determination of diluted earnings per share. Accordingly, basic and diluted loss per share are the same.

The potentially dilutive securities are summarized as follows:

	As of September 30,	
	2024	2023
Stock options outstanding (1)	33,180,236	35,463,759
Restricted stock and restricted stock units outstanding (2)	4,824,497	7,261,132
Common stock warrants (3)	82,022,634	78,561,263
Convertible Senior Notes (4)	44,661,605	39,170,766
Number of dilutive potential shares of common stock	164,688,972	160,456,920

- (1) During the three months ended September 30, 2024 and 2023, the Company granted options for 1,726,500 and 2,255,096 shares of common stock, respectively. During the nine months ended September 30, 2024 and 2023, the Company granted options for 9,147,125 and 9,131,689 shares of common stock, respectively.
- (2) During the three months ended September 30, 2024 and 2023, the Company granted 21,500 and 3,217,700 shares of restricted stock and restricted stock units, respectively. During the nine months ended September 30, 2024 and 2023, the Company granted 1,075,557 and 3,606,393 shares of restricted stock and restricted stock units, respectively.
- (3) In May 2024, the Company issued warrants in connection with an earn-out settlement agreement with Giner ELX, Inc. ("Giner") as described in Note 15, "Fair Value Measurements", and the Company registered for resale up to 3,461,371 shares of the Company's common stock issuable upon exercise of the warrants. The warrants had not been exercised as of September 30, 2024.

In August 2022, the Company issued a warrant to acquire up to 16,000,000 shares of the Company's common stock as part of a transaction agreement with Amazon.com, Inc. ("Amazon"), subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements". The warrant had not been exercised as of September 30, 2024 and 2023, respectively.

In April 2017, the Company issued a warrant to acquire up to 55,286,696 shares of the Company's common stock as part of a transaction agreement with Amazon, subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements". The warrant had been exercised with respect to 34,917,912 shares of the Company's common stock as of September 30, 2024 and 2023.

In July 2017, the Company issued a warrant to acquire up to 55,286,696 shares of the Company's common stock as part of a transaction agreement with Walmart, Inc. ("Walmart"), subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements". The warrant had been exercised with respect to 13,094,217 shares of the Company's common stock as of September 30, 2024 and 2023.

- (4) In March 2024, the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the 7.00% Convertible Senior Notes due 2026 (the "7.00% Convertible Senior Notes") as described in Note 10, "Convertible Senior Notes". There were no conversions of the 7.00% Convertible Senior Notes during the three and nine months ended September 30, 2024 and 2023.

In May 2020, the Company issued \$212.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes due 2025 (the "3.75% Convertible Senior Notes") as described in Note 10, "Convertible Senior Notes". There were no conversions of the 3.75% Convertible Senior Notes during the three and nine months ended September 30, 2024 and 2023.

## 5. Inventory

Inventory as of September 30, 2024 and December 31, 2023 consisted of the following (in thousands):

	September 30, 2024	December 31, 2023
Raw materials and supplies - production locations	\$ 522,332	\$ 564,818
Raw materials and supplies - customer locations	26,988	20,751
Work-in-process	146,441	149,574
Finished goods	190,003	226,110
Inventory	<u>\$ 885,764</u>	<u>\$ 961,253</u>

Inventory is comprised of raw materials and supplies, work-in-process, and finished goods. The Company had inventory reserves made up of excess and obsolete items and related lower of cost or net realizable value adjustments of \$89.5 million and \$85.2 million as of September 30, 2024 and December 31, 2023, respectively.

## 6. Property, Plant and Equipment

Property, plant and equipment as of September 30, 2024 and December 31, 2023 consisted of the following (in thousands):

	September 30, 2024	December 31, 2023
Land	\$ 5,845	\$ 6,049
Construction in progress	930,505	1,109,896
Hydrogen production plants	370,104	77,107
Leasehold improvements	97,022	95,229
Software, machinery, and equipment	<u>249,091</u>	<u>229,352</u>
Property, plant, and equipment	1,652,567	1,517,633
Less: accumulated depreciation	<u>(118,511)</u>	<u>(81,456)</u>
Property, plant, and equipment, net	<u>\$ 1,534,056</u>	<u>\$ 1,436,177</u>

Construction in progress is primarily comprised of construction of three hydrogen production plants. Completed assets are transferred to their respective asset classes, and depreciation begins when an asset is ready for its intended use. Interest on outstanding debt is capitalized during periods of capital asset construction and amortized over the useful lives of the related assets. During the three months ended September 30, 2024 and 2023, the Company capitalized \$3.1 million and \$2.0 million of interest, respectively. During the nine months ended September 30, 2024 and 2023, the Company capitalized \$8.3 million and \$6.0 million of interest, respectively.

Depreciation expense related to property, plant and equipment was \$12.6 million and \$10.2 million for the three months ended September 30, 2024 and 2023, respectively. Depreciation expense related to property, plant and equipment was \$37.3 million and \$23.0 million for the nine months ended September 30, 2024 and 2023, respectively.

## 7. Intangible Assets

The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of September 30, 2024 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	14 years	\$ 103,144	\$ (25,902)	\$ 77,242
Dry stack electrolyzer technology	10 years	29,000	(7,492)	21,508
Customer relationships, trade name, and other	13 years	104,473	(28,217)	76,256
		<u>\$ 236,617</u>	<u>\$ (61,611)</u>	<u>\$ 175,006</u>

The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of December 31, 2023 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	14 years	\$ 103,060	\$ (20,204)	\$ 82,856
Dry stack electrolyzer technology	10 years	29,000	(5,317)	23,683
Customer relationships, trade name, and other	13 years	103,981	(21,634)	82,347
		<u>\$ 236,041</u>	<u>\$ (47,155)</u>	<u>\$ 188,886</u>

The change in the gross carrying amount of the acquired technology and customer relationships, trade name and other from December 31, 2023 to September 30, 2024 was due to foreign currency translation.

Amortization expense for acquired identifiable intangible assets for the three months ended September 30, 2024 and 2023 was \$4.8 million and \$4.4 million, respectively. Amortization expense for acquired identifiable intangible assets for the nine months ended September 30, 2024 and 2023 was \$14.2 million and \$14.2 million, respectively.

The estimated amortization expense for subsequent years is as follows (in thousands):

Remainder of 2024	\$ 4,724
2025	18,228
2026	16,603
2027	16,596
2028	16,187
2029 and thereafter	102,668
Total	<u>\$ 175,006</u>

## 8. Accrued Expenses

Accrued expenses as of September 30, 2024 and December 31, 2023 consisted of (in thousands):

	September 30, 2024	December 31, 2023
Accrued payroll and compensation related costs	\$ 23,699	\$ 32,584
Accrual for capital expenditures	16,378	83,781
Accrued accounts payable	40,249	64,767
Accrued sales and other taxes	22,301	17,207
Accrued interest	4,107	562
Accrued other	668	1,643
Total	<u>\$ 107,402</u>	<u>\$ 200,544</u>

## 9. Long-Term Debt

During the second quarter of 2024, the Company began repaying the principal and interest on a \$ 2.0 million allowance for tenant work related to its manufacturing facility in Slingerlands, NY. In accordance with Accounting Standard Codification ("ASC") 842, Leases ("ASC 842"), the allowance is treated as a freestanding financial instrument separate from the facility lease and is accounted for as long-term debt. The outstanding principal and carrying value of the debt was \$1.7 million as of September 30, 2024.

In June 2020, the Company acquired debt as part of its acquisition of United Hydrogen Group Inc. During the three months ended September 30, 2024 and 2023, the Company repaid \$0 and \$0.3 million of principal related to this outstanding debt. During the nine months ended September 30, 2024 and 2023, the Company repaid \$0.6 million and \$5.7 million of principal related to this outstanding debt. The outstanding carrying value of the debt was \$ 3.9 million as of September 30, 2024. The remaining outstanding principal on the debt was \$4.9 million and the unamortized debt discount was \$1.0 million, bearing varying interest rates ranging from 7.3% to 7.6%. The debt is scheduled to mature in 2026. As of September 30, 2024, the principal balance was due at each of the following dates as follows (in thousands):

December 31, 2024	2,757
December 31, 2025	1,200
December 31, 2026	900
Total outstanding principal	<u>\$ 4,857</u>

## 10. Convertible Senior Notes

### 7.00% Convertible Senior Notes

On March 20, 2024, the Company entered into separate, privately negotiated exchange agreements with certain holders of the Company's outstanding 3.75% Convertible Senior Notes pursuant to which the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes, and accrued and unpaid interest of \$1.6 million on such notes to, but excluding, March 20, 2024, for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes due 2026, in each case, pursuant to the exemption from registration provided by Section 4(a)(2) under the Securities Act of 1933, as amended (the "Securities Act"). Following the exchange, approximately \$58.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged.

This transaction was accounted for as an extinguishment of debt. As a result, the Company recorded a loss on extinguishment of debt of \$14.0 million in the unaudited interim condensed consolidated statement of operations during the first quarter of 2024. Loss on extinguishment of debt arises from the difference between the net carrying amount of the Company's debt and the fair value of the assets transferred to extinguish the debt.

The 7.00% Convertible Senior Notes are the Company's senior, unsecured obligations and are governed by the terms of an Indenture (the "Indenture"), dated as of March 20, 2024, entered into between the Company and Wilmington Trust, National Association, as trustee. The 7.00% Convertible Senior Notes bear cash interest at the rate of 7.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2024, to holders of record at the close of business on the preceding May 15 and November 15, respectively. The 7.00% Convertible Senior Notes mature on June 1, 2026, unless earlier converted or redeemed or repurchased by the Company.

The conversion rate for the 7.00% Convertible Senior Notes is initially 235.4049 shares of the Company's common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, which is equivalent to an initial conversion price of approximately \$4.25 per share of common stock, which represents a premium of approximately 20% over the last reported sale price of Plug's common stock on the Nasdaq Capital Market on March 12, 2024. The conversion rate and conversion price are subject to customary adjustments upon the occurrence of certain events. Prior to the close of business on the business day immediately preceding December 1, 2025, the 7.00% Convertible Senior Notes will be convertible at the option of the holders of the 7.00% Convertible Senior Notes only upon the satisfaction of specified conditions and during certain periods. On or after December 1, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity date, the 7.00% Convertible Senior Notes will be convertible at the option of the holders of the 7.00% Convertible Senior Notes at any time regardless of these conditions. Conversions of the 7.00% Convertible Senior Notes will be settled in cash, shares of the Company's common stock, or a combination thereof, at the Company's election.

Subject to certain exceptions and subject to certain conditions, holders of the 7.00% Convertible Senior Notes may require the Company to repurchase their 7.00% Convertible Senior Notes upon the occurrence of a "Fundamental

Change" (as defined in the Indenture) prior to maturity for cash at a repurchase price equal to 100% of the principal amount of the 7.00% Convertible Senior Notes to be repurchased plus accrued and unpaid interest, if any, to, but excluding, the repurchase date.

The 7.00% Convertible Senior Notes will be redeemable, in whole or in part, at the Company's option at any time on or after June 5, 2025, at a cash redemption price equal to the principal amount of the 7.00% Convertible Senior Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the then-applicable conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the three trading days immediately preceding the date the Company sends the related redemption notice, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company sends such redemption notice.

In certain circumstances, conversions of 7.00% Convertible Senior Notes in connection with "Make-Whole Fundamental Changes" (as defined in the Indenture) or conversions of 7.00% Convertible Senior Notes called for redemption may result in an increase to the conversion rate, provided that the conversion rate will not exceed 282.4859 shares of the Company's common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, subject to adjustment. In such circumstance, a maximum of 39,659,890 shares of common stock, subject to adjustment, may be issued upon conversion of the 7.00% Convertible Senior Notes. There were no conversions of the 7.00% Convertible Senior Notes during the three and nine months ended September 30, 2024.

The 7.00% Convertible Senior Notes consisted of the following (in thousands):

	September 30, 2024
Principal amounts:	
Principal	\$ 140,396
Unamortized debt premium, net of offering costs (1)	8,818
Net carrying amount	\$ 149,214

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 7.00% Convertible Senior Notes for the three and nine months ended September 30, 2024 (in thousands, except for the effective interest rate):

	Three months ended September 30, 2024	Nine months ended September 30, 2024
Interest expense	\$ 2,478	\$ 5,224
Amortization of premium	(1,308)	(2,781)
Total	\$ 1,170	\$ 2,443
Effective interest rate	3.0%	3.0%

The estimated fair value of the 7.00% Convertible Senior Notes as of September 30, 2024 was approximately \$120.0 million. The fair value estimation was primarily based on a quoted price in an active market.

### 3.75% Convertible Senior Notes

On May 18, 2020, the Company issued \$200.0 million in aggregate principal amount of 3.75% Convertible Senior Notes due June 1, 2025 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act. On May 29, 2020, the Company issued an additional \$12.5 million in aggregate principal amount of 3.75% Convertible Senior Notes. On March 12, 2024, the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes due 2026. Following the exchange, approximately \$58.5 million in aggregate principal amount



of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged. There were no conversions of the 3.75% Convertible Senior Notes during the three and nine months ended September 30, 2024 and 2023.

The 3.75% Convertible Senior Notes consisted of the following (in thousands):

	September 30, 2024	December 31, 2023
Principal amounts:		
Principal	\$ 58,462	\$ 197,278
Unamortized debt issuance costs (1)	(299)	(2,014)
Net carrying amount	<u>\$ 58,163</u>	<u>\$ 195,264</u>

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 3.75% Convertible Senior Notes for the three and nine months ended September 30, 2024 and 2023 (in thousands, except for the effective interest rate):

	Three months ended		Nine months ended	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023
Interest expense	\$ 549	\$ 1,849	\$ 2,787	\$ 5,547
Amortization of debt issuance costs	108	338	532	1,003
Total	<u>\$ 657</u>	<u>\$ 2,187</u>	<u>\$ 3,319</u>	<u>\$ 6,550</u>
Effective interest rate	4.5%	4.5%	4.5%	4.5%

The estimated fair value of the 3.75% Convertible Senior Notes as of September 30, 2024 was approximately \$54.1 million. The fair value estimation was primarily based on a quoted price in an active market.

#### ***Capped Call***

In conjunction with the pricing of the 3.75% Convertible Senior Notes, the Company entered into privately negotiated capped call transactions (the "3.75% Notes Capped Call") with certain counterparties at a price of \$16.2 million. The 3.75% Notes Capped Call covers, subject to anti-dilution adjustments, the aggregate number of shares of the Company's common stock that underlie the initial 3.75% Convertible Senior Notes and is generally expected to reduce potential dilution to the Company's common stock upon any conversion of the 3.75% Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the 3.75% Notes Capped Call is initially \$6.7560 per share, which represents a premium of approximately 60% over the last then-reported sale price of the Company's common stock of \$4.11 per share on the date of the transaction and is subject to certain adjustments under the terms of the 3.75% Notes Capped Call. The 3.75% Notes Capped Call becomes exercisable if the conversion option is exercised.

The net cost incurred in connection with the 3.75% Notes Capped Call was recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets at the time the transactions were entered into. The book value of the 3.75% Notes Capped Call is not remeasured.

#### ***5.5% Convertible Senior Notes and Common Stock Forward***

In March 2018, the Company issued \$100.0 million in aggregate principal amount of the 5.5% Convertible Senior Notes due on March 15, 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act, which have been fully repaid. In connection with the issuance of the 5.5% Convertible Senior Notes, the Company entered into a forward stock purchase transaction (the "Common Stock Forward"), pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. On May

18, 2020, the Company amended and extended the maturity of the Common Stock Forward to June 1, 2025. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$ 27.5 million was recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets at the time the transactions were entered into. The related shares were accounted for as a repurchase of common stock. The book value of the Common Stock Forward is not remeasured.

There were no shares of common stock that settled in connection with the Common Stock Forward during the three and nine months ended September 30, 2024 and 2023.

## **11. Stockholders' Equity**

### ***At Market Issuance Sales Agreement***

On January 17, 2024, the Company entered into an At Market Issuance Sales Agreement with B. Riley, pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company's common stock, having an aggregate offering price of up to \$1.0 billion. As of February 23, 2024, the Company had \$697.9 million remaining authorized for issuance under the ATM Agreement. On February 23, 2024, the Company amended the ATM Agreement to increase the amount of shares of the Company's common stock available for sale under the ATM Agreement to \$ 1.0 billion. During the three months ended September 30, 2024, the Company sold 13,045,572 shares of common stock at a weighted-average sales price of \$ 2.35 per share for gross proceeds of \$30.7 million with related issuance costs of \$0.5 million. During the nine months ended September 30, 2024, the Company sold 189,411,442 shares of common stock at a weighted-average sales price of \$ 3.23 per share for gross proceeds of \$611.5 million with related issuance costs of \$9.2 million.

### ***Public Offering of Common Stock***

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$ 2.54 per share for net proceeds of \$191.0 million after deducting the underwriting discount and related offering expenses.

### ***Accumulated Other Comprehensive Loss***

Accumulated other comprehensive loss is comprised of unrealized gains and losses on available-for-sale securities (prior periods ending September 30, 2023 only) and foreign currency translation gains and losses. There were no reclassifications from accumulated other comprehensive loss for the three and nine months ended September 30, 2024 and 2023, respectively.

Net current-period other comprehensive income for the three months ended September 30, 2024 increased due to foreign currency translation gains of \$0.3 million. Net current-period other comprehensive income for the three months ended September 30, 2023 increased due to unrealized gains on available-for-sale securities of \$ 4.3 million, partially offset by foreign currency translation losses of \$3.0 million.

Net current-period other comprehensive income for the nine months ended September 30, 2024 increased due to foreign currency translation gains of \$5.2 million. Net current-period other comprehensive income for the nine months ended September 30, 2023 increased due to unrealized gains on available-for-sale securities of \$ 11.8 million and foreign currency translation gains of \$1.7 million.

## 12. Warrant Transaction Agreements

### *Amazon Transaction Agreement in 2022*

On August 24, 2022, the Company and Amazon entered into a Transaction Agreement (the “2022 Amazon Transaction Agreement”), under which the Company concurrently issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the “2022 Amazon Warrant”) to acquire up to 16,000,000 shares (the “2022 Amazon Warrant Shares”) of the Company’s common stock, subject to certain vesting events described below. The Company and Amazon entered into the 2022 Amazon Transaction Agreement in connection with a concurrent commercial arrangement under which Amazon agreed to purchase hydrogen fuel from the Company through August 24, 2029.

1,000,000 of the 2022 Amazon Warrant Shares vested immediately upon issuance of the 2022 Amazon Warrant. 15,000,000 of the 2022 Amazon Warrant Shares will vest in multiple tranches over the 7-year term of the 2022 Amazon Warrant based on payments made to the Company directly by Amazon or its affiliates, or indirectly through third parties, with 15,000,000 of the 2022 Amazon Warrant Shares fully vesting if Amazon-related payments of \$ 2.1 billion are made in the aggregate. The exercise price for the first 9,000,000 2022 Amazon Warrant Shares is \$22.9841 per share and the fair value on the grant date was \$20.36. The exercise price for the remaining 7,000,000 2022 Amazon Warrant Shares will be an amount per share equal to 90% of the 30-day volume weighted average share price of the Company’s common stock as of the final vesting event that results in full vesting of the first 9,000,000 2022 Amazon Warrant Shares. The 2022 Amazon Warrant is exercisable through August 24, 2029.

Upon the consummation of certain change of control transactions (as defined in the 2022 Amazon Warrant) prior to the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, the 2022 Amazon Warrant will automatically vest and become exercisable with respect to an additional number of 2022 Amazon Warrant Shares such that 60% of the aggregate 2022 Amazon Warrant Shares shall have vested. If a change of control transaction is consummated after the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, then no acceleration of vesting will occur with respect to any of the unvested 2022 Amazon Warrant Shares as a result of the transaction. The exercise price and the 2022 Amazon Warrant Shares issuable upon exercise of the 2022 Amazon Warrant are subject to customary antidilution adjustments.

On August 24, 2022, 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 1 vested. The warrant fair value associated with the vested shares of tranche 1 of \$20.4 million was capitalized to contract assets based on the grant date fair value and is subsequently amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement. As of September 30, 2024, the balance of the contract asset related to tranche 1 was \$18.8 million which is recorded in contract assets in the Company’s unaudited interim condensed consolidated balance sheet. During the second quarter of 2023, all 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 2 vested. The warrant fair value associated with the vested shares of tranche 2 was \$20.4 million and was determined on the grant date of August 24, 2022. As of September 30, 2024, the balance of the contract asset related to tranche 2 was \$18.8 million. Tranche 3 will vest over the next \$ 1.0 billion of collections from Amazon and its affiliates. The grant date fair value of tranche 3 will also be amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement. As of September 30, 2024, the balance of the contract asset related to tranche 3 was \$3.6 million. Because the exercise price has yet to be determined, the fair value of tranche 4 will be remeasured at each reporting period end and amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement.

As of September 30, 2024 and December 31, 2023, 2,500,000 and 2,000,000 of the 2022 Amazon Warrant Shares had vested, respectively, and none of the 2022 Amazon Warrant Shares had been exercised. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the three months ended September 30, 2024 and 2023 was \$2.0 million and \$1.6 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the nine months ended September 30, 2024 and 2023 was \$4.4 million and \$4.3 million, respectively.

The assumptions used to calculate the valuations of the 2022 Amazon Warrant as of August 24, 2022 and September 30, 2024 are as follows:

	Tranches 1-3 August 24, 2022	Tranche 4 September 30, 2024
Risk-free interest rate	3.15%	3.51%
Volatility	75.00%	95.00%
Expected average term (years)	7.00	1.15
Exercise price	\$22.98	\$2.03
Stock price	\$20.36	\$2.26

#### **Walmart Transaction Agreement**

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the "Walmart Transaction Agreement"), pursuant to which the Company agreed to issue to Walmart a warrant (the "Walmart Warrant") to acquire up to 55,286,696 shares of the Company's common stock, subject to certain vesting events (the "Walmart Warrant Shares"). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company's GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the warrant shares was conditioned upon payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The exercise price for the first and second tranches of Walmart Warrant Shares was \$ 2.1231 per share. After Walmart has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Walmart Warrant Shares will vest in eight installments of 2,546,098 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of the Walmart Warrant Shares is \$6.28 per share, which was determined pursuant to the terms of the Walmart Warrant as an amount equal to 90% of the 30-day volume weighted average share price of the Company's common stock as of October 30, 2023, the final vesting date of the second tranche of the Walmart Warrant Shares. The Walmart Warrant is exercisable through July 20, 2027. The Walmart Warrant provides for net share settlement that, if elected by the holder, will reduce the number of shares issued upon exercise to reflect net settlement of the exercise price. The Walmart Warrant provides for certain adjustments that may be made to the exercise price and the number of shares of common stock issuable upon exercise due to customary anti-dilution provisions based on future events. The Walmart Warrant is classified as an equity instrument. As of September 30, 2024, the balance of the contract asset related to the Walmart Warrant was \$5.4 million.

As of September 30, 2024 and December 31, 2023, 40,010,108 and 34,917,912 of the Walmart Warrant Shares had vested, respectively, and the Walmart Warrant was exercised with respect to 13,094,217 shares of the Company's common stock. During the three and nine months ended September 30, 2024 and 2023, there were no exercises with respect to the Walmart Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended September 30, 2024 was \$3.9 million compared to a negative provision for common stock warrants recorded as an addition to revenue of \$3.1 million for the three months ended September 30, 2023. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the nine months ended September 30, 2024 and 2023 was \$11.6 million and \$8.4 million, respectively.

### 13. Revenue

#### Disaggregation of revenue

The following table provides information about disaggregation of revenue (in thousands):

Major products/services lines	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Sales of fuel cell systems	\$ 8,131	\$ 37,650	\$ 40,282	\$ 138,682
Sales of hydrogen infrastructure	11,869	38,225	37,399	145,740
Sales of electrolyzers	57,789	26,628	74,169	73,627
Sales of engineered equipment	7,302	7,212	15,924	23,784
Services performed on fuel cell systems and related infrastructure	14,148	9,290	40,205	27,088
Power purchase agreements	20,459	20,068	58,437	44,135
Fuel delivered to customers and related equipment	29,791	19,371	77,964	47,391
Sales of cryogenic equipment and liquefiers	22,050	35,415	84,450	161,677
Other	2,191	4,852	8,514	7,055
Net revenue	<u>\$ 173,730</u>	<u>\$ 198,711</u>	<u>\$ 437,344</u>	<u>\$ 669,179</u>

#### Contract balances

The following table provides information about receivables, contract assets and deferred revenue and contract liabilities from contracts with customers (in thousands):

	September 30,	December 31,
	2024	2023
Accounts receivable	\$ 167,222	\$ 243,811
Contract assets	175,832	155,989
Deferred revenue and contract liabilities	191,874	288,302

Contract assets primarily relate to contracts for which revenue is recognized on a straight-line basis; however, billings escalate over the life of a contract. Contract assets also include amounts recognized as revenue in advance of billings to customers, which are dependent upon the satisfaction of another performance obligation. These amounts are included in contract assets on the accompanying unaudited interim condensed consolidated balance sheets.

The deferred revenue and contract liabilities relate to the advance consideration received from customers for services that will be recognized over time (primarily fuel cell and related infrastructure services and electrolyzer systems and solutions). Deferred revenue and contract liabilities also include advance consideration received from customers prior to delivery of products. These amounts are included within deferred revenue and other contract liabilities on the unaudited interim condensed consolidated balance sheets.

Significant changes in the contract assets and the deferred revenue and contract liabilities balances during the period are as follows (in thousands):

<b>Contract assets</b>	<b>Nine months ended</b>	<b>Year ended</b>
	<b>September 30, 2024</b>	<b>December 31, 2023</b>
Transferred to receivables from contract assets recognized at the beginning of the period	\$ (10,697)	\$ (94,860)
Change in contract assets related to warrants	5,324	14,260
Impairment	—	(2,375)
Revenue recognized and not billed as of the end of the period	25,216	134,677
Net change in contract assets	<u>\$ 19,843</u>	<u>\$ 51,702</u>

  

<b>Deferred revenue and contract liabilities</b>	<b>Nine months ended</b>	<b>Year ended</b>
	<b>September 30, 2024</b>	<b>December 31, 2023</b>
Increases due to customer billings, net of amounts recognized as revenue during the period	\$ 19,936	\$ 151,965
Change in contract liabilities related to warrants	330	440
Revenue recognized that was included in the contract liability balance as of the beginning of the period	(116,694)	(94,001)
Net change in deferred revenue and contract liabilities	<u>\$ (96,428)</u>	<u>\$ 58,404</u>

#### ***Estimated future revenue***

The following table includes estimated revenue expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period, including provision for common stock warrants (in thousands):

	<b>As of</b>	<b>Expected recognition</b>
	<b>September 30, 2024</b>	<b>period (years)</b>
Sales of fuel cell systems	\$ 34,553	1 - 2
Sales of hydrogen installations and other infrastructure	34,740	1
Sales of electrolyzers	269,371	1 - 2
Sales of engineered equipment	7,264	1
Services performed on fuel cell systems and related infrastructure	131,112	5 - 10
Power purchase agreements	375,119	5 - 10
Fuel delivered to customers and related equipment	82,733	5 - 10
Sales of cryogenic equipment and other	60,610	1
Total estimated future revenue	<u>\$ 995,502</u>	

#### **14. Income Taxes**

The Company recorded \$0.1 million of income tax expense and \$4.7 million of income tax benefit for the three months ended September 30, 2024 and 2023, respectively. The Company recorded \$0.1 million of income tax benefit and \$6.9 million of income tax benefit for the nine months ended September 30, 2024 and 2023, respectively. The income tax benefit for the nine months ended September 30, 2024 was due to an incremental change to the valuation allowance recorded in foreign jurisdictions. The Company has not changed its overall conclusion with respect to the need for a valuation allowance against its domestic net deferred tax assets, which remain fully reserved, and its valuation allowances recorded in foreign jurisdictions.

The domestic net deferred tax asset generated from the Company's net operating loss has been offset by a full valuation allowance because it is more likely than not that the tax benefits of the net operating loss carryforward will not

be realized. The Company recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as a component of income tax expense.

The Organization for Economic Co-operation and Development Inclusive Framework on Base Erosion and Profit Shifting has proposed a global minimum corporate tax rate of 15% on multi-national corporations, commonly referred to as the Pillar Two rules that has been agreed upon in principle by over 140 countries. While the United States has not adopted the Pillar Two rules, numerous foreign countries have enacted legislation to implement the Pillar Two rules, effective beginning January 1, 2024, or are expected to enact similar legislation. As of September 30, 2024, the Company did not meet the consolidated revenue threshold and is not subject to the GloBE Rules under Pillar Two. The Company will continue to monitor the implementation of rules in the jurisdictions in which it operates.

## 15. Fair Value Measurements

The Company records the fair value of assets and liabilities in accordance with ASC 820, *Fair Value Measurement* ("ASC 820"). ASC 820 defines fair value as the price received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and in the principal or most advantageous market for that asset or liability. The fair value should be calculated based on assumptions that market participants would use in pricing the asset or liability, not on assumptions specific to the entity.

In addition to defining fair value, ASC 820 expands the disclosure requirements around fair value and establishes a fair value hierarchy for valuation inputs. The hierarchy prioritizes the inputs into three levels based on the extent to which inputs used in measuring fair value are observable in the market. Each fair value measurement is reported in one of the three levels, which is determined by the lowest level input that is significant to the fair value measurement in its entirety.

These levels are:

- Level 1 — quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2 — quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.
- Level 3 — unobservable inputs reflecting management's own assumptions about the inputs used in pricing the asset or liability at fair value.

There were no transfers between Level 1, Level 2, or Level 3 during the nine months ended September 30, 2024. Financial instruments not recorded at fair value on a recurring basis include equity method investments that have not been remeasured or impaired in the current period, such as our investments in HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund.

Assets and liabilities measured at fair value on a recurring basis are summarized below (in thousands):

As of September 30, 2024					
	Carrying Amount	Fair Value	Fair Value Measurements		
			Level 1	Level 2	Level 3
<b>Liabilities</b>					
Contingent consideration	\$ 91,987	\$ 91,987	\$ —	\$ —	\$ 91,987
As of December 31, 2023					
	Carrying Amount	Fair Value	Fair Value Measurements		
			Level 1	Level 2	Level 3
<b>Liabilities</b>					
Contingent consideration	126,216	126,216	—	—	126,216

The liabilities measured at fair value on a recurring basis that have unobservable inputs and are therefore categorized as level 3 are related to contingent consideration. The fair value as of September 30, 2024 of \$92.0 million is comprised of contingent consideration related to the Joule Processing LLC ("Joule") acquisition in 2022 and the Frames Holding B.V. ("Frames") acquisition in 2021.

In connection with the Joule acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$41.7 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$60.0 million and \$75.5 million as of September 30, 2024 and December 31, 2023, respectively. The decrease compared to the year ended December 31, 2023 was primarily due to payments that reduced the fair value of the liability by \$10.0 million during the first quarter of 2024 and by \$57 thousand during the third quarter of 2024. A decrease of \$1.4 million and \$5.5 million was recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations for the three and nine months ended September 30, 2024, respectively.

In connection with the Frames acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$29.1 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$32.0 million and \$31.8 million as of September 30, 2024 and December 31, 2023, respectively. The increase compared to the year ended December 31, 2023 was primarily due to an increase in foreign currency translation losses of \$1.3 million and \$0.3 million for the three and nine months ended September 30, 2024, respectively. The increase was partially offset by a decrease of \$0.1 million recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations for the nine months ended September 30, 2024, partially offset by an increase of \$1.5 million recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations for the three months ended September 30, 2024.

In connection with the United Hydrogen Group Inc. ("UHG") acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$1.1 million representing the fair value of contingent consideration payable. The contingent consideration was fully settled during the second quarter of 2024 and the fair value of this contingent consideration was \$0.9 million as of December 31, 2023. The decrease of \$0.9 million was due to payments that reduced the fair value of the liability by \$1.0 million during the second quarter of 2024. Partially offsetting this decrease was an increase of \$0.1 million recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations during the nine months ended September 30, 2024. The \$1.0 million payment made during the second quarter of 2024 settled the remaining earn-out obligation.

In connection with the Giner acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$16.0 million representing the fair value of contingent consideration payable. The contingent consideration was fully settled during the second quarter of 2024 and the fair value of this contingent consideration was \$18.0 million as of December 31, 2023. The decrease of \$18.0 million was due to payments that reduced the fair value of the liability by \$18.2 million during the second quarter of 2024. Partially offsetting this decrease was an increase of \$0.2 million recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations during the nine months ended September 30, 2024. The \$18.2 million payment during the second quarter of 2024 was paid in common stock and warrants and settled the remaining obligation of the earn-out. As part of the \$18.2 million settlement of Giner's earn-out obligation on May 24, 2024, the Company issued warrants to the sellers of Giner and the Company registered for resale up to 3,461,371 shares of the Company's common stock issuable upon exercise of the warrants. The warrants had not been exercised as of September 30, 2024.

In the unaudited interim condensed consolidated balance sheets, contingent consideration is recorded in the contingent consideration, loss accrual for service contracts, and other current liabilities financial statement line item, and was comprised of the following unobservable inputs as of September 30, 2024:

Financial Instrument	Fair Value	Valuation Technique	Unobservable Input	Range (weighted average)
Contingent consideration	\$ 91,987	Scenario based method	Credit spread	12.21% - 13.51%
			Discount rate	15.73% - 18.38%
	<u>91,987</u>			



In the unaudited interim condensed consolidated balance sheets, contingent consideration is recorded in the contingent consideration, loss accrual for service contracts, and other current liabilities financial statement line item, and was comprised of the following unobservable inputs as of December 31, 2023:

Financial Instrument	Fair Value	Valuation Technique	Unobservable Input	Range (weighted average)
Contingent consideration	\$ 126,216	Scenario based method	Credit spread	13.61%
			Discount rate	17.71% - 19.06%
	<u>126,216</u>			

The change in the carrying amount of Level 3 liabilities during the nine months ended September 30, 2024 was as follows (in thousands):

	Nine months ended September 30, 2024
Beginning balance as of December 31, 2023	\$ 126,216
Cash payments	(10,000)
Change in fair value of contingent consideration	(9,200)
Foreign currency translation adjustment	(690)
Ending balance as of March 31, 2024	\$ 106,326
Cash payments	(1,000)
Payment settled in common stock and warrants	(18,241)
Change in fair value of contingent consideration	3,768
Foreign currency translation adjustment	(233)
Ending balance as of June 30, 2024	\$ 90,620
Cash payments	(57)
Change in fair value of contingent consideration	146
Foreign currency translation adjustment	1,278
Ending balance as of September 30, 2024	<u>\$ 91,987</u>

## 16. Investments

### Equity Method Investments

As of September 30, 2024 and December 31, 2023, the Company accounted for the following investments in the investee's common stock under the equity method, which are included in the investments in non-consolidated entities and non-marketable equity securities on the unaudited interim condensed consolidated balance sheets (amounts in thousands):

Investee	Formation Date	As of September 30, 2024		As of December 31, 2023	
		Common Stock Ownership %	Carrying Value	Common Stock Ownership %	Carrying Value
HyVia	Q2 2021	50%	\$ 2,420	50%	\$ (2,068)
AccionaPlug	Q4 2021	50%	4,062	50%	3,198
Clean H2 Infra Fund	Q4 2021	5%	27,392	5%	13,357
SK Plug Hyverse	Q1 2022	49%	56,274	49%	41,609
			<u>\$ 90,148</u>		<u>\$ 56,096</u>

As of December 31, 2023, the Company's investment in HyVia was negative due to historical losses. The Company is committed to fund its share of losses of the joint venture and, therefore, continued to record losses as incurred. The negative equity investment as of December 31, 2023 was recorded on the unaudited interim condensed consolidated balance sheet to the contingent consideration, loss accrual for service contracts, and other liabilities financial statement line item.

During the three months ended September 30, 2024, the Company contributed approximately \$0, \$0.7 million, \$0 and \$0 to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively. During the three months

ended September 30, 2023, the Company contributed approximately \$0, \$1.8 million, \$16.0 million and \$4.8 million to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively.

During the nine months ended September 30, 2024, the Company contributed approximately \$32.3 million, \$2.4 million, \$16.0 million and \$13.7 million to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively. During the nine months ended September 30, 2023, the Company contributed approximately \$22.3 million, \$2.6 million, \$33.8 million and \$8.1 million to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively.

The Company's capital commitments related to its equity method investments as of September 30, 2024 includes \$38.9 million to be made during the remainder of 2024.

## 17. Operating and Finance Lease Liabilities

As of September 30, 2024, the Company had operating leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash and security deposits (see also Note 19, "Commitments and Contingencies") as summarized below. These leases expire over the next one to seven years. Minimum rent payments under operating leases are recognized on a straight-line basis over the term of the lease.

Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote. At the end of the lease term, the leased assets may be returned to the lessor by the Company, the Company may negotiate with the lessor to purchase the assets at fair market value, or the Company may negotiate with the lessor to renew the lease at market rental rates. No residual value guarantees are contained in the leases. No financial covenants are contained within the lease; however, the lease contains customary operational covenants such as the requirement that the Company properly maintain the leased assets and carry appropriate insurance. The leases include credit support in the form of either cash, collateral or letters of credit. See Note 19, "Commitments and Contingencies", for a description of cash held as security associated with the leases.

The Company has finance leases associated with its property and equipment in Slingerlands, New York and at customer fueling locations.

Future minimum lease payments under operating and finance leases (with initial or remaining lease terms in excess of one year) as of September 30, 2024 were as follows (in thousands):

	Operating Lease Liability	Finance Lease Liability	Total Lease Liabilities
Remainder of 2024	\$ 25,078	\$ 2,978	\$ 28,056
2025	95,840	14,792	110,632
2026	86,964	11,934	98,898
2027	73,267	8,256	81,523
2028	50,874	1,941	52,815
2029 and thereafter	151,713	3,299	155,012
Total future minimum payments	483,736	43,200	526,936
Less imputed interest	(167,572)	(5,244)	(172,816)
Total	\$ 316,164	\$ 37,956	\$ 354,120

Rental expense for all operating leases was \$26.0 million and \$25.0 million for the three months ended September 30, 2024 and 2023, respectively. Rental expense for all operating leases was \$78.2 million and \$70.2 million for the nine months ended September 30, 2024 and 2023, respectively.

As of both September 30, 2024 and December 31, 2023, security deposits associated with sale/leaseback transactions were \$7.4 million and were included in other assets in the unaudited interim condensed consolidated balance sheets.

Other information related to the operating leases are presented in the following table:

	Nine months ended September 30, 2024	Nine months ended September 30, 2023
Cash payments - operating cash flows (in thousands)	\$ 75,057	\$ 66,970
Weighted average remaining lease term (years)	7.14	6.01
Weighted average discount rate	11.3%	11.3%

Finance lease costs include amortization of the right of use assets (i.e., depreciation expense) and interest on lease liabilities (i.e., interest and other expense, net in the unaudited interim condensed consolidated statement of operations) and were \$1.8 million and \$1.9 million for the three months ended September 30, 2024, and 2023, respectively, and were \$5.5 million and \$5.6 million for the nine months ended September 30, 2024, and 2023, respectively.

As of September 30, 2024 and December 31, 2023, the right of use assets associated with finance leases, net was \$52.9 million and \$57.3 million, respectively. The accumulated depreciation for these right of use assets was \$ 12.0 million and \$9.0 million at September 30, 2024 and December 31, 2023, respectively.

Other information related to the finance leases are presented in the following table:

	Nine months ended September 30, 2024	Nine months ended September 30, 2023
Cash payments - operating cash flows (in thousands)	\$ 2,119	\$ 2,329
Cash payments - financing cash flows (in thousands)	\$ 6,988	\$ 6,345
Weighted average remaining lease term (years)	3.28	3.26
Weighted average discount rate	6.8%	6.9%

## 18. Finance Obligation

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation as of September 30, 2024 was \$296.0 million, \$77.3 million and \$218.7 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at December 31, 2023 was \$350.8 million, \$74.0 million and \$276.8 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The amount is amortized using the effective interest method. Interest expense recorded related to finance obligations for the three months ended September 30, 2024 and 2023 was \$9.0 million and \$10.4 million, respectively. Interest expense recorded related to finance obligations for the nine months ended September 30, 2024 and 2023 was \$28.4 million and \$29.4 million, respectively.

During the third quarter of 2024, the Company entered into additional failed sale/leaseback transactions that were accounted for as financing obligations resulting in \$56.9 million of additional finance obligations. No gain or loss was recorded as a result of these transactions. The outstanding balance of finance obligations related to sale/leaseback transactions as of September 30, 2024 was \$65.6 million, \$6.0 million and \$59.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet with a residual value of \$33.6 million. The outstanding balance of this obligation at December 31, 2023 was \$ 17.6 million, \$10.0 million and \$7.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet.

Future minimum payments under finance obligations notes above as of September 30, 2024 were as follows (in thousands):

	Sale of Future Revenue - Debt	Sale/Leaseback Financings	Total Finance Obligations
Remainder of 2024	\$ 27,451	\$ 5,430	\$ 32,881
2025	104,547	15,553	120,100
2026	87,824	13,954	101,778
2027	71,253	13,954	85,207
2028	51,188	13,741	64,929
2029 and thereafter	25,503	22,038	47,541
Total future minimum payments	367,766	84,670	452,436
Less imputed interest	(71,751)	(52,691)	(124,442)
Total	\$ 296,015	\$ 31,979	\$ 327,994

Other information related to the above finance obligations are presented in the following table:

	Nine months ended September 30, 2024	Nine months ended September 30, 2023
Cash payments (in thousands)	\$ 86,397	\$ 76,747
Weighted average remaining term (years)	4.25	4.62
Weighted average discount rate	12.3%	11.3%

The fair value of the Company's total finance obligations approximated their carrying value as of September 30, 2024 and December 31, 2023.

## 19. Commitments and Contingencies

### ***Restricted Cash***

In connection with certain of the above noted sale/leaseback agreements, cash of \$ 507.8 million and \$573.5 million was required to be restricted as security as of September 30, 2024 and December 31, 2023, respectively, which restricted cash will be released over the lease term. As of September 30, 2024 and December 31, 2023, the Company also had certain letters of credit backed by security deposits totaling \$307.9 million and \$370.7 million, respectively, of which \$276.5 million and \$340.0 million are security for the above noted sale/leaseback agreements, respectively, and \$31.4 million and \$30.7 million are customs related letters of credit, respectively.

As of September 30, 2024 and December 31, 2023, the Company had \$ 80.0 million and \$76.8 million held in escrow related to the construction of certain hydrogen production plants, respectively.

The Company also had \$0.1 million and \$1.2 million of consideration held by our paying agent in connection with each of the Joule and CIS acquisitions, respectively, reported as restricted cash as of September 30, 2024, with a corresponding accrued liability on the Company's unaudited interim condensed consolidated balance sheet. Additionally, the Company had \$9.3 million and \$11.7 million in restricted cash as collateral resulting from the Frames acquisition as of September 30, 2024 and December 31, 2023, respectively.

### ***Litigation***

Legal matters are handled in the ordinary course of business. The outcome of any such matters, regardless of the merits, is inherently uncertain; therefore, assessing the likelihood of loss and any estimated damages is difficult and subject to considerable judgment. Liabilities for loss contingencies arising from claims, assessments, litigation, fines, and penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably

estimated. Legal costs incurred in connection with loss contingencies are expensed as incurred. While we are not in a position to accurately predict the outcome of any legal or other proceedings, where there is at least a reasonable possibility that a loss may be incurred, GAAP requires us to disclose an estimate of the reasonably possible loss or range of loss, if material, or make a statement that such an estimate cannot be made. Except for a \$0.6 million accrual relating to a settled matter subject to pending court approval, which has not been paid as of September 30, 2024, a reasonably possible loss or range of loss associated with any individual legal proceeding cannot be currently estimated.

#### *Securities Litigation and Related Stockholder Derivative Litigation*

##### *2021 Securities Action and Related Derivative Litigation*

One action is pending in which alleged stockholders of the Company assert claims derivatively, on the Company's behalf, based on allegations and claims that were asserted in *In re Plug Power, Inc. Securities Litigation*, No. 1:21-cv-2004 (S.D.N.Y.), an earlier putative securities class action that is no longer pending (the "2021 Securities Action"). In an opinion and order entered in August 2023, the district court dismissed the 2021 Securities Action with prejudice, and the plaintiffs in that action did not appeal.

A consolidated stockholder derivative action relating to the claims and allegations in the 2021 Securities Action is pending in the Court of Chancery for the State of Delaware, styled *In re Plug Power Inc. Stockholder Derivative Litigation*, Cons. C.A. No. 2022-0569-KSJM (Del. Ch.). By stipulation and order, the action was stayed until motions to dismiss were finally resolved in the 2021 Securities Action. On March 8, 2024, the alleged stockholder plaintiffs filed a consolidated amended complaint asserting claims against our officers Andrew J. Marsh, Paul B. Middleton, Gerard L. Conway, Jr., and Keith Schmid, and against our current or former directors George C. McNamee, Gary K. Willis, Maureen O. Helmer, Johannes M. Roth, Gregory L. Kenausis, Lucas Schneider, and Jonathan Silver. The Company is named as nominal defendant. Primarily based on allegations in the 2021 Securities Action, the plaintiffs assert claims against the individual defendants for alleged breaches of fiduciary duty, disgorgement, and unjust enrichment based on alleged transactions in the Company's securities while allegedly in possession of material non-public information concerning (i) the Company's financial accounting prior to the announcement that the Company would need to restate certain financial statements and (ii) the potential amendment and termination of a warrant agreement between the Company and a significant customer. On May 10, 2024, the Company, as nominal defendant, and all of the individual defendants filed a motion to dismiss (a) for failure to make a pre-suit demand or to adequately allege demand futility and (b) by the individual defendants, for failure to state a claim. Oral argument on the motion was held on November 4, 2024.

##### *2023 Securities Action and Related Derivative Litigation*

A consolidated action is pending in the United States District Court for the District of Delaware asserting claims under the federal securities laws against the Company and certain of its senior officers on behalf of a putative class of purchasers of the Company's securities, styled *In re Plug Power, Inc. Securities Litigation*, No. 1:23-cv-00576-MN (the "2023 Securities Action"). The plaintiffs filed a consolidated complaint on September 28, 2023, in which they assert claims under the federal securities laws against the Company and four of its senior officers, Mr. Marsh, Mr. Middleton, Sanjay Shrestha, and former officer David Mindnich, on behalf of a putative class of purchasers of the Company's common stock between January 19, 2022 and March 1, 2023. The complaint alleges that the defendants made "materially false and/or misleading statements" about the Company's business and operations, including the Company's revenue goals for 2022, its ability to effectively manage its supply chain and product manufacturing, and its progress in construction of new hydrogen production capacity. The defendants filed a motion to dismiss the complaint on December 14, 2023, and briefing was completed in March 2024. All proceedings are stayed pending resolution of the motion to dismiss.

Beginning on September 13, 2023, three separate actions were filed in the U.S. District Court for the District of Delaware and in the U.S. District Court for the Southern District of New York asserting claims derivatively, on behalf of the Company, against certain former and current Company officers and directors based on the allegations and claims in the 2023 Securities Action. Those cases have been consolidated in the District of Delaware under the caption *In re Plug Power, Inc. Stockholder Deriv. Litig.*, No. 1:23-cv-01007-MN (D. Del.). The defendants named in the constituent complaint were Mr. Marsh, Mr. Middleton, Mr. Mindnich, Martin Hull, Ms. Helmer, Mr. Kenausis, Mr. McNamee, Mr.

Schneider, Mr. Silver, Mr. Willis, and current or former directors Jean Bua, Kavita Mahtani, and Kyungyeol Song. In an order entered on April 26, 2024, the Court approved the parties' stipulation to stay all proceedings until motions to dismiss have been resolved in the 2023 Securities Action.

#### *2024 Securities Litigation*

On March 22, 2024, Ete Adote filed a complaint in the United States District Court for the Northern District of New York asserting claims under the federal securities laws against the Company, Mr. Marsh, and Mr. Middleton, on behalf of an alleged class of purchasers of the Company's common stock between May 9, 2023 and January 16, 2024, styled *Adote v. Plug Power, Inc. et al.*, No. 1:24-cv-00406-MAD-DJS (N.D.N.Y.). The complaint alleges that the defendants made misstatements concerning the Company's progress in construction of new hydrogen production capacity and its ability to effectively manage its supply chain. On April 30, 2024, a second complaint asserting substantially similar claims against the same defendants, but on behalf of a putative class of purchasers of the Company's common stock between March 1, 2023 and January 16, 2024, was filed in the Northern District of New York, styled *Lee v. Plug Power, et al.*, No. 1:24-cv-0598-MAD-DJS (N.D.N.Y.). The Court has approved stipulations in both actions extending the time for all defendants to respond to any pleading until after the Court appoints lead plaintiff(s).

#### *Other Litigation*

On May 2, 2023, a lawsuit entitled *Jacob Thomas and JTurbo Engineering & Technology, LLC v. Joule Processing, LLC and Plug Power Inc.*, Case No. 4:23-cv-01615, was filed in the United States District Court for the Southern District of Texas against Joule Processing, LLC and the Company. The only claims that remain are misappropriation of trade secrets under the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, misappropriation of trade secrets under the Texas Uniform Trade Secrets Act, and breach of contract. Currently pending before the United States District Court for the Southern District of Texas is Plaintiff[s] Verified Amended Application for Temporary Restraining Order, Preliminary Injunction and Permanent Injunctive Relief, which was filed on November 17, 2023. Also pending is Defendants Joule Processing, LLC's and the Company's Motion for Summary Judgment, which was filed on August 19, 2024, and Plaintiffs' Amended Motion for Partial Summary Judgment, which was filed on October 1, 2024.

On July 24, 2023, an action entitled *Felton v. Plug Power, Inc.*, Case No. 1:23-cv-887, was filed in the U.S. District Court for the Northern District of New York asserting claims against the Company pursuant to the New York State Human Rights Law. The complaint asserts that the plaintiff is seeking damages to redress injuries suffered as a result of harassment and discrimination on the basis of his race, together with creating a hostile work environment, and retaliation. The Company disagrees with plaintiff's representations about his time at the Company and intends to vigorously defend against his allegations. Plaintiff's counsel moved to withdraw from the case, which the court approved on March 18, 2024, and therefore plaintiff is now *pro se*. The current discovery deadline is January 31, 2025.

On October 23, 2024, a case entitled *First Solar, Inc. v. Plug Power Inc.*, Index No. 655610/2024 was filed in the New York State Supreme Court, New York County, asserting a claim for breach of contract associated with a purchase order for solar panels manufactured by First Solar to be purchased by the Company. The complaint seeks monetary relief along with pre-judgment interest.

#### **Concentrations of Credit Risk**

Financial instruments that potentially subject the Company to credit risk consist principally of cash, cash equivalents, restricted cash and accounts receivable. Cash and restricted cash are maintained in accounts with financial institutions, which, at times may exceed the Federal depository insurance coverage of \$250 thousand. The Company has not experienced losses on these accounts and management believes, based upon the quality of the financial institutions, that the credit risk with regard to these deposits is not significant.

Concentrations of credit risk with respect to receivables exist due to the limited number of select customers with whom the Company has commercial sales arrangements. To mitigate credit risk, the Company performs appropriate evaluation of a prospective customer's financial condition.

As of September 30, 2024, one customer individually exceeded 10% of total consolidated accounts receivable balance with a balance of \$34.1 million, or 20.4%, of the Company's consolidated accounts receivable balance. At December 31, 2023, one customer individually exceeded 10% of total consolidated accounts receivable balance with a balance of \$52.4 million, or 21.5%, of the Company's consolidated accounts receivable balance.

For purposes of assigning a customer to a sale/leaseback transaction completed with a financial institution, the Company considers the end user of the assets to be the ultimate customer. For the three months ended September 30, 2024, two customers individually exceeded 10% of total consolidated revenues. One of the customers accounted for \$29.0 million, or 16.7%, and one of the customers accounted for \$24.6 million, or 14.2%, of total consolidated revenues. For the three months ended September 30, 2023, three customers individually exceeded 10% of total consolidated revenues. One of the customers accounted for \$35.1 million, or 17.7%, one of the customers accounted for \$30.7 million, or 15.4%, and one of the customers accounted for \$22.2 million, or 11.2%, of total consolidated revenues.

For the nine months ended September 30, 2024, two customers individually exceeded 10% of total consolidated revenues. One of the customers accounted for \$81.2 million, or 18.6%, and one of the customers accounted for \$77.7 million, or 17.8%, of total consolidated revenues. For the nine months ended September 30, 2023, three customers individually exceeded 10% of total consolidated revenues. One of the customers accounted for \$169.0 million, or 25.2%, one of the customers accounted for \$72.3 million, or 10.8%, and one of the customers accounted for \$70.6 million, or 10.6%, of total consolidated revenues, respectively.

#### **Guarantee**

On May 30, 2023, our joint venture, HyVia, entered into a government grant agreement with Bpifrance. As part of the agreement, our wholly-owned subsidiary, Plug Power France, was required to issue a guarantee to Bpifrance in the amount of €20 million through the end of January 2027. Plug Power France is liable to the extent of the guarantee for sums due to Bpifrance from HyVia under the agreement based on the difference between the total amount paid by Bpifrance and the final amount certified by HyVia and Bpifrance. As part of the agreement, there are certain milestones that HyVia is required to meet, and the nonperformance of these milestones or termination of this agreement could result in this guarantee being called upon. As of September 30, 2024, no payments related to this guarantee have been made by the Company and Plug Power France did not record a liability for this guarantee as the likelihood of the guarantee being called upon is remote.

#### **Unconditional Purchase Obligations**

The Company has entered into certain off-balance sheet commitments that require the future purchase of goods or services ("unconditional purchase obligations"). The Company's unconditional purchase obligations primarily consist of supplier arrangements, take or pay contracts and service agreements. For certain vendors, the Company's unconditional obligation to purchase a minimum quantity of raw materials at an agreed upon price is fixed and determinable; while certain other raw material costs will vary due to product forecasting and future economic conditions.

Future payments under non-cancelable unconditional purchase obligations with a remaining term in excess of one year as of September 30, 2024, were as follows (in thousands):

Remainder of 2024	\$ 25,989
2025	8,023
2026	8,023
2027	2,638
2028	—
2029 and thereafter	—
Total	<u>44,673</u>

## 20. Employee Benefit Plans

### 2011 and 2021 Stock Option and Incentive Plan

The Company has issued stock-based awards to employees and members of its Board of Directors (the "Board") consisting of stock options and restricted stock and restricted stock unit awards. The Company accounts for all stock-based awards to employees and members of the Board as compensation costs in the consolidated financial statements based on their fair values measured as of the date of grant. These costs are recognized over the requisite service period. Stock-based compensation costs recognized, excluding the Company's matching contributions of \$2.6 million and \$3.0 million to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were \$21.3 million and \$42.4 million for the three months ended September 30, 2024 and 2023, respectively. Stock-based compensation costs recognized, excluding the Company's matching contributions of \$8.9 million and \$9.0 million to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were \$54.4 million and \$119.5 million for the nine months ended September 30, 2024 and 2023, respectively. The methods and assumptions used in the determination of the fair value of stock-based awards are consistent with those described in our 2023 Form 10-K.

The components and classification of stock-based compensation expense, excluding the Company's matching contributions to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were as follows (in thousands):

	Three months ended		Nine months ended	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023
Cost of sales	\$ 1,459	\$ 3,115	\$ 5,544	\$ 8,231
Research and development	2,028	2,935	6,621	6,982
Selling, general and administrative	17,784	36,392	42,224	104,278
	<u>\$ 21,271</u>	<u>\$ 42,442</u>	<u>\$ 54,389</u>	<u>\$ 119,491</u>

### Option Awards

The Company issues options that are time and performance-based awards. All option awards are determined to be classified as equity awards.

### Service Stock Options Awards

The following table reflects the service stock option activity for the nine months ended September 30, 2024:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Terms	Aggregate Intrinsic Value
Options outstanding as of December 31, 2023	17,336,362	\$ 11.37	7.86	\$ 11,391
Options exercisable as of December 31, 2023	8,288,944	11.84	6.18	7,250
Options unvested as of December 31, 2023	9,047,418	10.94	9.39	4,141
Granted	6,194,625	2.45	—	—
Exercised	(47,500)	2.09	—	—
Forfeited	(2,869,251)	15.98	—	—
Options outstanding as of September 30, 2024	<u>20,614,236</u>	\$ 8.07	7.35	\$ 476
Options exercisable as of September 30, 2024	8,733,294	11.56	5.63	342
Options unvested as of September 30, 2024	11,880,942	\$ 5.51	8.62	\$ 134

The weighted average grant date fair value of the service stock options granted during the nine months ended September 30, 2024 and 2023 was \$1.73 and \$8.44, respectively. The total intrinsic fair value of service stock options exercised during the nine months ended September 30, 2024 and 2023 was \$43 thousand and \$4.2 million, respectively.



The total fair value of the service stock options that vested during the nine months ended September 30, 2024 and 2023 was approximately \$16.9 million and \$24.4 million, respectively.

Compensation cost associated with service stock options represented approximately \$ 3.7 million and \$8.6 million of the total share-based payment expense recorded for the three months ended September 30, 2024 and 2023, respectively. Compensation cost associated with service stock options represented approximately \$16.0 million and \$23.8 million of the total share-based payment expense recorded for the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, there was approximately \$32.9 million of unrecognized compensation cost related to service stock option awards to be recognized over the weighted average remaining period of 1.87 years.

#### Market Condition Stock Option Awards

The following table reflects the market condition stock option award activity for the nine months ended September 30, 2024. Solely for the purposes of this table, the number of market condition stock options is based on participants earning the maximum number of market condition stock options (i.e. 200% of the target number of market condition stock options). These market condition stock options are subject to both market conditions tied to the achievement of stock price hurdles and time-based requisite service vesting:

	Shares	Average Exercise Price	Weighted Average Remaining Contractual Terms	Aggregate Intrinsic Value
Options outstanding as of December 31, 2023	21,925,000	\$ 21.32	5.27	\$ —
Options exercisable as of December 31, 2023	2,782,000	26.9	4.7	—
Options unvested as of December 31, 2023	19,143,000	20.50	5.35	—
Granted	2,952,500	2.42	—	—
Exercised	—	—	—	—
Forfeited	(12,311,500)	25.45	—	—
Options outstanding as of September 30, 2024	12,566,000	\$ 12.83	5.44	\$ —
Options exercisable as of September 30, 2024	5,372,667	22.46	4.36	—
Options unvested as of September 30, 2024	7,193,333	\$ 5.63	6.24	\$ —

The weighted average grant-date fair value of the market condition stock options granted during the nine months ended September 30, 2024 and 2023 was \$ 0.49 and \$4.32, respectively. There were no market condition stock options exercised during the nine months ended September 30, 2024 and 2023. The total fair value of the market condition stock options that vested was \$25.5 million and \$20.8 million during the nine months ended September 30, 2024 and 2023, respectively.

Compensation cost associated with market condition stock options represented approximately \$ 9.3 million and \$18.4 million of the total share-based payment expense recorded for the three months ended September 30, 2024 and 2023, respectively. Compensation cost associated with market condition stock options represented approximately \$11.1 million and \$53.6 million of the total share-based payment expense recorded for the nine months ended September 30, 2024 and 2023, respectively. Compensation costs associated with these awards are recognized as the requisite service period is rendered, regardless of when, if ever, the market condition is satisfied. Compensation cost for the nine months ended September 30, 2024 includes non-cash reversals due to forfeitures of unvested market condition stock options of during the first quarter of 2024. Forfeitures represent the expense related to awards for which the requisite service period was not met. The non-cash compensation expense reversals were offset by compensation costs of \$23.2 million during the nine months ended September 30, 2024. As of September 30, 2024, there was approximately \$7.8 million of unrecognized compensation cost related to market condition stock option awards to be recognized over the weighted average remaining period of 1.76 years.

As of September 30, 2024, there were 2,513,333 unvested market condition stock options for which the employee requisite service period had not been rendered but were expected to vest. The aggregate intrinsic value of these unvested

market condition stock options was \$0 as of September 30, 2024. The weighted average exercise price of these unvested market condition stock options was \$7.87 and the weighted average remaining contractual term was 5.63 years as of September 30, 2024.

#### Restricted Stock and Restricted Stock Unit Awards

The following table reflects the restricted stock and restricted stock unit activity for the nine months ended September 30, 2024 (in thousands except share amounts):

	Shares	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
Unvested restricted stock as of December 31, 2023	6,732,884	\$ 15.66	\$ 30,298
Granted	1,075,557	2.81	—
Vested	(1,784,759)	15.81	—
Forfeited	(1,199,185)	17.22	—
Unvested restricted stock as of September 30, 2024	4,824,497	\$ 12.35	\$ 10,903

The weighted average grant-date fair value of the restricted stock and restricted stock unit awards granted during the nine months ended September 30, 2024 and 2023 was \$2.81 and \$12.57, respectively. The total fair value of restricted shares of stock and restricted stock unit awards that vested for the nine months ended September 30, 2024 and 2023 was \$28.2 million and \$41.0 million, respectively.

Compensation cost associated with restricted stock and restricted stock unit awards represented approximately \$8.3 million and \$15.0 million for the three months ended September 30, 2024 and 2023, respectively. Compensation cost associated with restricted stock and restricted stock unit awards represented approximately \$27.3 million and \$42.1 million for the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, there was \$39.2 million of unrecognized compensation cost related to restricted stock and restricted stock unit awards to be recognized over the weighted average period of 1.49 years.

Included in the total unvested restricted stock and restricted stock units as of September 30, 2024, there were 375,000 restricted stock units outstanding with a performance target. The Company recorded expense associated with the restricted stock units with a performance target of \$0.4 million and \$0.4 million for the three months ended September 30, 2024 and 2023, respectively. The Company recorded expense associated with the restricted stock units with a performance target of \$1.7 million and \$0.4 million for the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024 there was \$1.4 million of unrecognized compensation cost related to the restricted stock units outstanding with a performance target to be recognized over the weighted average period of 1.83 years.

#### 401(k) Savings & Retirement Plan

The Company issued 3,305,494 shares of common stock and 872,026 shares of common stock pursuant to the Plug Power Inc. 401(k) Savings & Retirement Plan during the nine months ended September 30, 2024 and 2023, respectively.

The Company's expense for this plan was approximately \$2.6 million and \$3.0 million during the three months ended September 30, 2024 and 2023, respectively. The Company's expense for this plan was approximately \$8.9 million and \$9.0 million during the nine months ended September 30, 2024 and 2023, respectively.

### Non-Employee Director Compensation

The Company granted 83,085 shares of common stock and 13,662 shares of common stock to non-employee directors as compensation during the three months ended September 30, 2024 and 2023, respectively. The Company granted 210,315 shares of common stock and 35,444 shares of common stock to non-employee directors as compensation during the nine months ended September 30, 2024 and 2023, respectively. All common stock issued is fully vested at the time of issuance and is valued at fair value on the date of issuance. The Company's share-based compensation expense in connection with non-employee director compensation was approximately \$0.1 million and \$0.1 million during the three months ended September 30, 2024 and 2023, respectively. The Company's share-based compensation expense in connection with non-employee director compensation was approximately \$0.5 million and \$0.3 million during the nine months ended September 30, 2024 and 2023, respectively.

### 21. Segment and Geographic Area Reporting

Our organization is managed from a sales perspective based on "go-to-market" sales channels, emphasizing shared learning across end-user applications and common supplier/vendor relationships. These sales channels are structured to serve a range of customers for our products and services. As a result of this structure, we concluded that we have one operating and reportable segment — the design, development and sale of hydrogen products and solutions that help customers meet their business goals while decarbonizing their operations. Our chief executive officer was identified as the chief operating decision maker (CODM). All significant operating decisions made by management are largely based upon the analysis of Plug Power Inc. on a total company basis, including assessments related to our incentive compensation plans.

The revenue and long-lived assets based on geographic location are as follows (in thousands):

	Revenues		Revenues		Long-Lived Assets	
	Three months ended		Nine months ended		As of	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023	September 30, 2024	December 31, 2023
North America	\$ 107,798	\$ 156,645	\$ 326,647	\$ 557,644	\$ 1,923,649	\$ 1,881,315
Europe	50,958	34,097	80,714	86,367	162,748	122,489
Asia	11,155	3,128	20,334	12,746	143	—
Other	3,819	4,841	9,649	12,422	3,710	884
Total	\$ 173,730	\$ 198,711	\$ 437,344	\$ 669,179	\$ 2,090,250	\$ 2,004,688

### 22. Related Party Transactions

#### HyVia

Our 50/50 joint venture, HyVia, manufactures and sells fuel cell powered electric light commercial vehicles ("FCE-LCVs") and supplies hydrogen fuel and fueling stations to support the FCE-LCV market, in each case primarily in Europe. For the three months ended September 30, 2024 and 2023, we recognized related party total revenue of \$ 0.9 million and \$3.1 million, respectively. For the nine months ended September 30, 2024 and 2023, we recognized related party total revenue of \$4.7 million and \$9.2 million, respectively. As of September 30, 2024 and December 31, 2023, we had related party outstanding accounts receivable of \$1.4 million and \$2.3 million, respectively.

#### SK Plug Hyverse

Our 49/51 joint venture, SK Plug Hyverse, aims to provide hydrogen fuel cell systems, hydrogen fueling stations, electrolyzers and clean hydrogen to the Korean and other selected Asian markets. For the three months ended September 30, 2024 and 2023, we recognized related party total revenue of \$ 1.2 million and \$0, respectively. For the nine months ended September 30, 2024 and 2023, we recognized related party total revenue of \$ 5.7 million and \$1.0 million, respectively. As of September 30, 2024 and December 31, 2023, we had related party outstanding accounts receivable of \$0.8 million and \$1.7 million, respectively.

## 23. Restructuring

In February 2024, in a strategic move to enhance our financial performance and ensure long-term value creation in a competitive market, we approved a comprehensive initiative that encompasses a broad range of measures, including operational consolidation, strategic workforce adjustments, and various other cost-saving actions (the "Restructuring Plan"). These measures are aimed at increasing efficiency, improving scalability, and maintaining our leadership position in the renewable energy industry. We began executing the Restructuring Plan in February 2024 and expect the Restructuring Plan to be completed in the fourth quarter of 2024, subject to local law and consultation requirements.

The determination of when we accrue for involuntary termination benefits under restructuring plans depends on whether the termination benefits are provided under an ongoing benefit arrangement or under a one-time benefit arrangement. We account for involuntary termination benefits that are provided pursuant to one-time benefit arrangements in accordance with ASC 420, *Exit or Disposal Cost Obligations* ("ASC 420") whereas involuntary termination benefits that are part of an ongoing written or substantive plan are accounted for in accordance with ASC 712, *Nonretirement Postemployment Benefits* ("ASC 712"). We accrue a liability for termination benefits under ASC 420 in the period in which the plan is communicated to the employees and the plan is not expected to change significantly. For ongoing benefit arrangements, inclusive of statutory requirements, we accrue a liability for termination benefits under ASC 712 when the existing situation or set of circumstances indicates that an obligation has been incurred, it is probable the benefits will be paid, and the amount can be reasonably estimated. The restructuring charges that have been incurred but not yet paid are recorded in accrued expenses and other current liabilities in our unaudited interim condensed consolidated balance sheets, as they are expected to be paid within the next twelve months.

During the three months ended September 30, 2024, we incurred \$0.6 million in restructuring costs recorded as severance expenses of \$0.1 million and other restructuring costs of \$0.5 million in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. During the nine months ended September 30, 2024, we incurred \$8.2 million in restructuring costs recorded as severance expenses of \$6.9 million and other restructuring costs of \$1.3 million in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. Future restructuring costs are not expected to be material in subsequent quarters. The actual timing and amount of costs associated with these restructuring actions may differ from our current expectations and estimates and such differences may be material.

Severance expense recorded during the three and nine months ended September 30, 2024 in accordance with ASC 420 was a result of the separation of full-time employees associated with the Restructuring Plan. As of September 30, 2024, \$0.1 million of accrued severance-related costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the fourth quarter of 2024. For the three months ended September 30, 2024, other costs were represented by \$0.5 million of other one-time employee termination benefits. For the nine months ended September 30, 2024, other costs were represented by (1) \$0.2 million of legal and professional services costs, and (2) \$1.1 million of other one-time employee termination benefits. As of September 30, 2024, \$29 thousand of accrued other costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the fourth quarter of 2024.

## 24. Subsequent Events

### ***At Market Issuance Sales Agreement***

From September 30, 2024 through the date of filing of this Quarterly Report on Form 10-Q, the Company sold 30,423,779 shares of common stock at a weighted-average sales price of \$2.16 per share for gross proceeds of \$65.8 million with related issuance costs of \$1.2 million.

On November 7, 2024, the Company entered into Amendment No. 2 to the Original ATM Agreement ("Amendment No. 2" and together with the ATM Agreement, the "Amended ATM Agreement") with B. Riley. Amendment No. 2 increased the aggregate gross sales price of the Company's common stock the Company may offer and sell pursuant to the Amended ATM Agreement by approximately \$375.2 million to \$1.0 billion. From and

after November 7, 2024, through and including February 7, 2025, the Company has the right at its sole discretion to direct B. Riley to act on a principal basis and purchase from the Company up to the Maximum Commitment Advance Purchase Amount of \$11.0 million and up to the Maximum Commitment Advance Purchase Amount Cap of \$55.0 million (including any shares sold by B. Riley in agency transactions) in any calendar week. If the Company's market capitalization is less than \$1.0 billion on and after February 8, 2025, the Maximum Commitment Advance Purchase Amount shall be decreased to \$10.0 million and the Maximum Commitment Advance Purchase Amount Cap shall be decreased to \$ 30.0 million.

#### ***Debenture Purchase Agreement***

On November 11, 2024, the Company entered into a Debenture Purchase Agreement with YA II PN, Ltd. (the "Investor") under which the Company agreed to sell and issue to the Investor an unsecured convertible debenture in aggregate principal amount of \$200.0 million (the "Convertible Debenture") in exchange for the payment by the Investor to the Company of \$190.0 million. The Company expects to close the issuance of the Convertible Debenture on or about November 12, 2024, subject to customary closing conditions, including the Company's filing of a prospectus supplement registering the resale of the shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), that may be issuable upon conversion of the Convertible Debenture. The Convertible Debenture ranks pari passu in right of payment with all other outstanding and future senior indebtedness of the Company. The Convertible Debenture will be issued in a private placement in reliance upon an exemption from registration provided by Section 4(a)(2) of the Securities Act.

The Convertible Debenture bears interest at a rate of 6.00% per annum and is payable on the second year anniversary of the issuance date of the Convertible Debenture (the "Maturity Date") or earlier redemption date.

The Investor may convert all or any portion of the principal amount of the Convertible Debenture and if there are certain events of default, the Investor may require the Company to amortize \$22.5 million of the principal amount of the Convertible Debenture. The Company has the right to redeem the Convertible Debenture under certain circumstances.

The Convertible Debenture includes customary covenants and events of default that are typical for transactions of this type and certain affirmative and negative covenants.

## Item 2 — Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with our accompanying unaudited interim condensed consolidated financial statements and notes thereto included within this Quarterly Report on Form 10-Q, and our audited and notes thereto included in our 2023 Form 10-K. In addition to historical information, this Quarterly Report on Form 10-Q and the following discussion contain statements that are not historical facts and are considered forward-looking within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. These forward-looking statements contain projections of our future results of operations or of our financial position or state other forward-looking information. In some cases, you can identify these statements by forward-looking words such as "believe", "could", "continue", "estimate", "expect", "forecast", "intend", "may", "should", "will", "would", "plan", "project" or the negative of such words or other similar words or phrases. We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Investors are cautioned not to unduly rely on forward-looking statements because they involve risks and uncertainties, and actual results may differ materially from those discussed as a result of various factors, including, but not limited to:

- the anticipated benefits, actual savings and the amount and timing of the costs resulting from the implementation of the Restructuring Plan that was announced in February 2024;
- our ability to achieve our business objectives and to continue to meet our obligations, which is dependent upon our ability to maintain a certain level of liquidity and will depend in part on our ability to manage our cash flows, including successfully implementing our cost savings initiatives;
- the risk that we continue to incur losses and might never achieve or maintain profitability;
- the risk that we will need to raise additional capital to fund our operations and such capital may not be available to us;
- the risk that we may not be able to expand our business or manage our future growth effectively;
- the risk of loss related to an inability to maintain an effective system of internal control over financial reporting;
- the risk that delays in or not completing our product development and hydrogen plant construction goals may adversely affect our revenue and profitability;
- the risk that we may not be able to obtain from our hydrogen suppliers a sufficient supply of hydrogen at competitive prices or the risk that we may not be able to produce hydrogen internally at competitive prices;
- our ability to achieve the forecasted revenue and costs on the sale of our products;
- the risk that we may not be able to convert all of our estimated future revenue into revenue and cash flows;
- the risk that purchase orders may not ship, be installed and/or converted to revenue, in whole or in part;
- the risk that some or all of the recorded intangible assets and property, plant, and equipment could be subject to impairment;
- the risks associated with global economic uncertainty, including inflationary pressures, fluctuating interest rates, currency fluctuations, and supply chain disruptions;
- the risk of elimination, reduction of, or changes in qualifying criteria for government subsidies and economic incentives for alternative energy products, including with regards to the impact of the Inflation Reduction Act on our business;
- the risk that the funding of our loan guarantee from the Department of Energy may be delayed and the risk that we may not be able to satisfy all of the technical, legal, environmental or financial conditions acceptable to the Department of Energy to receive the loan guarantee;
- the risk that our lack of extensive experience in manufacturing and marketing of certain of our products may impact our ability to manufacture and market said products on a profitable and large-scale commercial basis;
- the risk that a sale or issuance of a significant number of shares of stock could depress the market price of our common stock;
- the risk of dilution to our stockholders and/or impact to our stock price should we need to raise additional capital;
- the risk that negative publicity related to our business or stock could result in a negative impact on our stock value and profitability;
- our ability to leverage, attract and retain key personnel;

- the risks associated with legal proceedings and legal compliance, including the challenges of predicting the outcome of legal proceedings and similar disputes with certainty and the significant judgment calls required to determine reserves for any litigation;
- the risk that a loss of one or more of our major customers, or the delay in payment or the failure to pay receivables by one of our major customers, could have a material adverse effect on our financial condition;
- the risk of potential losses related to any contract disputes;
- the risk of potential losses related to any product liability claims;
- the cost and timing of developing, marketing, and selling our products;
- the risks involved with participating in joint ventures, including our ability or inability to execute our strategic growth plan through joint ventures;
- our ability to obtain financing arrangements to support the sale or leasing of our products and services to customers;
- the cost and availability of fuel and fueling infrastructures for our products;
- the risk that our convertible senior notes, if settled in cash, could have a material adverse effect on our financial results;
- the risk that our convertible note hedges may affect the value of our convertible senior notes and our common stock;
- the risks related to the use of flammable fuels in our products;
- the risks, liabilities, and costs related to environmental, health, and safety matters;
- market acceptance of our products and services;
- our ability to establish and maintain relationships with third parties with respect to product development, manufacturing, distribution, and servicing, and the supply of key product components;
- the risk that we may be unable to successfully pursue, integrate, or execute upon our new business ventures;
- the cost and availability of components and parts for our products;
- the risk that possible new tariffs could have a material adverse effect on our business;
- our ability to develop commercially viable products;
- our ability to reduce product and manufacturing costs;
- our ability to successfully market, distribute and service our products and services internationally;
- our ability to improve system reliability for our products;
- competitive factors, such as price competition and competition from other traditional and alternative energy companies;
- our ability to protect our intellectual property;
- the risks related to our operational dependency on information technology and the risk of the failure of such technology, including failure to effectively prevent, detect, and recover from security compromises or breaches, including cyber-attacks;
- the cost of complying with current and future federal, state and international governmental regulations;
- the risks associated with past and potential future acquisitions;
- the risks associated with geopolitical instability, including the conflicts in the Middle East and between Russia and Ukraine as well as tensions between U.S. and China and neighboring regions; and
- the volatility of our stock price.

The risks included here are not exhaustive, and additional factors could adversely affect our business and financial performance, including factors and risks discussed in the section titled "Risk Factors" included under Part I, Item 1A, in our 2023 Form 10-K and supplemented by Part II, Item 1A of the Quarterly Report on Form 10-Q for the quarters ended March 31, 2024 and June 30, 2024 and Part II, Item 1A of this Quarterly Report on Form 10-Q. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for management to predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. These forward-looking statements speak only as of the date on which the statements were made. Except as may be required by applicable law, we do not undertake or intend to update any forward-looking statements after the date of this Quarterly Report on Form 10-Q.

References in this Quarterly Report on Form 10-Q to “Plug”, the “Company”, “we”, “our” or “us” refer to Plug Power Inc., including as the context requires, its subsidiaries.

## Overview

Plug is facilitating the paradigm shift to an increasingly electrified world by innovating cutting-edge hydrogen and fuel cell solutions.

While we continue to develop commercially viable hydrogen and fuel cell product solutions, we have expanded our offerings to support a variety of commercial operations that can be powered with clean hydrogen. We provide electrolyzers that allow customers — such as refineries, producers of chemicals, steel, fertilizer and commercial refueling stations — to generate hydrogen on-site. We are focusing our efforts on (a) industrial mobility applications, including electric forklifts and electric industrial vehicles, at multi shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility, and environmental benefits; (b) production of hydrogen; and (c) stationary power systems that will support critical operations, such as data centers, microgrids, and generation facilities, in either a backup power or continuous power role, and replace batteries, diesel generators or the grid for telecommunication logistics, transportation, and utility customers. Plug expects to support these products and customers with an ecosystem of vertically integrated products that produce, transport, store and handle, dispense, and use hydrogen for mobility and power applications.

Our current product and service portfolio includes:

**GenDrive:** GenDrive is our hydrogen fueled PEM fuel cell system, providing power to material handling electric vehicles (“EVs”), including Class 1, 2, 3 and 6 electric forklifts, automated guided vehicles, and ground support equipment.

**GenSure:** GenSure is our stationary fuel cell solution providing scalable, modular PEM fuel cell power to support the backup and grid-support power requirements of the telecommunications, transportation, and utility sectors; our GenSure High Power Fuel Cell Platform supports large scale stationary power and data center markets.

**ProGen:** ProGen is our fuel cell stack and engine technology currently used globally in mobility and stationary fuel cell systems, and as engines in electric delivery vans. This includes Plug’s membrane electrode assembly (“MEA”), a critical component of the fuel cell stack used in zero-emission fuel cell EV engines.

**GenFuel:** GenFuel is our liquid hydrogen fueling, delivery, generation, storage, and dispensing system.

**GenCare:** GenCare is our ongoing “Internet of Things”-based maintenance and on-site service program for GenDrive fuel cell systems, GenSure fuel cell systems, GenFuel hydrogen storage and dispensing products and ProGen fuel cell engines.

**GenKey:** GenKey is our vertically integrated “turn-key” solution combining either GenDrive or GenSure fuel cell power with GenFuel fuel and GenCare aftermarket service, offering complete simplicity to customers transitioning to fuel cell power.

**Electrolyzers:** The design and implementation of 5MW and 10MW electrolyzer systems that are modular, scalable hydrogen generators optimized for clean hydrogen production. Electrolyzers generate hydrogen from water using electricity and a special membrane and “green” hydrogen is generated by using renewable energy inputs, such as solar or wind power.

**Liquefaction Systems:** Plug’s 15 ton-per-day and 30 ton-per-day liquefiers are engineered for high efficiency, reliability, and operational flexibility — providing consistent liquid hydrogen to customers. This design increases plant reliability and availability while minimizing parasitic losses like heat leak and seal gas losses.



**Cryogenic Equipment:** Engineered equipment including trailers and mobile storage equipment for the distribution of liquified hydrogen, oxygen, argon, nitrogen and other cryogenic gases.

**Liquid Hydrogen:** Liquid hydrogen provides an efficient fuel alternative to fossil-based energy. We produce liquid hydrogen through our electrolyzer systems and liquefaction systems. Liquid hydrogen supply will be used by customers in material handling operations, fuel cell electric vehicle fleets, and stationary power applications.

We provide our products and solutions worldwide through our direct sales force, and by leveraging relationships with original equipment manufacturers ("OEMs") and their dealer networks. Plug is currently targeting Asia, Australia, Europe, Middle East and North America for expansion in adoption. The European Union has rolled out ambitious targets for the hydrogen economy, with the United Kingdom also taking steps in this direction, and Plug is seeking to execute on our strategy to become one of the European leaders in the hydrogen economy. This includes a targeted account strategy for material handling, securing strategic partnerships with European OEMs, energy companies, utility leaders and accelerating our electrolyzer business.

We manufacture our commercially viable products in Latham, New York; Rochester, New York; Slingerlands, New York; Houston, Texas; Lafayette, Indiana; and Spokane, Washington, and support liquid hydrogen production and logistics in Charleston, Tennessee and Kingsland, Georgia.

### **Results of Operations**

Our primary sources of revenue are from sales of equipment, related infrastructure and other, services performed on fuel cell systems and related infrastructure, power purchase agreements, and fuel delivered to customers and related equipment. A certain portion of our sales result from acquisitions in legacy markets, which we are working to transition to renewable solutions. Revenue from sales of equipment, related infrastructure and other represents sales of our GenDrive units, GenSure stationary backup power units, cryogenic stationary and on road storage, hydrogen liquefaction systems, electrolyzers and hydrogen fueling infrastructure. Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. Revenue from power purchase agreements primarily represent payments received from customers who make monthly payments to access the Company's GenKey solution. Revenue associated with fuel delivered to customers and related equipment represents the sale of hydrogen to customers that has been purchased by the Company from a third party or generated at our hydrogen production plant.

### ***Provision for Common Stock Warrants***

On August 24, 2022, the Company issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the "2022 Amazon Warrant") to acquire up to 16,000,000 shares of the Company's common stock (the "2022 Amazon Warrant Shares"), subject to certain vesting events described below under "Common Stock Transactions – Amazon Transaction Agreement in 2022".

In 2017, the Company issued a warrant to Walmart (the "Walmart Warrant") to purchase up to 55,286,696 shares of the Company's common stock (the "Walmart Shares"), subject to certain vesting events described below under "Common Stock Transactions – Walmart Transaction Agreement". The Company recorded a portion of the estimated fair value of the warrants as a reduction of revenue based upon the projected number of shares of common stock expected to vest under the warrants, the proportion of purchases by Walmart and their affiliates within the period relative to the aggregate purchase levels required for vesting of the respective warrants, and the fair value of the warrants.

The amount of provision for the Amazon and Walmart Warrants recorded as a (reduction)/increase to revenue during the three and nine months ended September 30, 2024 and 2023, respectively, is shown in the table below (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Sales of equipment, related infrastructure and other	\$ (486)	\$ (765)	\$ (3,414)	\$ (1,891)
Services performed on fuel cell systems and related infrastructure	(631)	(268)	(1,610)	(953)
Power purchase agreements	(1,632)	1,767	(4,419)	(4,635)
Fuel delivered to customers and related equipment	(3,218)	831	(6,851)	(5,258)
Total	<u>\$ (5,967)</u>	<u>\$ 1,565</u>	<u>\$ (16,294)</u>	<u>\$ (12,737)</u>

Net revenue, cost of revenue, gross profit/(loss) and gross margin/(loss) for the three and nine months ended September 30, 2024 and 2023 were as follows (in thousands):

	Three months ended September 30,				Nine months ended September 30,			
	Net Revenue	Cost of Revenue	Gross Profit/(Loss)	Gross Margin	Net Revenue	Cost of Revenue	Gross Profit/(Loss)	Gross Margin
<b>For the period ended September 30, 2024:</b>								
Sales of equipment, related infrastructure and other	\$ 107,141	\$ 149,912	\$ (42,771)	(39.9)%	\$ 252,224	\$ 414,948	\$ (162,724)	(64.5)%
Services performed on fuel cell systems and related infrastructure	14,148	9,086	5,062	35.8 %	40,205	35,773	4,432	11.0 %
Provision for loss contracts related to service	—	6,036	(6,036)	N/A	—	38,265	(38,265)	N/A
Power purchase agreements	20,459	51,782	(31,323)	(153.1)%	58,437	161,322	(102,885)	(176.1)%
Fuel delivered to customers and related equipment	29,791	55,538	(25,747)	(86.4)%	77,964	172,428	(94,464)	(121.2)%
Other	2,191	1,401	790	36.1 %	8,514	4,963	3,551	41.7 %
Total	<u>\$ 173,730</u>	<u>\$ 273,755</u>	<u>\$ (100,025)</u>	<u>(57.6)%</u>	<u>\$ 437,344</u>	<u>\$ 827,699</u>	<u>\$ (390,355)</u>	<u>(89.3)%</u>
<b>For the period ended September 30, 2023:</b>								
Sales of equipment, related infrastructure and other	\$ 145,130	\$ 158,989	\$ (13,859)	(9.5)%	\$ 543,510	\$ 504,717	\$ 38,793	7.1 %
Services performed on fuel cell systems and related infrastructure	9,290	17,916	(8,626)	(92.9)%	27,088	53,586	(26,498)	(97.8)%
Provision for loss contracts related to service	—	41,581	(41,581)	N/A	—	55,801	(55,801)	N/A
Power purchase agreements	20,068	56,981	(36,913)	(183.9)%	44,135	157,773	(113,638)	(257.5)%
Fuel delivered to customers and related equipment	19,371	59,012	(39,641)	(204.6)%	47,391	177,963	(130,572)	(275.5)%
Other	4,852	2,197	2,655	54.7 %	7,055	4,843	2,212	31.4 %
Total	<u>\$ 198,711</u>	<u>\$ 336,676</u>	<u>\$ (137,965)</u>	<u>(69.4)%</u>	<u>\$ 669,179</u>	<u>\$ 954,683</u>	<u>\$ (285,504)</u>	<u>(42.7)%</u>

## Net Revenue

*Revenue – sales of equipment, related infrastructure and other.* Revenue from sales of equipment, related infrastructure and other represents sales of our GenDrive units, GenSure stationary backup power units, cryogenic stationary and on road storage, hydrogen liquefaction systems, electrolyzers and hydrogen fueling infrastructure referred to at the site level as hydrogen installations. Revenue from sales of equipment, related infrastructure and other for the three months ended September 30, 2024 decreased \$38.0 million, or 26.2%, to \$107.1 million from \$145.1 million for the three months ended September 30, 2023. Primarily contributing to the decrease in revenue was a decrease in sales of hydrogen infrastructure, sales of cryogenic equipment and liquefiers and sales of fuel cell systems, partially offset by an increase in sales of electrolyzers. The decrease in revenue from sales of hydrogen infrastructure of \$26.4 million was due to three hydrogen site installations for the three months ended September 30, 2024 compared to ten for the three months ended September 30, 2023. Additionally, revenue from sales of cryogenic equipment and liquefiers decreased \$13.4 million for the three months ended September 30, 2024 primarily due to product mix with respect to cryogenic equipment and fewer projects and a slower rate of progress on existing liquefier projects as they near completion compared to the three months ended September 30, 2023. The decrease in revenue related to sales of fuel cell systems of \$29.5 million was due primarily to a decrease in volume of GenDrive units sold, with 522 units sold for the three months ended September 30, 2024 compared to 1,452 units sold for the three months ended September 30, 2023. Also, the pace of development of the

hydrogen economy has been slower than anticipated and has impacted hydrogen equipment deployments. Partially offsetting these decreases, revenue from sales of electrolyzers increased \$31.2 million, primarily due to an increase in electrolyzer systems for which revenue was recognized, with 16 systems sold for the three months ended September 30, 2024 compared to one system sold for the three months ended September 30, 2023.

Revenue from sales of equipment, related infrastructure and other for the nine months ended September 30, 2024 decreased \$291.3 million, or 53.6%, to \$252.2 million from \$543.5 million for the nine months ended September 30, 2023. Primarily contributing to the decrease in revenue was a decrease in sales of hydrogen infrastructure, sales of cryogenic equipment and liquefiers and sales of fuel cell systems, partially offset by an increase in sales of electrolyzers. The decrease in sales of hydrogen infrastructure revenue of \$108.3 million was due to a decrease in volume with 11 hydrogen site installations for the nine months ended September 30, 2024 compared to 41 for the nine months ended September 30, 2023. Additionally, revenue from sales of cryogenic equipment and liquefiers decreased \$77.2 million for the nine months ended September 30, 2024 primarily due to product mix with respect to cryogenic equipment, fewer projects and a slower rate of progress on existing liquefier projects as they near completion compared to the nine months ended September 30, 2023. The decrease in revenue related to sales of fuel cell systems of \$98.4 million was primarily due to a decrease in volume of GenDrive units sold, with 2,545 units sold for the nine months ended September 30, 2024 compared to 5,167 units sold for the nine months ended September 30, 2023. Additionally, there was a decrease in revenue of \$7.9 million related to decreased sales of engineered equipment from the Frames acquisition, for which sales are not expected to continue beyond current commitments. Furthermore, there was an increase in the provision for common stock warrants recorded as a reduction of revenue to \$3.4 million for the nine months ended September 30, 2024 compared to a provision of \$1.9 million for the nine months ended September 30, 2023. Also, the pace of development of the hydrogen economy has been slower than anticipated and has impacted hydrogen equipment deployments. Partially offsetting the decrease in revenue was an increase in revenue from sales of electrolyzers of \$0.3 million primarily due to an increase in electrolyzer systems for which revenue was recognized discussed above offset by a decrease in electrolyzer stack sales during the first half of 2024.

*Revenue – services performed on fuel cell systems and related infrastructure* . Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. Revenue from services performed on fuel cell systems and related infrastructure for the three months ended September 30, 2024 increased \$4.8 million, or 51.6%, to \$14.1 million from \$9.3 million for the three months ended September 30, 2023. The increase in revenue from services performed on fuel cell systems and related infrastructure was primarily related to the increase in number of units in service, with the number of GenDrive units under maintenance contracts during the three months ended September 30, 2024 of 22,235 compared to 20,417 for the three months ended September 30, 2023, coupled with an increase in contract rates negotiated with certain customers.

Revenue from services performed on fuel cell systems and related infrastructure for the nine months ended September 30, 2024 increased \$13.1 million, or 48.3%, to \$40.2 million from \$27.1 million for the nine months ended September 30, 2023. The increase in revenue from services performed on fuel cell systems and related infrastructure was primarily related to the increase in number of units in service during the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023, as discussed above, coupled with an increase in contract rates negotiated with certain customers.

*Revenue – power purchase agreements*. Revenue from Power Purchase Agreements (“PPAs”) represents payments received from customers for power generated through the provision of equipment and service. Revenue from PPAs for the three months ended September 30, 2024 increased \$0.4 million, or 2.0%, to \$20.5 million from \$20.1 million for the three months ended September 30, 2023. The increase in revenue was a result of an increase in the number of units and customer sites party to these agreements as well as an increase in pricing rates, partially offset by an increase in the provision for common stock warrants. There were 31,715 GenDrive units under PPA arrangements as of September 30, 2024 compared to 31,484 as of September 30, 2023. In addition, there were 154 hydrogen sites under PPA arrangements as of September 30, 2024 compared to 138 as of September 30, 2023. Furthermore, pricing rates were favorable in the third quarter of 2024 compared to the third quarter of 2023. Offsetting the increase in revenue was an increase in the provision for common stock warrants recorded as a reduction of revenue, which increased to \$1.6 million for the three months ended September 30, 2024 compared to a negative provision of \$1.8 million for the three months ended September 30, 2023.

Revenue from PPAs for the nine months ended September 30, 2024 increased \$14.3 million, or 32.4%, to \$58.4 million from \$44.1 million for the nine months ended September 30, 2023. The increase in revenue was a result of an increase in the number of units and customer sites party to these agreements, as discussed above, as well as more favorable pricing rates during the first three quarters of 2024 compared to the first three quarters of 2023. Finally, the provision for common stock warrants recorded as a reduction of revenue was relatively flat, decreasing to \$4.4 million for the nine months ended September 30, 2024 compared to \$4.6 million for the nine months ended September 30, 2023.

*Revenue – fuel delivered to customers and related equipment.* Revenue associated with fuel and related equipment delivered to customers represents the sale of hydrogen that has been purchased by the Company from a third party or generated at our hydrogen production plant. Revenue associated with fuel delivered to customers for the three months ended September 30, 2024 increased \$10.4 million, or 53.6%, to \$29.8 million from \$19.4 million for the three months ended September 30, 2023. The increase in revenue was primarily due to an increase in the number of sites with fuel contracts, with 260 sites receiving fuel delivery as of September 30, 2024 compared to 237 sites as of September 30, 2023. Furthermore, increased fuel prices were negotiated with certain customers during the second quarter of 2024. Partially offsetting the increase in revenue was an increase in the provision for common stock warrants recorded as a reduction of revenue, which increased to \$3.2 million for the three months ended September 30, 2024 compared to a negative provision of \$0.8 million for the three months ended September 30, 2023.

Revenue associated with fuel delivered to customers for the nine months ended September 30, 2024 increased \$30.6 million, or 64.6%, to \$78.0 million from \$47.4 million for the nine months ended September 30, 2023. The increase in revenue was primarily due to an increase in the number of sites with fuel contracts. Furthermore, increased fuel prices were negotiated with certain customers in the second quarter of 2024. Partially offsetting the decrease, there was an increase in the provision for common stock warrants recorded as a reduction of revenue to \$6.9 million for the nine months ended September 30, 2024 compared to \$5.3 million for the nine months ended September 30, 2023.

#### **Cost of Revenue**

*Cost of revenue – sales of equipment, related infrastructure and other.* Cost of revenue from sales of equipment, related infrastructure and other includes direct materials, labor costs, and allocated overhead costs related to the manufacture of our fuel cells such as GenDrive units and GenSure stationary back-up power units, cryogenic stationary and on road storage, and electrolyzers, as well as hydrogen fueling infrastructure referred to at the site level as hydrogen installations. Cost of revenue from sales of equipment, related infrastructure and other for the three months ended September 30, 2024 decreased \$9.1 million, or 5.7%, to \$149.9 million from \$159.0 million for the three months ended September 30, 2023. Primarily contributing to the decrease in cost of revenue was a decrease in sales of hydrogen infrastructure, sales of cryogenic equipment and liquefiers, sales of fuel cell systems and inventory valuation adjustments, partially offset by an increase in sales of electrolyzers.

The cost of revenue related to sales of hydrogen infrastructure decreased \$13.8 million primarily due to the decrease in the number of hydrogen site installations, with three hydrogen site installations for the three months ended September 30, 2024 compared to ten for the three months ended September 30, 2023. Included in cost of revenue related to sales of hydrogen infrastructure were inventory valuation adjustments of \$1.3 million for the three months ended September 30, 2024 compared to \$0.1 million for the three months ended September 30, 2023.

The decrease in cost of revenue related to sales of cryogenic equipment and liquefiers of \$6.8 million for the three months ended September 30, 2024 was primarily due to product mix with respect to cryogenic equipment, fewer projects and a slower rate of progress on existing liquefier projects as they near completion compared to the three months ended September 30, 2023. Included in cost of revenue related to sales of cryogenic equipment and liquefiers were inventory valuation adjustments of \$1.1 million for the three months ended September 30, 2024 compared to \$0.2 million for the three months ended September 30, 2023.

Cost of revenue related to sales of fuel cell systems decreased by \$19.8 million primarily due to a decrease in volume of GenDrive units sold, with 522 units sold for the three months ended September 30, 2024 compared to 1,452

units sold for the three months ended September 30, 2023. Included in cost of revenue related to sales of fuel cell systems were inventory valuation adjustments of \$3.4 million for the three months ended September 30, 2024 compared to \$3.3 million for the three months ended September 30, 2023.

Additionally, there was a decrease in cost of revenue of \$3.1 million related to a decrease in sales of engineered equipment from the Frames acquisition, for which sales are not expected to continue beyond current commitments.

Cost of revenue related to sales of electrolyzer stacks and systems increased by \$34.4 million, which was primarily due to an increase in electrolyzer systems for which revenue was recognized, with 16 systems sold for the three months ended September 30, 2024 compared to one system sold for the three months ended September 30, 2023. Included in cost of revenue related to sales of electrolyzer stacks and systems were inventory valuation adjustments of \$6.5 million for the three months ended September 30, 2024 compared to \$16.5 million for the three months ended September 30, 2023. The decrease in inventory valuation adjustments during the three months ended September 30, 2024 were primarily related to higher sales prices on recently signed contracts with customers resulting in decreased lower of cost or net realizable valuation adjustments.

Gross loss generated from sales of equipment, related infrastructure and other increased to (39.9%) for the three months ended September 30, 2024 compared to (9.5%) for the three months ended September 30, 2023. The increase in gross loss was primarily due to customer mix, lower margins on new product offerings and decline in volume which impacted leveraging of labor and overhead in the third quarter of 2024. The increase in gross loss was partially offset by the decrease in inventory valuation adjustments of described above.

Cost of revenue from sales of equipment, related infrastructure and other for the nine months ended September 30, 2024 decreased \$89.8 million, or 17.8%, to \$414.9 million from \$504.7 million for the nine months ended September 30, 2023. Primarily contributing to the decrease in cost of revenue was a decrease in sales of hydrogen infrastructure, sales of cryogenic equipment and liquefiers, sales of fuel cell systems and inventory valuation adjustments, partially offset by an increase in sales of electrolyzers.

The cost of revenue related to sales of hydrogen infrastructure decreased \$55.9 million due to the decrease in the number of hydrogen site installations, with 11 hydrogen site installations for the nine months ended September 30, 2024 compared to 41 for the nine months ended September 30, 2023. Included in cost of revenue related to sales of hydrogen infrastructure were inventory valuation adjustments of \$4.2 million for the nine months ended September 30, 2024 compared to \$1.3 million for the nine months ended September 30, 2023.

The decrease in cost of revenue related to sales of cryogenic equipment and liquefiers of \$50.0 million for the nine months ended September 30, 2024 was primarily due to product mix with respect to cryogenic equipment and fewer projects and a slower rate of progress on existing liquefier projects as they near completion compared to the nine months ended September 30, 2023. Included in cost of revenue related to sales of cryogenic equipment and liquefiers were inventory valuation adjustments of \$3.2 million for the nine months ended September 30, 2024 compared to \$1.1 million for the nine months ended September 30, 2023.

Cost of revenue related to sales of fuel cell systems decreased \$20.4 million primarily due to a decrease in the volume of GenDrive units sold for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023, with 2,545 units sold for the nine months ended September 30, 2024 compared to 5,167 units sold for the nine months ended September 30, 2023. Included in cost of revenue related to sales of fuel cell systems were inventory valuation adjustments of \$29.1 million for the nine months ended September 30, 2024 compared to \$5.8 million for the nine months ended September 30, 2023. The increase in inventory valuation adjustments were primarily related to lower sales volume at lower sales prices than previously experienced which resulted in higher lower of cost or realizable valuation adjustments.

Additionally, there was a decrease in cost of revenue of \$8.7 million related to a decrease in sales of engineered equipment from the Frames acquisition, for which sales are not expected to continue beyond current commitments.

Partially offsetting these decreases was an increase in cost of revenue related to sales of electrolyzer stacks and systems of \$45.2 million, primarily due to an increase in electrolyzer systems for which revenue was recognized, with 16 systems sold for the nine months ended September 30, 2024 compared to two systems sold for the nine months ended September 30, 2023. Included in cost of revenue related to sales of electrolyzer stacks and systems were inventory valuation adjustments of \$27.9 million for the nine months ended September 30, 2024 compared to \$19.9 million for the nine months ended September 30, 2023. The increase in inventory valuation adjustments were primarily related to additional costs incurred during the nine months ended September 30, 2024 as projects neared completion requiring additional lower of cost or net realizable valuation adjustments.

Gross loss generated from sales of equipment, related infrastructure and other was (64.5%) for the nine months ended September 30, 2024 compared to a gross margin of 7.1% for the nine months ended September 30, 2023. The decrease from gross margin to gross loss was primarily due to the inventory valuation adjustments described above, customer mix, lower margins on new product offerings and decline in volume which impacted leveraging of labor and overhead in the first three quarters of 2024.

*Cost of revenue – services performed on fuel cell systems and related infrastructure.* Cost of revenue from services performed on fuel cell systems and related infrastructure includes the labor, material costs and allocated overhead costs incurred for our product service and hydrogen site maintenance contracts and spare parts. Cost of revenue from services performed on fuel cell systems and related infrastructure for the three months ended September 30, 2024 decreased \$8.8 million, or 49.2%, to \$9.1 million from \$17.9 million for the three months ended September 30, 2023. The decrease in cost of revenue was primarily due to an increase in the release of the loss accrual, with a release of \$13.9 million during the three months ended September 30, 2024 compared to a release of \$6.5 million during the three months ended September 30, 2023. Included in cost of revenue related to services performed on fuel cell systems and related infrastructure were inventory valuation adjustments of \$0.1 million for the three months ended September 30, 2024 compared to \$0.2 million for the three months ended September 30, 2023. Gross margin increased to 35.8% for the three months ended September 30, 2024 compared to gross loss of (92.9%) for the three months ended September 30, 2023. The increase in gross margin was primarily due to an increase in negotiated contract rates discussed above, as well as an increase in the release of the loss accrual during the three months ended September 30, 2024.

Cost of revenue from services performed on fuel cell systems and related infrastructure for the nine months ended September 30, 2024 decreased \$17.8 million, or 33.2%, to \$35.8 million from \$53.6 million for the nine months ended September 30, 2023. The decrease in cost of revenue was primarily due to an increase in the release of the loss accrual, with a release of \$38.8 million during the nine months ended September 30, 2024 compared to a release of \$19.9 million during the nine months ended September 30, 2023. Included in cost of revenue related to services performed on fuel cell systems and related infrastructure were inventory valuation adjustments of \$0.2 million for the nine months ended September 30, 2024 compared to \$0.4 million for the nine months ended September 30, 2023. Gross margin increased to 11.0% for the nine months ended September 30, 2024 compared to gross loss of (97.8%) for the nine months ended September 30, 2023. The increase in gross margin was primarily due to an increase in negotiated contract rates discussed above, as well as an increase in the release of the loss accrual during the nine months ended September 30, 2024.

*Cost of revenue – provision for loss contracts related to service.* The Company also recorded a provision for loss contracts related to service of \$6.0 million for the three months ended September 30, 2024 compared to \$41.6 million for the three months ended September 30, 2023. The Company decreased the provision primarily due to relatively flat costs of labor, parts and related overhead coupled with an increase in negotiated contract rates with certain customers.

The Company recorded a provision for loss contracts related to service of \$38.3 million for the nine months ended September 30, 2024 compared to \$55.8 million for the nine months ended September 30, 2023. The Company decreased the provision primarily due to relatively flat costs of labor, parts and related overhead coupled with an increase in negotiated contract rates with certain customers.

*Cost of revenue – power purchase agreements.* Cost of revenue from PPAs includes depreciation of assets utilized and service costs to fulfill PPA obligations and interest costs associated with certain financial institutions for leased equipment. Cost of revenue from PPAs for the three months ended September 30, 2024 decreased \$5.2 million, or 9.1%,

to \$51.8 million from \$57.0 million for the three months ended September 30, 2023. The decrease in cost was primarily due to a decrease in cost of parts. Gross loss decreased to (153.1%) for the three months ended September 30, 2024 compared to (183.9%) for the three months ended September 30, 2023. The decrease in gross loss was primarily due to improved pricing and a reduction in cost of parts, partially offset by an increase in provision for common stock warrants of \$3.4 million as discussed above.

Cost of revenue from PPAs for the nine months ended September 30, 2024 increased \$3.5 million, or 2.2%, to \$161.3 million from \$157.8 million for the nine months ended September 30, 2023. The increase in cost was primarily a result of an increase in units and sites under PPA contracts. Gross loss decreased to (176.1%) for the nine months ended September 30, 2024 compared to (257.5%) for the nine months ended September 30, 2023. The decrease in gross loss was primarily due to improved pricing which began in the first quarter of 2024.

*Cost of revenue – fuel delivered to customers and related equipment* . Cost of revenue from fuel delivered to customers and related equipment represents the purchase of hydrogen from suppliers and internally produced hydrogen that is ultimately sold to customers. Cost of revenue from fuel delivered to customers for the three months ended September 30, 2024 decreased \$3.5 million, or 5.9%, to \$55.5 million from \$59.0 million for the three months ended September 30, 2023. The decrease was primarily due to lower costs of purchased fuel, an increase in fuel internally produced by the Company, which is inherently lower in cost, as well as a recognition of the clean hydrogen production tax credit ("PTC") of \$1.6 million. Included in cost of revenue related to fuel delivered to customers and related equipment were inventory valuation adjustments of \$0.4 million for the three months ended September 30, 2024 compared to \$2.0 million for the three months ended September 30, 2023. Gross loss decreased to (86.4%) during the three months ended September 30, 2024 compared to (204.6%) during the three months ended September 30, 2023. The decrease in gross loss was primarily due to favorable fuel rates negotiated with certain customers, lower costs of purchased fuel, an increase in fuel internally produced by the Company, the decrease in inventory valuation adjustments described above and recognition of the PTC.

Cost of revenue from fuel delivered to customers for the nine months ended September 30, 2024 decreased \$5.6 million, or 3.1%, to \$172.4 million from \$178.0 million for the nine months ended September 30, 2023. The decrease was primarily due to lower costs of purchased fuel, an increase in fuel internally produced by the Company, which is inherently lower in cost, as well as a recognition of the PTC of \$2.9 million. Included in cost of revenue related to fuel delivered to customers and related equipment were inventory valuation adjustments of \$3.1 million for the three months ended September 30, 2024 compared to \$5.3 million for the three months ended September 30, 2023. Gross loss decreased to (121.2%) during the nine months ended September 30, 2024 compared to (275.5%) during the nine months ended September 30, 2023. The decrease in gross loss was primarily due to favorable fuel rates negotiated with certain customers, lower costs of purchased fuel, an increase in fuel internally produced by the Company, the decrease in inventory valuation adjustments described above and recognition of the PTC.

## Expenses

*Research and development*. Research and development expenses include: materials to build development and prototype units, cash and non-cash stock compensation and benefits for the engineering and related staff, expenses for contract engineers, fees paid to consultants for services provided, materials and supplies consumed, facility related costs such as computer and network services, and other general overhead costs associated with our research and development activities. Research and development expense for the three months ended September 30, 2024 decreased \$8.0 million, or 28.9%, to \$19.7 million from \$27.7 million for the three months ended September 30, 2023. The decrease was primarily related to headcount reductions.

Research and development expense for the nine months ended September 30, 2024 decreased \$19.5 million, or 23.4%, to \$63.9 million from \$83.4 million for the nine months ended September 30, 2023. The decrease was primarily related to headcount reductions as well as a decrease in component materials which are used for testing, prototypes and proof of concept.

*Selling, general and administrative*. Selling, general and administrative expenses include cash and non-cash stock compensation, benefits, amortization of intangible assets and related costs in support of our general corporate functions,



including general management, finance and accounting, human resources, selling and marketing, information technology and legal services. Selling, general and administrative expenses for the three months ended September 30, 2024 decreased \$13.9 million, or 13.2%, to \$91.6 million from \$105.5 million for the three months ended September 30, 2023. The decrease was primarily due to a decrease in stock compensation as certain market-condition awards near the end of their vesting period as well as stock compensation forfeitures.

Selling, general and administrative expenses for the nine months ended September 30, 2024 decreased \$55.9 million, or 18.0%, to \$254.7 million from \$310.6 million for the nine months ended September 30, 2023. The decrease was primarily due to a decrease in stock compensation expense related to stock compensation forfeitures resulting from the Restructuring Plan announced in February 2024 as well as certain market-condition awards nearing the end of their vesting period.

*Restructuring.* Expenses related to the Restructuring Plan for the three months ended September 30, 2024 was \$0.5 million. The increase was due to severance and benefits related to the Restructuring Plan the Company announced in February 2024.

Expenses related to the Restructuring Plan for the nine months ended September 30, 2024 was \$8.2 million. The increase was due to severance and benefits related to the Restructuring Plan the Company announced in February 2024.

*Impairment.* Impairment for the three months ended September 30, 2024 increased \$3.5 million, or 500.0%, to \$4.2 million from \$0.7 million for the three months ended September 30, 2023. The increase was primarily related to the Company recording a higher impairment charge on long-lived assets due to the cancellation of certain projects during the three months ended September 30, 2024.

Impairment for the nine months ended September 30, 2024 decreased \$3.3 million, or 28.2%, to \$8.4 million from \$11.7 million for the nine months ended September 30, 2023. The decrease was primarily related to the Company recording a lower impairment charge on long-lived assets during the nine months ended September 30, 2024, and due to the cancellation of a specific contract during the nine months ended September 30, 2023.

*Change in fair value of contingent consideration.* The change in fair value of contingent consideration is related to earnouts for the Joule Processing LLC ("Joule") and Frames Holding B.V. ("Frames") acquisitions. The change in fair value of contingent consideration for the three months ended September 30, 2024 and 2023 was \$0.1 million and \$2.2 million, respectively. The decrease was primarily due to the Giner ELX, Inc. ("Giner") and Universal Hydrogen Group Inc. ("UHG") earn-outs that were still outstanding during the three months ended September 30, 2023 but subsequently settled during the second quarter of 2024. In addition, the fair value of contingent consideration for Joule's earn-out increased by \$2.9 million during the three months ended September 30, 2023 due to passage of time.

The change in fair value of contingent consideration for the nine months ended September 30, 2024 and 2023 was (\$5.3) million and \$26.3 million, respectively. The decrease was primarily due to changes in assumptions related to future earn-out payments due to renegotiated agreements during the first quarter of 2024 as well as the settlement of the UHG and Giner earn-outs.

*Interest income.* Interest income primarily consists of income generated by our investment holdings, restricted cash escrow accounts, and money market accounts. Interest income for the three months ended September 30, 2024 decreased \$3.0 million compared to the three months ended September 30, 2023. The decrease during the three months ended September 30, 2024 compared to September 30, 2023 was primarily due to the maturities and sale of the Company's available-for-sale portfolio of higher-yielding U.S. treasury securities during 2023.

Interest income for the nine months ended September 30, 2024 decreased \$19.9 million compared to the nine months ended September 30, 2023. The decrease during the nine months ended September 30, 2024 compared to September 30, 2023 was primarily due to the maturities and sale of the Company's available-for-sale portfolio of higher-yielding U.S. treasury securities during 2023.



*Interest expense.* Interest expense consists of interest expense related to our long-term debt, convertible senior notes, obligations under finance leases and our finance obligations. Interest expense for the three months ended September 30, 2024 decreased \$2.7 million compared to the three months ended September 30, 2023 primarily due to an increase in capitalized interest during the third quarter of 2024.

Interest expense for the nine months ended September 30, 2024 decreased \$3.7 million compared to the nine months ended September 30, 2023 primarily due to an increase in capitalized interest during the second and third quarters of 2024.

*Other income/(expense), net.* Other income/(expense), net primarily consists of gains and losses related to energy contracts and foreign currency. Other income/(expense), net for the three months ended September 30, 2024 increased \$10.5 million compared to the three months ended September 30, 2023. The increase was primarily due to foreign currency gains as well as gains related to energy contracts.

Other income/(expense), net for the nine months ended September 30, 2024 increased \$4.3 million compared to the nine months ended September 30, 2023. The increase was primarily due to gains related to energy contracts, partially offset by overall foreign currency losses for the nine months ended September 30, 2024.

*Other-than-temporary impairment of available-for-sale securities.* For the three and nine months ended September 30, 2023, the Company recorded an other-than-temporary impairment charge of \$10.8 million on the Company's available-for-sale securities due to a change in the Company's ability and intent to retain the investments for a period of time sufficient to allow for any anticipated recovery in the fair value. The other-than-temporary charge was realized when the Company sold its remaining available-for-sale securities and equity securities during the fourth quarter of 2023. There was no such charge recorded in the three and nine months ended September 30, 2024.

*Change in fair value of equity securities.* Change in fair value of equity securities consists of the changes in fair value for equity securities from the purchase date to the end of the period. The change in fair value of equity securities was \$0 for the three months ended September 30, 2024 compared to a gain of \$70 thousand for the three months ended September 30, 2023. The decrease in the change in fair value of equity securities is due to the Company selling its remaining equity securities during the fourth quarter of 2023.

The change in fair value of equity securities was \$0 for the nine months ended September 30, 2024 compared to a gain of \$9.0 million for the nine months ended September 30, 2023. The decrease in the change in fair value of equity securities is due to the Company selling its remaining equity securities during the fourth quarter of 2023.

*Loss on equity method investments.* Loss on equity method investments consists of our interest in HyVia, which is our 50/50 joint venture with Renault, AccionaPlug, which is our 50/50 joint venture with Acciona, SK Plug Hyverse, which is our 49/51 joint venture with SK E&S, and Clean H2 Infra Fund. For the three months ended September 30, 2024, the Company recorded a loss of \$8.7 million on equity method investments compared to a loss of \$7.0 million for the three months ended September 30, 2023. These losses are driven from the start-up activities for commercial and production operations of the aforementioned investments.

For the nine months ended September 30, 2024, the Company recorded a loss of \$29.0 million on equity method investments compared to a loss of \$20.0 million for the nine months ended September 30, 2023. These losses are driven from the start-up activities for commercial and production operations of the aforementioned investments.

*Loss on extinguishment of convertible senior notes.* Loss on extinguishment of convertible senior notes arises from the difference between the net carrying amount of the Company's Convertible Senior Notes and the fair value of the assets transferred to extinguish the Convertible Senior Notes. For the three months ended September 30, 2024 and September 30, 2023, the Company did not record a loss on extinguishment of convertible senior notes.

For the nine months ended September 30, 2024, the Company recorded a loss of \$14.0 million on extinguishment of convertible senior notes. These losses are driven from the exchange of \$138.8 million in aggregate principal amount of

the Company's 3.50% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes during the first quarter of 2024.

### Income Taxes

The Company recorded \$0.1 million of income tax expense and \$4.7 million of income tax benefit for the three months ended September 30, 2024 and 2023, respectively. The Company recorded \$0.1 million of income tax benefit and \$6.9 million of income tax benefit for the nine months ended September 30, 2024 and 2023, respectively. The income tax benefit for the nine months ended September 30, 2024 was due to an incremental change to the valuation allowance recorded in foreign jurisdictions. The Company has not changed its overall conclusion with respect to the need for a valuation allowance against its domestic net deferred tax assets, which remain fully reserved, and its valuation allowances recorded in foreign jurisdictions.

The domestic net deferred tax asset generated from the Company's net operating loss has been offset by a full valuation allowance because it is more likely than not that the tax benefits of the net operating loss carryforward will not be realized. The Company recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as a component of income tax expense.

The Organization for Economic Co-operation and Development Inclusive Framework on Base Erosion and Profit Shifting has proposed a global minimum corporate tax rate of 15% on multi-national corporations, commonly referred to as the Pillar Two rules that has been agreed upon in principle by over 140 countries. While the United States has not adopted the Pillar Two rules, numerous foreign countries have enacted legislation to implement the Pillar Two rules, effective beginning January 1, 2024, or are expected to enact similar legislation. As of September 30, 2024, the Company did not meet the consolidated revenue threshold and is not subject to the GloBE Rules under Pillar Two. The Company will continue to monitor the implementation of rules in the jurisdictions in which it operates.

### Liquidity and Capital Resources

As of September 30, 2024 and December 31, 2023, the Company had \$93.9 million and \$135.0 million, respectively, of cash and cash equivalents and \$906.3 million of restricted cash as of September 30, 2024.

The Company has continued to experience negative cash flows from operations and net losses. The Company incurred net losses of \$769.3 million and \$726.4 million for the nine months ended September 30, 2024 and 2023, respectively, and had an accumulated deficit of \$5.3 billion as of September 30, 2024.

A summary of our consolidated sources and uses of cash, cash equivalents and restricted cash was as follows (in thousands):

	Nine months ended	
	September 30, 2024	September 30, 2023
Net cash (used in) provided by:		
Operating activities	\$ (597,402)	\$ (863,919)
Investing activities	(358,529)	460,488
Financing activities	779,175	14,447
	<u>\$ (176,756)</u>	<u>\$ (388,984)</u>

### Operating Activities

The net cash used in operating activities for the nine months ended September 30, 2024 and 2023 was \$597.4 million and \$863.9 million, respectively. This decrease in net cash used in operating activities was primarily due to cash inflows related to the Company's accounts receivables and inventory, partially offset by an increase in net loss, a decrease in accounts payable, accrued expenses, and other liabilities and a decrease in deferred revenue and other contract liabilities.

The Company's working capital was \$847.1 million as of September 30, 2024, which included unrestricted cash and cash equivalents of \$93.9 million.

#### ***Investing Activities***

The net cash (used in)/provided by investing activities for the nine months ended September 30, 2024 and 2023 was (\$358.5) million and \$460.5 million, respectively. The change from cash inflow to cash outflow from investing activities was primarily due to a decrease in proceeds from maturities of available-for-sale securities during the nine months ended September 30, 2024 as the Company no longer holds available-for-sale securities.

#### ***Financing Activities***

The net cash provided by financing activities for the nine months ended September 30, 2024 and 2023 was \$779.2 million and \$14.4 million, respectively. The increase in cash provided by financing activities was primarily driven by proceeds from the At Market Issuance Sales Agreement, as amended (as described below), with B. Riley Securities, Inc. ("B. Riley") during the nine months ended September 30, 2024, partially offset by a decrease in proceeds from finance obligations.

The Company's working capital was \$847.1 million as of September 30, 2024, which included unrestricted cash and cash equivalents of \$93.9 million and restricted cash of \$906.3 million. On January 17, 2024, the Company entered into the At Market Issuance Sales Agreement (the "Original ATM Agreement") with B. Riley pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company's common stock, having an aggregate gross sales price of up to \$1.0 billion. As of February 23, 2024, the Company had \$697.9 million remaining authorized for issuance under the Original ATM Agreement. On February 23, 2024, the Company and B. Riley entered into Amendment No. 1 to the Original ATM Agreement ("Amendment No. 1" and, together with the Original ATM Agreement, the "ATM Agreement") to increase the aggregate gross sales price of shares of the Company's common stock available for future issuance under the Original ATM Agreement to \$1.0 billion. Under the ATM Agreement, the Company has the right at its sole discretion to direct B. Riley to act on a principal basis and purchase directly from the Company up to \$11.0 million of shares of its common stock on any trading day (the "Maximum Commitment Advance Purchase Amount") if the Company's market capitalization is more than \$1.0 billion (or up to \$10.0 million if the Company's market capitalization is less than \$1.0 billion) and up to \$55.0 million of shares in any calendar week (the "Maximum Commitment Advance Purchase Amount Cap") if the Company's market capitalization is more than \$1.0 billion (or up to \$30.0 million if the Company's market capitalization is less than \$1.0 billion). As of November 7, 2024, the Company had offered and sold 219,835,221 shares of common stock having an aggregate gross sales price of approximately \$677.2 million under the ATM Agreement and shares of the Company's common stock having an aggregate gross sales price of approximately \$624.8 million remained available for issuance and sale under the ATM Agreement.

On November 7, 2024, the Company entered into Amendment No. 2 to the Original ATM Agreement ("Amendment No. 2" and together with the ATM Agreement, the "Amended ATM Agreement") with B. Riley. Amendment No. 2 increased the aggregate gross sales price of the Company's common stock the Company may offer and sell pursuant to the Amended ATM Agreement by approximately \$375.2 million to \$1.0 billion. From and after November 7, 2024, through and including February 7, 2025, the Company has the right at its sole discretion to direct B. Riley to act on a principal basis and purchase from the Company up to the Maximum Commitment Advance Purchase Amount of \$11.0 million and up to the Maximum Commitment Advance Purchase Amount Cap of \$55.0 million (including any shares sold by B. Riley in agency transactions) in any calendar week. If the Company's market capitalization is less than \$1.0 billion on and after February 8, 2025, the Maximum Commitment Advance Purchase Amount shall be decreased to \$10.0 million and the Maximum Commitment Advance Purchase Amount Cap shall be decreased to \$30.0 million.

On November 11, 2024, the Company entered into a Debenture Purchase Agreement with YA II PN, Ltd. (the "Investor") under which the Company agreed to sell and issue to the Investor an unsecured convertible debenture in aggregate principal amount of \$200.0 million (the "Convertible Debenture") in exchange for the payment by the Investor to the Company of \$190.0 million. The Company expects to close the issuance of the Convertible Debenture on or about November 12, 2024, subject to customary closing conditions. For more information, see Note 24, "Subsequent Events".

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$2.54 per share for net proceeds of \$191.0 million after deducting the underwriting discount and related offering expenses.

The Company believes that its working capital and cash position, together with its right to direct B. Riley to purchase shares directly from the Company under the Amended ATM Agreement, will be sufficient to fund its on-going operations for a period of at least 12 months subsequent to the issuance of the accompanying unaudited interim condensed consolidated financial statements.

The Company's significant obligations consisted of the following as of September 30, 2024:

- (i) Operating and finance leases totaling \$316.2 million and \$38.0 million, respectively, of which \$67.0 million and \$10.8 million, respectively, are due within the next 12 months. These leases are primarily related to sale/leaseback agreements entered into with various financial institutions to facilitate the Company's commercial transactions with key customers. See Note 17, "Operating and Finance Lease Liabilities", for more details.
- (ii) Finance obligations totaling \$361.6 million, of which approximately \$83.3 million is due within the next 12 months. Finance obligations consist primarily of debt associated with the sale of future revenues and failed sale/leaseback transactions. See Note 18, "Finance Obligations", for more details.
- (iii) Convertible senior notes totaling \$207.4 million, of which \$58.2 million is due within the next twelve months. See Note 10, "Convertible Senior Notes", for more details.
- (iv) Capital commitments totaling \$38.9 million related to the Company's equity method investments, of which all \$38.9 million is due within the next 12 months. See Note 16, "Investments", for more details.
- (v) Future payments under non-cancelable unconditional purchase obligations with a remaining term in excess of one year totaling \$44.7 million, of which \$32.0 million is due within the next 12 months. See Note 19, "Commitments and Contingencies", for more details.
- (vi) Contingent consideration with an estimated fair value of approximately \$92.0 million, of which \$53.1 million is due within the next 12 months. See Note 15, "Fair Value Measurements", for more details.

#### ***Public and Private Offerings of Equity and Debt***

##### ***At Market Issuance Sales Agreement***

The Company entered into the Amended ATM Agreement with B. Riley, pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company's common stock, having an aggregate offering price of up to \$1.0 billion. During the three months ended September 30, 2024, the Company sold 13,045,572 shares of common stock at a weighted-average sales price of \$2.35 per share for gross proceeds of \$30.7 million with related issuance costs of \$0.5 million. During the nine months ended September 30, 2024, the Company sold 189,411,442 shares of common stock at a weighted-average sales price of \$3.23 per share for gross proceeds of \$611.5 million with related issuance costs of \$9.2 million.

##### ***Public Offering of Common Stock***

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$2.54 per share for net proceeds of \$191.0 million after deducting the underwriting discount and related offering expenses.

### **Secured Debt**

During the second quarter of 2024, the Company began repaying the principal and interest on a \$2.0 million allowance for tenant work related to its manufacturing facility in Slingerlands, NY. In accordance with Accounting Standard Codification ("ASC") 842, Leases ("ASC 842"), the allowance is treated as a freestanding financial instrument separate from the facility lease and is accounted for as long-term debt. The outstanding principal and carrying value of the debt was \$1.7 million as of September 30, 2024.

In June 2020, the Company acquired debt as part of its acquisition of United Hydrogen Group Inc. During the three months ended September 30, 2024 and 2023, the Company repaid \$0 and \$0.3 million of principal related to this outstanding debt. During the nine months ended September 30, 2024 and 2023, the Company repaid \$0.6 million and \$5.7 million of principal related to this outstanding debt. The outstanding carrying value of the debt was \$3.9 million as of September 30, 2024. The remaining outstanding principal on the debt was \$4.9 million and the unamortized debt discount was \$1.0 million, bearing varying interest rates ranging from 7.3% to 7.6%. The debt is scheduled to mature in 2026. As of September 30, 2024, the principal balance was due at each of the following dates as follows (in thousands):

December 31, 2024	2,757
December 31, 2025	1,200
December 31, 2026	900
Total outstanding principal	<u>\$ 4,857</u>

### **7.00% Convertible Senior Notes**

On March 20, 2024, the Company entered into separate, privately negotiated exchange agreements with certain holders of the Company's outstanding 3.75% Convertible Senior Notes pursuant to which the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes, and accrued and unpaid interest of \$1.6 million on such notes to, but excluding, March 20, 2024, for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes due 2026, in each case, pursuant to the exemption from registration provided by Section 4(a)(2) under the Securities Act of 1933, as amended (the "Securities Act"). Following the exchange, approximately \$58.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged.

This transaction was accounted for as an extinguishment of debt. As a result, the Company recorded a loss on extinguishment of debt of \$14.0 million in the unaudited interim condensed consolidated statement of operations during the first quarter of 2024. Loss on extinguishment of debt arises from the difference between the net carrying amount of the Company's debt and the fair value of the assets transferred to extinguish the debt.

The 7.00% Convertible Senior Notes are the Company's senior, unsecured obligations and are governed by the terms of an Indenture (the "Indenture"), dated as of March 20, 2024, entered into between the Company and Wilmington Trust, National Association, as trustee. The 7.00% Convertible Senior Notes bear cash interest at the rate of 7.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2024, to holders of record at the close of business on the preceding May 15 and November 15, respectively. The 7.00% Convertible Senior Notes mature on June 1, 2026, unless earlier converted or redeemed or repurchased by the Company.

The conversion rate for the 7.00% Convertible Senior Notes is initially 235.4049 shares of the Company's common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, which is equivalent to an initial conversion price of approximately \$4.25 per share of common stock, which represents a premium of approximately 20% over the last reported sale price of Plug's common stock on the Nasdaq Capital Market on March 12, 2024. The conversion rate and conversion price are subject to customary adjustments upon the occurrence of certain events. Prior to the close of business on the business day immediately preceding December 1, 2025, the 7.00% Convertible Senior Notes will be convertible at the option of the holders of the 7.00% Convertible Senior Notes only upon the satisfaction of specified conditions and during certain periods. On or after December 1, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity date, the 7.00% Convertible Senior Notes will be convertible at the option of the

holders of the 7.00% Convertible Senior Notes at any time regardless of these conditions. Conversions of the 7.00% Convertible Senior Notes will be settled in cash, shares of the Company's common stock, or a combination thereof, at the Company's election.

Subject to certain exceptions and subject to certain conditions, holders of the 7.00% Convertible Senior Notes may require the Company to repurchase their 7.00% Convertible Senior Notes upon the occurrence of a "Fundamental Change" (as defined in the Indenture) prior to maturity for cash at a repurchase price equal to 100% of the principal amount of the 7.00% Convertible Senior Notes to be repurchased plus accrued and unpaid interest, if any, to, but excluding, the repurchase date.

The 7.00% Convertible Senior Notes will be redeemable, in whole or in part, at the Company's option at any time on or after June 5, 2025, at a cash redemption price equal to the principal amount of the 7.00% Convertible Senior Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the then-applicable conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the three trading days immediately preceding the date the Company sends the related redemption notice, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company sends such redemption notice.

In certain circumstances, conversions of 7.00% Convertible Senior Notes in connection with "Make-Whole Fundamental Changes" (as defined in the Indenture) or conversions of 7.00% Convertible Senior Notes called for redemption may result in an increase to the conversion rate, provided that the conversion rate will not exceed 282.4859 shares of the Company's common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, subject to adjustment. In such circumstance, a maximum of 39,659,890 shares of common stock, subject to adjustment, may be issued upon conversion of the 7.00% Convertible Senior Notes. There were no conversions of the 7.00% Convertible Senior Notes during the three and nine months ended September 30, 2024.

The 7.00% Convertible Senior Notes consisted of the following (in thousands):

	September 30, 2024
Principal amounts:	
Principal	\$ 140,396
Unamortized debt premium, net of offering costs (1)	8,818
Net carrying amount	<u>\$ 149,214</u>

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 7.00% Convertible Senior Notes for the three and nine months ended September 30, 2024 (in thousands, except for the effective interest rate):

	Three months ended September 30, 2024	Nine months ended September 30, 2024
Interest expense	\$ 2,478	\$ 5,224
Amortization of premium	(1,308)	(2,781)
Total	<u>\$ 1,170</u>	<u>\$ 2,443</u>
Effective interest rate	3.0%	3.0%

The estimated fair value of the 7.00% Convertible Senior Notes as of September 30, 2024 was approximately \$120.0 million. The fair value estimation was primarily based on a quoted price in an active market.

### 3.75% Convertible Senior Notes

On May 18, 2020, the Company issued \$200.0 million in aggregate principal amount of 3.75% Convertible Senior Notes due June 1, 2025 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act. On May 29, 2020, the Company issued an additional \$12.5 million in aggregate principal amount of 3.75% Convertible Senior Notes. On March 12, 2024, the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes due 2026. Following the exchange, approximately \$58.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged. There were no conversions of the 3.75% Convertible Senior Notes during the three and nine months ended September 30, 2024 and 2023.

The 3.75% Convertible Senior Notes consisted of the following (in thousands):

	September 30, 2024	December 31, 2023
Principal amounts:		
Principal	\$ 58,462	\$ 197,278
Unamortized debt issuance costs (1)	(299)	(2,014)
Net carrying amount	<u>\$ 58,163</u>	<u>\$ 195,264</u>

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 3.75% Convertible Senior Notes for the three and nine months ended September 30, 2024 and 2023 (in thousands, except for the effective interest rate):

	Three months ended		Nine months ended	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023
Interest expense	\$ 549	\$ 1,849	\$ 2,787	\$ 5,547
Amortization of debt issuance costs	108	338	532	1,003
Total	<u>\$ 657</u>	<u>\$ 2,187</u>	<u>\$ 3,319</u>	<u>\$ 6,550</u>
Effective interest rate	4.5%	4.5%	4.5%	4.5%

The estimated fair value of the 3.75% Convertible Senior Notes as of September 30, 2024 was approximately \$54.1 million. The fair value estimation was primarily based on a quoted price in an active market.

### Capped Call

In conjunction with the pricing of the 3.75% Convertible Senior Notes, the Company entered into privately negotiated capped call transactions (the "3.75% Notes Capped Call") with certain counterparties at a price of \$16.2 million. The 3.75% Notes Capped Call covers, subject to anti-dilution adjustments, the aggregate number of shares of the Company's common stock that underlie the initial 3.75% Convertible Senior Notes and is generally expected to reduce potential dilution to the Company's common stock upon any conversion of the 3.75% Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the 3.75% Notes Capped Call is initially \$6.7560 per share, which represents a premium of approximately 60% over the last then-reported sale price of the Company's common stock of \$4.11 per share on the date of the transaction and is subject to certain adjustments under the terms of the 3.75% Notes Capped Call. The 3.75% Notes Capped Call becomes exercisable if the conversion option is exercised.

The net cost incurred in connection with the 3.75% Notes Capped Call was recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets at the time the transactions were entered into. The book value of the 3.75% Notes Capped Call is not remeasured.



### **5.5% Convertible Senior Notes and Common Stock Forward**

In March 2018, the Company issued \$100.0 million in aggregate principal amount of the 5.5% Convertible Senior Notes due on March 15, 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act, which have been fully repaid. In connection with the issuance of the 5.5% Convertible Senior Notes, the Company entered into a forward stock purchase transaction (the "Common Stock Forward"), pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. On May 18, 2020, the Company amended and extended the maturity of the Common Stock Forward to June 1, 2025. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$27.5 million was recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets at the time the transactions were entered into. The related shares were accounted for as a repurchase of common stock. The book value of the Common Stock Forward is not remeasured.

There were no shares of common stock that settled in connection with the Common Stock Forward during the three and nine months ended September 30, 2024 and 2023.

### **Amazon Transaction Agreement in 2022**

On August 24, 2022, the Company and Amazon entered into a Transaction Agreement (the "2022 Amazon Transaction Agreement"), under which the Company concurrently issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the "2022 Amazon Warrant") to acquire up to 16,000,000 shares (the "2022 Amazon Warrant Shares") of the Company's common stock, subject to certain vesting events described below. The Company and Amazon entered into the 2022 Amazon Transaction Agreement in connection with a concurrent commercial arrangement under which Amazon agreed to purchase hydrogen fuel from the Company through August 24, 2029.

1,000,000 of the 2022 Amazon Warrant Shares vested immediately upon issuance of the 2022 Amazon Warrant. 15,000,000 of the 2022 Amazon Warrant Shares will vest in multiple tranches over the 7-year term of the 2022 Amazon Warrant based on payments made to the Company directly by Amazon or its affiliates, or indirectly through third parties, with 15,000,000 of the 2022 Amazon Warrant Shares fully vesting if Amazon-related payments of \$2.1 billion are made in the aggregate. The exercise price for the first 9,000,000 2022 Amazon Warrant Shares is \$22.9841 per share and the fair value on the grant date was \$20.36. The exercise price for the remaining 7,000,000 2022 Amazon Warrant Shares will be an amount per share equal to 90% of the 30-day volume weighted average share price of the Company's common stock as of the final vesting event that results in full vesting of the first 9,000,000 2022 Amazon Warrant Shares. The 2022 Amazon Warrant is exercisable through August 24, 2029.

Upon the consummation of certain change of control transactions (as defined in the 2022 Amazon Warrant) prior to the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, the 2022 Amazon Warrant will automatically vest and become exercisable with respect to an additional number of 2022 Amazon Warrant Shares such that 60% of the aggregate 2022 Amazon Warrant Shares shall have vested. If a change of control transaction is consummated after the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, then no acceleration of vesting will occur with respect to any of the unvested 2022 Amazon Warrant Shares as a result of the transaction. The exercise price and the 2022 Amazon Warrant Shares issuable upon exercise of the 2022 Amazon Warrant are subject to customary antidilution adjustments.

On August 24, 2022, 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 1 vested. The warrant fair value associated with the vested shares of tranche 1 of \$20.4 million was capitalized to contract assets based on the grant date fair value and is subsequently amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. As of September 30, 2024, the balance of the contract asset related to tranche 1



was \$18.8 million which is recorded in contract assets in the Company's unaudited interim condensed consolidated balance sheet. During the second quarter of 2023, all 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 2 vested. The warrant fair value associated with the vested shares of tranche 2 was \$20.4 million and was determined on the grant date of August 24, 2022. As of September 30, 2024, the balance of the contract asset related to tranche 2 was \$18.8 million. Tranche 3 will vest over the next \$1.0 billion of collections from Amazon and its affiliates. The grant date fair value of tranche 3 will also be amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. As of September 30, 2024, the balance of the contract asset related to tranche 3 was \$3.6 million. Because the exercise price has yet to be determined, the fair value of tranche 4 will be remeasured at each reporting period end and amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement.

As of September 30, 2024 and December 31, 2023, 2,500,000 and 2,000,000 of the 2022 Amazon Warrant Shares had vested, respectively, and none of the 2022 Amazon Warrant Shares had been exercised. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the three months ended September 30, 2024 and 2023 was \$2.0 million and \$1.6 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the nine months ended September 30, 2024 and 2023 was \$4.4 million and \$4.3 million, respectively.

The assumptions used to calculate the valuations of the 2022 Amazon Warrant as of August 24, 2022 and September 30, 2024 are as follows:

	Tranches 1-3 August 24, 2022	Tranche 4 September 30, 2024
Risk-free interest rate	3.15%	3.51%
Volatility	75.00%	95.00%
Expected average term (years)	7.00	1.15
Exercise price	\$22.98	\$2.03
Stock price	\$20.36	\$2.26

#### **Walmart Transaction Agreement**

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the "Walmart Transaction Agreement"), pursuant to which the Company agreed to issue to Walmart a warrant (the "Walmart Warrant") to acquire up to 55,286,696 shares of the Company's common stock, subject to certain vesting events (the "Walmart Warrant Shares"). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company's GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the warrant shares was conditioned upon payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The exercise price for the first and second tranches of Walmart Warrant Shares was \$2.1231 per share. After Walmart has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Walmart Warrant Shares will vest in eight installments of 2,546,098 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of the Walmart Warrant Shares is \$6.28 per share, which was determined pursuant to the terms of the Walmart Warrant as an amount equal to 90% of the 30-day volume weighted average share price of the Company's common stock as of October 30, 2023, the final vesting date of the second tranche of the Walmart Warrant Shares. The Walmart Warrant is exercisable through July 20, 2027. The Walmart Warrant provides for net share settlement that, if elected by the holder, will reduce the number of shares issued upon exercise to reflect net settlement of the exercise price. The Walmart Warrant provides for certain adjustments that may be made to the exercise price and the number of shares of common stock issuable upon exercise due

to customary anti-dilution provisions based on future events. The Walmart Warrant is classified as an equity instrument. As of September 30, 2024, the balance of the contract asset related to the Walmart Warrant was \$5.4 million.

As of September 30, 2024 and December 31, 2023, 40,010,108 and 34,917,912 of the Walmart Warrant Shares had vested, respectively, and the Walmart Warrant was exercised with respect to 13,094,217 shares of the Company's common stock. During the three and nine months ended September 30, 2024 and 2023, there were no exercises with respect to the Walmart Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended September 30, 2024 was \$3.9 million compared to a negative provision for common stock warrants recorded as an addition to revenue of \$3.1 million for the three months ended September 30, 2023. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the nine months ended September 30, 2024 and 2023 was \$11.6 million and \$8.4 million, respectively.

#### ***Operating and Finance Lease Liabilities***

As of September 30, 2024, the Company had operating leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash and security deposits (see also Note 19, "Commitments and Contingencies") as summarized below. These leases expire over the next one to seven years. Minimum rent payments under operating leases are recognized on a straight-line basis over the term of the lease.

Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote. At the end of the lease term, the leased assets may be returned to the lessor by the Company, the Company may negotiate with the lessor to purchase the assets at fair market value, or the Company may negotiate with the lessor to renew the lease at market rental rates. No residual value guarantees are contained in the leases. No financial covenants are contained within the lease; however, the lease contains customary operational covenants such as the requirement that the Company properly maintain the leased assets and carry appropriate insurance. The leases include credit support in the form of either cash, collateral or letters of credit. See Note 19, "Commitments and Contingencies", for a description of cash held as security associated with the leases.

The Company has finance leases associated with its property and equipment in Slingerlands, New York and at customer fueling locations.

#### ***Finance Obligation***

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation as of September 30, 2024 was \$296.0 million, \$77.3 million and \$218.7 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at December 31, 2023 was \$350.8 million, \$74.0 million and \$276.8 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The amount is amortized using the effective interest method. Interest expense recorded related to finance obligations for the three months ended September 30, 2024 and 2023 was \$9.0 million and \$10.4 million, respectively. Interest expense recorded related to finance obligations for the nine months ended September 30, 2024 and 2023 was \$28.4 million and \$29.4 million, respectively.

During the third quarter of 2024, the Company entered into additional failed sale/leaseback transactions that were accounted for as financing obligations resulting in \$56.9 million of additional finance obligations. No gain or loss was recorded as a result of these transactions. The outstanding balance of finance obligations related to sale/leaseback transactions as of September 30, 2024 was \$65.6 million, \$6.0 million and \$59.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet with a residual value of \$33.6 million. The outstanding balance of this obligation at December 31, 2023 was \$17.6 million, \$10.0 million and \$7.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet.

The fair value of the Company's total finance obligations approximated their carrying value as of September 30, 2024 and December 31, 2023.

#### ***Restricted Cash***

In connection with certain of the above noted sale/leaseback agreements, cash of \$507.8 million and \$573.5 million was required to be restricted as security as of September 30, 2024 and December 31, 2023, respectively, which restricted cash will be released over the lease term. As of September 30, 2024 and December 31, 2023, the Company also had certain letters of credit backed by security deposits totaling \$307.9 million and \$370.7 million, respectively, of which \$276.5 million and \$340.0 million are security for the above noted sale/leaseback agreements, respectively, and \$31.4 million and \$30.7 million are customs related letters of credit, respectively.

As of September 30, 2024 and December 31, 2023, the Company had \$80.0 million and \$76.8 million held in escrow related to the construction of certain hydrogen production plants, respectively.

The Company also had \$0.1 million and \$1.2 million of consideration held by our paying agent in connection with each of the Joule and CIS acquisitions, respectively, reported as restricted cash as of September 30, 2024, with a corresponding accrued liability on the Company's unaudited interim condensed consolidated balance sheet. Additionally, the Company had \$9.3 million and \$11.7 million in restricted cash as collateral resulting from the Frames acquisition as of September 30, 2024 and December 31, 2023, respectively.

#### ***Guarantee***

On May 30, 2023, our joint venture, HyVia, entered into a government grant agreement with Bpifrance. As part of the agreement, our wholly-owned subsidiary, Plug Power France, was required to issue a guarantee to Bpifrance in the amount of €20 million through the end of January 2027. Plug Power France is liable to the extent of the guarantee for sums due to Bpifrance from HyVia under the agreement based on the difference between the total amount paid by Bpifrance and the final amount certified by HyVia and Bpifrance. As part of the agreement, there are certain milestones that HyVia is required to meet, and the nonperformance of these milestones or termination of this agreement could result in this guarantee being called upon. As of September 30, 2024, no payments related to this guarantee have been made by the Company and Plug Power France did not record a liability for this guarantee as the likelihood of the guarantee being called upon is remote.

#### ***Unconditional Purchase Obligations***

The Company has entered into certain off-balance sheet commitments that require the future purchase of goods or services ("unconditional purchase obligations"). The Company's unconditional purchase obligations primarily consist of supplier arrangements, take or pay contracts and service agreements. For certain vendors, the Company's unconditional obligation to purchase a minimum quantity of raw materials at an agreed upon price is fixed and determinable; while certain other raw material costs will vary due to product forecasting and future economic conditions.

Future payments under non-cancelable unconditional purchase obligations with a remaining term in excess of one year as of September 30, 2024, were as follows (in thousands):

Remainder of 2024	\$	25,989
2025		8,023
2026		8,023
2027		2,638
2028		—
2029 and thereafter		—
<b>Total</b>		<b>44,673</b>

### **Restructuring**

In February 2024, in a strategic move to enhance our financial performance and ensure long-term value creation in a competitive market, we approved a comprehensive initiative that encompasses a broad range of measures, including operational consolidation, strategic workforce adjustments, and various other cost-saving actions (the "Restructuring Plan"). These measures are aimed at increasing efficiency, improving scalability, and maintaining our leadership position in the renewable energy industry. We began executing the Restructuring Plan in February 2024 and expect the Restructuring Plan to be completed in the fourth quarter of 2024, subject to local law and consultation requirements.

The determination of when we accrue for involuntary termination benefits under restructuring plans depends on whether the termination benefits are provided under an ongoing benefit arrangement or under a one-time benefit arrangement. We account for involuntary termination benefits that are provided pursuant to one-time benefit arrangements in accordance with ASC 420, *Exit or Disposal Cost Obligations* ("ASC 420") whereas involuntary termination benefits that are part of an ongoing written or substantive plan are accounted for in accordance with ASC 712, *Nonretirement Postemployment Benefits* ("ASC 712"). We accrue a liability for termination benefits under ASC 420 in the period in which the plan is communicated to the employees and the plan is not expected to change significantly. For ongoing benefit arrangements, inclusive of statutory requirements, we accrue a liability for termination benefits under ASC 712 when the existing situation or set of circumstances indicates that an obligation has been incurred, it is probable the benefits will be paid, and the amount can be reasonably estimated. The restructuring charges that have been incurred but not yet paid are recorded in accrued expenses and other current liabilities in our unaudited interim condensed consolidated balance sheets, as they are expected to be paid within the next twelve months.

During the three months ended September 30, 2024, we incurred \$0.6 million in restructuring costs recorded as severance expenses of \$0.1 million and other restructuring costs of \$0.5 million in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. During the nine months ended September 30, 2024, we incurred \$8.2 million in restructuring costs recorded as severance expenses of \$6.9 million and other restructuring costs of \$1.3 million in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. Future restructuring costs are not expected to be material in subsequent quarters. The actual timing and amount of costs associated with these restructuring actions may differ from our current expectations and estimates and such differences may be material.

Severance expense recorded during the three and nine months ended September 30, 2024 in accordance with ASC 420 was a result of the separation of full-time employees associated with the Restructuring Plan. As of September 30, 2024, \$0.1 million of accrued severance-related costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the fourth quarter of 2024. For the three months ended September 30, 2024, other costs were represented by \$0.5 million of other one-time employee termination benefits. For the nine months ended September 30, 2024, other costs were represented by (1) \$0.2 million of legal and professional services costs, and (2) \$1.1 million of other one-time employee termination benefits. As of September 30, 2024, \$29 thousand of accrued other costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the fourth quarter of 2024.

### **Extended Maintenance Contracts**

On a quarterly basis, we evaluate any potential losses related to our extended maintenance contracts for sales of equipment, related infrastructure and other that have been sold. The following table shows the roll forward of balances in the accrual for loss contracts, including changes due to the provision for loss accrual, releases to service cost of sales, increase to loss accrual related to customer warrants, and foreign currency translation adjustment (in thousands):

	Nine months ended September 30, 2024	Year ended December 31, 2023
Beginning balance	\$ 137,853	\$ 81,066
Provision for loss accrual	37,997	85,375
Releases to service cost of sales	(38,823)	(29,713)
Increase to loss accrual related to customer warrants	268	971
Foreign currency translation adjustment	214	154
Ending balance	<u>\$ 137,509</u>	<u>\$ 137,853</u>

### **Critical Accounting Estimates**

The consolidated financial statements of the Company have been prepared in conformity with U.S. generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, we evaluate our estimates and judgments, including but not limited to those related to revenue recognition, valuation of inventories, intangible assets, valuation of long-lived assets, accrual for service loss contracts, operating and finance leases, allowance for doubtful accounts receivable, unbilled revenue, common stock warrants, stock-based compensation, income taxes, and contingencies. We base our estimates and judgments on historical experience and on various other factors and assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about (1) the carrying values of assets and liabilities and (2) the amount of revenue and expenses realized that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

There have been no changes in our critical accounting estimates from those reported in our 2023 Form 10-K.

### **Recent Accounting Pronouncements**

#### *Recently Adopted Accounting Guidance*

There have been no significant changes in our reported financial position or results of operations and cash flows resulting from the adoption of new accounting pronouncements.

#### *Recently Issued and Not Yet Adopted Accounting Pronouncements*

Other than the standards mentioned in our 2023 Form 10-K, all issued but not yet effective accounting and reporting standards as of September 30, 2024 are either not applicable to the Company or are not expected to have a material impact on the Company.

### **Item 3 — Quantitative and Qualitative Disclosures about Market Risk**

There has been no material change from the information provided in the Company's 2023 Form 10-K under the section titled Item 7A, "Quantitative and Qualitative Disclosures About Market Risk".

## **Item 4 — Controls and Procedures**

### ***Evaluation of Disclosure Controls and Procedures***

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act, are recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer) as appropriate, to allow for timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of September 30, 2024. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that such disclosure controls and procedures were effective as of September 30, 2024.

### ***Changes in Internal Control over Financial Reporting***

There were no changes during the quarter ended September 30, 2024 in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **Part II. OTHER INFORMATION**

### **Item 1 – Legal Proceedings**

See Note 19, “Commitments and Contingencies”, within Item 1 of this Quarterly Report on Form 10-Q for a discussion regarding material legal proceedings.

Except as otherwise noted, there have been no material developments in legal proceedings. For previously reported information about legal proceedings, refer to Part I, Item 3, “Legal Proceedings”, of the Company’s 2023 Form 10-K.

### **Item 1A – Risk Factors**

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the risk factors that could materially affect the Company’s business, financial condition or future results discussed in the Company’s 2023 Form 10-K in Part I, Item 1A “Risk Factors” and the Company’s Form 10-Q for the quarters ended March 31, 2024 and June 30, 2024 in Part II, Item 1A “Risk Factors”. The risks described in the 2023 Form 10-K and the Form 10-Q for the quarters ended March 31, 2024 and June 30, 2024 are not the only risks that could affect the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect our business, financial condition and/or operating results in the future. As a supplement to the risk factors identified in the 2023 Form 10-K and the Form 10-Q for the quarters ended March 31, 2024 and June 30, 2024, below we have set forth updated risk factors. Other than as provided below, there have been no material changes to the risk factors identified in the 2023 Form 10-K and the Form 10-Q for the quarters ended March 31, 2024 and June 30, 2024.

***The funding of the loan guarantee from the Department of Energy may be delayed, and we may not be able to satisfy all of the technical, legal, environmental or financial conditions acceptable to the Department of Energy to receive the loan guarantee.***

As previously announced, the Company received a conditional commitment for an up to \$1.66 billion loan guarantee from the Department of Energy’s (“DOE”) Loan Programs Office to finance the development, construction, and ownership of up to six green hydrogen production facilities. Our ability to benefit from this loan guarantee is subject to

certain technical, legal, environmental and financial conditions, including negotiation of definitive financing documents, to be satisfied before funding of the loan guarantee. Whether and when our DOE loan guarantee will be funded is subject to a number of factors outside of our control, including political administration changes, legislative enactments, administrative actions. The funding of such loan guarantee may take longer than we expect, and if we are not able to satisfy all of the technical, legal, environmental or financial conditions acceptable to the DOE to receive the loan guarantee, our business may be adversely affected.

***We are subject to legal proceedings and legal compliance risks that could harm our business.***

We are currently, and in the future may continue to be, subject to legal proceedings and similar disputes. In connection with any disputes or litigation in which we are involved, we may incur costs and expenses in connection with defending ourselves or in connection with the payment of any settlement or judgment or compliance with any ruling in connection therewith. It is often challenging to predict the outcome of legal proceedings and similar disputes with certainty. Determining reserves for any litigation is a complex and fact-intensive process that requires significant judgment calls. There can be no assurance that our expectations will prove correct, and even if these matters are resolved in our favor or without significant cash settlements, these matters, and the time and resources necessary to litigate or resolve them, including diversion of management resources, could have a material adverse effect on our business, results of operations, financial condition and cash flows.

**Item 2 - Unregistered Sales of Equity Securities and Use of Proceeds**

(a) Not applicable.

(b) Not applicable.

(c) None.

**Item 3 — Defaults Upon Senior Securities**

None.

**Item 4 — Mine Safety Disclosures**

None.

**Item 5 — Other Information**

*(c) Director and Officer Trading Arrangements*

During the three months ended September 30, 2024, none of the Company's directors or officers (as defined in Rule 16a-1(f) of the Securities Exchange Act) adopted, terminated or modified a Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (as such terms are defined in Item 408 of Regulation S-K).

**Item 6 — Exhibits**

- 3.1 [Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Annual Report on Form 10-K filed on March 16, 2009 and incorporated by reference herein\)](#)
- 3.2 [Certificate of Amendment to Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.3 to Plug Power Inc.'s Annual Report on Form 10-K filed on March 16, 2009 and incorporated by reference herein\)](#)
- 3.3 [Second Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on May 19, 2011 and incorporated by reference herein\)](#)
- 3.4 [Third Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on July 25, 2014 and incorporated by reference herein\)](#)
- 3.5 [Certificate of Correction to Third Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.9 to Plug Power Inc.'s Annual Report on Form 10-K filed on March 10, 2017 and incorporated by reference herein\)](#)
- 3.6 [Fourth Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on June 30, 2017 and incorporated by reference herein\)](#)
- 3.7 [Fifth Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.7 to Plug Power Inc.'s Quarterly Report on Form 10-Q filed on August 5, 2021 and incorporated by reference herein\)](#)
- 3.8 [Certificate of Designations, Preferences and Rights of a Series of Preferred Stock of Plug Power Inc. classifying and designating the Series A Junior Participating Cumulative Preferred Stock. \(filed as Exhibit 3.1 to Plug Power Inc.'s Registration Statement on Form 8-A filed on June 24, 2009 and incorporated by reference herein\)](#)
- 3.9 [Seventh Amended and Restated By-laws of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on April 26, 2024 and incorporated by reference herein\)](#)
- 10.1 [Amendment No. 2 to At Market Issuance Sales Agreement, dated November 7, 2024, by and between Plug Power Inc. and B. Riley Securities, Inc. \(filed as Exhibit 1.1 to Plug Power Inc.'s Current Report on Form 8-K filed on November 7, 2024 and incorporated by reference herein\)](#)
- 10.2\* [Debenture Purchase Agreement, dated November 11, 2024, by and between Plug Power Inc. and YA II PN, Ltd.](#)
- 31.1\* [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2\* [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.1\*\* [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 32.2\*\* [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 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 Labels Linkbase Document
- 101.PRE\* Inline XBRL Taxonomy Extension Presentation Linkbase Document
- 104\* Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Submitted electronically herewith.

\*\* Pursuant to Item 601(b)(32)(ii) of Regulation S-K, this certification is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.



## Signatures

Pursuant to requirements 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.

### **PLUG POWER INC.**

Date: November 12, 2024

By: /s/ Andrew Marsh  
Andrew Marsh  
President, Chief Executive  
Officer and Director (Principal  
Executive Officer)

Date: November 12, 2024

By: /s/ Paul B. Middleton  
Paul B. Middleton  
Chief Financial Officer (Principal  
Financial Officer)

**DEBENTURE PURCHASE AGREEMENT**

**THIS DEBENTURE PURCHASE AGREEMENT** (this "Agreement"), dated as of November 11, 2024, is between **PLUG POWER INC.**, a company incorporated under the laws of the State of Delaware, with principal executive offices located at 125 Vista Boulevard, Slingerlands, New York 12159 (the "Company"), and YA II PN, Ltd., a Cayman Islands exempt limited company (the "Buyer").

**WITNESSETH**

**WHEREAS**, the Company and the Buyer desire to enter into this transaction for the Company to sell and the Buyer to purchase the Convertible Debenture (as defined below) pursuant to an exemption from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act");

**WHEREAS**, the parties desire that, upon the terms and subject to the conditions contained herein, the Company shall issue and sell to the Buyer and the Buyer shall purchase a convertible debenture in the form attached hereto as Exhibit A (the "Convertible Debenture") in the aggregate principal amount of \$200,000,000 (the "Subscription Amount"), which shall be convertible into shares of the Company's common stock, par value \$0.01 per share (the "Common Shares") (as converted, the "Conversion Shares"), which shall be purchased on the date that is one (1) Business Day following the satisfaction of the conditions contained herein (the "Closing"), at a purchase price equal to 95% of the Subscription Amount (the "Purchase Price");

**WHEREAS**, the Company has agreed to register for resale under the Securities Act all of the Registrable Securities (as defined in the Convertible Debenture); and

**WHEREAS**, the Convertible Debenture and the Conversion Shares are collectively referred to herein as the "Securities."

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Buyer hereby agree as follows:

**1. PURCHASE AND SALE OF CONVERTIBLE DEBENTURE.**

(a) Purchase of Convertible Debenture. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to the Buyer, and the Buyer agrees to purchase from the Company at the Closing, a Convertible Debenture with principal amount corresponding to the Subscription Amount set forth opposite the Buyer's name on Schedule I attached hereto.

(b) Closing Date. The Closing shall occur remotely by conference call and electronic delivery of documentation. The date and time of the Closing shall be at 10:00 a.m., New York time, on the first Business Day following the date on which the conditions to the

Closing set forth in Sections 6 and 7 below are satisfied or waived (or such other date as is mutually agreed to by the Company and the Buyer) (the "Closing Date"). As used herein, "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

(c) Form of Payment; Deliveries. Subject to the satisfaction (or waiver) of the terms and conditions set forth in Sections 6 and 7 of this Agreement, on the Closing Date, (i) the Buyer shall deliver to the Company, in immediately available funds to a bank account designated in writing by the Company, the Purchase Price for the Convertible Debenture to be issued and sold to the Buyer at such Closing, minus any fees or expenses to be paid directly from the proceeds of such Closing as set forth herein, and (ii) the Company shall deliver to the Buyer the Convertible Debenture which the Buyer is purchasing at the Closing with a principal amount corresponding with the Subscription Amount set forth in Schedule I hereto, duly executed on behalf of the Company.

(d) Maximum Shares. Notwithstanding anything in this Agreement to the contrary, the Company shall not issue any Common Shares pursuant to the transactions contemplated hereby or by any other Transaction Documents (as defined below) (including the Conversion Shares) if the issuance of Common Shares would exceed the aggregate number of Common Shares that the Company may issue upon conversion pursuant to the terms of the Convertible Debenture in compliance with the Company's obligations under the rules or regulations of the Nasdaq Stock Market LLC ("Nasdaq") (the number of shares which may be issued without violating such rules and regulations is 182,148,267 and shall be referred to as the "Exchange Cap"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Nasdaq for issuances of Common Shares in excess of such amount or (B) is advised by outside counsel to the Company that such approval is not required. The Exchange Cap shall be appropriately adjusted for any stock dividend, stock split, reverse stock split or similar transaction.

## **2. BUYER'S REPRESENTATIONS AND WARRANTIES.**

The Buyer represents and warrants to the Company that, as of the date hereof and as of the Closing Date:

(a) Investment Purpose. The Buyer understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities for its own account for investment purposes and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under or exempt from the registration requirements of the Securities Act. The Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person (as defined below) to distribute any of the Securities in violation of applicable securities laws (this representation and warranty not limiting the Buyer's right to sell the Securities in compliance with applicable securities laws). As used herein, "Person" means a corporation, a limited liability company, an association, a partnership, an organization, a business, an individual, a governmental or political subdivision thereof or a governmental

agency.

(b) Accredited Investor Status. At the time the Buyer was offered the Securities, it was and, as of the date hereof, the Buyer is an "Accredited Investor" as that term is defined in Rule 501(a)(3) of Regulation D.

(c) Reliance on Exemptions. The Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Securities.

(d) Access to Information. The Buyer and its advisors have (i) been afforded the opportunity to ask questions of the Company and its management and to receive information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (ii) the opportunity to obtain such additional information necessary to make an informed investment decision with respect to the Buyer's investment. Neither such inquiries nor any other due diligence investigations conducted by the Buyer or its advisors or representatives, if any, shall modify, amend or affect the Buyer's right to rely on the Company's representations and warranties contained in Section 3 below. The Buyer understands that its investment in the Securities involves a high degree of risk. The Buyer acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby. The Buyer understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Buyer in connection with the purchase of the Securities constitutes legal, tax or investment advice. The Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(e) Transfer or Resale. The Buyer understands that: (i) the Securities have not been registered under the Securities Act or qualified under any state securities laws, and may not be offered for sale, sold, pledged, assigned or transferred unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company an opinion of counsel, in form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration requirements, or (C) such Buyer provides the Company with reasonable assurances (in the form of seller and broker representation letters) that such Securities can be sold, assigned or transferred pursuant to Rule 144 promulgated under the Securities Act, as amended (or a successor rule thereto) (collectively, "Rule 144"), in each case following the applicable holding period set forth therein; and (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities

Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder.

(f) Legends. The Buyer agrees to the imprinting, so long as its required by this Section 2(f), of a restrictive legend on the Securities in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE [AND THOSE SECURITIES INTO WHICH THEY ARE CONVERTIBLE] HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS. THE SECURITIES [AND THOSE SECURITIES INTO WHICH THEY ARE CONVERTIBLE] HAVE BEEN ACQUIRED SOLELY FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TOWARD RESALE AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS.

Certificates evidencing the Conversion Shares shall not be required to contain any legend (including the legend set forth above), (i) while the Conversion Shares are sold or transferred pursuant to an effective registration statement, (ii) following any sale of such Conversion Shares pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (iii) if such Conversion Shares are eligible to be sold under Rule 144 (provided that the Buyer provides the Company with reasonable assurances that such securities are eligible for sale under Rule 144), or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) business days following the delivery by the Buyer to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such securities (endorsed or with stock powers attached and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from the Buyer as may be required, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program ("FAST"), credit the aggregate number of Common Shares to which the Buyer shall be entitled to such Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Company's transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the Buyer, a certificate representing such securities that is free from all restrictive and other legends, registered in the name of the Buyer or its designee. The Buyer agrees that the removal of a restrictive legend from certificates representing Securities as set forth in this Section 2(f) is predicated upon the Company's reliance that the Buyer will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein. The Company shall be responsible for the fees and expenses of its

transfer agent, its legal counsel, and DTC fees required in connection with the delivery of unlegended shares in accordance with the foregoing. The Company shall not be responsible for any fees incurred by the Buyer in connection with the sale or other transfer of such unlegended shares (including any underwriting, brokerage or similar fees or discounts of selling commissions, or any stock transfer taxes or any other taxes borne by the Buyer).

(g) Organization; Authority. The Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(h) Authorization, Enforcement. The Transaction Documents to which the Buyer is a party have been duly and validly authorized, executed and delivered on behalf of the Buyer and shall constitute the legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with their terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by the Buyer of this Agreement and the consummation by the Buyer of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of the Buyer, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Buyer is a party or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Buyer, except, in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Buyer to perform its obligations hereunder.

(j) Certain Trading Activities. The Buyer has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with the Buyer, engaged in any transactions in the securities of the Company (including, without limitation, any Short Sales (as defined below) involving the Company's securities) during the period commencing as of the time that the Buyer first contacted the Company or the Company's agents regarding the specific investment in the Company contemplated by this Agreement and ending on the date and such time that the transactions contemplated by this Agreement are first publicly announced pursuant to Section 4(a)(ii).

(k) No General Solicitation. The Buyer is not purchasing or acquiring the Securities as a result of any general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities.

(l) Not an Affiliate. The Buyer is not (i) an officer or director of the Company or any of its Subsidiaries, (ii) an “affiliate” (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) a “beneficial owner” of more than 10% of the shares of Common Shares (as defined for purposes of Rule 13d3 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)).

(m) Regulation M. The Buyer is aware that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of Common Shares and other activities with respect to the Common Shares by the Buyer.

(n) Beneficial Ownership. The Buyer does not intend to, alone or together with others, make a public filing with the SEC to disclose that it has (or that it together with such other Persons have) acquired, or obtained the right to acquire, at any one time, as a result of the Closing (when added to any other securities of the Company that it or they then own or have the right to acquire), in excess of 19.999% of the outstanding Common Shares or the voting power of the Company on a post-transaction basis that assumes that the Closing shall have occurred.

(o) Excluded Information. Notwithstanding anything to the contrary in this Agreement, the Buyer acknowledges that the Company has access to and is in possession of material nonpublic information regarding the Company and its subsidiaries that is not known to the Buyer (the “Excluded Information”). The Buyer hereby assumes and accepts the risk that the Excluded Information will not be known to the Buyer before making a binding commitment to purchase the Convertible Debenture. The Buyer acknowledges that it has been afforded the opportunity to receive information (including the Excluded Information) about the Company and its financial condition, results of operations, business, properties, management and prospects, and to ask such questions of, and to receive answers from, representatives of the Company concerning such information (including the Excluded Information), in each case sufficient to enable the Buyer to evaluate a decision to enter into this Agreement.

### **3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.**

Except (i) as set forth in the SEC Documents (as defined below) that are available on the SEC’s website through the EDGAR system, (ii) the Draft 10-Q (as defined below) or (iii) the Draft Earnings Release (as defined below), the Company hereby makes the representations and warranties set forth below to the Buyer:

(a) Organization and Qualification. The Company and each of its Subsidiaries are entities duly formed, validly existing and in good standing under the laws of the jurisdiction in which they are formed and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. The Company and each of its significant subsidiaries (as defined in Rule 1-02 of Regulation S-X) is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, “Material Adverse Effect” means

any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments to be entered into by the Company in connection herewith or therewith or (iii) the authority or ability of the Company to perform any of its obligations under any of the Transaction Documents. "Subsidiaries" shall mean any Person in which the Company, directly or indirectly, (x) owns a majority of the outstanding capital stock or holds a majority of the equity or similar interest of such Person or (y) controls or operates all or substantially all of the business, operations or administration of such Person (whether by contract or otherwise), and each of the foregoing, is individually referred to herein as a "Subsidiary."

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Convertible Debenture, the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Convertible Debenture), have been duly authorized by the Company's board of directors and no further filing, consent or authorization is required by the Company, its board of directors or its shareholders or other governmental body (other than filings as may be required by the SEC or the Principal Market (as defined below)). This Agreement has been, and the other Transaction Documents to which the Company is a party will be prior to the Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "Transaction Documents" means, collectively, this Agreement, the Convertible Debenture and each of the other agreements and instruments entered into by the Company or delivered by the Company in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Securities. The issuance of the Securities has been duly authorized and, upon issuance and payment in accordance with the terms of the Transaction Documents, the Securities shall be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, security interests and other encumbrances (collectively, "Liens") with respect to the issuance thereof. As of the Closing Date, the Company's board of directors shall have reserved from its duly authorized capital stock and the Company shall have delivered an instruction letter to its transfer agent instructing the transfer agent to reserve the Required Reserve Amount (as defined in the Convertible Debenture). Upon issuance or conversion in accordance with the Convertible



Debenture, the Conversion Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Shares.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Convertible Debenture, the Conversion Shares, and the reservation of the Required Reserve Amount for issuance of the Conversion Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined below), Bylaws (as defined below), certificate of formation, bylaws or other organizational documents of the Company or any of its Subsidiaries, or the terms or rights of any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, contract, indenture or instrument to which the Company or any of its Subsidiaries is a party or bound or by which of any their assets are bound, encumbered or otherwise affected, or (iii) assuming the accuracy of the representations and warranties in Section 2, result in a violation of any law, rule, regulation, order, judgment or decree, including, without limitation, U.S. federal and state securities laws and regulations, and the rules and regulations of the Nasdaq Capital Market (the "Principal Market," provided however, that in the event the Company's Common Shares are ever listed or traded on any of the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market or the Nasdaq Global Market, the "Principal Market" shall mean that market on which the Common Shares is then listed or traded) and including all applicable laws, rules and regulations applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound, encumbered or otherwise affected, except in the case of (ii) and (iii), for such breaches, violations or conflicts as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(e) Consents. The Company is not required to obtain any consent from, authorization or order of, or make any filing or registration with (other than any filings as may be required by any federal or state securities agencies and any filings as may be required by the Principal Market), any Governmental Entity (as defined below) or any regulatory or selfregulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. Neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of trading of the Common Shares. "Governmental Entity" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasigovernmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multinational organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial,

legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that the Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that the Buyer is not (i) an officer or director of the Company or any of its Subsidiaries, (ii) to its knowledge, an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 10% of the Common Shares (as defined for purposes of Rule 13d3 of the Exchange Act). The Company further acknowledges that neither the Buyer nor any affiliate of the Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by the Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to the Buyer's purchase of the Securities. The Company further represents to the Buyer that the Company's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company and its advisors and representatives, and that the Company is not a client or customer of the Buyer or its affiliates and neither the Buyer nor any of its affiliates has provided any services to the Company or any of its affiliates.

(g) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor, to the Company's knowledge, any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering of any of the Securities to be integrated with other offerings of securities of the Company or cause this offering of the Securities to require approval of shareholders of the Company under any applicable shareholders approval provisions, including, without limitation, under the rules and regulations of Nasdaq . None of the Company, its Subsidiaries, their affiliates or any Person acting on their behalf will take any action or steps that would cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(h) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares will increase in certain circumstances. The Company further acknowledges its obligation to issue the Conversion Shares upon conversion of the Convertible Debenture in accordance with its terms is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other shareholders of the Company.

(i) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested shareholders, business combination, poison pill (including, without limitation, any distribution under a rights agreement), shareholders rights plan or other similar antitakeover provision under the Certificate of Incorporation, Bylaws or other

organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to the Buyer as a result of the transactions contemplated by this Agreement and the other Transaction Documents, including, without limitation, the Company's issuance of the Securities and the Buyer's ownership of the Securities.

(j) SEC Documents; Financial Statements. During the two (2) years prior to the date hereof, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC (other than Section 16 ownership filings) pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC Documents"). As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as applicable and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("GAAP"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal yearend audit adjustments). The reserves, if any, established by the Company or the lack of reserves, if applicable, are reasonable based upon facts and circumstances known by the Company on the date hereof. No other information provided by or on behalf of the Company to the Buyer which is not included in the SEC Documents contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes to the financial statements or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "Financial Statements"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financial Statements to be in compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(k) Absence of Certain Changes. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, except as specifically set forth in a subsequent SEC

Filing filed prior to the date hereof, there has been no Material Adverse Effect, nor any event or occurrence affecting the Company or its Subsidiaries that, individually or in the aggregate, would be reasonably expected to result in a Material Adverse Effect. Since the date of the Company's most recent unaudited financial statements contained in a Form 10-Q, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any material assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any material capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Section 3(k), "Insolvent" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; or (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature.

(l) No Undisclosed Events, Liabilities, Developments or Circumstances No event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur specific to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-3 filed with the SEC relating to an issuance and sale by the Company of its Common Shares and which has not been publicly announced or (ii) would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(m) Regulatory Permits. During the one (1) year prior to the date hereof, (i) the Common Shares have been listed on the Principal Market, (ii) trading in the Common Shares has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Shares from the Principal Market, which has not been

publicly disclosed. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any of its Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit, except where the revocation or modification of such certificates, authorizations or permits would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Foreign Corrupt Practices. None of the Company or any of its Subsidiaries or any director or officer or, to the Company's knowledge, any employee, any agent or any other Person acting for or on behalf of the Company or any of its Subsidiaries (individually and collectively, a "Company Affiliate") have violated the U.S. Foreign Corrupt Practices Act (the "FCPA") or any other applicable antibribery or anticorruption laws, nor, to the Company's knowledge, has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other Person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "Government Official") or to any Person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose, in violation of applicable law, of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or (ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

(o) Equity Capitalization.

(i) Authorized and Outstanding Capital Stock. As of November 7, 2024, the authorized capital stock of the Company consists of (A) 1,500,000,000 Common Shares, of which, 911,196,936 shares (excluding treasury shares) are issued and outstanding and (B) 5,000,000 shares of preferred stock, none of which are issued and outstanding. As of November 7, 2024, the Company has reserved 164,688,972 Common Shares for issuance to parties or persons other than the Buyer.

(ii) Valid Issuance; Available Shares. All of such outstanding shares are duly authorized and have been validly issued and are fully paid and nonassessable. Except as disclosed in the SEC Documents, there are no Common Shares that are (A) reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Convertible Debenture) and (B) that are, as of the date hereof, owned by Persons who are "affiliates" (as defined in Rule 405 of the Securities Act and calculated based on

the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Shares are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, no Person owns 10% or more of the Company's issued and outstanding Common Shares (calculated based on the assumption that all Convertible Securities (as defined below), whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% shareholder for purposes of federal securities laws). "Convertible Securities" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Shares) or any of its Subsidiaries.

(iii) Existing Securities; Obligations. Except as disclosed in the SEC Documents: (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the resale of any of their securities under the Securities Act (except pursuant to this Agreement and except in connection with the Transaction Agreement, dated as of July 20, 2017, by and between the Company and Wal-Mart Stores, Inc., the Transaction Agreement, dated as of August 24, 2022, by and between the Company and Amazon.com, Inc. and the earn-out settlement agreement with Giner ELX, Inc.); (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing antidilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has entered into any Variable Rate Transaction.

(iv) Organizational Documents. The Company has furnished to the Buyer or

filed on EDGAR true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "Certificate of Incorporation"), and the Company's bylaws, as amended and as in effect on the date hereof (the "Bylaws"), and the terms of all convertible securities and the material rights of the holders thereof in respect thereto. Neither the Company nor any of its Subsidiaries is in violation of any term under the Certificate of Incorporation, Bylaws, certificate of formation, bylaws or other organizational documents of the Company or any of its Subsidiaries.

(p) Indebtedness and Other Contracts. Except as disclosed in the SEC Documents, neither the Company nor any of its Subsidiaries, (i) has any material outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "Indebtedness" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent

Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "Contingent Obligation" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(q) Litigation. Except as disclosed in the SEC Documents or the Draft 10-Q, there is no action, suit, arbitration, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, selfregulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Shares or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, which would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries (1) is the subject of any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity that would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or (2) is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, except for violations which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(r) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("Intellectual Property Rights") necessary to conduct their respective businesses as now conducted and presently proposed to be conducted. The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights, except where such claim, action or proceeding would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and its Subsidiaries have taken reasonable security measures to protect their Intellectual Property Rights, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.



(s) Environmental Laws. Except, in each case, as would not be reasonably anticipated to have a Material Adverse Effect, the Company and the Subsidiaries (a) are in compliance with any and all applicable laws relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants, (b) have received and hold all material permits, licenses or other approvals required of them under all such laws to conduct their respective businesses and (c) are in compliance with all material terms and conditions of any such permit, license or approval.

(t) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject through the date of this Agreement or have requested extensions thereof (except where the failure to timely file would not, individually or in the aggregate, have a Material Adverse Effect), (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim. The Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the Internal Revenue Code of 1986, as amended.

(u) Internal Accounting and Disclosure Controls. The Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that is effective 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, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act, as applicable, is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as disclosed in the SEC Documents, neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in

any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(v) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an “investment company,” or a company controlled by an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(w) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged.

(x) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries.

Registration Eligibility. The Initial Registration Statement (as defined herein) was declared effective by the SEC on June 8, 2022. The Company is eligible to use, and meets the transaction requirements of, Form S-3 under the Securities Act and will register the Registrable Securities for resale by the Buyer by filing a prospectus supplement under Rule 424(b)(7) to the Initial Registration Statement.

(y) Shell Company Status. The Company is not and has never been an issuer identified in, or subject to, Rule 144(i).

(z) Sanctions Matters. None of the Company or any of its Subsidiaries or controlled affiliates or, to the knowledge of the Company, any director or officer of the Company or any Subsidiary, is a Person that is, or is owned or controlled by a Person that is (i) the subject of any sanctions administered or enforced by the U.S. Department of Treasury’s Office of Foreign Asset Control (“OFAC”), the United Nations Security Council, the European Union, His Majesty’s Treasury, or other relevant sanctions authorities, including, without limitation, designation on OFAC’s Specially Designated Nationals and Blocked Persons List or OFAC’s Foreign Sanctions Evaders List or other relevant sanctions authority (collectively, “Sanctions”), or (ii) located, organized or resident in a country or territory that is the subject of Sanctions that broadly prohibit dealings with that country or territory (including, without limitation, the Crimea, Zaporizhzhia and Kherson regions, the Donetsk People’s Republic and Luhansk People’s Republic in Ukraine, Cuba, Iran, North Korea, Russia, Sudan and Syria (the “Sanctioned Countries”)). Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer or controlled affiliate of the Company or any of its Subsidiaries, has ever had funds blocked by a United States bank or financial institution, temporarily or otherwise, as a result of OFAC concerns.

(aa) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided the Buyer or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information concerning the Company or any of its Subsidiaries, other than (1) the existence of the transactions contemplated by this Agreement and the other Transaction Documents, (2) a draft of the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2024 which was shared with the Buyer on November 11, 2024 (such Quarterly Report, the "Draft 10-Q") and (3) a draft of the Company's earnings release for the quarter ended September 30, 2024 which was shared with the Buyer on November 11, 2024 (such earnings release, the "Draft Earnings Release"). The Company understands and confirms that the Buyer will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosures provided to the Buyer regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby furnished by or on behalf of the Company or any of its Subsidiaries, taken as a whole, are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to the Buyer pursuant to or in connection with this Agreement and the other Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred, and no information exists, with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed. The Company acknowledges and agrees that the Buyer has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(bb) No General Solicitation. Neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act) in connection with the offer or sale of the Securities.

(cc) Private Placement. Assuming the accuracy of the Buyer's representations and warranties set forth in Section 2, no registration under the Securities Act is required for the offer and sale of the Convertible Debenture by the Company to the Buyer as contemplated hereby. The Securities will be issued hereunder in a manner that does not contravene the rules and regulations of the Principal Market.

(dd) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, nor is the Company currently aware of facts or circumstances which would be reasonably expected to cause a material disagreement of any

kind, between the Company and the accountants and lawyers formerly or presently employed by the Company, and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

In addition, on or prior to the date hereof, the Company had discussions with its accountants about its financial statements previously filed with the SEC. Based on those discussions, the Company has no reason to believe that it will need to restate any such financial statements or any part thereof.

#### 4. COVENANTS.

(a) Effective Registration Statement.

(i) The Registration Statement. The Company has filed, in accordance with the provisions of the Securities Act and the rules and regulations thereunder, with the SEC an "automatic shelf registration statement" as defined under Rule 405 under the Securities Act, on Form S-3 (File Number 333-265488) (the "Initial Registration Statement") including a base prospectus, with respect to the issuance and sale of securities by the Company. The Initial Registration Statement became automatically effective on June 8, 2022, and remains in effect on the date hereof. Except where the context otherwise requires, the Initial Registration Statement, as amended when it became effective, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus subsequently filed with the SEC pursuant to Rule 424(b) under the Securities Act or deemed to be a part of the Initial Registration Statement pursuant to Rule 430B of the Securities Act, is herein referred to as the "Registration Statement."

(ii) Initial Disclosure. On or before the first Business Day immediately following the execution of this Agreement, the Company shall file with the SEC a current report on Form 8-K or such other appropriate form as determined by counsel to the Company (the "Current Report"), relating to the transactions contemplated by this Agreement and a prospectus supplement pursuant to Rule 424(b)(7) of the Securities Act disclosing an updated Plan of Distribution, including the identity of the Buyer and its beneficial ownership of the Underlying Securities, and all other information relating to the transactions contemplated by the Transaction Documents required to be disclosed therein(collectively, the "Initial Disclosure") and shall provide the Buyer with adequate opportunity to review and comment upon the Initial Disclosure prior to its filing. To the extent required or reasonably requested by the Buyer at any time after the Initial Disclosure, the Company shall promptly file with the SEC a prospectus supplement or amendment thereto pursuant to Rule 424(b) of the Securities Act to include any new or additional selling securityholder disclosure.

(iii) Maintaining a Registration Statement. So long as the Registrable Securities are outstanding, the Company shall maintain the effectiveness of the Registration Statement. Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that the Registration Statement (including, without limitation, all amendments and supplements thereto) and the prospectus (including, without limitation, all amendments and supplements thereto) used in connection with the Registration Statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light

of the circumstances in which they were made) not misleading. If the Buyer becomes unable to utilize the Initial Registration Statement for the resale of the Registrable Securities contemplated by this Agreement and the other Transaction Documents, the Company shall promptly file a Registration Statement to the extent necessary to register the resale of the Registrable Securities by the Buyer. Without limiting the generality of the foregoing sentence, the Company shall file a new Registration Statement to continue the registration of the resale of the Registrable Securities and have such new Registration Statement declared effective (or become automatically effective upon filing in the case of an “automatic shelf registration statement” in accordance with the Securities Act) no later than June 8, 2025 to the extent any Registrable Securities are outstanding on such date.

(iv) Filing Procedures. So long as the Registrable Securities are outstanding, not less than one Business Day prior to the filing of a Registration Statement and not less than one Business Day prior to the filing of any related amendments and supplements to any Registration Statement (except for any amendments or supplements caused by the filing of any annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, definitive proxy statements on Schedule 14A and any similar or successor reports), the Company shall furnish to the Buyer copies of all such documents proposed to be filed, which documents (other than those filed pursuant to Rule 424 promulgated under the Securities Act) will be subject to the reasonable and prompt review of the Buyer (in each of which cases, if such document contains material non-public information as consented to by the Buyer pursuant to Section 4(g)(ii), the information provided to the Buyer will be kept confidential until filed). The Buyer shall furnish comments on a Registration Statement and any related amendment and supplement to a Registration Statement to the Company within 24 hours of the receipt thereof. If the Buyer fails to provide comments to the Company within such 24-hour period, then the Registration Statement, related amendment or related supplement, as applicable, shall be deemed accepted by the Buyer in the form originally delivered by the Company to the Buyer.

(v) Delivery of Final Documents. The Company shall furnish to the Buyer without charge, (i) at least one copy of each Registration Statement as declared effective by the SEC and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, all exhibits and each preliminary prospectus, (ii) at the request of the Buyer, at least one copy of the final prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as the Buyer may reasonably request) and (iii) such other documents as the Buyer may reasonably request from time to time in order to facilitate the disposition of the Underlying Securities owned by the Buyer pursuant to a Registration Statement. Filing of the foregoing with the SEC via its EDGAR system shall satisfy the requirements of this Section.

(b) Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyer at the Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States (or to obtain an exemption from such qualification). Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable “Blue Sky” laws),

and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyer.

(c) Reporting Status. Until the date on which the Buyer shall have sold all of the Registrable Securities (the "Reporting Period"), the Company shall file on a timely basis all reports required to be filed with the SEC pursuant to the Exchange Act (reports filed in compliance with the time period specified in rule 12-25 promulgated under the Exchange Act shall be considered timely for this purpose), and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would otherwise no longer require such reporting or permit such termination.

(d) Use of Proceeds. Neither the Company nor any Subsidiary will, directly or indirectly, use the proceeds of the transactions contemplated herein to repay any loans to any executives or employees of the Company or to make any payments in respect of any related party debt. Neither the Company nor any of its Subsidiaries will, directly or indirectly, use the proceeds from the transactions contemplated herein, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person (a) for the purpose of funding or facilitating any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions or is a Sanctioned Country, or (b) in any other manner that will result in a violation of Sanctions or applicable laws by any Person (including any Person participating in the transactions contemplated by this Agreement, whether as underwriter, advisor, investor or otherwise). For the past five (5) years, neither the Company nor any of its Subsidiaries has engaged in, and is now not engaged in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions or was a Sanctioned Country.

(e) Listing. To the extent applicable, the Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Underlying Securities (as defined below) on the Principal Market, subject to official notice of issuance, and shall use reasonable efforts to maintain such listing or designation for quotation (as the case may be) of all Underlying Securities from time to time issuable under the terms of the Transaction Documents on such Principal Market for the Reporting Period. Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Shares on a Principal Market during the Reporting Period. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(e). "Underlying Securities" means the (i) the Conversion Shares, and (ii) any Common Shares issued or issuable with respect to the Conversion Shares, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Shares are converted or exchanged without regard to any limitations on conversion of the Convertible Debenture. Fees. The Company shall pay the Buyer or an affiliate thereof, as directed by the Buyer, a one-time due diligence and structuring fee of \$25,000, which was previously received. The Company shall also reimburse the Buyer

for its out-of-pocket legal expenses incurred in connection with the transaction contemplated by the Transaction Documents, which expenses shall be deducted from the gross proceeds of the Closing; provided, the Company's reimbursement obligation in respect of such out-of-pocket legal expenses shall not exceed \$50,000.

(f) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transactions. From and after the filing of the Current Report, the Company shall have publicly disclosed all material, nonpublic information (if any) provided to the Buyer by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the filing of the Current Report, the Company acknowledges and agrees that any and all confidentiality or similar obligations with respect to the transactions contemplated by the Transaction Documents under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Buyer or any of its affiliates, on the other hand, shall terminate, other than solely with respect to the Draft Form 10-Q and the Draft Earnings Release, which the Buyer shall keep confidential until the Form 10-Q and earnings release for the quarter ended September 30, 2024 are filed with the SEC, at which time any and all confidentiality or similar obligations with respect to the Form 10-Q or the earnings release shall terminate.

(ii) Limitations on Disclosure. The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide the Buyer with any material, nonpublic information regarding the Company or any of its Subsidiaries from and after the date hereof unless prior thereto the Buyer shall have consented in writing to the receipt of such information and agreed with the Company to keep such information confidential. To the extent that the Company delivers any material, non-public information to the Buyer without the Buyer's prior written consent, the Company hereby (x) covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to, or any other duty to the Company in respect of, such material, non-public information, (y) expressly acknowledges that in such case such material, non-public information will be delivered without any expectation of, or entitlement to, the maintenance of any confidentiality or any other duty with respect thereto and (z) covenants and agrees that the Company shall comply with its obligations in Section (4)(f)(iii) below. Subject to the foregoing, neither the Company, its Subsidiaries nor the Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of the Buyer, to make any press release or other public disclosure with respect to such transactions (A) in substantial conformity with the Current Report and (B) as is required by applicable law. Without the prior written consent of the Buyer (which consent may not be unreasonably withheld, delayed or conditioned), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of the Buyer in any filing, announcement, release or otherwise.

(iii) Other Confidential Information. Disclosure Failures In addition to other remedies set forth in this Section 4(h), and without limiting anything set forth in any other Transaction Document, at any time after the Closing Date if the Company, any of its Subsidiaries, or any of their respective officers, directors, employees or agents, provides the Buyer

with material non-public information relating to the Company or any of its Subsidiaries without the Buyer's prior written consent (each, the "Confidential Information"), the Company shall, on or prior to the applicable Required Disclosure Date (as defined below), publicly disclose such Confidential Information on a Current Report on Form 8-K or otherwise (each, a "Disclosure"). From and after such Disclosure, the Company shall have disclosed all Confidential Information provided to the Buyer by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents. In addition, effective upon such Disclosure, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Buyer or any of its affiliates, on the other hand, shall terminate. "Required Disclosure Date" means (x) if the Buyer authorized the delivery of such Confidential Information, either (I) if the Company and the Buyer have mutually agreed upon a date (as evidenced by an e-mail or other writing) of Disclosure of such Confidential Information, such agreed upon date or (II) otherwise, the seventh (7th) calendar day after the date the Buyer first received any Confidential Information or (y) if the Buyer did not authorize the delivery of such Confidential Information, the first (1st) Business Day after the Buyer's receipt of such Confidential Information.

(g) Reservation of Shares. So long as the Convertible Debenture remains outstanding, the Company's board of directors shall have reserved from its duly authorized capital stock and the Company shall have instructed its transfer agent to irrevocably reserve (and no later than three (3) Business Days after the Closing, the transfer agent shall have reserved) the Required Reserve Amount; provided that at no time shall the number of shares of Common Shares reserved pursuant to this Section be reduced other than proportionally in connection with any conversion and/or redemption of the Convertible Debenture, or a reverse stock split. If at any time the number of Common Shares authorized to be issued is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, and recommending that stockholders vote in favor of an increase in such authorized number of shares sufficient to meet the Required Reserve Amount.

(h) Conduct of Business. At all times from the date hereof until the Convertible Debenture has been indefeasibly repaid or converted into Common Shares, the business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(i) Except as expressly set forth below, the Buyer covenants that from and after the date hereof through and ending when the Convertible Debenture is no longer outstanding (the "Restricted Period"), no Buyer or any of its officers, or any entity managed or controlled by the Buyer (collectively, the "Restricted Persons" and each of the foregoing is referred to herein as a "Restricted Person") shall, directly or indirectly, engage in any "short sale" (as such term is defined in Rule 200 of Regulation SHO of the Exchange Act) of the



Common Shares or any securities or loans that are exercisable or convertible for Common Shares, either for its own principal account or for the principal account of any other Restricted Person. Notwithstanding the foregoing, it is expressly understood and agreed that nothing contained herein shall (without implication that the contrary would otherwise be true) prohibit any Restricted Person during the Restricted Period from: (1) selling "long" (as defined under Rule 200 promulgated under Regulation SHO) Common Shares or (2) selling a number of Common Shares equal to the number of Underlying Securities that such Restricted Person is entitled to receive, but has not yet received from the Company or the transfer agent, upon the completion of a pending conversion of the Convertible Debenture for which a valid Conversion Notice (as defined in the Convertible Debenture) has been submitted to the Company pursuant to Section 4(b) of the Convertible Debenture.

(j) Trading Information. Upon the Company's request, the Buyer agrees to provide the Company with trading reports setting forth the number and average sales prices of Conversion Shares sold by the Buyer during the prior trading week.

(k) Prohibited Transactions. At no time from the date hereof through the 45 days following the Closing shall the Company or any of its Subsidiaries (i) enter into, agree to enter into, or effect any Variable Rate Transaction other than Variable Rate Transactions where the Buyer is the sole counterparty, (ii) enter into, agree to enter into or effect any Discounted Offering, (iii) effect any ATM Sales or (iv) otherwise issue any Common Shares, preferred equity, convertible securities or debt securities of the Company; provided, however, that in the event of an Amortization Event (as defined in the Convertible Debenture) and while such Amortization Event shall be continuing, the Company shall be permitted to effect ATM Sales. The foregoing sentence shall not apply to: (a) the issuance of Common Shares upon the conversion of the Debenture; (b) the issuance of Common Shares upon the exercise or vesting or settlement of any option, warrant, restricted stock unit or restricted shares of common stock outstanding on the date hereof, or upon the conversion, redemption or exchange of the 7.00% Convertible Senior Notes due 2026 or the 3.75% Convertible Senior Notes due 2025 outstanding on the date hereof; (c) the issuance of Common Shares, options to acquire Common Shares, restricted stock units, restricted shares of common stock or other equity awards pursuant to the Company's stock option plans or other employee compensation plans as such plans are in existence on the date hereof; (d) the issuance of Common Shares as matching contributions under the Company's 401(k) plan; (e) the entry into any agreement providing for the issuance of Common Shares or any security convertible into or exercisable for shares of Common Stock in connection with bona fide joint ventures, commercial relationships or other strategic transactions, and the issuance of any such securities pursuant to any such agreement; and (f) the amendment, modification, termination or unwind of any Base Call Option Transaction or Additional Call Option Transaction, dated as of May 13, 2020 and May 13, 2020, respectively, between the Company and each of Morgan Stanley & Co. LLC and Wells Fargo Bank, National Association.

"Discounted Offering" shall mean a transaction in which the Company issues or sells any equity, warrants, or debt securities at an implied discount (taking into account all the securities issuable in such offering, including the right to receive additional Common Shares) to the market price of the Common Shares at the time of the offering in excess of

30%.

“ATM Sales” shall mean the sale or issuance of Common Shares pursuant to and in accordance with the terms of that certain At Market Issuance Sales Agreement, dated as of January 17, 2024, and amended as of February 23, 2024 and as of November 7, 2024, by and between the Company and B. Riley Securities, Inc. (as such agreement may be further amended, amended and restated, supplemented or otherwise modified following the date hereof, the “ATM”).

“Variable Rate Transaction” shall mean a transaction in which the Company (i) issues or sells any equity, warrants, or debt securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional Common Shares either (A) at a conversion price, exercise price, exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the Common Shares at any time after the initial issuance of such security, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Shares (including, without limitation, any “full ratchet” or “weighted average” anti-dilution provisions, but not including any standard anti-dilution protection for any reorganization, recapitalization, non-cash dividend, stock split or other similar transaction), (ii) enters into or effects any agreement for the continuous offering or other similar offering of the Common Shares, including, but not limited to, an “equity line of credit” or “ATM agreement”, or (iii) enters into or effects any forward purchase agreement, equity pre-paid forward transaction or other similar offering of securities where the purchaser of securities of the Company receives an upfront or periodic payment of all, or a portion of, the value of the securities so purchased, and the Company receives proceeds from such purchaser based on a price or value that varies with the trading prices of the Common Shares.

## **5. REGISTER; TRANSFER RESTRICTIONS; CONVERSION.**

(a) Register. The Company shall maintain at its principal executive offices or with its transfer agent (or at such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Convertible Debenture in which the Company shall record the name and address of the Person in whose name the Convertible Debenture has been issued (including the name and address of each transferee), and the amount of the Convertible Debenture held by such Person. The Company shall keep the register open and available at all times during business hours for inspection by the Buyer, any subsequent holder and their respective legal representatives.

(b) Transfer Restrictions. The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of the Buyer, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the

Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights and obligations of the Buyer under this Agreement. The Buyer agrees that it will not transfer the Convertible Debenture to any Competitor. For purposes of this Agreement, "Competitor" means (i) any Person that is primarily engaged in any business that directly or indirectly competes with the business of the Company and its Subsidiaries, (ii) any Person that owns (other than a passive shareholder owning less than 20% of the equity interests of such Person) or controls any Person referenced in the foregoing clause (i), or (iii) any activist hedge fund or an Affiliate thereof.

(c) Conversion and Exercise Procedures. The form of Conversion Notice included in the Convertible Debenture sets forth the totality of the procedures required of the Buyer in order to convert the Convertible Debenture. Except as provided in Section 2(e) and Section 5(b), no additional legal opinion, other information or instructions shall be required of the Buyer to convert the Convertible Debenture. The Company shall honor conversions of the Convertible Debenture and shall deliver the Conversion Shares in accordance with the terms, conditions and time periods set forth in the Convertible Debenture.

## **6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.**

The obligation of the Company hereunder to issue and sell the Convertible Debenture to the Buyer at the Closing is subject to the satisfaction, at or before the Closing, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing the Buyer with written notice thereof:

(a) The Buyer shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company.

(b) The Buyer shall have completed and returned a form of the Selling Securityholder Questionnaire in form and substance reasonably satisfactory to the Company.

(c) The Buyer shall have delivered to the Company the Purchase Price (less the amounts withheld pursuant to Section 4(f)) for the Convertible Debenture by wire transfer of immediately available funds in accordance with a letter, duly executed by an officer of the Company, setting forth the wire amounts of the Buyer and the wire transfer instructions of the Company (the "Closing Statement").

(d) The representations and warranties of the Buyer shall be true and correct in all material respects as of the date when made and as of the Closing as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and the Buyer shall have performed, satisfied and complied with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Buyer at or prior to the Closing.

## 7. CONDITIONS TO THE BUYER'S OBLIGATION TO PURCHASE.

The obligation of the Buyer hereunder to purchase the Convertible Debenture at the Closing is subject to the satisfaction, at or before the Closing, of each of the following conditions, provided that these conditions are for the Buyer's sole benefit and may be waived by the Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have duly executed and delivered to the Buyer each of the Transaction Documents to which it is a party, and the Company shall have duly executed and delivered to the Buyer a Convertible Debenture with a principal amount corresponding to the Subscription Amount set forth in Schedule I.

(b) The Initial Registration Statement is effective under the Securities Act as of the Closing. The Initial Disclosure shall have been timely made by the Company and the Company shall have filed with the SEC a prospectus supplement to the Initial Registration Statement registering for resale the Registrable Securities.

(c) The Buyer shall have received the opinion of counsel to the Company, dated as of the Closing Date, in form and substance reasonably acceptable to the Buyer.

(d) The Company shall have delivered to the Buyer a certificate evidencing the incorporation and good standing of the Company in the State of Delaware as of a date within ten (10) days of the Closing Date.

(e) Each and every representation and warranty of the Company shall be true and correct in all material respects (other than representations and warranties qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the date when made and as of the Closing as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions set forth in each Transaction Document required to be performed, satisfied or complied with by the Company at or prior to the Closing.

(f) The Common Shares (A) shall continue to be listed on the Principal Market and (B) shall not have been suspended, as of the Closing, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing, either (I) in writing by the SEC or the Principal Market or (II) by receiving a notification from the Principal Market of falling below the minimum maintenance requirements of the Principal Market.

(g) The Company shall have obtained all governmental, regulatory or third-party consents and approvals, if any, necessary for the sale of the Securities.

(h) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or

Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(i) Since the date of execution of this Agreement, no event or series of events shall have occurred that has resulted in or would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or an Event of Default (as defined in the Convertible Debenture).

(j) The "Listing of Additional Shares" notification with respect to the maximum number of Conversion Shares shall have been submitted to the Principal Market. The Buyer shall have received the Closing Statement.

(k) From the date hereof to the Closing, trading in the Common Shares shall not have been suspended by the SEC or the Principal Market.

(l) The board of directors of the Company has approved the transactions contemplated by the Transaction Documents, (ii) said approval has not been amended, rescinded or modified and remains in full force and effect as of such Closing, and (iii) a true, correct and complete copy of such approval duly adopted by the board of directors of the Company shall have been provided to the Buyer.

(m) The Company shall have delivered to the Buyer a compliance certificate executed by the chief executive officer or the chief financial officer of the Company certifying that Company has complied with all of the conditions precedent to the Closing set forth herein and which may be relied upon by the Buyer as evidence of satisfaction of such conditions without any obligation to independently verify such satisfaction.

(n) The Company and its Subsidiaries shall have delivered to the Buyer such other documents, instruments or certificates relating to the transactions contemplated by the Transaction Documents as the Buyer or its counsel may reasonably request.

## **8. TERMINATION.**

In the event that the Closing shall not have occurred within ten (10) Business Days of the date hereof, then the Buyer shall have the right to terminate its obligations under this Agreement at any time at or after the close of business on such date without liability of the Buyer to any other party, including the Company; provided, however, (i) the right to terminate this Agreement under this Section 8 shall not be available to the Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of the Buyer's breach of this Agreement and (ii) such termination shall not affect any obligation of the Company under this Agreement to reimburse the Buyer for its expenses as described herein. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents prior to the valid termination hereof or thereof or to impair the

right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

## **9. MISCELLANEOUS.**

(a) Governing Law. This Agreement and the rights and obligations of the parties hereunder shall, in all respects, be governed by, and construed in accordance with, the laws (excluding the principles of conflict of laws) of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York), including all matters of construction, validity and performance.

(b) Jurisdiction; Venue; Service.

(i) The Company hereby irrevocably consents to the non-exclusive personal jurisdiction of the state courts of the State of New York (the "Governing Jurisdiction") and, if a basis for federal jurisdiction exists, the non-exclusive personal jurisdiction of the United States District Court for the Southern District of New York.

(ii) The Company agrees that venue shall be proper in any court of the Governing Jurisdiction selected by the Buyer or, if a basis for federal jurisdiction exists, in the United States District Court for the Southern District of New York. The Company waives any right to object to the maintenance of any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any of the state or federal courts of the Governing Jurisdiction on the basis of improper venue or inconvenience of forum.

(iii) Any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, brought by the Company against the Buyer arising out of or based upon this Agreement or any matter relating to this Agreement, or any other Transaction Document, or any contemplated transaction, shall be brought in a court only in the Governing Jurisdiction. The Company shall not file any counterclaim against the Buyer in any suit, claim, action, litigation or proceeding brought by the Buyer against the Company in a jurisdiction outside of the Governing Jurisdiction unless under the rules of the court in which the Buyer brought such suit, claim, action, litigation or proceeding the counterclaim is mandatory, and not permissive, and would be considered waived unless filed as a counterclaim in the suit, claim, action, litigation or proceeding instituted by the Buyer against the Company. The Company agrees that any forum outside the Governing Jurisdiction is an inconvenient forum and that any suit, claim, action, litigation or proceeding brought by the Company against the Buyer in any court outside the Governing Jurisdiction should be dismissed or transferred to a court located in the Governing Jurisdiction. Furthermore, the Company irrevocably and unconditionally agrees that it will not bring or commence any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Buyer arising out of or based upon this Agreement or any matter relating to this Agreement or any other Transaction

Document, or any contemplated transaction, in any forum other than the courts of the State of New York sitting in New York County, and the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such suit, claim, action, litigation or proceeding may be heard and determined in such New York State Court or, to the fullest extent permitted by applicable law, in such federal court. The Company and the Buyer agree that a final judgment in any such suit, claim, action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(iv) The Company and the Buyer irrevocably consent to the service of process out of any of the aforementioned courts in any such suit, claim, action, litigation or proceeding in any manner provided for notices in this Agreement.

(v) Nothing herein shall affect the right of the Buyer to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against the Company or any other Person in the Governing Jurisdiction or in any other jurisdiction.

(c) THE PARTIES MUTUALLY WAIVE ALL RIGHT TO TRIAL BY JURY OF ALL CLAIMS OF ANY KIND ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY MATTER RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTION DOCUMENT, OR ANY CONTEMPLATED TRANSACTION. THE PARTIES ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND THAT THE PARTIES EACH MAKE THIS WAIVER VOLUNTARILY AND KNOWINGLY AFTER CONSULTATION WITH COUNSEL OF THEIR RESPECTIVE CHOICE. THE PARTIES AGREE THAT ALL SUCH CLAIMS SHALL BE TRIED BEFORE A JUDGE OF A COURT HAVING JURISDICTION, WITHOUT A JURY.

(d) Counterparts. This Agreement may be executed in two (2) or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by an email which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(e) Headings; Gender. The headings of this Agreement are only for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and

words of like import refer to this entire Agreement instead of just the provision in which they are found.

(f) Entire Agreement. Amendments. This Agreement, together with the other Transaction Documents, supersedes all other prior oral or written agreements between the Buyer, the Company, their affiliates and persons acting on their behalf with respect to the matters discussed herein, and this Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended or waived other than by an instrument in writing signed by the party to be charged with enforcement. As a material inducement for the Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by the Buyer, any of its advisors or any of its representatives shall affect the Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as disclosed in the SEC Documents," nothing contained in any of the SEC Documents shall affect the Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document.

(g) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing by letter and email and will be deemed to have been delivered: upon (A) receipt, when delivered personally, (B) one (1) Business Day after deposit with an overnight courier service with next day delivery specified or (C) delivery, when sent by electronic mail (provided the sender does not receive a "bounce-back" or other non-delivery notification following such delivery, in each of the foregoing cases, properly addressed to the party to receive the same. The addresses and email addresses for such communications shall be:

If to the Company, to:

Plug Power Inc.  
125 Vista Boulevard,  
Slingerlands, New York  
Attention: General Counsel  
Telephone: (518) 738-0970  
E-Mail: gconway@plugpower.com

With copy to (which shall not constitute notice):

Goodwin Procter LLP  
620 Eighth Avenue  
New York, New York 10018  
Attention: James P. Barri and Audrey S. Leigh  
Email: jbarri@goodwinlaw.com; aleigh@goodwinlaw.com



If to the Buyer, to its address and email address set forth in Schedule I,

With copy to (which shall not constitute notice):

Robert Harrison, Esq.  
c/o Yorkville Advisors Global, LP  
1012 Springfield Avenue  
Mountainside, NJ 07092  
Email: legal@yorkvilleadvisors.com

or to such other address, email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (x) given by the recipient of such notice, consent, waiver or other communication, (y) electronically generated by the sender's e-mail service provider containing the time, date, recipient e-mail address or (z) provided by an overnight courier service shall be rebuttable evidence of personal service or receipt in accordance with clause (A), (B) or (C) above, respectively

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Convertible Debenture (or any portion thereof) (but excluding any purchasers of Underlying Securities, unless pursuant to a written assignment by the Buyer). The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Buyer (other than by merger). In connection with any transfer of any or all of its Securities, the Buyer may assign all, or a portion, of its rights and obligations hereunder in connection with such Securities with five (5) days' written notice to, but without the consent of, the Company, provided such assignee agrees in writing to be bound by the provisions hereof that apply to the Buyer, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such transferred Securities.

(i) Indemnification.

(i) In consideration of the Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless the Buyer and its Affiliates and each of its and their partners, members, officers, directors, employees and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith, and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the

execution, delivery, performance or enforcement of any of the Transaction Documents, or (B) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to the Transaction Documents (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief); provided, however, that the Company will not be liable in any such case solely to the extent that any such claim, loss, damage, liability or expense arise primarily out of or is based upon the inaccuracy of any representations made by the Buyer herein, the Buyer's breach of any covenant, agreement or obligation contained in any of the Transaction Documents, or the Buyer's breach of applicable law or regulation in connection with the Transaction Documents or with respect to the Securities, or the Buyer's gross negligence or willful misconduct. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(i) of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Section 9(i), deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually reasonably satisfactory to the Company and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the Company if: (A) the Company has agreed in writing to pay such fees and expenses; (B) the Company shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (C) the named parties to any such Indemnified Liability (including any impleaded parties) include both such Indemnitee and the Company, and such Indemnitee shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitee and the Company (in which case, if such Indemnitee notifies the Company in writing that it elects to employ separate counsel at the expense of the Company, then the Company shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Company), provided further, that in the case of clause (C) above the Company shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for the Indemnitees. The Indemnitee shall reasonably cooperate with the Company in connection with any negotiation or defense of any such action or Indemnified Liability by the Company and shall furnish to the Company all information reasonably available to the Indemnitee which relates to such action or Indemnified Liability. The Company shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. The Company shall not be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, that the Company shall not unreasonably withhold, delay or condition its consent. The Company shall not, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise, unless such settlement includes an unconditional release of such Indemnitee from all liability in respect to such Indemnified Liability or litigation, and such settlement does not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the Company shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which

indemnification has been made. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnatee under this Section 9(i), except solely to the extent that the Company is actually and materially and adversely prejudiced in its ability to defend such action.

(iii) The indemnification required by this Section 9(i) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, within ten (10) days after bills supporting the Indemnified Liabilities are received by the Company.

(iv) The indemnity agreement contained herein shall be in addition to (A) any cause of action or similar right of the Indemnatee against the Company or others, and (B) any liabilities the Company may be subject to pursuant to the law.

(j) No Strict Construction. The language used in this Agreement will be deemed to be the language mutually chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

**[REMAINDER PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

**COMPANY:**

**PLUG POWER INC.**

By: /s/ Paul B. Middleton

Name: Paul B. Middleton

Title: Chief Financial Officer

**IN WITNESS WHEREOF**, the Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

**BUYER:**

**YA II PN, LTD.**

By: Yorkville Advisors Global, LP  
Its: Investment Manager

By: Yorkville Advisors Global II, LLC  
Its: General Partner

By: /s/ Troy Rillo  
Name: Troy J. Rillo  
Title: Authorized Signatory

## EXHIBIT A

### FORM OF CONVERTIBLE DEBENTURE

NEITHER THIS DEBENTURE NOR THE SECURITIES INTO WHICH THE DEBENTURE IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE. THESE SECURITIES HAVE BEEN SOLD IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

PLUG POWER INC.

### CONVERTIBLE DEBENTURE

Principal Amount: \$200,000,000

Debenture Issuance Date: November [ ], 2024

Debenture Number: PLUG-1

**FOR VALUE RECEIVED**, PLUG POWER INC., an entity organized under the laws of the state of Delaware (the "Company"), hereby promises to pay to the order of YA II PN, Ltd., or its registered assigns (the "Holder") the amount set out above as the principal amount (as reduced or increased pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "Principal") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("Interest") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Debenture Issuance Date (the "Issuance Date") until the same becomes due and payable, whether upon the Maturity Date or acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Convertible Debenture (including all debentures issued in exchange, transfer or replacement hereof, this "Debenture") was originally issued pursuant to the Debenture Purchase Agreement dated as of November 11, 2024, as it may be amended from time to time (the "Purchase Agreement") between the Company and the Buyer(s) listed on the Schedule of Buyers attached thereto. Certain capitalized terms used herein are defined in Section (15).

### GENERAL TERMS

B. Maturity Date. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, accrued and unpaid Interest, and

any other amounts outstanding pursuant to the terms of this Debenture. The Maturity Date" shall be [ ], 2026<sup>1</sup>, as may be extended at the option of the Holder. Other than as specifically permitted by this Debenture, the Company may not prepay or redeem any portion of the outstanding Principal and accrued and unpaid Interest.

C. Interest Rate and Payment of Interest Interest shall accrue on the outstanding Principal balance hereof at an annual rate equal to 6.00% ("Interest Rate"), which Interest Rate shall increase to an annual rate of 16.00% upon the occurrence of an Event of Default (for so long as such event remains uncured and unwaived). Interest shall be calculated based on a 365-day year and the actual number of days elapsed, to the extent permitted by applicable law.

D. Payment Dates. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

#### PAYMENTS

E. Monthly Payments. If, at any time after the Issuance Date and from time to time thereafter, an Amortization Event occurs, then the Company shall make monthly payments (each such monthly payment, an "Amortization Payment") beginning on the 10th Trading Day after the Amortization Event Date and continuing on the same day of each successive Calendar Month (each such payment date, an "Amortization Payment Date"). Each Amortization Payment shall be in an amount equal to the sum of (i) \$22,500,000 of Principal, or the then-outstanding Principal if the then-outstanding Principal less than such amount (the "Amortization Principal Amount"), *plus* (ii) the Payment Premium (as defined below) in respect of such Amortization Principal Amount, *plus* (iii) the accrued and unpaid Interest in respect of the Amortization Principal Amount to, but not including, such payment date. The obligation of the Company to make monthly Amortization Payments related to an Amortization Event shall cease (with respect to any payment that has not yet come due) if any time after the Amortization Event Date (A) in the event of a Floor Price Event, on the date that is the 7th consecutive Trading Day that the daily VWAP is greater than 110% of the Floor Price then in effect, (B) in the event of an Exchange Cap Event, the date the Company has obtained stockholder approval to increase the number of Common Shares under the Exchange Cap and/or the Exchange Cap no longer applies, or (C) in the event of a Registration Default, the condition or event causing the Registration Default has been cured or the Common Shares issuable upon conversion of this Debenture would be Freely Tradable, unless, in any of the foregoing cases, a subsequent Amortization Event occurs. If this Debenture is held by more than one holder, the Amortization Principal Amount, Payment Premium in respect of such Amortization Principal Amount and Interest payable shall be allocated to each holder based on each holder's pro-rata portion of the total outstanding Principal amount outstanding on this Debenture.

F. Reserved.

G. The Company shall have the right, but not the obligation, to redeem (Optional Redemption) early in cash a portion or all amounts outstanding under this Debenture

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<sup>1</sup> Note to Draft: To be the date 24 months from the issuance date.

at the Redemption Amount (as defined below) as described in this Section 2(c) *provided* that (A) the Company provides the Holder with at least three (3) Trading Days' prior written notice (each, a "Variable Redemption Notice") of its desire to exercise an Optional Redemption, which Variable Redemption Notice (i) shall be delivered to the Holder after the closing of regular trading hours on a Trading Day, and (ii) may only be given if the VWAP on the date such Variable Redemption Notice is delivered is less than the Fixed Price, (B) the Company provides the Holder with at least 30 calendar days' prior written notice (each, a "Fixed Price Stock Redemption Notice") of its desire to exercise an Optional Redemption, which Fixed Price Stock Redemption Notice (i) shall be delivered to the Holder after the closing of regular trading hours on a Trading Day, and (ii) may only be given if the VWAP on the date such Fixed Price Stock Redemption Notice is delivered is equal to or greater than the Upper Redemption Threshold or (C) the Company provides the Holder with three (3) Trading Days' prior written notice (each, a "Fixed Price Cash Redemption Notice" and together with a Variable Redemption Notice and a Fixed Price Stock Redemption Notice, each a "Redemption Notice") of its desire to exercise an Optional Redemption, which Fixed Price Cash Redemption Notice (i) shall be delivered to the Holder after the closing of regular trading hours on a Trading Day, and (ii) may only be given if the VWAP on the date such Fixed Price Cash Redemption Notice is delivered is equal to or greater than the Upper Redemption Threshold. Each Redemption Notice shall be irrevocable and shall specify the outstanding balance of the Debentures to be redeemed and the Redemption Amount. The "Redemption Amount" shall be (x) in the case of a Variable Redemption Notice or a Fixed Price Stock Redemption Notice, an amount equal to the outstanding Principal balance being redeemed by the Company, plus the Payment Premium in respect of such Principal amount, plus all accrued and unpaid Interest in respect of such Redemption Amount to, but not including, such redemption date, or (y) in the case of a Fixed Price Cash Redemption Notice, an amount equal to (I) the outstanding Principal balance being redeemed by the Company, *plus* 5% of such Principal amount, *plus* all accrued and unpaid Interest in respect of such Redemption Amount to, but not including, such redemption date *divided by* (II) the Fixed Price *multiplied by* (III) the VWAP of the Common Shares on the date the Redemption Notice is received by the Holder, which Redemption Amount shall be paid in all cases in cash by wire transfer of immediately available funds to an account designated by the Holder. After receipt of a Redemption Notice, the Holder shall have, in the case of a Variable Redemption Notice, three (3) Trading Days or, in the case of a Fixed Price Stock Redemption Notice, thirty (30) calendar days (in any case, beginning with the Trading Day immediately following the date such Redemption Notice is received) to elect to convert all or any portion of the outstanding Principal of this Debenture *plus* the Payment Premium in respect of such Principal *plus* all accrued and unpaid Interest in respect of such Redemption Amount to, but not including, such redemption date. On the fourth (4<sup>th</sup>) Trading Day after the applicable Variable Redemption Notice is delivered or the thirty-first (31<sup>st</sup>) Trading Day after the applicable Fixed Price Stock Redemption Notice is delivered, the Company shall deliver to the Holder the applicable Redemption Amount to the extent not converted and otherwise after giving effect to conversions or other permitted payments made during, in the case of a Variable Redemption Notice, the preceding three (3) Trading Day period or, in the case of a Fixed Price Stock Redemption Notice, the preceding thirty (30) Trading Day period. In the case of a Fixed Price Cash Redemption Notice, the Holder shall not be permitted to convert any portion of the outstanding Principal or accrued and unpaid Interest to be redeemed by the Company pursuant to such Fixed Price Cash Redemption Notice, and on the fourth (4<sup>th</sup>) Trading Day after the applicable Fixed Price Cash Redemption Notice is delivered, the Company shall deliver to the holder the applicable Redemption Amount.



H. Other than as specifically set forth in this Debenture, the Company shall not have the ability to make any early repayments without the consent or at the request of the Holder.

EVENTS OF DEFAULT.

I. An "Event of Default", wherever used herein, means any one of the following events (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

1. The Company's failure to pay to the Holder any amount of Principal after such payment is due, or any Redemption Amount, Payment Premium, Interest, or other cash amounts when and as due under this Debenture or any other Transaction Document and such failure continues for a period of five (5) Business Days;

2. (A) The Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors or (B) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive days;

3. The Company or any Significant Subsidiary of the Company shall default in any of its obligations under any note, debenture, or any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing (other than long term leases that are fully secured by restricted cash or a bona fide letter of credit) or factoring arrangement of the Company or any Significant Subsidiary of the Company in an aggregate amount exceeding \$25,000,000 (or its foreign currency equivalent), whether such indebtedness (or money due under a long term leasing (other than long term leases that are fully secured by restricted cash or a bona fide letter of credit) or factoring arrangement) now exists or shall hereafter be created and such default shall result in such indebtedness (or money due under a long term leasing (other than long term leases that are fully secured by restricted cash or a bona fide letter of credit) or factoring arrangement) becoming or being declared due and payable and such default is not thereafter cured, waived, rescinded or annulled or such indebtedness for borrowed money (or money due under a long term leasing (other

than long term leases that are fully secured by restricted cash or a bona fide letter of credit) or factoring arrangement) is not discharged within ten (10) Business Days;

4. a final judgment or judgments for the payment of money aggregating in excess of \$25,000,000 (or its foreign currency equivalent) (excluding any amounts covered by insurance) are rendered against the Company and/or any of its Significant Subsidiaries and which judgment or judgments, as the case may be, is not discharged, paid, waived or stayed within thirty (30) days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

5. The Common Shares shall cease to be quoted or listed for trading, as applicable, on any Principal Market for a period of ten (10) consecutive Trading Days;

6. The occurrence of any Change of Control Transaction (as defined in Section (20)) unless in connection with such Change of Control Transaction this Debenture is redeemed under Section (2)(c);

7. The Company's (A) failure to deliver the required number of shares of Common Shares to the Holder within three (3) Trading Days after the applicable Share Delivery Date or (B) written notice to any Holder, or a public announcement by the Company, at any time, of its intention not to comply with a request for conversion of any Debenture into Common Shares that is properly tendered for conversion in accordance with the provisions of the Debenture, other than pursuant to Section (4)(c);

8. Any material representation or warranty made by the Company in Section 3 of the Purchase Agreement, or any waiver hereunder or under another Transaction Document, or in any report, certificate, financial statement or other document furnished pursuant to any Transaction Document, shall prove to have been incorrect when made or deemed made;

9. (A) Any material provision of any Transaction Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder, ceases to be in full force and effect, other than if caused by a Holder or any of its Affiliates; (B) the Company or any other authorized Person on the Company's behalf contests in writing the validity or enforceability of any material provision of any Transaction Document; or (C) the Company unreasonably denies in writing that it has any or further liability or obligation under any Transaction Document, or purports in writing to revoke, terminate (other than in line with the relevant termination provisions) or rescind any Transaction Document;

10. The Company uses the proceeds of the issuance of this Debenture, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulations T, U and X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof), or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose;

11. The Company shall fail to observe or perform any covenant, agreement or warranty contained in, or otherwise commit any breach or default of any provision

of this Debenture (except as may be covered by Section (3)(a)(i) through (3)(a)(x) hereof) or any other Transaction Document which is not cured or remedied within the time prescribed or if no time is prescribed within ten (10) Business Days after receiving written notice thereof from a Holder.

J. During the time that any portion of this Debenture is outstanding, if any Event of Default has occurred (other than an event with respect to the Company described in Section (3)(a)(ii)), the full unpaid Principal amount of this Debenture, together with accrued and unpaid Interest and other amounts owing in respect thereof and other Obligations accrued hereunder and under the other Transaction Documents, to the date of acceleration, shall become at the Holder's election given by notice pursuant to Section (8), immediately due and payable in cash; provided that, in the case of any event with respect to the Company described in Section (3)(a)(ii), the full unpaid Principal amount of this Debenture, together with accrued and unpaid Interest and other amounts owing in respect thereof and other Obligations accrued hereunder and under the other Transaction Documents, to the date of acceleration, shall automatically become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Company. Furthermore, in addition to any other remedies, the Holder shall have the right (but not the obligation) to convert, at the Conversion Price, on one or more occasions all or part of the Conversion Amount in accordance with Section (4) and subject to the limitations in Sections (4)(c)(i) and (4)(c)(ii) (but not subject to any other limitations contained herein, including, but not limited to, the limitations set forth in Sections 4(c)(iii) and (4)(b)(i)(2)) at any time after (x) a Specified Event of Default (for so long as such Specified Event of Default is continuing) or (y) the Maturity Date, provided that this Debenture remains outstanding. The Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, (other than required notice of conversion) and the Holder may immediately enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such declaration may be rescinded and annulled by the Holder in writing at any time prior to payment hereunder. No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

CONVERSION OF DEBENTURE. This Debenture shall be convertible into Common Shares, on the terms and conditions set forth in this Section (4).

K. Conversion Right. Subject to the limitations of Section (4)(c), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into fully paid and nonassessable Common Shares in accordance with Section (4)(b), at the Conversion Price (as defined below). The number of Common Shares issuable upon conversion of any Conversion Amount pursuant to this Section (4)(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price. The Company shall not issue any fraction of a Common Shares upon any conversion. All calculations under this Section (4) shall be rounded to the nearest \$0.0001. If the issuance would result in the issuance of a fraction of a Common Shares, the Company shall round such fraction of a Common Shares up to the nearest whole share. The Company shall pay any and all transfer, stamp and similar taxes that may be payable with respect to the issuance and delivery of Common Shares upon conversion of any Conversion Amount.

1. "Conversion Amount" means the portion of the Principal and accrued Interest to be converted with respect to which this determination is being made.

2. "Conversion Price" means, as of any Conversion Date (as defined below) or other date of determination, \$2.90 per Common Share (the "Fixed Price"); provided that for purposes of the second sentence of Section (3)(b), Section (4)(b)(i)(2), Section (4)(c)(iii)(1), Section (4)(c)(iii)(2)(ii) (and for purposes of Section (4)(a) to the extent a conversion is pursuant to the second sentence of Section (3)(b), Section (4)(b)(i)(2), Section (4)(c)(iii)(1) or Section (4)(c)(iii)(2)(ii)) and Section (5)(d) "Conversion Price" means, as of any Conversion Date or other date of determination, the lower of (i) the Fixed Price and (ii) 97.25% of the lowest daily VWAP for the Common Shares during the three (3) Trading Days immediately preceding the applicable Conversion Date or other date of determination (the "Market Price"), but which Market Price shall not be lower than the Floor Price then in effect. The Fixed Price shall be adjusted from time to time pursuant to the other terms and conditions of this Debenture.

L. Mechanics of Conversion.

1. Optional Conversion.

(a) To convert any Conversion Amount into Common Shares on any date (a "Conversion Date"), the Holder shall (A) transmit by email (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "Conversion Notice") to the Company and (B) if required by Section (4)(b)(iii), surrender this Debenture to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking reasonably satisfactory to the Company with respect to this Debenture in the case of its loss, theft or destruction). On or before the second (2<sup>nd</sup>) Trading Day following the date of receipt of a Conversion Notice (the "Share Delivery Date"), the Company shall (X) if legends are not required by applicable law as reasonably determined by the Company to be placed on certificates or the book-entry position of the Common Shares and provided that the Company's transfer agent is participating in the Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program, instruct such transfer agent to credit such aggregate number of Common Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission system or (Y) if the Company's transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, or if restrictive legends are required by applicable law as reasonably determined by the Company to be placed on certificates or book-entry positions of the Common Shares, issue and deliver to the address as specified in the Conversion Notice, a certificate or book-entry position, registered in the name of the Holder or its designee, for the number of Common Shares to which the Holder shall be entitled. If this Debenture is physically surrendered for conversion and the outstanding Principal of this Debenture is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than five (5) Business Days after receipt of this Debenture and at its own expense, issue and deliver to the Holder a new Debenture representing the outstanding Principal not converted. The Person or Persons entitled to receive the Common Shares issuable upon a conversion of this Debenture shall be treated for all purposes as the record holder or holders of such Common Shares upon the transmission of a Conversion Notice.

(b) Notwithstanding the foregoing Section (4)(b)(i)(1), but subject to Section (4)(c)(iii)(2), prior to the Holder submitting any Conversion Notice at a

Conversion Price equal to the Market Price (each such conversion, a Market Price Conversion"), the Holder shall submit a notice in the form attached hereto as Exhibit II to the Company (a Market Price Conversion Notice") no earlier than twenty (20) Business Days and no less than five (5) Business Days prior to the first calendar day of any Calendar Month during which the Holder intends to submit Market Price Conversions. Upon receipt of a Market Price Conversion Notice, the Company may elect to either (i) permit the Holder to submit Market Price Conversions during such Calendar Month in accordance with the maximum aggregate amount of such Market Price Conversions set forth therein and in accordance with Section (4)(c)(iii)(1) or (ii) prohibit Market Price Conversions during such Calendar Month; provided, that the Company may only prohibit Market Price Conversions during such Calendar Month if (x) the Company delivers notice to the Holder of its election to do so prior to the first calendar day of such Calendar Month (a "Market Price Conversion Payment Notice") and (y) the Company makes a cash payment to the Holder by wire transfer of immediately available funds on or before the last Trading Day of such Calendar Month in an amount equal to (A) \$22,500,000 of Principal *plus* (B) the Payment Premium on such Principal amount *plus* (C) all accrued and outstanding Interest on such Principal as of the first calendar day of such Calendar Month (such cash payment, a "Market Price Conversion Payment"). If the Holder does not receive a Market Price Conversion Payment Notice prior to the first calendar day of such Calendar Month, the Company shall be deemed to have elected to permit the Holder to submit Market Price Conversions during the applicable Calendar Month beginning on the first calendar day of such Calendar Month. For the avoidance of doubt and without implication that the opposite would otherwise be true, the Holder shall not be required to convert any portion of this Debenture at any time, including, but not limited to, following its submission of a Market Price Conversion Notice. Any and all conversions of this Debenture shall be at the sole discretion of the Holder. Notwithstanding anything to the contrary in the foregoing, (x) a Market Price Conversion Notice may not be submitted (and will be void if submitted) during the period beginning on the date an Amortization Event occurs and ending on the date the obligation of the Company to make monthly Amortization Payments related to such Amortization Event ceases (any such period, the "Amortization Period") and (y) if an Amortization Period begins after the submission of a Market Price Conversion Notice, no further conversions of the Debenture will be permitted pursuant to this Section 4(b)(i)(2) and no Market Price Conversion Payment will be owed in relation to such Market Price Conversion Notice; provided, any Market Price Conversions undertaken prior to such Amortization Period beginning will be honored and if the Company elected to allow Market Price Conversions with respect to such Market Price Conversion Notice pursuant to clause (i) of this Section (4)(b)(i)(2) above, the Holder may continue to make Market Price Conversions pursuant to such Market Price Conversion Notice under which no Market Price Conversion Payment was contemplated.

2. Company's Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to an applicable Share Delivery Date to comply with its obligations to issue and deliver Common Shares to the Holder pursuant to Section (4)(b)(i)(1) to which the Holder is entitled upon such Holder's conversion of any Conversion Amount in respect of such Share Delivery Date (a "Conversion Failure"), and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) Common Shares to deliver in satisfaction of a sale by the Holder of Common Shares issuable upon such conversion that the Holder anticipated receiving from the Company (a "Buy-In"), then the Company shall, within three (3) Business Days after the Holder's request and in the Holder's discretion, either (i)

pay cash to the Holder in an amount equal to the Holder's total purchase price (including reasonable and documented brokerage commissions and other reasonable and documented out of pocket expenses, if any) for the Common Shares so purchased (the "Buy-In Price"), at which point the Company's obligation to deliver such certificate (and to issue such Common Shares) shall terminate, or (ii) promptly honor its obligation to deliver such Common Shares in accordance with Section (4)(b)(i)(1) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Common Shares *multiplied by* (B) the Closing Price on the Conversion Date, and compliance by the Company with the foregoing will constitute a cure of any default or Event of Default for failing to so comply with its obligations to issue and deliver Common Shares to the Holder pursuant to Section (4)(b)(i)(1) to which the Holder is entitled upon such Holder's conversion of any Conversion Amount; provided, the Company shall only be permitted to cure such an Event of Default for failing to comply with its obligations to issue and deliver Common Shares to the Holder by timely satisfying its obligations under this Section (4)(b)(ii) and for which the Holder exercised its Buy-in right on two (2) occasions during the term of this Debenture, and any subsequent Event of Default for failing to comply with its obligations to issue and deliver Common Shares to the Holder and for which the Holder exercised its Buy-in right shall not be curable by timely satisfying its obligations under this Section (4)(b)(ii).

3. Registration; Book-Entry. The Company shall maintain a register (the "Register") for the recordation of the name and address of the Holder of this Debenture (and the name and address of any Person who is transferred all or any portion of this Debenture to the extent permitted by the terms hereof or the Purchase Agreement) and the Principal amount (and stated Interest with respect thereto) held by the Holder (and any Person who is transferred all or any portion of this Debenture to the extent permitted by the terms hereof or the Purchase Agreement) (the "Registered Debenture"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of this Debenture shall treat each Person whose name is recorded in the Register as the owner of this Debenture for all purposes, including, without limitation, the right to receive payments of Principal and Interest hereunder, notwithstanding notice to the contrary. A Registered Debenture may be assigned, transferred or sold in whole or in part as permitted by the terms hereof or the Purchase Agreement, and any such permitted assignment, transfer or sale shall be reflected on the Register by the Company. Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of this Debenture in accordance with the terms hereof, the Holder shall not be required to physically surrender this Debenture to the Company unless (A) the full Conversion Amount represented by this Debenture is being converted or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Debenture upon physical surrender of this Debenture. The Holder and the Company shall maintain records showing the Principal and Interest converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Debenture upon any partial conversion.

M. Limitations on Conversions.

1. Beneficial Ownership. The Holder shall not have the right to convert any portion of this Debenture to the extent that after giving effect to such conversion, the Holder, together with any affiliate thereof, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in

excess of 4.99% of the number of Common Shares outstanding immediately after giving effect to such conversion. The Holder shall have the authority and obligation to determine whether the restriction contained in this Section (4)(c)(i) will limit any particular conversion hereunder and to the extent that the Holder determines that the limitation contained in this Section (4)(c)(i) applies, the determination of which portion of the Principal amount of this Debenture is convertible shall be the responsibility and obligation of the Holder. The provisions of this Section (4)(c)(i) may be waived by a holder (but only as to itself and not to any other holder) upon not less than 65 days prior notice to the Company. Other holders shall be unaffected by any such waiver.

2. Principal Market Limitation. Notwithstanding anything in this Debenture to the contrary, the Company shall not issue any Common Shares pursuant to the terms of this Debenture if the issuance of such Common Shares would exceed the aggregate number of Common Shares that the Company may issue upon conversion of this Debenture and under the other Transaction Documents in compliance with the Company's obligations under the rules or regulations of the Principal Market (the number of shares which may be issued without violating such rules and regulations is 182,148,267 and shall be referred to as the "Exchange Cap"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Shares in excess of such amount or (B) as advised by outside counsel to the Company that such approval is not required.

3. Other Conversion Limitations.

(a) Subject to Sections (3)(b), (4)(c)(i), (4)(c)(ii) and (4)(c)(iii)(2), Market Price Conversions may be made during any Calendar Month but only to the extent permitted under Section (4)(b)(i)(2); provided that Market Price Conversions made during any Calendar Month shall not be in respect of more than \$22,500,000 of Principal *plus* (y) all accrued and unpaid Interest on such Principal so converted at the Market Price.

(b) Notwithstanding anything to the contrary contained in this Debenture or in any other Transaction Document, there shall be no limitations, including, but not limited to, with respect to timing or amount, on conversions of this Debenture (i) at the Fixed Price at any time and (ii) at the Market Price following a Specified Event of Default for so long as such Specified Event of Default is continuing, other than, in either case of the foregoing clauses (i) and (ii) of this sentence, those limitations set forth in Sections (4)(c)(i) and (4)(c)(ii) of this Debenture in accordance with their respective terms.

N. Other Provisions.

1. All calculations under this Section (4) shall be rounded to the nearest \$0.0001 or whole share.

2. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued Common Shares at least 125,000,000 Common Shares for issuance upon conversion of this Debenture (the "Required Reserve Amount"), provided that such Required Reserve Amount may be reduced (i) to zero in connection with the cancellation of this Debenture, (ii) proportionately in connection with a reverse stock split

undertaken by the Company and (iii) to the maximum number of Common Shares issuable upon conversion of this Debenture (assuming for purposes of this clause (iii) that (x) this Debenture is convertible at the Floor Price as of the date of determination and (y) any such conversion shall not take into account any limitations on the conversion of the Debenture set forth herein) if such maximum number of Common Shares is less than the Required Reserve Amount then in effect. The Required Reserve Amount shall be proportionately adjusted upward in connection with any stock split, stock dividend or other similar corporate action that results in an increase in the number of Common Shares outstanding (other than, for the avoidance of doubt, issuances of Common Shares not in connection with any stock split or stock dividend or other similar corporate action). The Company covenants that, upon issuance in accordance with conversion of this Debenture in accordance with its terms, the Common Shares, when issued, will be validly issued, fully paid and nonassessable.

3. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section (3) herein for the Company's failure to deliver Common Shares upon conversion in the manner and within the time period specified herein and such Holder shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief, in each case without the need to post a bond or provide other security. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

4. Legal Opinions. The Company is obligated, upon reasonable notice, to use its commercially reasonable efforts to cause its legal counsel to promptly deliver legal opinions to the Company's transfer agent in connection with any restrictive legend removal, if required by such transfer agent, upon (A) the resale of the Underlying Securities from time to time pursuant to the Registration Statement (if the Registration Statement is available for use in connection with such resale), or (B) the expiration of any holding period or other requirement, as determined by the Company upon advice of legal counsel, for which the Underlying Securities may bear legends restricting the transfer thereof. To the extent such opinions are not provided (either promptly or at all), then, other than because of an action or inaction of the Holder including if the Holder has failed to deliver reasonably requested representations to such transfer agent, the Company and the Company's legal counsel in connection with such opinion, then, in addition to being a default that may mature into an Event of Default in accordance with Section (3)(a)(xi), the Company agrees to reimburse the Holder for all reasonable and documented costs incurred by the Holder in connection with any legal opinions paid for by the Holder in connection with sale or transfer of Underlying Securities. The Holder shall notify the Company of any such costs and expenses it incurs that are referred to in this section from time to time and all amounts owed hereunder shall be paid by the Company with reasonable promptness.

5. The Company hereby expressly acknowledges and agrees that (i) the Purchase Agreement and all Transaction Documents to which it is a party are ratified and confirmed and shall remain in full force and effect and (ii) it has no set off, counterclaim, defense or other claim or dispute with respect to any Transaction Document as of the Issuance Date.



6. The Company hereby covenants and agrees that, upon the reasonable request of the Holder, the Company shall take all reasonably necessary action, at the Company's sole expense, to ensure the continued registration for resale of the Registrable Securities, in accordance with applicable securities laws and regulations and subject to the occurrence and duration of any Blackout Period.

#### ADJUSTMENTS TO CONVERSION PRICE.

O. Adjustment of Fixed Price and Floor Price in Certain Circumstances If the Company, at any time while this Debenture is outstanding, shall (a) pay a stock dividend or otherwise make a distribution or distributions on its Common Shares in Common Shares, (b) subdivide outstanding Common Shares into a larger number of shares, (c) combine (including by way of reverse stock split) outstanding Common Shares into a smaller number of shares, or (d) issue by reclassification of shares of the Common Shares any shares of capital stock of the Company, then each of the Fixed Price and the Floor Price shall be multiplied by a fraction of which the numerator shall be the number of Common Shares (excluding treasury shares, if any) outstanding before such event and of which the denominator shall be the number of Common Shares outstanding after such event. Any adjustment made pursuant to this Section (5)(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

P. Adjustment of Fixed Price upon Issuance of Common Shares If the Company, at any time while this Debenture is outstanding, issues or sells any Common Shares or Convertible Securities (other than shares issued or sold by the Company in connection with any Excluded Securities) for a consideration per share (plus any related underwriting spread or placement agent fee paid to an underwriter or placement agent in connection with such issuance or sale) (the "New Issuance Price") less than a price equal to the Fixed Price in effect immediately prior to such issue or sale (such price the "Applicable Price") (the foregoing a "Dilutive Issuance"), then immediately after such Dilutive Issuance the Fixed Price then in effect shall be reduced to an amount equal to the New Issuance Price. For the purposes hereof, if the Company in any manner issues or sells any Convertible Securities (other than shares issued or sold by the Company in connection with any Excluded Securities) and the lowest price per share for which one Common Share is issuable upon such conversion or exchange or exercise thereof is less than the Applicable Price (without giving effect to any "make-whole" shares issuable in connection with a fundamental change, change of control, delisting or liquidation or dissolution or a redemption (in each case, however so defined)), then such Common Shares shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. No further adjustment of the Fixed Price shall be made upon the actual issuance of such Common Shares upon conversion or exchange or exercise of such Convertible Securities.

Q. Other Events. If any event occurs of the type contemplated by the provisions of Section (5)(a) or (b) but not expressly provided for by such provisions, then the Company's Board of Directors will make an appropriate adjustment in the Fixed Price so as to protect the rights of the Holder under this Debenture; provided that no such adjustment will increase the Fixed Price as otherwise determined pursuant to this Section (5). If the Company issues

any Convertible Securities with a variable conversion formula that is more favorable than this Debenture, then at the option of the Holder, the Market Price formula shall be changed to match that of the new Convertible Securities (it being understood that a customary "make-whole" provision for conversions in connection with certain change of control transactions, delisting events or the approval of a liquidation or dissolution or redemptions does not constitute a variable conversion formula).

R. Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of Common Shares are entitled to receive securities or other assets with respect to or in exchange for Common Shares (a "Corporate Event"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon a conversion of this Debenture such securities or other assets received by the holders of Common Shares in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Debenture initially been issued with conversion rights for the form of such consideration (as opposed to Common Shares) at a conversion rate for such consideration commensurate with the Conversion Price (as of the effective date of the Corporate Event). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Required Holders. The provisions of this Section (5)(d) shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Debenture.

S. Whenever the Fixed Price, Market Price formula or Floor Price is adjusted pursuant to this Section (5), the Company shall promptly provide the Holder with a written notice setting forth the Fixed Price, Market Price formula and Floor Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

T. Whenever there has been a payment of a dividend or other distribution on the Common Shares of any shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "Spin-Off"), the Fixed Price shall be decreased based on the following formula:

$$FxP_1 = FxP_0 \times \frac{MP_0}{FMV + MP_0}$$

where,

$FxP_0$  = the Fixed Price in effect immediately prior to the end of the Fx Valuation Period;

$FxP_1$  = the Fixed Price in effect immediately after the end of the Fx Valuation Period;

$FMV_0$  = the average of the VWAP of the capital stock distributed to holders of the Common Shares applicable to one Common Share over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "Fx Valuation Period"); and

$MP_0$  = the average of the VWAP of the Common Shares over the Fx Valuation Period.

The decrease to the Fixed Price under the preceding paragraph shall occur on the last Trading Day of the Ex Valuation Period; *provided* that if the relevant Conversion Date occurs during the Ex Valuation Period, references to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the Conversion Date in determining the Fixed Price

U. Whenever there has been a Spin-Off, the Floor Price shall be decreased based on the following formula:

$$FIP_1 = FxP_0 \times \frac{MP_0}{FMV + MP_0}$$

where,

FIP<sub>0</sub> = the Floor Price in effect immediately prior to the end of the FI Valuation Period;

FIP<sub>1</sub> = the Floor Price in effect immediately after the end of the FI Valuation Period;

FMV<sub>0</sub> = the average of the VWAP of the capital stock distributed to holders of the Common Shares applicable to one Common Share over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "FI Valuation Period"); and

MP<sub>0</sub> = the average of the VWAP of the Common Shares over the FI Valuation Period.

The decrease to the Floor Price under the preceding paragraph shall occur on the last Trading Day of the FI Valuation Period; *provided* that if the relevant Conversion Date occurs during the FI Valuation Period, references to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the Conversion Date in determining the Floor Price.

V. Reserved.

INDEMNIFICATION. With respect to Registrable Securities which are included in the Registration Statement :

(a) To the fullest extent permitted by law, the Company shall, and hereby does, indemnify, hold harmless and defend the Holder, its investment manager and their respective directors, officers, partners, members, employees, agents, representatives, and successors and assigns of, and each Person, if any, who controls Holder within the meaning of the Securities Act or the Exchange Act (each, an "Indemnified Person"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several (collectively, "Claims") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("Indemnified Damages"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or

threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in the Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other “blue sky” laws of any jurisdiction in which Registrable Securities are offered (“Blue Sky Filing”), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) related the resale of the Registrable Securities or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation there under relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement (the matters in the foregoing clauses (i) through (iii) being, collectively, “Violations”). The Company shall reimburse the Indemnified Persons and each such controlling person promptly as such expenses are incurred and are due and payable, for any legal fees or disbursements or other reasonable expenses incurred by them in connection with investigating or defending any such Claim.

Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section (6)(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of an Indemnified Person expressly for use in connection with the preparation of the Registration Statement, prospectus or any such amendment thereof or supplement thereto; (ii) shall not be available to the extent such Claim is based on a failure of an Indemnified Person to deliver or to cause to be delivered the prospectus made available by the Company; (iii) shall not be available to the extent such Claim is based on any finally adjudicated violation of law by an Indemnified Person in the sale of Registrable Securities due to the manner of sale of the Registrable Securities, (iv) shall not be available to the extent such Claim is based on any use by an Indemnified Person of a free writing prospectus, (v) shall not be available to the extent such Claim is based on an Indemnified Person's sale of Registrable Securities during a Blackout Period and (vi) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person.

(b) In connection with a Registration Statement and any prospectus related to the resale of the Registrable Securities, the Holder agrees to indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section (6)(a), the Company, each of its directors, each of its officers, employees, representatives, or agents and each Person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (each an “Indemnified Party”), against any Claim or Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages: (i) arise out of or is based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of an Indemnified Person expressly for use in connection with the preparation of the Registration Statement, prospectus or any such amendment thereof or supplement thereto; (ii)

arise out of or is based upon a failure of an Indemnified Person to deliver or to cause to be delivered the prospectus made available by the Company; (iii) arise out of or is based upon any finally adjudicated violation of law by an Indemnified Person in the sale of Registrable Securities due to the manner of sale of the Registrable Securities, (iv) arise out of or is based upon any use by an Indemnified Person of a free writing prospectus or (v) arise out of or is based upon an Indemnified Person's sale of Registrable Securities during a Blackout Period; and, subject to Section (6)(d), the Holder will reimburse any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section (6)(b) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Holder, which consent shall not be unreasonably withheld; provided, further, however, that the Holder shall be liable under this Section (6)(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Holder (or its affiliates) as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section (6)(b) with respect to any prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the prospectus was corrected and such new prospectus was delivered to the Holder prior to the Holder's use of the prospectus to which the Claim relates.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section (6) of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section (6), deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one (1) counsel for such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. The Indemnified Party or Indemnified Person shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other

compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section (6), except solely to the extent that the indemnifying party is actually prejudiced in its ability to defend such action.

(d) The indemnification required by this Section (6) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

#### REISSUANCE OF THIS DEBENTURE

W. Transfer. If this Debenture is to be transferred, the Holder shall surrender this Debenture to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Debenture (in accordance with Section (7)(d)), registered in the name of the registered transferee or assignee, representing the outstanding Principal being transferred by the Holder (along with any accrued and unpaid Interest thereof) and, if less than the entire outstanding Principal is being transferred, a new Debenture (in accordance with Section (7)(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of Section (4)(b)(iii) following conversion or redemption of any portion of this Debenture, the outstanding Principal represented by this Debenture may be less than the Principal stated on the face of this Debenture.

X. Lost, Stolen or Mutilated Debenture. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Debenture, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Debenture, the Company shall execute and deliver to the Holder a new Debenture (in accordance with Section (7)(d)) representing the outstanding Principal.

Y. Debenture Exchangeable for Different Denominations. This Debenture is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Debenture or Debentures (in accordance with Section (7)(d)) representing in the aggregate the outstanding Principal of this Debenture, and each such new Debenture will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

Z. Issuance of New Debentures. Whenever the Company is required to issue a new Debenture pursuant to the terms of this Debenture, such new Debenture (i) shall be of like tenor with this Debenture, (ii) shall represent, as indicated on the face of such new Debenture, the Principal remaining outstanding (or in the case of a new Debenture being issued pursuant to Section (7)(a) or Section (7)(c), the Principal designated by the Holder which, when added to the Principal represented by the other new Debentures issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Debenture immediately prior to such issuance of new Debentures), (iii) shall have an issuance date, as indicated on the face of such new Debenture, which is the same as the Issuance Date of this Debenture, (iv) shall have the same rights and conditions as this Debenture, and (v) shall represent accrued and unpaid Interest from the Issuance Date.

NOTICES. Any notices, consents, waivers or other communications required or permitted to be given under the terms hereof must be in writing by letter or email and will be deemed to have been delivered: upon either (A) receipt, when delivered personally, (B) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same or (C) receipt, when sent by electronic mail. The addresses and email addresses for such communications shall be:

If to the Company, to:

Plug Power Inc.  
125 Vista Boulevard,  
Slingerlands, New York  
Attention: General Counsel  
Telephone: (518) 738-0970  
E-Mail: gconway@plugpower.com

with a copy (which shall not constitute notice) to:

Goodwin Procter LLP  
620 Eighth Avenue  
New York, New York 10018  
Attention: James P. Barri and Audrey S. Leigh  
E-Mail: jbarri@goodwinlaw.com;  
aleigh@goodwinlaw.com

If to the Holder:

YA II PN, Ltd  
c/o Yorkville Advisors Global, LLC  
1012 Springfield Avenue  
Mountainside, NJ 07092  
Attention: Mark Angelo  
Telephone: 201-985-8300  
Email: Legal@yorkvilleadvisors.com

or at such other address and/or email and/or to the attention of such other person as the recipient party has specified by written notice given to each other party three (3) Business Days prior to the effectiveness of such change. Written confirmation of receipt (i) given by the recipient of such notice, consent, waiver or other communication, (ii) electronically generated by the sender's email service provider containing the time, date, recipient email address or (iii) provided by a nationally recognized overnight delivery service, shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

NO IMPAIRMENT. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligations of the Company, which are absolute and unconditional, to pay the Principal of, Interest and other charges (if any) on, this Debenture at the time, place, and rate, and in the currency, herein prescribed. This Debenture is a direct obligation of the Company. As long as this Debenture is outstanding, the Company shall not, without the consent of the Holder, (i) except with respect to any contractual commitment in effect prior to the date hereof and disclosed in the Periodic Reports or in accordance with any Approved Stock Plan, repay, repurchase or offer to repay, repurchase or otherwise acquire (or allow any of its Subsidiaries repay, repurchase or offer to repay, repurchase or otherwise acquire) for cash Common Shares of the Company (provided, the foregoing shall not (A) restrict any such repayment, repurchase or other acquisition or offer that is financed in connection with such repayment, repurchase or offer), (B) prohibit repurchases by the Company deemed to occur upon exercise of stock options if such Common Shares represent a portion of the exercise price of such options, (C) prohibit the repurchase, acquisition or retirement of Common Shares deemed to occur upon the vesting of restricted shares, or the Company's withholding of a portion of the Common Shares granted or awarded to pay for the taxes payable upon such grant or award (or the vesting thereof) or to cover any other tax withholding obligations of the Company or any of the Company's Subsidiaries upon the exercise, vesting or settlement of equity incentive awards (including stock options, restricted stock awards and restricted stock unit awards) or (D) purchases, redemptions or other acquisitions of fractional Common Shares of the Company arising out of a consolidation, merger or sale of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, that is permitted by this Debenture); (ii) enter into any agreement with respect to the foregoing; or (iii) enter into any agreement, arrangement or transaction in or of which the terms thereof would contractually restrict or prohibit the Company from performing its obligations under this Debenture, including, without limitation, the obligation of the Company to make cash payments hereunder.

NO STOCKHOLDER RIGHTS. This Debenture shall not entitle the Holder to any of the rights of a stockholder of the Company, including without limitation, the right to vote, to receive dividends and other distributions, or to receive any notice of, or to attend, meetings of stockholders or any other proceedings of the Company, unless and to the extent converted into Common Shares in accordance with the terms hereof.

CHOICE OF LAW; VENUE; WAIVER OF JURY TRIAL

AA. Governing Law. This Debenture and the rights and obligations of the Parties hereunder shall, in all respects, be governed by, and construed in accordance with, the laws (excluding the principles of conflict of laws) of the State of New York (the "Governing



Jurisdiction") (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York), including all matters of construction, validity and performance.

BB. Jurisdiction; Venue; Service.

1. The Company and the Holder hereby irrevocably consents to the non-exclusive personal jurisdiction of the state courts of the Governing Jurisdiction and, if a basis for federal jurisdiction exists, the non-exclusive personal jurisdiction of any United States District Court for the Governing Jurisdiction.

2. The Company and the Holder agree that venue shall be proper in any court of the Governing Jurisdiction selected by the Company or the Holder, as applicable, or, if a basis for federal jurisdiction exists, in any United States District Court in the Governing Jurisdiction. The Company and the Holder waive any right to object to the maintenance of any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any of the state or federal courts of the Governing Jurisdiction on the basis of improper venue or inconvenience of forum.

3. Any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, brought by the Company against the Holder or the Holder against the Company arising out of or based upon this Debenture or any matter relating to this Debenture, or any other Transaction Document, or any contemplated transaction, shall be brought in a court only in the Governing Jurisdiction. Neither the Company nor the Holder shall file any counterclaim against the Holder or the Company, as the case may be, in any suit, claim, action, litigation or proceeding brought by the Holder against the Company or by the Company against the Holder, as the case may be, in a jurisdiction outside of the Governing Jurisdiction unless under the rules of the court in which the Company or the Holder, as the case may be, brought such suit, claim, action, litigation or proceeding the counterclaim is mandatory, and not permissive, and would be considered waived unless filed as a counterclaim in such jurisdiction in the suit, claim, action, litigation or proceeding instituted by the Holder against the Company or the Company against the Holder, as the case may be. The Company and the Holder agree that any forum outside the Governing Jurisdiction is an inconvenient forum and that any suit, claim, action, litigation or proceeding brought by the Company against the Holder or the Holder against the Company in any court outside the Governing Jurisdiction should be dismissed or transferred to a court located in the Governing Jurisdiction. Furthermore, the Company and the Holder irrevocably and unconditionally agree that they will not bring or commence any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Holder or the Company, as the case may be, arising out of or based upon this Debenture or any matter relating to this Debenture, or any other Transaction Document, or any contemplated transaction, in any forum other than the courts of the State of New York sitting in New York County, and the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such suit, claim, action, litigation or proceeding may be heard and determined in such New York State Court or, to the fullest extent permitted by applicable law, in such federal court. The Company and the Holder agree that a final judgment in any such suit, claim, action, litigation or

proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

4. The Company and the Holder irrevocably consent to the service of process out of any of the aforementioned courts in any such suit, claim, action, litigation or proceeding by the mailing of copies thereof by registered or certified mail postage prepaid, to it at the address provided for notices in this Debenture, such service to become effective thirty (30) days after the date of mailing.

5. Nothing herein shall affect the right of the Holder or the Company to serve process in any other manner permitted by law.

CC. THE PARTIES MUTUALLY WAIVE ALL RIGHT TO TRIAL BY JURY OF ALL CLAIMS OF ANY KIND ARISING OUT OF OR BASED UPON THIS DEBENTURE OR ANY MATTER RELATING TO THIS DEBENTURE, OR ANY OTHER TRANSACTION DOCUMENT, OR ANY CONTEMPLATED TRANSACTION. THE PARTIES ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND THAT THE PARTIES EACH MAKE THIS WAIVER VOLUNTARILY AND KNOWINGLY AFTER CONSULTATION WITH COUNSEL OF THEIR RESPECTIVE CHOICE. THE PARTIES AGREE THAT ALL SUCH CLAIMS SHALL BE TRIED BEFORE A JUDGE OF A COURT HAVING JURISDICTION, WITHOUT A JURY.

VOTE TO ISSUE, OR CHANGE THE TERMS OF, THE DEBENTURE AND OTHER DEBENTURES. Except for Section 4(c)(ii) which may not be amended, modified or waived by the parties hereto, the prior written consent of the Required Holders and the Company shall be required for any change, waiver or amendment to this Debenture and the Other Debentures. Any change, waiver or amendment so approved shall be binding upon all existing and future holders of this Debenture and the Other Debentures; *provided, however*, that no such change, waiver or, as applied to this Debenture or any of the Other Debentures, shall, without the written consent of the particular holder of this Debenture or such Other Debenture, (i) reduce the amount of Principal, reduce the amount of accrued and unpaid Interest, reduce the Interest Rate or change the Maturity Date, of this Debenture or the Other Debentures, (ii) change the definition of Required Holders, (iii) make any change that adversely affects the conversion rights of this Debenture or the Other Debentures other than as required by this Debenture or the Other Debentures, (iv) reduce the Redemption Amount or change the times at which, or the circumstances under which, this Debenture or the Other Debentures may or will be redeemed or repurchased by the Company, (v) make this Debenture payable in a currency other than U.S. dollars, or (vi) change the ranking of this Debenture or the Other Debentures or (vii) modify any of the provisions of, or impair the right of any holder of this Debenture or the Other Debentures under, this Section (12). An instrument in writing signed by the Required Holders and the Company shall be required for any change or amendment or waiver of any provision to this Debenture and the Other Debentures

WITHHOLDING. Notwithstanding anything in this Debenture to the contrary, the Company shall be entitled to deduct or withhold from any payment made pursuant to this Debenture or the conversion consideration deliverable upon conversion of this Debenture in whole or in part any amount required to be deducted or withheld under applicable law with respect to the

making of such payment or delivery; provided, that before making any deduction or withholding pursuant to this Section (13), the Company shall (i) provide reasonable prior notice to the Holder in respect of whom such deduction or withholding is to be made (together with the legal basis therefor), (ii) afford the Holder with a reasonable opportunity to provide any forms or other documentation or take such other steps in order to avoid such deduction or withholding, and (iii) reasonably cooperate with the Holder in good faith to reduce or eliminate any amounts that would otherwise be deducted or withheld. To the extent that amounts are so deducted or withheld and paid over to the relevant governmental authority, such amounts shall be treated for all purposes with respect to this Debenture or such conversion consideration, as applicable, as having been paid to the Person in respect of which such deduction or withholding was made. The Holder shall deliver to the Company on the date hereof (and from time to time thereafter upon the reasonable request of the Company) an executed Internal Revenue Service Form W-9 or W-8, as applicable.

PREVAILING PARTY. If any legal action, dispute or other proceeding is brought for the enforcement of this Debenture or any other Transaction Document, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Debenture or any other Transaction Document, the successful or prevailing party or parties shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys' fees, court costs and all expenses, including, without limitation, all such fees, costs and expenses in connection with any appeal, incurred in that action, dispute or other proceeding, in addition to any other relief to which such party or parties may be entitled.

SEVERABILITY. Any waiver by the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture. Any waiver must be in writing.

CONSTRUCTION; HEADINGS. This Debenture shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Debenture are for convenience of reference and shall not form part of, or affect the interpretation of, this Debenture.

CANCELLATION. After all Principal, any accrued Interest and any other amounts at any time owed on this Debenture have been paid in full, this Debenture shall automatically be deemed canceled and shall not be reissued, sold or transferred.

NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS. No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under this Debenture or for any claim based on, in respect of, or by reason of, such obligations or its creation. By accepting this Debenture, the Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of this Debenture.

SEVERABILITY. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture shall remain in effect, and if any provision is

inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances. If it shall be found that any Interest or other amount deemed Interest due hereunder shall violate applicable laws governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum permitted rate of interest. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the Principal of or Interest on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impeded the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

CERTAIN DEFINITIONS. For purposes of this Debenture, the following terms shall have the following meanings:

"Affiliate" has the meaning set forth in Rule 144 as in effect on the Issuance Date.

"Amortization Event" shall mean (i) the daily VWAP is less than the Floor Price then in effect for five (5) Trading Days during a period of seven (7) consecutive Trading Days (a "Floor Price Event"), (ii) unless the Company has obtained the approval from its stockholders in accordance with the rules of the Principal Market for the issuance of Common Shares pursuant to the transactions contemplated in this Debenture and the other Transaction Documents in excess of the Exchange Cap, the Company has issued in excess of 99% of the Common Shares available under the Exchange Cap (an "Exchange Cap Event"), or (iii) a Registration Default has occurred (the last such day of each such occurrence, a "Amortization Event Date").

DD. "Amortization Payment date" shall have the meaning given such term in Section (2)(a).

EE. "Amortization Principal Amount" shall have the meaning set forth in Section (2)(a).

"Applicable Price" shall have the meaning set forth in Section (5)(b).

"Approved Stock Plan" means any employee benefit plan or share incentive plan which has been approved by the Board of Directors of the Company, pursuant to which the Company's securities may be issued to any employee, officer or director for services provided to the Company.

"Blackout Commencement Notice" means a notice sent by the Company to the Holder that states that the use of the Registration Statement for the resale of Registrable Securities is suspended; provided that the Company may only send such notice to the Holder if there occurs or exists any pending corporate development, filing with the Commission or any other

event, in each case that, in the Company's reasonable and good faith judgment, makes it appropriate to suspend the availability of the Registration Statement.

"Blackout Period" means the period from and including the time of the delivery of any Blackout Commencement Notice to the Holder to the time of the delivery of the related Blackout Termination Notice to the Holder.

"Blackout Period Extension Determination" means a good faith determination by the Company's board of directors (or a committee thereof duly authorized to act on behalf of such board) that the termination of a Blackout Period would require public disclosure relating to a proposed or pending material business transaction and such disclosure would be reasonably likely to impede the consummation of such transaction or would otherwise be materially detrimental to the Company and its Subsidiaries, taken as a whole.

"Blackout Termination Notice" means a notice sent by the Company to the Holder that states the suspension of the Registration Statement for the resale of the Registrable Securities is no longer needed or appropriate.

FF. "Bloomberg" means Bloomberg Financial Markets (or if not available, a similar service provider of national recognized standing).

GG. "Business Day" means any day except Saturday, Sunday and any day which shall be a federal legal holiday in the United States or a day on which banking institutions in the State of New York are authorized or required by law or other government action to close.

HH. "Buy-In" shall have the meaning set forth in Section (4)(b)(ii).

II. "Buy-In Price" shall have the meaning set forth in Section (4)(b)(ii).

JJ. "Calendar Month" means one of the twelve months of the year.

KK. "Change of Control Transaction" means the occurrence of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of fifty percent (50%) of the voting power of the Company (except that the acquisition of voting securities by the Holder shall not constitute a Change of Control Transaction for purposes hereof), (b) any transaction or event (whether by means of (A) a share exchange or tender offer applicable to the Common Shares that is subject to the then-applicable tender offer rules under the Exchange Act or (B) a liquidation, consolidation, recapitalization, reclassification, combination or merger of the Company) or a series of related transactions or related events pursuant to which the outstanding Common Shares of the Company are exchanged for, converted into or constitute solely the right to receive cash, securities or other property, and after giving effect to such transaction or event, the Persons who held the Common Shares immediately prior to such transaction or event cease to hold a majority of the voting power of the acquirer or successor immediately following such transaction or event, or (c) a sale, assignment, transfer, conveyance or other disposal of all or substantially all of the properties and/or other assets of the Company and its Subsidiaries on a

consolidated basis to another Person other than one or more of the Company's direct or indirect Wholly Owned Subsidiaries, unless, in connection with the occurrence of any of the events, transactions or other actions described in the foregoing subclauses (a) through (c), all amounts due under this Debenture are paid in full (and solely in the case of a Change of Control Transaction, if the VWAP of the Common Shares as of the relevant date of determination is above the Fixed Price but less than Upper Redemption Threshold, the Company will be permitted to redeem the Debenture pursuant to a Fixed Price Cash Redemption Notice) or the Holder consents to such Change of Control Transaction.

LL. "Claims" shall have the meaning set forth in Section (6)(a).

MM. "Closing Price" means the price per share in the last reported trade of the Common Shares on a Principal Market or on the exchange which the Common Shares is then listed as quoted by Bloomberg.

NN. "Commission" means the Securities and Exchange Commission.

OO. "Common Shares" means the common stock, par value \$0.01, of the Company, as such common stock may hereafter be changed or reclassified.

PP. "Company" shall have the meaning set forth in the preamble of this Debenture.

QQ. "Conversion Date" shall have the meaning set forth in Section (4)(b)(i)(1).

RR. "Conversion Failure" shall have the meaning set forth in Section (4)(b)(ii).

SS. "Conversion Notice" shall have the meaning set forth in Section (4)(b)(i)(1).

TT. "Convertible Securities" means any securities (other than Options issued in a non-capital raising transaction or issued to lenders in connection with a loan transaction) directly or indirectly convertible into or exercisable or exchangeable for Common Shares.

UU. "Corporate Event" shall have the meaning set forth in Section (5)(d).

VV. "Debenture" shall have the meaning set forth in the preamble of this Debenture.

WW. "Dilutive Issuance" shall have the meaning set forth in Section (5)(b).

XX. "DTC" shall have the meaning set forth in Section (4)(b)(i)(1).

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

ZZ. “Exchange Cap” shall have the meaning set forth in Section (4)(c)(ii).

AAA. “Ex-Dividend Date” means the first date on which the Common Shares trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Share on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

BBB. “Excluded Securities” means any Common Shares issued or issuable or deemed to be issued by the Company: (i) under any Approved Stock Plan, including in respect of Options issued under any Approved Stock Plan, (ii) upon conversion of any of the Debentures issued pursuant to the Purchase Agreement (including the Debentures and Other Debentures and the Common Shares issued in connection with this Debenture and any of the Other Debentures); (iii) upon conversion, exercise or exchange of any Options or Convertible Securities which are outstanding on the day immediately preceding the date of the Purchase Agreement (or are issued pursuant to a binding agreement entered into prior to such date and the early vesting of any Options thereunder); provided, that such issuance of Common Shares upon exercise of such Options or Convertible Securities (x) is made pursuant to the terms of such Options or Convertible Securities in effect on such date (or such date they are issued pursuant to such binding agreement) and such Options or Convertible Securities are not amended, modified or changed on or after such date in a manner that decreases the effective exercise or conversion price or (y) results in the issuance of a number of Common Shares that is less than would be required pursuant to the terms of such Options or Convertible Securities, (iv) upon a stock split, reverse stock split, distribution of bonus shares, combination or other recapitalization events, (v) pursuant to any ATM Sales (as defined in the Purchase Agreement), to the extent permitted to be made under the Purchase Agreement, and, after 45 days from the Issuance Date, any other sales of Common Shares pursuant to an agreement that is substantially similar to that certain At Market Issuance Sales Agreement, dated as of January 17, 2024, and amended as of February 23, 2024 and as of November 7, 2024, by and between the Company and B. Riley Securities, Inc, (vi) pursuant to any other agreement by and between the Company and the Holder, (vii) as matching contributions under the Company’s 401(k) plan or (viii) upon exercise or conversion of Options issued in a non-capital raising transaction or issued to lenders in connection with a loan transaction.

CCC. “Fixed Redemption Notice” shall have the meaning set forth in Section (2)(c).

DDD. “Floor Price” solely with respect to the Market Price, shall mean \$[ ]<sup>2</sup> per Common Share.

EEE. “Freely Tradable” means with respect to a security that such security (x) is not identified by a “restricted” CUSIP or ISIN number; (y) is not represented by any certificate that bears a restricted security legend, and (z) is eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise if held by a Person that is not an Affiliate of the

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<sup>2</sup> Insert price equal to 20% of the VWAP of the Common Shares on the last complete trading day immediately prior the Issuance Date.

Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act.

FFF. “Fundamental Transaction” means any of the following: (1) the Company effects any merger or consolidation of the Company with or into another Person and the Company is the non-surviving company (other than a merger or consolidation with a Wholly Owned Subsidiary of the Company for the purpose of redomiciling the Company, provided such domicile is within the United States of America), (2) the Company effects any sale of all or substantially all of its and its Subsidiaries’ consolidated assets in one or a series of related transactions, or (3) the Company effects any reclassification of the Common Shares or any compulsory share exchange pursuant to which the Common Shares are effectively converted into or exchanged for other securities, cash or property.

GGG. “Governing Jurisdiction” shall have the meaning set forth in Section (11)(a).

HHH. “Holder” shall have the meaning set forth in the preamble of this Debenture.

III. “Indemnified Damages” shall have the meaning set forth in Section (6)(a).

JJJ. “Indemnified Person” shall have the meaning set forth in Section (6)(a).

KKK. “Installment Payment” shall have the meaning given such term in Section (2)(b).

LLL. “Installment Payment Date” shall have the meaning given such term in Section (2)(b).

MMM. “Installment Principal Amount” shall have the meaning given such term in Section (2)(b).

NNN. “Issuance Date” shall have the meaning set forth in the preamble of this Debenture.

OOO. “Interest Rate” shall have the meaning set forth in Section (1)(b).

PPP. “Market Price Conversion” shall have the meaning set forth in Section (4)(b)(i)(2).

QQQ. “Market Price Conversion Notice” shall have the meaning set forth in Section (4)(b)(i)(2).

RRR. “Market Price Conversion Payment” shall have the meaning set forth in Section (4)(b)(i)(2).



SSS. "Market Price Conversion Payment Notice" shall have the meaning set forth in Section (4)(b)(i)(2).

TTT. "Maturity Date" shall have the meaning set forth in Section (1)(a).

UUU. "New Issuance Price" shall have the meaning set forth in Section (5)(b).

VVV. "Obligations" means all of the Company's obligations, indebtedness or liabilities of the Company to the Holder under the Transaction Documents at any time.

WWW. "Optional Redemption" shall have the meaning set forth in Section (2)(c).

XXX. "Options" means any rights, warrants or options to subscribe for or purchase Common Shares or Convertible Securities.

YYY. "Other Debentures" means any other debentures issued pursuant to the Purchase Agreement and any other debentures, notes, or other instruments issued in exchange, replacement, or modification of the foregoing.

ZZZ. "Payment Premium" means 2.75%.

AAAA. "Periodic Reports" shall mean all of the Company's reports required to be filed by the Company with the Commission under applicable laws and regulations (including, without limitation, Regulation S-K), including annual reports (on Form 10-K), quarterly reports (on Form 10-Q), and current reports (on Form 8-K), for so long as any amounts are outstanding under this Debenture.

BBBB. "Person" means a corporation, an association, a partnership, organization, a business, an individual, a government or political subdivision thereof or a governmental agency.

CCCC. "Principal" shall have the meaning set forth in the preamble of this Debenture.

DDDD. "Principal Market" means the Nasdaq Capital Market; provided however, that in the event the Company's Common Shares are ever listed or traded on any of the New York Stock Exchange, the NYSE American, the Nasdaq Global Market, or the Nasdaq Global Select Market, or such successor thereto, the "Principal Market" shall mean that market on which the Common Shares are then listed or traded

EEEE. "Purchase Agreement" shall have the meaning set forth in the preamble of this Debenture.

FFFF. "Redemption Amount" shall have the meaning set forth in Section (2)(c).

GGGG. “Redemption Notice” shall have the meaning set forth in Section (2)(c).

HHHH. “Registration Default” means, on any day after the Issuance Date until November [ ]<sup>3</sup>, 2025 (such period the “Resale Registration Statement Effectiveness Period”), the Registration Statement is not effective under the Securities Act or usable for the resale of the Registrable Securities by the Holder, other than as a result of an action or inaction by the Holder (a “Maintenance Failure”), which Maintenance Failure is not cured within five (5) Trading Days; *provided, however*, that it will not be a Registration Default to the extent that the number of days during the Resale Registration Statement Effectiveness Period that the Registration Statement is not so effective or usable (inclusive of any Blackout Period) does not exceed an aggregate of either (x) twenty (20) (or, in the case of a Blackout Period Extension Determination for which the Company provides notice to the Holder, thirty (30)) calendar days (whether or not consecutive) in any ninety (90) consecutive calendar day period; or (y) sixty (60) (or, in the case of a Permitted Blackout Period Extension for which the Company provides notice to the Holder, seventy-five (75)) calendar days (whether or not consecutive) during the Resale Registration Statement Effectiveness Period;

IIII. “Registrable Securities” means all of the Common Shares issuable or issued upon conversion of this Debenture as of the date of determination (without giving effect to any limitations on exercise set forth in Section 4(c)(i)); *provided, however*, that any such Common Share will cease to be a Registrable Security upon the earliest to occur of the following events: (1) such Common Share is Freely Tradable; (2) such Common Share ceases to be outstanding (or issuable upon conversion of this Debenture as of the date of determination (without giving effect to any limitations on exercise set forth in Section 4(c)(i)); (3) such Common Share (x) is sold or otherwise transferred in a transaction (including, for the avoidance of doubt, a transaction that is registered under the Securities Act) following which such Common Share ceases to be a “restricted security” (as defined in Rule 144); (y) is not identified by a “restricted” CUSIP or ISIN number; and (z) is not represented by any certificate that bears a restricted security legend, (4) the Debenture would be eligible to be offered, sold or otherwise transferred pursuant to Rule 144 if held by a Person that is not an Affiliate of the Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and (5) the Debenture is sold or otherwise transferred in a transaction following which the Debenture ceases to be a “restricted security” (as defined in Rule 144).

JJJJ. “Registration Statement” has the meaning given such term in the Purchase Agreement.

KKKK. “Required Holders” has the meaning given such term in the Purchase Agreement.

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<sup>3</sup> NTD: insert one year anniversary.

LLLL. "Required Reserve Amount" shall have the meaning set forth in Section (4)(d).

MMMM. "Rule 144" means Rule 144 under the Securities Act (or any successor rule thereto).

NNNN. "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

OOOO. "Share Delivery Date" shall have the meaning set forth in Section (4)(b)(i)(1).

PPPP. "Share Installment Payment" shall have the meaning given such term in Section (2)(b).

QQQQ. "Significant Subsidiary" of any Person means any Subsidiary of that Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of that Person.

RRRR. "Specified Event of Default" means the Events of Default set forth in Sections (3)(a)(i) and (3)(a)(ii).

SSSS. "Subsidiary" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

TTTT. "Trading Day" means a day on which the Common Shares are quoted or traded on a Principal Market on which the Common Shares are then quoted or listed; provided, that in the event that the Common Shares are not listed or quoted on a Principal Market, then Trading Day shall mean a Business Day.

UUUU. "Transaction Document" has the meaning given such term in the Purchase Agreement.

VVVV. "Underlying Securities" has the meaning given such term in the Purchase Agreement.

WWWW. "Upper Redemption Threshold" means 1.3793 *multiplied by* the Fixed Price

XXXX. "Variable Redemption Notice" shall have the meaning set forth in Section (2)(c).

YYYY. "Violations" shall have the meaning set forth in Section (6)(a).

ZZZZ. "VWAP" means, for any security as of any date, the daily dollar volume-weighted average price for such security on the Principal Market during regular trading hours as reported by Bloomberg through its "Historical Prices – Px Table with Average Daily Volume" function.

AAAAA. "Wholly Owned Subsidiary" of a Person means any Subsidiary of such Person all of the outstanding capital stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Company has caused this Convertible Debenture to be duly executed by a duly authorized officer as of the date set forth above.

**COMPANY:**

**PLUG POWER INC.**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

**EXHIBIT I  
CONVERSION NOTICE**

**(To be executed by the Holder in order to Convert the Convertible Debenture)**

**TO: PLUG POWER INC.**

**Via Email:**

The undersigned hereby irrevocably elects to convert a portion of the outstanding and unpaid Conversion Amount of Convertible Debenture No. PLUG-1 into Common Shares of **PLUG POWER INC.**, according to the conditions stated therein, as of the Conversion Date written below.

**Conversion Date:**

**Principal Amount to be Converted:**

**Accrued Interest to be Converted:**

**Total Conversion Amount to be converted:**

**Fixed Price:**

**Market Price:**

**Applicable Conversion Price:**

**Number of Common Shares to be issued:**

**Please issue the Common Shares in the following name and deliver them to the following account:**

**Issue to:**

**Broker DTC Participant Code:**

**Account Number:**

**Authorized Signature:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT II  
MARKET PRICE CONVERSION NOTICE**

(To be executed by the Holder in order to initiate Market Price Conversions)

**TO: PLUG POWER INC.**

**Via Email:**

The undersigned hereby elects to convert up to \$[ ] of unpaid Principal, together with all accrued and unpaid interest on such Principal, as of the first calendar day of the Calendar Month set forth below, of Convertible Debenture No. PLUG-1 into Common Shares of **PLUG POWER INC.**, according to the conditions stated therein, at the Market Price during the Calendar Month set forth below. Capitalized terms used but not defined herein shall have the meaning ascribed thereto in Convertible Debenture No. PLUG-1.

The Holder will be eligible to begin submitting Market Price Conversions on [ 4 if the Holder does not receive a Market Price Conversion Payment Notice from the Company prior to [ ]<sup>5</sup>.

**Calendar Month:**

**Principal Amount eligible to be Converted<sup>6</sup>:**

**Accrued Interest on such Principal Amount as of the first calendar day of the Calendar Month set forth above eligible to be Converted:**

**Total Conversion Amount eligible to be converted at the Market Price during the Calendar Month set forth above:**

**Applicable Market Price Conversion Payment:**

**Applicable Market Price Conversion Payment Deadline (if elected by the Company)<sup>7</sup>:**

**Authorized Signature:**

**Name:**

**Title:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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<sup>4</sup> The first calendar day of the applicable Calendar Month.

<sup>5</sup> The first calendar day of the applicable Calendar Month.

<sup>6</sup> Not to exceed \$22,500,000 in any given Calendar Month.

<sup>7</sup> To be the last Trading Day of the applicable Calendar Month.

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**SCHEDULE I**

**SCHEDULE OF BUYERS**

(a)  <b>Buyer</b>	(b) <b>Subscription Amount of Convertible Debenture</b>	(c) <b>Purchase Price (95% of Subscription Amount)</b>
<b>YA II PN, Ltd.</b> 1012 Springfield Avenue Mountainside, NJ 07092  <b>Legal Representative's Address and E-Mail Address</b> Robert Harrison, Esq. 1012 Springfield Avenue Mountainside, NJ 07092 Email: Legal@yorkvilleadvisors.com	\$200,000,000.00	\$190,000,000.00

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I, Andrew Marsh, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Plug Power Inc.;
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 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 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: November 12, 2024

by: /s/ Andrew Marsh  
Andrew Marsh  
Chief Executive Officer

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I, Paul B. Middleton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Plug Power Inc.;
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 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 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: November 12, 2024

by: /s/ Paul B. Middleton  
Paul B. Middleton  
Chief Financial Officer

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**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 Quarterly Report of Plug Power Inc. (the "Company") on Form 10-Q for the period ending September 30, 2024 as filed with the Securities and Exchange Commission (the "SEC") on the date hereof (the "Report"), I, Andrew Marsh, Chief Executive Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Andrew Marsh  
Andrew Marsh  
Chief Executive Officer

November 12, 2024

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**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 Quarterly Report of Plug Power Inc. (the "Company") on Form 10-Q for the period ending September 30, 2024 as filed with the Securities and Exchange Commission (the "SEC") on the date hereof (the "Report"), I, Paul B. Middleton, Chief Financial Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Paul B. Middleton  
Paul B. Middleton  
Chief Financial Officer

November 12, 2024

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