

REFINITIV

# DELTA REPORT

## 10-K

EOS ENERGY ENTERPRISES, I  
10-K - DECEMBER 31, 2023 COMPARED TO 10-K - DECEMBER 31, 2022

The following comparison report has been automatically generated

TOTAL DELTAS	3607
CHANGES	315
DELETIONS	1755
ADDITIONS	1537

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

☒

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

For the fiscal year ended: **December 31, 2022** **December 31, 2023**

☐

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

EOS ENERGY ENTERPRISES, INC.

<b>Delaware</b>	<b>001-39291</b>	<b>84-4290188</b>
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
<b>3920 Park Avenue</b> <b>Edison, New Jersey 08820</b> (Address of principal executive offices, including zip code) Registrant's telephone number, including area code: <b>(732) 225-8400</b>  Securities registered pursuant to Section 12(b) of the Act:		
<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common stock, par value \$0.0001 per share	EOSE	The Nasdaq Stock Market LLC
Warrants, each exercisable for one share of common stock	EOSEW	The Nasdaq Stock Market LLC

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes ☐ No ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. **Yes** ☐ **No** ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). **Yes** ☐ **No** ☐

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

The aggregate market value of the voting stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter, **June 30, 2022** **June 30, 2023**, was approximately **\$53.7** **\$522.2** million based upon the closing sale price of our common stock of **\$1.21** **\$4.34** on that date. As of **February 22, 2023** **February 27, 2024**, there were **84,890,812** **202,645,716** shares of the registrant's common stock issued and outstanding.

## Table of Contents

	Page
<b>Part I</b>	<b>1</b>
<u>Item 1. Business</u>	3
<u>Item 1A. Risk Factors</u>	11 10
<u>Item 1B. Unresolved Staff Comments</u>	31 32
<u>Item 1C. Cybersecurity</u>	32
<u>Item 2. Properties</u>	31 33
<u>Item 3. Legal Proceedings</u>	32 33
<u>Item 4. Mine Safety Disclosures</u>	32 34
<b>Part II</b>	<b>32 34</b>
<u>Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	32 34
<u>Item 6. [Reserved]</u>	32 34
<u>Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	32 34
<u>Item 7A. Quantitative and Qualitative Disclosure about Market Risk</u>	46 47
<u>Item 8. Financial Statements and Supplementary Data</u>	47 48
<u>Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosures</u>	47 48
<u>Item 9A. Controls and Procedures</u>	47 48
<u>Item 9B. Other Information</u>	48 49
<u>Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections</u>	49
<b>Part III</b>	<b>50</b>
<u>Item 10. Directors, Executive Officers and Corporate Governance</u>	50
<u>Item 11. Executive Compensation</u>	50
<u>Item 12. Security Ownership of Certain Beneficial Owner and Management and Related Stockholder Matters</u>	50
<u>Item 13. Certain Relationships and Related Transactions, and Director Independence</u>	50
<u>Item 14. Principal Accounting Fees and Services</u>	50
<b>Part IV</b>	<b>50</b>
<u>Item 15. Exhibits and Financial Statement Schedules</u>	50
<u>Item 16. Form 10-K Summary</u>	117

## Forward-Looking Statements

All statements included in this Annual Report on Form 10-K ("Annual Report"), other than statements or characterizations of historical fact, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "would" and similar expressions, as they relate to us, are intended to identify forward-looking statements. These statements appear in a number of places in this Annual Report and include statements regarding the intent, belief or current expectations of Eos Energy Enterprises, Inc. Forward-looking statements are based on our management's beliefs, as well as assumptions made by, and information currently available to, them. Because such statements are based on expectations as to future financial and operating results and are not statements of fact, actual results may differ materially from those projected. Factors which may cause actual results to differ materially from current expectations include, but are not limited to:

- changes adversely affecting the business in which we are engaged;
- our ability to forecast trends accurately;

- our ability to generate cash, service indebtedness and incur additional indebtedness;

1

- our ability to raise financing in the future;
- our customers' ability to secure project financing;
- the amount of final tax credits available to our customers or to Eos Energy Enterprises, Inc. pursuant to the Inflation Reduction Act;
- uncertainties around our ability to meet the applicable conditions precedent and secure conditional commitment final approval of a loan in a timely manner or at all or final approval of a loan from the Department of Energy, the Loan Programs Office, or the timing of funding and the final size of any loan if approved;
- the possibility of a government shutdown while we remain in the due diligence phase with the U.S. Department of Energy Loan Programs Office or while we await notice of a decision regarding the issuance of a loan from the Department of Energy Loan Programs Office;
- our ability to develop efficient manufacturing processes to scale and to forecast related costs and efficiencies accurately;
- fluctuations in our revenue and operating results;
- competition from existing or new competitors;
- the failure to convert firm order backlog and pipeline to revenue;
- risks associated with security breaches in our information technology systems;
- risks related to legal proceedings or claims;
- risks associated with evolving energy policies in the United States and other countries and the potential costs of regulatory compliance;
- risks associated with changes to U.S. trade environment;
- risks resulting from the impact of global pandemics, including the novel coronavirus, Covid-19;
- our ability to maintain the listing of our shares of common stock on NASDAQ;
- our ability to grow our business and manage growth profitably, maintain relationships with customers and suppliers and retain our management and key employees;
- risks related to adverse changes in general economic conditions, including inflationary pressures and increased interest rates;
- risk from supply chain disruptions and other impacts of geopolitical conflict;
- changes in applicable laws or regulations;
- other factors detailed under the section entitled "Risk Factors" herein.

More information on these important factors that could cause actual results to differ materially from those projected in the forward-looking statements we make in this Annual Report are set forth in Part I, Item 1A under "Risk Factors". In addition, there may be other factors of which we are presently unaware or that we currently deem immaterial that could cause our actual results to be materially different from the results referenced in the forward-looking statements.

Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and, except as required by law, the Company assumes no obligation and does not intend to update or revise these forward-looking statements, whether as a result of new information, future events, or otherwise.

2

## PART I

### ITEM. 1 BUSINESS

#### General

Eos Energy Enterprises, Inc. (the "Company," "we," "us," "our," and "Eos"), a Delaware corporation, was originally incorporated in Delaware on June 3, 2019, as a special purpose acquisition company under the name B. Riley Principal Merger Corp. II., in order to acquire a company or companies, through a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination. Upon the completion of a business combination on November 16, 2020 (the "Merger"), the Company changed its name to "Eos Energy Enterprises, Inc." The Company's common shares started trading under the ticker NASDAQ: EOSE on November 16, 2020.

On April 8, 2021, the Company entered into a unit purchase agreement (the "Purchase Agreement") with Holtec Power, Inc. ("Holtec"), in accordance with the terms and conditions of which the Company purchased from Holtec the remaining 51% interest in HI-POWER, LLC ("Hi-Power") that was not already owned by the Company. Hi-Power was incorporated as a joint venture between the Company and Holtec in 2019. In connection with the transaction, the Company also entered into a transition services agreement and a sublease with

Holtec. The transaction closed on April 9, 2021. Following the consummation of the transactions set forth in the Purchase Agreement (the "Transactions"), Hi-Power became a 100% indirect, wholly-owned subsidiary of the Company and the obligations of the parties under the Hi-Power joint venture terminated.

The Company designs, develops, manufactures, and markets innovative zinc-based energy storage solutions for utility-scale, microgrid, and commercial & industrial ("C&I") applications. We believe that our batteries have the potential to emerge as a leading alternative to Lithium-ion ("Li-ion") batteries for such long-duration applications. The Company has developed a broad range of intellectual property with multiple patents covering unique battery chemistry, mechanical product design, energy block configuration and a software operating system (Battery Management System or "BMS"). The BMS software uses proprietary Eos-developed algorithms and includes ambient and battery temperature sensors, as well as voltage and electric current sensors for the electrical strings and the system. The Company currently focuses on designing, developing, producing manufacturing and selling safe, reliable, long-lasting, low-cost turn-key direct current ("DC") battery energy storage systems. The Company plans to develop a turn-key alternating current ("AC") ("AC") integrated systems using Eos' direct current ("DC") Battery Energy Storage System ("BESS"). system. The Company's primary applications focus on integrating battery storage solutions with: (1) renewable energy systems that are connected to the utility power grid; (2) renewable energy systems that are not connected to the utility power grid; (3) storage systems utilized to relieve congestion; and (4) storage systems to assist C&I customers in reducing their peak energy usage or participating in the utilities ancillary and demand response markets. The Company has a manufacturing facility in Turtle Creek, Pennsylvania to produce DC energy blocks with an integrated BMS. The Company's primary market is North America with opportunistic growth opportunities in Europe, Oceania, Africa, and Asia. America. The Company has one operating and reportable segment.

## Principal Products and Services

The Company offers an innovative Znyth™ technology BESS battery energy storage system ("BESS") designed to provide the operating flexibility to manage increased grid complexity and price volatility resulting from an overall increase in renewable energy generation and a congested grid coming from an increase in electricity demand growth. The Company's BESS is a validated chemistry with accessible non-precious earth components in a durable design that delivers is intended to deliver results in even the most extreme temperatures and conditions. The system is designed to be safe, flexible, scalable, sustainable and manufactured in the United States, using raw materials primarily sourced in the United States. The We believe the Company's BESS is flagship Gen 2.3™ battery module and its newest Z3™ battery module ("Z3") are the core of its innovative systems systems. The Z3 battery module is the only US designed and manufactured battery module that today provide utilities, independent power producers, renewables developers, and C&I customers with a validated, reliable energy storage an alternative to lithium-ion and lead-acid monopolar batteries for critical 3- to 12-hour discharge durations. The Company's innovative spirit extends to its manufacturing strategy, which includes proprietary equipment duration applications. We believe the Z3 battery will transform how utility, industrial, and processes that allow the Company to scale quickly and with a lower capital intensity than other similar technologies. The Company believes its technology will continue to reduce cost and improve the operating efficiency and competitiveness of its BESS. commercial customers store power.

3

In addition to the Company's its BESS, the Company currently offers: (a) a BMS which provides a remote asset monitoring capability and service to track the performance and health of the Company's BESS and to proactively identify future system performance issues through predictive analytics; (b) project management services to ensure the process of implementing the Company's BESS are coordinated in conjunction with the customer's overall project plans; (c) commissioning services that ensure the customer's installation of the BESS meets the performance expected by the customer; and (d) long-term maintenance plans to maintain optimal operating performance of the Company's systems.

## Availability of Raw Materials

While we believe we have sufficient sources for the materials, components, services and supplies used in our manufacturing activities, we are highly dependent on the availability of essential materials, parts and subassemblies from our suppliers. The predominant raw materials required for our current generation product ("Gen 2.3") are zinc-bromide, titanium, felt, steel, and resin. The predominant raw materials that are required for our next generation Z3™ battery product ("Z3") are zinc halide salts, felt, resin, titanium, and conductive polymer.

We use both domestic and international suppliers for our raw materials purchases. In 2022, approximately 80% of suppliers to create our raw materials were procured through domestic suppliers and approximately 20% were procured through international suppliers. We expect our raw materials purchases to shift to approximately 90% domestic suppliers and 10% international suppliers for Gen 2.3 battery module, as well as the next generation Z3 battery which is expected module. We will continue to launch in the second half of 2023.

The Company experienced some focus on domesticating our supply chain disruptions in 2022, primarily related an economically sustainable manner.

Additionally, based on the latest Internal Revenue Service ("IRS") guidance, the Company believes that our current Gen 2.3 battery module and our next generation Z3 battery module feature raw materials sourcing sufficient to logistics, which impacted our results in 2022. We do not expect near term availability and concerns with respect to materials, components or supplies related to our Z3 production that would materially impact our business.

qualify for the Domestic Content Bonus awarded by the Inflation Reduction Act's ("IRA") tax credits.

## Industry Overview

We believe that energy storage is on the verge of wide-scale global deployment, becoming a critical element of a low-carbon, flexible, resilient future electric grid. In the past several years, there has been a dramatic increase of variable renewable generation in the U.S. power sector, and we expect significant growth in the future. At the same time, there have been significant cost declines in energy storage technologies (particularly batteries) over the past few years, and cheaper energy storage technologies are under development. These converging factors have increased attention on the potential role of energy storage as a critical asset for decarbonization and reliable electricity for the evolving grid.

Additionally, there are significant government incentives, such as the recently enacted Inflation Reduction Act of 2022 ("IRA"), IRA, that includes significant tax credits, that the Company could will benefit from in the near future. See Regulations section in Item 1 - Business.

As batteries increasingly become economical on a levelized cost of storage basis, we believe that utility-scale battery technology will be increasingly beneficial for a variety of solutions, including solar-plus-storage, peaking capacity, grid congestion and wind-plus-storage. We anticipate rapid increases in utility scale, co-located renewable energy-plus-storage projects, especially in the United States, with most near and medium-term installations qualifying as utility scale. By combining a battery with an intermittent renewable energy source, such as wind or solar, the energy stored in the battery can be used when the intermittent source is not available, for example if the wind is not blowing or the sun is not shining.

## Strategy

The Company continues to invest in the design, development, and development production of its next generation product, the Eos Z3™ Z3 battery, which builds off the same electrochemistry that has not fundamentally changed for the better part of a decade. The next generation Eos Z3 battery is being designed to reduce cost and weight while improving manufacturability and system performance. The Eos Z3 battery is more cost-effective and has a simpler tub design with 50% fewer cells and 98% fewer welds per battery module, module, compared to Gen 2.3. The Company currently expects the Eos Z3 battery will give customers the benefit of two times the energy density per square foot with the same safety and reliability as the previous generation battery. The Eos Z3 transition is fully underway, and the first semi-automated battery manufacturing line is installed and has started commercial production. Eos Z3 batteries utilize the same chemistry, which has over 3 million cycles, and incorporate a new mechanical design aimed at improving performance, lowering cost and increasing manufacturability.

4

The Company expects to launch the Z3 started delivery of its Z3™ battery modules in the second half third quarter of 2023. The Z3 battery incorporates valuable lessons learned from the past 15 years into a new system design which the Company expects to scale the Z3 battery production at a cost competitive position, with the opportunity for revenue growth, result in efficiencies as it develops its new state-of-the-art manufacturing line.

The Company believes the simplicity, flexibility, and safety of our products are what the market desires. In addition, we understand that the Inflation Reduction Act will give gives us a competitive advantage with production tax credits ("PTC") that can be claimed on battery components manufactured domestically, in addition to a tax credit for customers for projects that satisfy domestic content requirements. See Regulations section in Item 1 - Business Business. .

## Commercialization

The Company achieved third-party product safety certification from Underwriter Laboratories ("UL") for intends to engage with a consortium of community leaders, universities, and supply chain partners in anticipation of pursuing grants made available under the Company's current energy storage system in August Bipartisan Infrastructure Law of 2021. The Company is preparing to provide a Declaration of Conformity for the Company's energy storage system for the European marketplace.

The Company continued production of its current generation product and enhanced its factory testing protocols during 2022, to ensure that its battery energy storage systems will operate at expected and optimized performance.

## Market Trends and Opportunities

The Company believes the world wants to generate energy with sustainable renewable energy sources, however this objective creates imbalances in the existing energy grid. Managing and mitigating those imbalances will require multiple energy storage technologies to provide safe and reliable power. Until now, most energy storage systems have been in short durations, meaning they have reliably provided power for less than four hours. The Company believes the future will require mid-duration (6-12 hour) BESS that provide the flexibility to match intermittency and congestion. The Gen 2.3 product and the next generation Z3 product are battery is predominantly composed of five earth-abundant, readily available raw materials with mature supply chains that allow the Company to drive cost down as it scales up production.

The Company believes the Russian-Ukrainian war has added more urgency to global efforts for energy security as the reliance on Russian gas has led European policymakers to take action to accelerate the transition to alternative sources of power, including clean energy, and to increase stationary energy storage deployments. The Company also believes volatility in energy prices will be a catalyst for global efforts to decarbonize the grid, which is critical for meeting climate change goals.

While Li-ion batteries are the prevailing form of stationary energy storage, the costs of Li-ion energy storage systems have increased significantly as final product availability remains extremely limited due to the lack of availability and significant increases in cost of Li-ion battery raw material components, including lithium carbonate, nickel, and cobalt as well as the high demand for Li-ion batteries, storage. This is primarily driven primarily by Electric Vehicles ("EV"). Lithium, since lithium is one of the key components in EV batteries, but global supplies are under strain because of rising EV demand, batteries. According to the World Economic Forum report released July 20, 2022, Benchmark Source, the lithium industry needs to invest \$116 billion by 2030 if the world could face lithium shortages is to meet the ambitions targets set by 2025, because demand could triple between 2020 governments and 2025, and supply is stretched. Lithium supply faces challenges not only the largest automakers. The analysis's high case scenario, which encompasses data from surging demand, but because resources are concentrated in a few places.

The Company believes it is manufacturing at scale the first commercially available battery system that is not based Rho Motion on Li-ion chemistry. The Company anticipates that its BESS using Znyth™ battery technology will gradually take market share of the stationary storage market, given its 100% depth of discharge capability, flattened degradation curve and 3- to 12-hour duration, automakers' passenger EV targets as well as other characteristics related to safety data from the International Energy Agency on enacted country-level policies, would require 5.3 million tonnes of lithium carbonate equivalent in production today, and we believe the cost of operating and maintaining its BESS. The Company's ability to successfully deploy its BESS technology and gain market share in the energy storage market result will be important to the growth of the Company's business.

a supply shortage, causing increase in lithium prices.

## Intellectual Property

The success of our business depends, in part, on our ability to maintain and protect our proprietary technology, information, processes and know-how. We rely primarily on patent, trademark, copyright and trade secret laws in the United States and similar laws in other countries, confidentiality agreements and procedures and other contractual arrangements. These patents are subject to regulatory approval by the respective governing entity where the patent was filed. A majority of our patents relate to cell chemistry, architecture and battery mechanical design, system packaging and BMS. We continually assess opportunities to seek patent protection for those aspects of our technology, design, methodologies and processes that we believe provide significant competitive advantages.

The Company periodically assesses its patent portfolio in relation to the patents' utility and materiality to the current operation and future strategy of the business and abandons applications or ceases to maintain patents which are deemed immaterial to our current or future business operations. As of **December 31, 2022** **December 31, 2023**, we have **22** **23** patent families and **93** **122** patents pending, issued, or published in **23** **28** countries, protecting our technology and system architecture. The Company's key patents, related to its most recent generation product and future products, are not scheduled to expire until 2035 or later.

In addition, the Company relies on trade secret protection and confidentiality agreements to safeguard our interests with respect to proprietary know-how that is not patentable and processes for which patents are difficult to enforce. We believe that many key elements of our manufacturing processes involve proprietary know-how, technology or data that are not covered by patents or patent applications, including technical processes, test equipment designs, algorithms and procedures. All of our research and development personnel have entered into confidentiality and proprietary information agreements with us. These agreements address intellectual property protection issues and requires our employees to assign to us all of the inventions, designs and technologies that Company personnel develop during the course of their employment. We also require our customers and business partners to enter into confidentiality agreements before we disclose any sensitive aspects of our technology or business plans.

## Regulations

### Governmental Programs and Incentives

Globally, both the operations of our business by us and the ownership of our products by our customers are impacted by various government programs, incentives and other arrangements.

U.S. Department of **Energy's** **Energy's** (DOE) Renewable Energy **Projects** **Project** and Efficient Energy Loan Program

In August 2023, the DOE issued a Conditional Commitment Letter to the Company for a loan of an aggregate principal amount of up to \$398.6 million through the DOE's Clean Energy Financing Program. The Conditional Commitment Letter follows an extensive technical, financial and commercial due diligence process by the DOE. If finalized, the loan is expected to fund 80% of eligible costs of the Company's planned manufacturing expansion in Turtle Creek, Pennsylvania.

Eligible costs include capital expenditures and other costs associated with ramping up the manufacturing lines and facility, for example start-up and shakedown costs, as well as certain material and labor costs before efficiencies are met. The Company is currently in working to finalize the process of negotiating additional outside capital under the U.S. Department of Energy's ("DOE") Loan Guarantee Solicitation for Applications for Renewable Energy Projects and Efficient Energy Projects (the "DOE Loan Program"), and is in the due diligence phase of negotiations loan documents with the DOE. During this stage, the Company DOE and the DOE Loan Programs Office will work to negotiate a term sheet setting out the principal terms and fulfill certain conditions of the loan. While there can precedent. Eos is spending eligible costs now that would be no assurance that the Company will be able to secure such loan from the DOE within the expected timeframe or on terms that are acceptable to the Company, we believe the Company is positioned well in this process because our products and technologies enable greenhouse gas emission reduction and decarbonization. In addition, we believe that the Company's Made in America strategy and high-quality manufacturing jobs align with many of the policy objectives of the IRA. Refer to Part 1, Item 1A- Risk Factors section for further discussion.

reimbursable at first funding.

#### *Inflation Reduction Act of 2022 ("IRA")*

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 into law. The IRA features has significant economic incentives for both energy storage customers and manufacturers for projects placed in service after December 31, 2022. One of the most important features of the IRA legislation is that it offers a 10-year term tax credit, whereas historically similar industrial credits have been shorter in duration. Customers placing new energy storage facilities in service, after this date will be allowed to claim at least a thirty percent which include our Gen 2.3 and Z3™ BESS, could qualify for investment tax credit ("ITC") under certain conditions. The IRA also offers an extra ten percent credit if the project is in an "energy community" and another ten percent credit if the project satisfies domestic content requirements, which will be set forth when the implementing regulations are finalized. The ten percent bonus for domestic content could represent a strategic advantage for the Company resulting from the Company's near-sourcing and Made in America strategy, and we currently anticipate that projects utilizing Eos batteries will qualify for the bonus.

Starting in 2023, there are also meaningful PTC Production Tax Credits under Internal Revenue Code 45X ("PTC"), that can be claimed on battery components manufactured in the US U.S. and sold to customers, which could apply U.S. or foreign customers. These tax credits available to the Company, including credits manufacturers include a credit for ten percent of the cost incurred to make electrode active materials in addition to credits of \$35 per kWh of capacity of battery cells and \$10 per kWh of capacity of battery modules. These credits are cumulative, meaning the Company expects to that companies will be able to claim each of the available tax credits based on the battery components produced and sold through 2029, after which the PTC will begin to gradually phase down through 2032. In June 2023, the IRS issued temporary and proposed regulations related to applicable tax credit amount for each component. The IRA directs the Internal Revenue Service to pay manufacturers the cash value, also known as transferability and direct pay provisions of PTCs for making battery components, the Inflation Reduction Act. The Company has reviewed these regulations and therefore, these believes they do not have a material impact on the financial statements.

These credits may be expected to be a new source of cash flow for Eos. The direct pay option is valid for up to five tax years, after which any such tax credits can be sold to other companies for cash.

Benefits for energy storage customers and manufacturers will begin in 2023. The Company has worked proactively and in partnership with its customers to push out orders originally scheduled to be produced and delivered in 2022 to 2023, so that both Eos and its customers can better realize the benefits offered by the PTC and ITC, respectively. See Part 1, Item 1A- Risk Factors section for further discussion.

#### *State Programs and Incentives:*

- California - In 2022, California Energy Commission ("CEC"), Indian Energy, and the Company agreed to bring its innovative Made in America clean energy storage solution for Viejas Enterprise Microgrids project to the Viejas Band of Kumeyaay Indians. This includes an order for a 35 MWh energy storage system capable of 10-hour discharge duration. The order, worth approximately \$13.5 million, is funded by a grant through the CEC's Long-Duration Energy Storage ("LDES") Program as part of a project being carried out by Indian Energy, a 100 percent Native American-owned business, to create a first-of-its-kind resilient clean energy microgrid;
- Pennsylvania - Under the State of Pennsylvania's Redevelopment Assistance Capital Program ("RACP"), the Company was selected to enter into a grant agreement and, subject to the Company's successful completion of the related application process, may be eligible to receive up to \$2 million in funding for its Turtle Creek project in Allegheny County, PA. RACP funding is intended to provide much needed economic stimulus to the Pennsylvania economy and it is intended to assist in the immediate creation of quality, family-sustaining jobs for Pennsylvanians; future.
- New Jersey plans to initiate an energy storage incentive program totaling \$180 million over three years;
- Michigan created a roadmap for the future of storage in the state, including a proposed deployment target of 4 Gigawatts ("GW") of energy storage by 2040;
- Northwest Power and Conservation Council's six-year action plan called for 3.5 GW of new renewable sources by 2027, including a 4-hour standalone and paired battery storage systems; and
- New York doubled its energy storage target from 3 GW to 6 GW in the same 2030 timeframe. Previous studies indicated the state will need at least 15 GW of storage by 2040 to support zero-emission goals.

There is no assurance that these programs and incentives will benefit the Company as expected or at all.

## Competition

The markets for our products are competitive, and we compete with manufacturers of traditional Li-ion and other battery storage systems. Factors affecting customers when choosing from different battery storage systems in the market include:

- product performance and features;



- safety and sustainability;
- total lifetime cost of ownership;
- total operational costs related to auxiliary equipment;

6

- total product lifespan; lifespan and degradation rate;
- power and energy efficiency;
- duration of the battery's storage;
- customer service and support; and
- U.S.-based manufacturing and sourced materials.

Our Znyth™ battery system competes with products from traditional Li-ion battery manufacturers and solution providers such as Panasonic, Samsung Electronics Co., Ltd, LG Chem, Ltd., Tesla, BYD, Sungrow, and Contemporary Amperex Technology Co. Limited. Our longer duration competitors include ESS Inc., Enervenue, Ambri, Form Energy, and Lockheed Martin. We believe that our current and next generation battery system offers significant technology, safety and cost advantages that reflect a competitive differentiation over Li-ion storage technologies.

#### Competitive Strengths

We believe the following strengths of our business distinguish us from our competitors and position us to capitalize on the expected continued growth in the energy storage market:

- *Differentiated Product-* Lithium cells must be kept within a narrow temperature range (25 °C +/- 5 °C), otherwise they are at risk of thermal runaway, potentially leading to fire or explosion. The Znyth™ BESS has a significantly wider thermal operating range (-20°C to 50°C), which eliminates the need for costly thermal management measures such as HVAC and fire suppression systems. Additionally, the product is a static modular battery design, which eliminates the need for pumps or compressors, both maintenance prone equipment required for flow batteries. Our battery system can charge and discharge at different durations, covering a wide range of use cases. The charge and discharge rates are fixed for Li-ion, and the life of a Li-ion battery can degrade if it is not charged or discharged at the rate for which it was designed, while the Eos Znyth technology BESS is not subject to the same degradation. This is because Eos batteries are manufactured at zero voltage and a zero percent state of charge, whereas Li-ion batteries must be kept at a specific voltage and state of charge even when not actively being used.
- *Minimal Supply Chain Constraints-* All materials for producing our Gen 2.3 and next generation Z3 Z3™ battery products are widely available commodities with fewer supply chain constraints and minimal competition from electric vehicles. Additionally, the majority of the materials are recyclable at end of product life, helping preserve the environment.
- *Proven Technology Solution in the Growing and Evolving Energy Storage Market-* As we launch the Z3™ Z3 battery and ramp up manufacturing to gigawatt-hours ("GWh") scale, we believe that we will benefit from the overall growth of the energy storage market, which is expected to reach 1,095 GWh by 2040, as projected by BNEF. From an application perspective, the market is evolving to a LDES market. Our technology is tailored to address such a need. While Li-ion has been optimized for shorter duration, the performance of our batteries improves as it moves towards longer duration, making us the prime technology for the long-duration storage market.

8

- *Experienced Technology Team Focused on Continuous Innovation-* Our research and development team is responsible for growing and advancing our intellectual property portfolio, protecting our technology and system architecture. We believe that our continued investment in research and development will enable us to improve efficiency, energy density, functionality, and reliability while reducing the cost of our battery solution. We are also focused on leveraging our technology know-how to improve our BMS, expanding the operation of our batteries and increasing our overall performance. This same leverage would allow us to optimize our energy management solution to contextualize the operation of the battery based on the application, expanding our customer's customers' ability to use our Znyth™ BESS in a wider set of use-cases.

- *Established Global Sales Channels Anchored with Top-Tier Customers*- We sell products directly to the electric utility industry and through sales channels to the commercial and industrial market. We continue to build relationships with new customers and enter into agreements to provide battery solutions to new customers.
- *Strong management team*- We have assembled an executive team focused on accelerating the commercialization of the next-generation Z3 Z3™ battery product. With decades of combined, diverse experience in the energy industry and deep expertise in manufacturing, battery storage and executing complex power and energy projects around the world, our management team is able to develop, manufacture and deliver systems at scale to meet the growing demands of the global storage market.

## Customers

Our customers include the following:

- Renewable power producers and developers, including EnerSmart Storage LLC, Renew Akshay Urja Limited, Carson Hybrid Energy Storage, LLC, Blue Ridge Power, LLC, Ameresco Canada Inc., and Webcor Construction, LP, developers.
- Industrial companies, including Motor Oil Corinth Refineries S.A.
- Utility companies, including San Diego Gas & Electric Company, BA Power LLC, and Coop Power, Inc. companies.
- Microgrid developers, including Verdant Microgrid LLC, Bloom Energy, Consolidated Energy Design Inc., and Charge Bliss, Inc. developers.

During fiscal year 2022, one customer 2023, two customers individually accounted for 81% 49.9% and 45.2%, respectively, of our total revenue. None of our other customers accounted for more than ten percent of our revenues for the year ended December 31, 2022.

## Environmental, Social and Governance ("ESG")

Since our founding, the Company has been on a mission to accelerate the shift to clean energy by transforming how the world stores power in a safe, scalable, efficient, and sustainable way. We are committed to advancing global sustainable development through our products, working to systematically grow our business to meet the challenges of the global energy transition and combat the global climate crisis. Additionally, the Company has not incurred significant costs to remain in compliance with environmental laws.

Our approach to ESG is intrinsically united to our four product themes: safety, scalability, sustainability, and efficiency. As we continue to scale, we remain committed to driving progress across these themes.

## Human Capital

The table below represents our 2022 2023 employees by gender\* and ethnicity as a percentage of total headcount across non-exempt and exempt positions:

		By Gender				By Ethnicity									

As of **December 31, 2022** **December 31, 2023**, we had **333 420** total employees, all of which are full-time employees. None of our employees are represented by a labor union. We have not experienced any employment-related work stoppages, and we consider relations with our employees to be good.

Our success is based on the focused passion and dedication of our personnel. We are committed to providing a positive and engaging work environment for our employees and taking an active role in the betterment of the communities in which our employees live and work. Our full-time employees are provided a competitive benefits program, including comprehensive healthcare benefits, a 3% non-elective employer contribution 401(k) plan, equity awards, discretionary bonus and incentive pay opportunities, paid time-off benefits, paid parental leave, wellness programs, and periodic surveys.

8

#### Available Information

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to these reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") are available free of charge on our investor website, located at <https://investors.eose.com/>, as soon as reasonably practicable after they are filed with or furnished to the Securities and Exchange Commission. Our reports are also available on the Securities and Exchange Commission's website at <https://www.sec.gov/>. The information on our website is not, and shall not be deemed to be, a part hereof or incorporated into this or any of our other filings with the SEC.

109

#### ITEM 1A. RISK FACTORS

In addition to the factors discussed elsewhere in this Report, the following risks and uncertainties could materially and adversely affect the Company's business, financial condition, results of operations, and cash flows.

##### Risk Factors Summary

The following is a summary of the principal risks that could adversely affect our business, operations and financial results.

##### Risks Related to Our Business and Industry

- We have a history of losses that casts substantial doubt as to our ability to continue as a going concern. We must deliver on our potential for significant business growth and improved manufacturing processes to achieve sustained, long-term profitability and long-term commercial success.
- We believe our ability to utilize our net operating loss carryforwards will likely be substantially limited as a result of an "ownership change," as defined in Section 382 of the Internal Revenue Code of 1986, as amended.
- We identified material weaknesses in our internal controls over financial reporting, **at December 31, 2022 and 2021**, and we may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. If we **fail to do not effectively** remediate these material weaknesses or if we otherwise fail to **establish and maintain effective control internal controls** over financial reporting, **our ability we may not be able to** accurately and timely report our financial results.
- Our business and financial results **could have and may continue to be adversely affected, affected by the effects of sustained inflation and increased interest rates.**
- Current market conditions and recessionary pressures in one or more of our markets could impact our ability to grow our business.
- The relatively recent commercialization of our products makes it difficult to evaluate our prospects.
- **If demand for energy storage solutions does not continue to grow or grows at a slower rate than we anticipate, our business and results of operations may be impacted.**
- Failure to deliver the benefits offered by our technologies, or the emergence of improvements to competing technologies, could reduce demand for our products and harm our business.

- A decline in lithium prices may result in increased competition from traditional lithium-ion batteries and adversely affect the demand for our products.
- As we endeavor to expand our business, we will incur significant costs and expenses, which could outpace our cash reserves. Unfavorable conditions or disruptions in the capital and credit markets may adversely impact business conditions and the availability of credit.
- Our success depends on the continuing contributions of our key personnel, and the loss of services of any principal member of our management team could adversely affect our business.
- The failure or breach of our network or IT systems, including as a result of a cybersecurity breach, could affect our sales and operations.
- Internal system or service failures, or failures in the systems or services of third parties on which we rely, could disrupt our business and impair our ability to effectively provide our services and products to our customers, which could damage our reputation and adversely affect our business.
- The nature of our business exposes us to potential claims, and we are subject to legal proceedings and legal compliance risks or claims that could harm adversely affect our business, operating results. These claims could conceivably exceed the level of our liability insurance coverage.
- Labor disputes could disrupt our ability to serve our customers and/or lead to higher labor costs.

#### Risks Related to Our Products and Manufacturing

- We must obtain Underwriters Laboratories ("UL") and other related certifications for our future generations of our products.
- Compared to traditional Li-ion energy storage technologies, our cells and modules have less power density and round trip efficiency and may be considered inferior to competitors' products.
- We have limited manufacturing experience and could experience difficulty producing commercial volumes of the battery storage system, establishing manufacturing capacity to scale and in meeting potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities.
- We may experience delays, disruptions, or quality control problems in our manufacturing operations.
- We may not have sufficient insurance coverage to cover business continuity.

10

- Defects or performance problems in our products could result in loss of customers, reputational damage, and decreased revenue, as well as facing warranty, indemnity, and product liability claims, claims that may arise from defective products.
- We are heavily dependent on third-party suppliers and contractors. Supply chain issues and constraints, including those attributable to the Covid-19 pandemic, could adversely affect our operations and financial results, including our ability to deliver products to customers on time, results.
- If we elect to expand our production capacity by constructing one or more new manufacturing facilities, we may encounter challenges relating to the construction, management and operation of such facilities.
- We could incur substantial costs as a result of violations of, or liabilities under, environmental laws.
- Increased scrutiny from stakeholders and regulators regarding ESG practices and disclosures, including those related to sustainability and related disclosures could result in additional costs and adversely impact our business and reputation, risks.

#### Risks Related to Our Future Growth

- If we fail to manage our recent and future growth effectively, we may be unable to execute our business plan, maintain high levels of customer service, or adequately address competitive challenges.
- Our growth prospects depend on our ability to capitalize on market opportunities.
- We will require additional financing to achieve our long-term goals and a failure to obtain this capital on acceptable terms, or at all, may adversely impact our ability to support our business growth strategy.

11

- If we fail to meet the covenants in our Senior Secured Term Loan Credit Agreement, we may be subject to default on the loan, which could have a material adverse effect on our business.

- Our planned expansion into new geographic markets or new product lines or services could subject us to additional business, financial, and competitive risks.
- Our results of operations may fluctuate from quarter to quarter, which could make our future performance difficult to predict and could cause our results of operations for a particular period to fall below expectations, resulting in a decline in the price of our common stock.
- Forecasts of market growth in this Form 10-K may not be accurate.

#### Risks Related to Our United States and Foreign Operations

- The reduction, elimination or expiration of government subsidies and economic incentives related to renewable energy solutions could reduce demand for our technologies and harm our business.

- Changes in the U.S. trade environment, including the imposition of import tariffs, could adversely affect the amount or timing of our revenues, results of operations or cash flows.
- We have operations in the United States, which exposes us to multiple federal, state and local regulations.
- Changes in applicable law, regulations or requirements, or our material failure to comply with any of them, can increase our costs and have other negative impacts on our business.
- We are subject to complex and evolving laws, regulations, rules, standards and contractual obligations regarding data privacy and cybersecurity, which could increase the cost of doing business, compliance risks and potential liability.
- We could be adversely affected by any violations of the FCPA, the U.K. Bribery Act, and other foreign anti-bribery laws, as well as violations against export controls and economic embargo regulations.

#### Risks Related to Intellectual Property

- If we fail to protect, or incur significant costs in defending, our intellectual property and other proprietary rights, then our business and results of operations could be materially harmed.
- Third parties may assert that we are infringing upon their intellectual property rights, which could divert management's attention, cause us to incur significant costs, and prevent us from selling or using the technology to which such rights relate.

#### Risk Related to Our Securities

- To the extent that any shares of common stock are issued upon exercise of any of the warrants, the number of shares eligible for resale in the public market would increase.
- Provisions in our third amended and restated certificate of incorporation of the Company (the "Charter") and Delaware law may have the effect of discouraging lawsuits against our directors and officers.
- Provisions in our Charter may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management.
- We may redeem the public warrants prior to their exercise at a time that is disadvantageous to such warrant holders, thereby making your public warrants worthless.
- Our stock price may be volatile and may decline regardless of our operating performance.
- There can be no assurance that Future resales of our common stock may cause the warrants will be in the money at the time they become exercisable, and they may expire worthless. market price of our securities to drop significantly, even if our business is doing well.

11

- There can be no assurance that our common stock will be able to comply with the continued listing standards of Nasdaq.
- We do not intend to pay dividends on our common stock in the foreseeable future and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.
- We are a "smaller reporting company" and, because we have opted to use the reduced reporting requirements available to us, certain investors may find investing in our securities less attractive.

#### Risk Factors

*An investment in our securities involves a high degree of risk. You should carefully consider the risks described below before making an investment decision. Our business, prospects, financial condition, or operating results could be harmed by any of these risks, as well as other risks not known to us or that we consider immaterial as of the date of this Form 10-K. The trading price of our securities could decline due to any of these risks, and, as a result, you may lose all or part of your investment.*

#### Risks Related to Our Business and Industry

***We have a history of losses that casts substantial doubt as to our ability to continue as a going concern. We must deliver on our potential for significant business growth and improved manufacturing processes to achieve sustained, long-term profitability and long-term commercial success.***

12

We have had net losses and negative operating cash flows each fiscal quarter since inception of our business. For the years ended **December 31, 2022** **December 31, 2023** and **2021**, 2022, we had **\$229.8 million** **\$229.5 million** and **\$124.2 million** **\$229.8 million** in net losses, respectively. We expect to continue to incur losses and experience negative operating cash flows for the foreseeable future, as we anticipate continued investment in the development and launch of product with outside capital at the expense of short-term profitability. For the fiscal year ended **December 31, 2022** **December 31, 2023**, the Company concluded that there was substantial doubt about its ability to continue to operate as a going concern for the 12 months following the issuance of these consolidated financial statements.

Although our available capital has increased substantially since our Merger through the issuance of convertible notes and other financing, we continue to have limited resources relative to certain of our competitors, especially certain Li-ion manufacturers that have a longer history, are part of large multinational corporations and are already operating at a profit. To achieve profitability as well as long-term commercial success, we must continue to execute our plan to expand our business, which will require us to deliver on our existing global sales pipeline in a timely manner, increase our production capacity, improve our cost profile, grow demand for our products, and seize new market opportunities by leveraging our proprietary technology and its manufacturing processes for novel solutions. Failure to do one or more of these things could prevent us from achieving sustained, long-term commercial success.

As a growth company in the early commercialization stage of its lifecycle, Eos is subject to inherent risks and uncertainties associated with the development of an enterprise. Our revenues may not grow as expected for a number of reasons, many of which are outside of our control, including a decline in global demand for battery storage products, increased competition, or our failure to continue to capitalize on growth opportunities. In addition, although we have achieved sales of our products to potential customers, it is not clear to what extent, if any, the products will be profitable and when. The costs of goods associated with production of our battery storage system are significant. While we are working to optimize our supply chain, improve the speed and efficiency of our manufacturing processes, and lower the cost of other input costs such as raw material and conversion costs, there can be no assurance that we will be successful in these efforts. If we are not able to sustain revenue growth, reduce cost and continue to raise the capital necessary to support operations, our failure to achieve or maintain profitability could negatively impact the value of our common stock. Even if we do achieve profitability when expected, we may be unable to sustain or increase our profitability in the future.

12

In order to execute our development strategy, we have historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively "outside capital") to fund our cost structure and expect to continue to rely on outside capital for the foreseeable future. While we believe we will eventually reach a scale of profitability to sustain our operations, there can be no assurance we will be able to achieve such profitability or do so in a manner that does not require our continued reliance on outside capital. Moreover, while we have historically been successful in raising outside capital, there can be no assurance we will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to us.

***We believe our ability to utilize our net operating loss carryforwards will likely be substantially limited as a result of an "ownership change," as defined in Section 382 of the Internal Revenue Code of 1986, as amended.***

As of **December 31, 2023** and **2022**, we had approximately **\$638.5 million** and **\$485.4 million** of net operating loss ("NOL") carryforwards for U.S. federal tax purposes. Under U.S. federal income tax law, we generally would be able to use our NOL carryforwards (and certain related tax credits) to offset ordinary taxable income, thereby reducing our U.S. federal income tax liability, for up to 20 years from the year in which the losses were generated, after which time they will expire. In addition, as of **December 31, 2023** and **2022**, we had approximately **\$228.3 million** and **\$235.7 million** in state NOL carryforwards (and certain related tax credits) which generally would be useable to offset future state taxable income for approximately 20 years from the year in which the losses are generated, depending on the state, after which time they will expire.

The rate at which we are able to utilize our NOL carryforwards will become subject to a limitation that can be very significant (and that will result in our NOL carryforwards expiring prior to their use) when we experience an "ownership change," as determined under Section 382 of the Internal Revenue Code. A Section 382 ownership change generally occurs if a stockholder or a group of stockholders who are deemed to own at least 5% of our common stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. If an ownership change occurs, Section 382 generally would impose an annual limit on the amount of post-ownership change taxable income that may be offset with pre-ownership change NOL carryforwards equal to the product of the total value of our outstanding equity immediately prior to the ownership change (reduced by certain items specified in Section 382) and the U.S. federal long-term tax-exempt interest rate in effect at the time of the ownership change. A number of special and complex rules apply in calculating this Section 382 limitation.

While the complexity of Section 382 makes it difficult to determine whether and when an ownership change has occurred, and a formal study has not been performed, we believe that a Section 382 ownership change likely has occurred or will occur as a result of our capital raising efforts through equity financings during fiscal years 2022 and 2023. We believe this Section 382 limitation will likely substantially reduce the amount of federal and state NOLs that may be used by us before they expire. In addition, our ability to use our NOL carryforwards also is limited to the extent we fail to generate enough taxable income in the future before they expire. Existing and future Section 382 limitations and our inability to generate enough taxable income in the future could result in a substantial portion of our NOL carryforwards expiring before they are used. We have recorded a full valuation allowance for our deferred tax assets.

***We identified material weaknesses in our internal controls over financial reporting and we may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. If we do not effectively remediate these material weaknesses or if we otherwise fail to maintain effective internal controls over financial reporting, we may not be able to accurately and timely report our financial results.***

13

---

Our management is responsible for establishing and maintaining adequate internal controls over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our management is likewise required, on a quarterly basis, to evaluate the effectiveness of our internal controls and to disclose any changes and material weaknesses identified through such evaluation in those internal controls. A material weakness is a deficiency, or a combination of deficiencies, in internal controls over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

13

---

Our management identified material weaknesses in our internal controls over financial reporting as of **December 31, 2022** **December 31, 2023** and **2021, 2022**. See Item 9A, "Controls and Procedures," in this Annual Report for information regarding the identified material weaknesses and our actions to date to remediate the material weaknesses. As a result of these material weaknesses, our management has concluded that our internal controls over financial reporting were not effective as of **December 31, 2022** **December 31, 2023**.

We are taking steps to remediate these material weaknesses, which include hiring personnel with the depth of knowledge and experience to join our accounting and finance organization, and designing and implementing improved processes and internal controls. However, our efforts to remediate these material weaknesses may not be effective in preventing a future material weakness or significant deficiency in our internal controls over financial reporting. If we do not effectively remediate these material weaknesses or if we otherwise fail to maintain effective internal controls over financial reporting, we may not be able to accurately and timely report our financial results, which could cause our reported financial results to be materially misstated, result in the loss of investor confidence and cause the market price of our common stock to decline.

We can give no assurance that the measures we have taken or plans to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal controls over financial reporting or circumvention of these controls.

***Our business and financial results have and may continue to be adversely affected by the effects of sustained inflation and increased interest rates.***

Inflation has the potential to adversely affect our liquidity, business, financial condition and results of operations by increasing our overall cost structure, particularly if we are unable to achieve commensurate increases in the prices that we charge our customers. The existence of sustained inflation in the economy has resulted in, and may continue to result in, higher interest rates and capital costs, increased shipping costs, supply shortages, increased costs of labor, weakening exchange rates and other similar effects. As interest rates rise **or remain elevated** to address inflation or otherwise, we may experience further increases in capital and other costs. Further, changes in monetary or other policies here and abroad to combat inflation may lead to an economic downturn in some of our markets. Although we may take measures to mitigate the impact of this inflation, if these measures are not effective, our business, financial condition, results of operations and liquidity could be materially adversely affected. Even if such measures are effective, the benefits of such measures may not be realized until after the costs of inflation have been incurred.

***Current market conditions and recessionary pressures in one or more of our markets could impact our ability to grow our business.***

14

---

Over the last few years in the U.S. and globally, market and economic conditions have been **challenging, particularly in light of the COVID-19 pandemic, challenging**. Any negative impact on economic conditions and international markets, continued volatility or deterioration in the debt and equity capital markets, inflation, deflation or other adverse economic conditions may adversely affect our liquidity and financial condition. It may limit our ability to access the capital markets to meet liquidity and/or capital needs, which could have a material adverse effect on our financial condition and results of operations. Ongoing uncertain economic and financial market conditions may also adversely affect the financial condition of our customers, suppliers and other business partners. When our customers' financial conditions are adversely affected, it could materially and adversely affect our sales and financial results, which could have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our common shares to decline. Our global business may be negatively affected by local economic conditions, including inflation, increasing labor costs, potential recession, and

currency exchange rate fluctuations, which could adversely affect our cost to manufacture and provide our products and services and revenues generated through sales of such products and services. There is no guarantee that we will be able to fully absorb any such additional costs or revenue declines in the prices for our products and services.

14

***The relatively recent commercialization of our products makes it difficult to evaluate our future prospects.***

Since our inception, we have sold a limited quantity of Eos Znyth™ DC battery systems to our customers. We began commercializing our products in mid-2018, and while our research and development activities successfully established the efficiency of our chemistry, we struggled to incorporate our proven technologies into an effective manufacturing design prior to 2018.

We continue to invest in the design and development of the next generation product, the Z3™ battery which builds off the same electrochemistry that has not fundamentally changed for the better part of a decade. The Z3™ Z3 battery is designed to reduce cost and weight and improve manufacturability and system performance. The Z3™ product Eos Z3 transition is currently fully underway, and the first semi-automated battery manufacturing line is installed and has started commercial production. The Company started delivery of its Z3 battery modules in the testing phase and is expected to launch in the second half third quarter of 2023.

Our success will depend on our ability to manufacture products at scale and low cost while timely meeting customers' demands and overcome any negative perception in the market related to our historical manufacturing challenges, and we may not be able to generate sufficient customer confidence in our latest designs and ongoing product improvements and lower the cost due to economies of scale. Our inability to predict the extent of customer adoption of our proprietary technologies in the already-established traditional energy storage market makes it difficult to evaluate our profitability and future prospects.

***If demand for energy storage solutions does not continue to grow or grows at a slower rate than we anticipate, our business and results of operations may be impacted.***

Our flagship product, the Eos Znyth™ system, is a Znyth™ battery that can be used as an alternative to Li-ion batteries. Our products have been piloted by eight blue chip utilities and C&I end users. The pilots involved several use cases including solar shifting, peak shaving, price arbitrage, utility ancillary services and microgrids.

The viability and demand for our products, may be affected by many factors outside of our control, including:

- cost competitiveness, reliability and performance of our products compared to Li-ion products;
- levels of investment by end users of energy storage products, which may decrease when economic growth or energy demand slows resulting in a reduction in battery purchases generally;
- expansion of electricity use across the global economy, including growth of the electric vehicle market. If electric vehicles sales slow, thus diminishing the demand for Li-ion, then Li-ion competitors could move capacity to the stationary battery storage market to avoid shutting factories, which could put pressures on pricing in the market;
- strength of the renewable energy industry and associated integration opportunities for our products;
- a favorable regulatory landscape, including full adoption by the states in the United States of FERC Order 841, which mandates that battery storage can participate in the demand response and ancillary markets; incentives for the implementation of battery storage by state regulators; and adoption by Congress of an ITC for standalone battery storage; and
- the emergence, continuance or success of other alternative energy storage technologies and products.

If we do not manage these risks and overcome these potential difficulties outside of our control successfully, our business and results of operations may suffer.

***Failure to deliver the benefits offered by our technologies, or the emergence of improvements to competing technologies, could reduce demand for our products and harm our business.***

We believe that, compared to Li-ion batteries, our energy storage solutions offer significant benefits, including the use of widely-available and low-cost materials with no rare earth or toxic components, recyclability at end-of-life, an over twenty (20) year product life requiring minimal maintenance, and a wide thermal operating range that eliminates the need for fire suppression and HVAC, which would otherwise be required for use with Li-ion batteries.

15

However, The rates at which electricity is available from a customer's local electric utility company is subject to change and any changes in such rates may affect the relative benefits of our energy storage systems. Further, if our manufacturing costs do not decrease to the extent we intend, or if our expectations regarding the operation, performance, maintenance and disposal of our products are not realized, we could have difficulty marketing our products as a superior alternative to already-established technologies and impact the market reputation and adaptability of our products. In addition, developments Developments of existing and new technologies could improve their cost and usability profile, reducing any relative benefits currently offered by our products which would negatively impact the likelihood of our products gaining market acceptance.

***A decline in lithium prices may result in increased competition from traditional lithium-ion ("Li-ion") batteries and adversely affect the demand for our products.***



Currently, global lithium available supply exceeds demand. Decreases in the price of lithium, a key component of traditional Li-ion batteries, may increase the competitiveness of the traditional Li-ion batteries relative to the zinc-based energy storage solutions we provide. Mineral prices fluctuate widely and are affected by numerous factors beyond our control such as global and regional supply and demand, interest rates, exchange rates, inflation or deflation, fluctuation in the value of the United States dollar and foreign currencies, and the political and economic conditions of mineral-producing countries throughout the world. The exact effect of these factors cannot be accurately predicted, but the combination of these factors may result in a decrease in lithium prices, which may adversely affect our business and results of operations.

***As we endeavor to expand our business, we will incur significant costs and expenses, which could outpace our cash reserves. Unfavorable conditions or disruptions in the capital and credit markets may adversely impact business conditions and the availability of credit.***

We expect to incur additional costs and expenses in the future related to the continued development and expansion of our business, including in connection with expanding our manufacturing capabilities to significantly increase production capacity, developing our products, maintaining and enhancing our research and development operations, expanding our sales, marketing, and business development activities in the United States and internationally, and growing our project management, field services and overall operational capabilities for delivering projects. We do not know whether we will be able to reduce our manufacturing cost and grow our revenue rapidly enough to absorb these costs or the extent of these expenses or their impact on our results of operations.

Disruptions in the global capital and credit markets as a result of an economic downturn, economic uncertainty, changing or increased regulation, or failures of significant financial institutions could adversely affect our customers' ability to access capital and could adversely affect our access to liquidity needed for business in the future. Our business could be hurt if we are unable to obtain additional capital as required, resulting in a decrease in our revenues and profitability.

***Our success depends on the continuing contributions of our key personnel, and the loss of services of any principal member of our management team could adversely affect our business.***

We rely heavily on the services of our key executive officers. We are investing significant resources in developing new members of management as we complete our restructuring and strategic transformation, and the loss of services of any principal member of our management team could adversely affect our business. The competition for qualified personnel is intense in our industry, and we may not be successful in attracting and retaining enough qualified personnel to support our anticipated growth. We also cannot guarantee that any employee will remain employed with us for any definite period since all of our employees, including our key executive officers, serve at-will and may terminate their employment at any time for any reason.

The Company's Compensation Committee of the Board of Directors is committed to working with the management to design compensation plans that attract, retain and motivate the Company's executives and support business objectives that create shareholder value. In addition, the Board of Directors has implemented procedures to plan for the effective succession of senior management and key personnel. However, we still depend on the experience of our senior management team, including our chief executive officer, chief financial officer and chief accounting officer, and other key personnel, each of whom would be difficult to replace in the event of an unforeseen departure from the Company. Despite successfully managing recent turnover, the loss of any such personnel could have a material adverse effect on our business and our ability to implement our business strategy. All of our employees, including our senior management, are free to terminate their employment relationships with us at any time. We do not maintain key-person insurance for any of our employees, including senior management. In addition, changes and replacement, as well as transition in senior executive leadership could adversely affect our relationships with clients, customers, and employees. We must successfully integrate new key personnel whom we hire within our organization in order to achieve our operating objectives.

Additionally, our ability to attract qualified personnel, including senior management and key technical personnel, is critical to the execution of our growth strategy. Competition for qualified senior management personnel and highly skilled individuals with technical expertise is extremely intense. We face and are likely to continue to face challenges identifying, hiring, and retaining qualified personnel in all areas of our business. In addition, integrating new employees into our team could prove disruptive to our operations, require substantial resources and management attention, and ultimately prove unsuccessful. Our failure to attract and retain qualified senior management and other key technical personnel could limit or delay our strategic efforts, which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

***Third parties might attempt to gain unauthorized access to The failure or breach of our network or seek to compromise IT systems, including as a result of a cybersecurity breach, could affect our products sales and services. operations.***

From time to time, we may face attempts by others to gain unauthorized access to our network or IT systems through various forms of the Internet or try to introduce malicious software to our network or IT systems, including our BMS. We or our products may be a target of computer hackers, organizations or malicious attackers who attempt to:

- gain access to our systems, network or data centers or those of our customers;
- steal proprietary information related to our business, products, employees, and customers; or
- or interrupt our infrastructure or those of our customers.

To date, no attempts have resulted in any material adverse impact to our business or operations; however, there can be no guarantee that such intrusions will not be material in the future. While we seek to detect and investigate all unauthorized attempts and attacks against our network and products, and to prevent their recurrence where practicable through changes to our internal processes and tools and/or changes to our products, we remain potentially vulnerable to additional known or unknown threats, threats, such as, among other things, malware and computer virus attacks, ransomware attacks, social engineering attacks (including phishing attacks) or denial-of-service attacks. In addition to intentional third-party cybersecurity breaches, the integrity and confidentiality of company Company and customer data may be compromised as a result of human error, fraud or malice on the part of our employees or third parties, product defects, software bugs, server malfunctions, software or hardware failure or other technological failures. Such threats are evolving, may be difficult for long periods of time, and may see their frequency increased and effectiveness enhanced by the use of artificial intelligence. Further, these risks may be heightened in connection with ongoing global conflicts such as the military conflict between Russia and Ukraine and the military conflict between Israel and Hamas. Cybersecurity breaches, whether successful or unsuccessful, and other IT system interruptions, including those resulting from human error and technological failures, could result in us incurring significant costs related to, for example, rebuilding internal systems, reduced inventory value, providing modifications to our products and services, defending against litigation, responding to regulatory inquiries or actions, paying damages, or taking other remedial steps with respect to third parties.

**The failure or breach of our IT systems could affect our sales and operations.**

Our IT infrastructure is currently managed by a third party Managed Services Provider ("MSP"). While we regularly review the cybersecurity tools and other security protection provided by this MSP, and this MSP regularly runs intrusion and other security tests on services provided to us, there can be no guarantee that a failure or breach of such systems will not occur. While we generally perform cybersecurity diligence on our other key service providers, we do not control our service providers and our ability to monitor their cybersecurity is limited. Some of our service providers may store or have access to our data and may not have effective controls, processes, or practices to protect our information from loss, unauthorized disclosure, unauthorized use or misappropriation or cybersecurity breaches. A vulnerability in our service providers' software or systems, a failure of our service providers' safeguards, policies or procedures, or a cybersecurity breach affecting any of these third parties could harm our business.

We operate a few IT systems throughout our business that could fail for a variety of reasons, including the threats of unauthorized intrusions and attackers. If such failures were to occur, we may not be able to sufficiently recover to avoid the loss of data or any adverse impact on our operations that are dependent on such IT systems. This could result in lost sales as we may not be able to meet the demands for our product.

17

Furthermore, because our IT systems are essential for the exchange of information both internally and in communicating with third parties, including our suppliers and manufacturers, cybersecurity breaches could potentially lead to the unauthorized release of sensitive, confidential or personal data or information, improper use of our systems, or, unauthorized access, use, disclosure, modification or destruction of information or defective products. If these cybersecurity breaches continue, our operations and ability to communicate both internally and with third parties may be negatively impacted. Additionally, if we try to remediate our cybersecurity problems, we could face significant unplanned costs or capital investments and any damage or interruption could have a material adverse effect on our reputation, business, financial condition, and results of operations. Additionally, we cannot be certain that our insurance coverage will be adequate for data security liabilities actually incurred, that insurance will continue to be available to us on economically reasonable terms, or at all, or that our insurer will not deny coverage as to any future claim.

**Internal system or service failures, or failures in the systems or services of third parties on which we rely, could disrupt our business and impair our ability to effectively provide our services and products to our customers, which could damage our reputation and adversely affect our business.**

17

Any system or service disruptions, including to our IT systems managed by a MSP, if not anticipated and appropriately mitigated, could materially and adversely affect our business. We, and the service providers on which we rely, are also subject to systems failures, including network, software or hardware failures, whether caused by us, third-party service providers, cybersecurity threats, malicious insiders, natural disasters, power shortages, terrorist attacks, pandemics or other events, which could cause loss of data and interruptions or delays in our business, cause us to incur remediation costs, subject us to claims and damage our reputation. In addition, the failure or disruption of our communications, or those of our service providers, could cause us to interrupt or suspend our operations or otherwise adversely affect our business. Our property and business interruption insurance may be inadequate to compensate us for all losses resulting from any system or operational failure or disruption.

**The nature of our business exposes us to potential legal proceedings or claims that could adversely affect our operating results. These claims could conceivably exceed the level of our liability insurance coverage.**

We are a party to lawsuits in the normal course of our business. Litigation can be expensive, lengthy and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict. Responding to lawsuits brought against us, or legal actions that we may initiate, can be expensive and time-consuming. Unfavorable outcomes from these claims and/or lawsuits could adversely affect our business, results of operations, or financial condition and cash flows, and we could incur substantial monetary liability and/or be required to change our business practices. See Part I, Item 3, "Legal Proceedings."

Our business may expose us to claims for personal injury, death or property damage resulting from the use of our products or from employee related matters. Additionally, we could be subject to potential litigation associated with compliance with various laws and governmental regulations at the federal, state or local levels, such as those relating to the protection of persons with disabilities, employment, health, safety, security and other regulations under which we operate.

We carry comprehensive insurance, subject to deductibles, at levels we believe are sufficient to cover existing and future claims made during the respective policy periods. However, we may be exposed to multiple claims, and, as a result, could incur significant out-of-pocket costs before reaching the deductible amount, which could adversely affect our financial condition and results of operations. In addition, the cost of such insurance policies may increase significantly upon renewal of those policies as a result of general rate increases for the type of insurance we carry as well as our historical experience and experience in our industry. Although we have not experienced any material losses that were not covered by insurance, our existing or future claims may exceed the coverage level of our insurance, and such insurance may not continue to be available on economically reasonable terms, or at all. If we are required to pay significantly higher premiums for insurance, are not able to maintain insurance coverage at affordable rates or must pay amounts in excess of claims covered by our insurance, then we could experience higher costs that could adversely affect our financial condition and results of operations.

**Labor disputes could disrupt our ability to serve our customers and/or lead to higher labor costs.**

18

---

As of December 31, 2022 December 31, 2023, we had 333 420 full-time employees, none of whom are represented by unions or covered by collective bargaining agreements. If a union sought to organize any of our employees, such organizing efforts or collective bargaining negotiations could potentially lead to work stoppages and/or slowdowns or strikes by certain of our employees, which could adversely affect our ability to serve our customers. Further, settlement of actual or threatened labor disputes or an increase in the number of our employees covered by collective bargaining agreements can have unknown effects on our labor costs, productivity and flexibility.

#### **Risks Related to Our Products and Manufacturing**

**We must obtain Underwriters Laboratories ("UL") and other related certifications for our future generations of product.**

Our existing generation of battery systems has received Underwriters Laboratories ("UL") 1973 certification and has been tested for UL 9540A. Based on these North American certifications, we also intend to expand our current generation of battery systems product certification to other national standards such as European Conformity ("CE") marking in the European Union and the international certification of the International Electrotechnical Commission ("IEC"). We also intend to obtain the UL certification and all applicable safety standards for our future products. Failure to obtain UL, IEC or CE certification would have a significant impact on our revenues, as such certifications are required by most of our customers. As Battery Storage is a relatively new market segment, additional rules will be introduced and regulation changes will occur. We must continue to adapt and ensure conformity to new standards and regulations introduced in the market.

**Compared to traditional Li-ion energy storage technologies, our cells and modules have less power density and round trip efficiency and may be considered inferior to competitors' products.**

18

---

While the energy density of the Eos Z3 Z3™ battery enclosure product is significantly improved compared to the Eos Gen 2.3 enclosure product, and we believe that for certain installation sites the Eos Z3 systems may now equal Li-ion energy density per acre of land, traditional Li-ion cells and modules continue to offer higher power density and a lower self-discharge rate than Eos cells and modules. The differences in power density and energy efficiency become lower when comparing full size Li-ion systems to Eos Z3 systems due to the differences in auxiliary loads required by Li-ion systems and safety spacing between enclosures required by Li-ion, however, if customers were to place greater value on power density and efficient power delivery on a cell and module basis, then we could have difficulty positioning our batteries as a viable or compelling alternative to traditional Li-ion batteries and our business would suffer.

**We have limited manufacturing experience and could experience difficulty in producing commercial volumes of the battery storage system, establishing manufacturing capacity to scale and in meeting potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities.**

We have limited experience in commercial manufacturing of the battery storage system. On August 21, 2019, we entered into a joint venture agreement with Holtec and formed Hi-Power, which was owned 51% by Holtec and 49% by us. We acquired the 51% equity interest owned by Holtec in April 2021. Because we have limited prior commercial manufacturing experience, we may incur manufacturing inefficiencies, delays or interruptions. Our current manufacturing and testing processes do not require significant

technological or production process expertise. However, any change in our processes could cause one or more production errors, requiring a temporary suspension or delay in our production line until the errors can be researched, identified, and properly addressed and rectified. This may occur particularly as we introduce new products, modify our engineering and production techniques, and/or expand our capacity. In addition, our failure to maintain appropriate quality assurance processes could result in increased product failures, loss of customers, increased warranty reserve, decreased production, and logistical costs and delays. Any of these developments could have a material adverse effect on our business, financial condition, and results of operations.

19

To date, we have only manufactured batteries in limited quantities for commercial customers. The output achieved to date is a fraction of what the Company expects will be necessary for full commercialization and to meet the demand we see in the market for our product. The manufacturing process for commercial scale is being refined and improved. There are risks associated with scaling up manufacturing to commercial volumes including, among others, technical or other problems with process scale-up, process reproducibility, stability issues, quality consistency, timely availability of raw materials and cost overruns. There is no assurance that we will be successful in establishing a larger-scale commercial manufacturing process that achieves our objectives for manufacturing capacity and cost per battery, in a timely manner or at all. If we are unable to produce sufficient quantities of product for commercialization on a timely basis and in a cost-effective manner, the Company's commercialization efforts would be impaired which could materially affect our business, financial condition, results of operations and growth prospects.

***We may experience delays, disruptions, or quality control problems in our manufacturing operations.***

Our operations require significant amounts of certain components and raw materials. We deploy a continuous, company wide process to source the components and raw materials from a few suppliers. If we are unable to source these components or raw materials, our operations may be disrupted, or we could experience a delay or halt in certain of our manufacturing operations. We believe that our supply management and production practices are based on an appropriate balancing of the foreseeable risks and the costs of alternative practices. Nonetheless, reduced availability or interruption in supplies, whether resulting from more stringent regulatory requirements, supplier financial condition, increases in duties and tariff costs, disruptions in transportation, an outbreak of a severe public health pandemic, such as the COVID-19 pandemic, including resurgences and the emergence of new variants, severe weather, the occurrence or threat of wars, and other geopolitical conflict, including the ongoing Russia-Ukraine war, inflation, or increased interest rates could have an adverse effect on our financial condition, results of operations and cash flows. For example, we have experienced supply chain issues related to the COVID-19 pandemic, including but not limited to suppliers utilizing force majeure provisions under existing contracts.

19

Furthermore, the ongoing global economic recovery from the COVID-19 pandemic has caused challenges for global supply chains resulting in inflationary cost pressures, component shortages, and transportation delays. In recent periods, we have seen an increase in costs for a wide range of materials and components and logistics, and such increases may continue, particularly if the high rates of inflation seen in 2022 persist. We expect prices for these materials to continue to increase in the near term and then to fluctuate over time. Available supply for these materials may also be unstable, depending on market conditions and global demand for these materials. We have also experienced increased prices and/or inconsistent quality and supply of the components. Any reduced availability of these materials may impact our access and any further increases in their prices may reduce our profitability if we cannot recoup the increased costs through increased prices for our products. Moreover, any such attempts to increase product prices may be difficult to achieve and even if achieved, may harm our brand, prospects and operating results.

Some of our customers may experience project delays as a result of delays in site selection and preparation, procedures of obtaining necessary permissions and establishing grid connections. These delays have impacted, and may, from time to time, continue to impact the timing of our product deliveries and our results of operations.

***We may not have sufficient insurance coverage to cover business continuity.***

We rely on a single manufacturing site in Turtle Creek, Pennsylvania to manufacture the products to our customers. As a result, a sustained or repeated interruption in the manufacturing of our products due to labor shortage, fire, flood, war, pandemic, or natural disasters may interfere with our ability to manufacture our products and fulfill customers' demands in a timely manner. Failure to manufacture our products and meet customer demands would impair our ability to generate revenues which would adversely affect our financial results.

***Defects or performance problems in our products could result in loss of customers, reputational damage, and decreased revenue, facing warranty, indemnity, and product liability claims that may arise from defective products.***

Since our inception, our business objectives have been focused on producing a safe, low-cost grid-scale energy storage solution to meet the increasing demand for and adoption of renewable energy generation assets. Our Gen 2.3 battery design has, after years of research and prototype development, resulted in robust control of cell-to-cell spacing using a method which can easily be scaled for mass manufacturing production.

Although our products meet our stringent quality requirements, they may contain undetected errors or defects, especially when first introduced or when new generations of products are released. Errors, defects, or poor performance can arise due to design flaws, defects in raw materials or components or manufacturing difficulties, which can affect the quality of our products. In addition, our BMS software may contain errors, bugs, vulnerabilities (including to cyber attacks), design defects or technical limitations. Some errors, bugs or vulnerabilities inherently may be difficult to detect. Any actual or perceived errors, bugs, vulnerabilities, defects, or poor performance in our products could result in the replacement or recall of our products, shipment delays, rejection of our products, damage to our reputation, legal claims, lost revenue, diversion of our engineering personnel from our product development efforts, and increases in customer service and support costs, all of which could have a material adverse effect on our business, financial condition, and results of operations.

Furthermore, defective components may give rise to warranty, indemnity, or product liability claims against us that exceed any revenue or profit we receive from the affected products. Generally, our product comes with an initial two (2) year manufacturing warranty. We also offer customers an extended performance warranty of up to twenty (20) years at an additional cost to the customer. The price charged for any such extended warranty is based on the use case of the customer and the additional performance that such customer desires. For extended warranties, this may require system augmentation or battery replacements, which would be provided at no additional charge beyond the price of the extended warranty paid by such customer.

While we accrued reserves for warranty claims, our estimated warranty costs for previously sold products may change to the extent future products are not compatible with earlier generation products under warranty. Our warranty accruals are based on various assumptions, which are based on a short operating history. As a result, these assumptions could prove to be materially different from the actual performance of our systems, causing us to incur substantial unanticipated expense to repair or replace defective products in the future or to compensate customers for defective products. Our failure to accurately predict future claims could result in unexpected volatility in, and have a material adverse effect on, our financial condition.

If one of our products were to cause injury to someone or cause property damage, due to a result of product malfunctions, defects, or improper installation, we could be exposed to product liability claims. We could incur significant costs and liabilities if we are sued and if damages are awarded against us. Further, any product liability claim we face could be expensive to defend and could divert management's attention. The successful assertion of a product liability claim against us could result in potentially significant monetary damages, penalties or fines, subject us to adverse publicity, damage our reputation and competitive position, and adversely affect sales of our products. In addition, product liability claims, injuries, defects, or other problems experienced by other companies in the battery industry could lead to unfavorable market conditions for the industry as a whole and may have an adverse effect on our ability to attract new customers, thus harming our growth and financial performance.

***We are heavily dependent on third-party suppliers and contractors. Supply chain issues could adversely affect our operations and financial results.***

We are heavily dependent on third-party suppliers and contractors and their ability to deliver sufficient quantities of key components, products and services at reasonable prices and in time for us to meet schedules for the delivery of our products and services. In addition, our operations depend on our ability to anticipate and our suppliers' ability to fulfill, our needs for sufficient quantities of key components and products. Given the diverse distribution of our suppliers and contract manufacturers, and the long lead times required to manufacture, assemble and deliver our products, problems could arise in production, planning and inventory management, and regulatory compliance that could seriously harm our business. Third-party suppliers Suppliers may have limited financial resources to withstand challenging business conditions, such as the adverse impact from Covid-19. Suppliers are facing face global supply chain challenges, such as truck shortages, container transportation delays or reduced access to raw materials, etc. While we have taken several initiatives to mitigate the effects of such disruptions and disruptions caused by Covid-19, our business could be negatively impacted if key suppliers are forced to cease or limit reduce their normal operations.

***If we elect to expand our production capacity by constructing one or more new manufacturing facilities, we may encounter challenges relating to the construction, management and operation of such facilities.***

We currently operate our manufacturing facility located in Pennsylvania. We may, however, seek to construct one or more manufacturing facilities designed to meet our product supply needs in the future. Although we currently believe that we can expand our Turtle Creek facility to a 1.2 gigawatt-hour ("GWh") manufacturing facility, we cannot provide any assurances that we would be able to successfully establish or operate a new manufacturing facility in a timely or profitable manner, or at all, or within any budget that might be forecasted for such a project. The construction of any such facility would require significant capital expenditures and result in significantly increased fixed costs. If we are unable to transition manufacturing operations to any such new facilities in a cost-efficient and timely manner, then we may experience disruptions in operations, which could negatively impact our business and financial results. Further, if the demand for our products decreases or if we do not produce the expected output after any such new facility is operational, we may not be able to spread a significant amount of our fixed costs over the production volume, thereby increasing our product unit fixed cost, which would have a negative impact on our financial condition and results of operations.

Our ability to expand our manufacturing capacity would also greatly depend on our ability to hire, train and retain an adequate number of manufacturing employees, in particular employees with the appropriate level of knowledge, background and skills. Should we be unable to hire such employees, our business and financial results could be negatively impacted.

21

---

***We could incur substantial costs as a result of violations of, or liabilities under, environmental laws.***

Our properties, operations and the products we manufacture are subject to a number of environmental, health and safety laws and regulations in each of the jurisdictions in which we operate. These laws and regulations govern, among other things, air emissions, water discharges, handling and disposal of solid and hazardous substances and wastes, soil and groundwater contamination, employee health and safety and the content of products. Under certain of these laws and regulations, we may be subject to joint and several liability for environmental investigations and remediation, including sites at which waste we generated was disposed, even if the contamination was not caused by us or was lawful at the time it occurred. Our failure to comply with these environmental, health and safety laws and regulations, including failing to obtain any necessary permits, could cause us to incur substantial civil or criminal fines or penalties or enforcement actions, including regulatory or judicial orders enjoining or curtailing our operations or requiring us to conduct or fund remedial or corrective measures, install pollution control equipment or perform other actions. The future identification of presently unidentified environmental conditions, more vigorous enforcement by regulatory agencies, enactment of more stringent laws, regulations or permit requirements, including relating to climate change, or other unanticipated events may arise in the future and give rise to environmental liabilities, which could adversely affect our business, financial condition and results of operations.

***Increased scrutiny from stakeholders and regulators regarding environmental, social and governance ("ESG") practices and disclosures, including those related to climate change and sustainability, could result in additional costs and risks.***

Companies across many industries are facing increasing scrutiny relating to their environmental, social and governance practices and disclosures. Our failure to satisfy evolving stakeholder expectations for ESG practices and reporting may potentially harm our reputation and impact employee retention, customer relationships and access to capital and financial markets. We have established goals related to ESG matters. These goals reflect our current plans and aspirations and are not guarantees that we will be able to achieve them. Our efforts to accomplish and accurately report on these goals and objectives present numerous operational, reputational, financial, legal and other risks, any of which could have a material negative impact, including on our reputation and the market price of our common stock.

22

---

Further, certain institutional investors, investor advocacy groups, investment funds, creditors, influential financial markets participants and other stakeholders have become increasingly focused on companies' ESG issues in evaluating their investments and business relationships. Certain organizations also provide ESG ratings, scores and benchmarking studies that assess companies' ESG practices. Although there are no universally accepted standards for such ratings, scores or benchmarking studies, they are used by some investors to inform their investment and voting decisions. It is possible that our future shareholders or organizations that report on, rate or score ESG practices will not be satisfied with our ESG performance. **There are also an increasing number of anti-ESG initiatives that may conflict with other regulatory requirements or our stakeholders' expectations.** Unfavorable press about or ratings or assessments of our ESG practices, regardless of whether or not we comply with applicable legal requirements, may lead to negative investor sentiment toward us, which could have a negative impact on our share price and our access to and cost of capital.

In addition, the adoption of new ESG-related regulations applicable to our business, or pressure from key stakeholders to comply with additional voluntary ESG-related initiatives or frameworks, could require us to make substantial investments in ESG matters, which could impact the results of our operations. Decisions or related investments in this regard could affect consumer perceptions as to our brand. Furthermore, if our competitors' corporate responsibility or ESG performance is perceived to be better than ours, potential or current investors may elect to invest with our competitors instead. We could also fail, or be perceived to fail, in our achievement of any announced ESG initiatives, goals or objectives, or we could be criticized for the scope of such initiatives, goals or objectives. If we fail to satisfy the expectations of investors and other key stakeholders or our initiatives, goals or objectives are not executed as planned, our reputation, financial results and market price of our common stock and access to and cost of capital could be materially and adversely affected.

---

22

## Risks Related to Our Future Growth

***If we fail to manage our recent and future growth effectively, we may be unable to execute our business plan, maintain high levels of customer service, or adequately address competitive challenges.***

We have experienced significant growth in recent periods and intend to continue to expand our business significantly within existing and new markets. This growth has placed, and any future growth may place, a significant strain on our management, operational, and financial infrastructure. We will be required to expand, train, and manage our growing employee base and scale and otherwise improve our information technology ("IT") infrastructure in tandem with that headcount growth. Our management will also be required to maintain and expand our relationships with customers, suppliers, and other third parties and attract new customers and suppliers, as well as manage multiple geographic locations.

Our current and planned operations, personnel, customer support, IT, information systems, and other systems and procedures might be inadequate to support future growth and may require us to make additional unanticipated investments in its infrastructure. Our success and ability to further scale our business will depend, in part, on our ability to manage these changes in a cost-effective and efficient manner. If we cannot manage our growth, we may be unable to take advantage of market opportunities, execute our business strategies, or respond to competitive pressures. This could also result in declines in quality or customer satisfaction, increased costs, difficulties in introducing new offerings, or other operational difficulties. Any failure to effectively manage growth could adversely impact our business and reputation.

***Our growth prospects depend on our ability to capitalize on market opportunities.***

We believe that several market opportunities could help fuel our growth prospects, including the following:

- the pervasiveness of electric grid congestion, creating an opportunity to deploy batteries to reduce the peak energy usage of a customer in specific locations where infrastructure constraints create a need for transmission and/or distribution upgrades;
- the demand for co-location of battery assets on solar or wind farms to store off-peak intermittent renewable energy production and provide on-peak energy at the higher price of alternative energy;
- C&I end users' adoption of alternative energy generation technologies to supplement or replace on-the-grid energy usage; and

---

23

- carbon reduction targets and lower prices from renewables may be forcing earlier retirement of conventional energy sources and drive demand for energy storage.

If these expected market opportunities do not materialize, or if we fail to capitalize on them, then we may not be able to meet our growth projections.

***We will require additional financing to achieve our long-term goals and a failure to obtain this capital on acceptable terms may adversely impact our ability to support our business growth strategy.***

We intend to continue to make investments to support our business and will require significant additional funds. In particular, we will require additional funds to enhance existing products and develop new products, expand our operations domestically and internationally, including our sales and marketing organizations and our presence outside of the United States, improve our infrastructure or acquire complementary businesses, technologies, products and other assets. Accordingly, we anticipate that equity or debt financings to secure additional funds will be necessary to support our business strategy. If we raise additional funds through future issuances of equity or convertible debt securities, our stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing that we may secure in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing when we require it, our ability to continue to support our business growth, scale our infrastructure, develop product enhancements and to respond to business challenges could be significantly impaired, and our business, results of operations and financial condition may be adversely affected.

---

23



***If we fail to meet the covenants in our Senior Secured Term Loan Credit Agreement, we may be subject to default on the loan, which could have a material adverse effect on our business.***

The Senior Secured Term Loan contains customary affirmative and negative covenants, which limit the Company's and its subsidiaries' ability to incur indebtedness, make restricted payments, including cash dividends on its common stock, make certain investments, loans and advances, enter into mergers and acquisitions, sell, assign, transfer or otherwise dispose of its assets, enter into transactions with its affiliates and engage in sale and leaseback transactions, among other restrictions. The Senior Secured Term Loan also includes a minimum financial liquidity covenant. The minimum financial liquidity covenant requires that the Company have enough available liquidity as of the last day of each fiscal quarter to meet the Interest Escrow Required Amount (as defined in the Senior Secured Term Loan), which is calculated as the aggregate amount of the four immediately following interest payments on loans under the Senior Secured Term Loan. While the Company was in compliance with this covenant as of **December 31, 2022** **December 31, 2023**, and expects to remain in compliance as of **March 31, 2023** **March 31, 2024**, absent the Company's ability to secure additional outside capital, the Company may be unable to remain in compliance with this covenant beginning on **June 30, 2023** **June 30, 2024**, and thereafter. There can be no assurance that the Company will be able to secure additional outside capital in order to satisfy the minimum financial liquidity covenant on terms acceptable to the Company, on a timely basis, or at all. In the event the Company is unable to remain in compliance with the minimum financial liquidity covenant and the other covenants under the Senior Secured Term Loan, and the Company is further unable to cure such noncompliance or secure a waiver, **the Lender - Atlas Credit Partners (ACP) Post Oak Credit I LLC (Atlas)** may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among other things, entering into a forbearance agreement with the Company and/or asserting its rights in the Company's assets securing the Senior Secured Term Loan. Moreover, the Company's other lenders may exercise similar rights and remedies under the cross-default provisions of their respective borrowing arrangements with the Company. See Note **13, 12, Borrowings** to our consolidated financial statements included elsewhere in this Annual Report.

***Our planned expansion into new geographic markets or new product lines or services could subject us to additional business, financial, and competitive risks.***

24

During the years ended **December 31, 2022** **December 31, 2023** and **2021, 2022**, we **primarily** sold our products in **a number of different countries, including** the United **States, India, Greece, and Nigeria. States**. We have in the past, and may in the future, evaluate opportunities to expand into new geographic markets and introduce new product offerings and services that are a natural extension of our existing business. We also may from time to time engage in acquisitions of businesses or product lines with the potential to strengthen our market position, enable us to enter attractive markets, expand our technological capabilities, or provide synergy opportunities.

Our success operating in these new geographic or product markets, or in operating any acquired business, will depend on a number of factors, including our ability to develop solutions to address the requirements of the electric utility industry and C&I end users, our timely qualification and certification of new products, our ability to manage increased manufacturing capacity and production, and our ability to identify and integrate any acquired businesses.

Further, any additional markets that we may enter could have different characteristics from the markets in which we currently sell products, and our success will depend on our ability to adapt properly to these differences. These differences may include regulatory requirements, including tax laws, trade laws, labor regulations, tariffs, export quotas, customs duties, or other trade restrictions, limited or unfavorable intellectual property protection, international, political or economic conditions, restrictions on the repatriation of earnings, longer sales cycles, warranty expectations, product return policies and cost, performance and compatibility requirements. In addition, expanding into new geographic markets will increase our exposure to presently existing and new risks, such as fluctuations in the value of foreign currencies and difficulties and increased expenses in complying with United States and foreign laws, regulations, and trade standards, including the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA").

Failure to develop and introduce these new products successfully into the market, to successfully integrate acquired businesses or to otherwise manage the risks and challenges associated with our potential expansion into new product and geographic markets, could adversely affect our revenues and our ability to sustain profitability.

24

***Our results of operations may fluctuate from quarter to quarter, which could make our future performance difficult to predict and could cause our results of operations for a particular period to fall below expectations, resulting in a decline in the price of our common stock.***

Revenue from our battery sales is primarily recorded upon transfer of ownership of the product to the customer. Under our customer contracts, this transfer typically takes place upon shipment of the battery from our manufacturing facility but, in some instances, occurs upon delivery to a customer site or, even more infrequently, when commercial operation



commences. Because our revenues are generally derived from sales of hardware that may take many months to manufacture and prepare for delivery, such revenue can come in peaks and troughs based on the underlying customer arrangements. As a result, our quarterly results of operations are difficult to predict and may fluctuate significantly in the future based on the timing of product deliveries.

#### **Risks Related to Our United States and Foreign Operations**

***The reduction, elimination or expiration of government subsidies and economic incentives related to renewable energy solutions could reduce demand for our technologies and harm our business.***

To promote renewable energy generation and consumption, federal, state, local and foreign government bodies provide incentives to owners, end users, distributors, system integrators and manufacturers of alternative energy systems in the form of rebates, tax credits and other financial incentives such as system performance payments, issuance of renewable energy credits associated with renewable energy generation and exclusion of certain renewable energy systems from property tax assessments.

25

Our business relies, in part, on the co-location of battery assets with solar and wind technologies. The market for on-grid applications, where solar or wind power is used to supplement a customer's electricity purchased from the utility network or sold to a utility under tariff, often depends in large part on the availability and size of government and economic incentives that vary by geographic market. The reduction, elimination or expiration of government subsidies and economic incentives for on-grid renewable electricity may negatively affect the competitiveness of alternative electricity generation relative to conventional and nonrenewable sources of electricity and could harm or halt the growth of the alternative electricity industries. Because our C&I end user sales are generally expected to be made into the on-grid market, these changes could harm our business. For example, the Inflation Reduction Act enacted in August 2022 allows owners of new batteries to claim an ITC of between 30% and 70% during 2023 through a period that extends at least into the 2030s and possibly longer. The tax credit amount depends on the location of the battery and amount of domestic content. Companies should have an incentive to buy US-made batteries to qualify for a higher tax credit. A condition to claim tax credits at these levels is the same wages that are paid on federal construction projects must be paid to mechanics and laborers who work at the project site and lay down yard during construction and for the five years after on alterations and repairs, and qualified apprentices must be used during the same periods for as much as 15% of total labor hours.

The Inflation Reduction Act also allows manufacturers of certain battery components made in the United States to claim tax credits. The Internal Revenue Service will pay such manufacturers the tax credit amounts in cash for the first five tax years after the manufacturer starts producing. The tax credits for manufacturers start phasing down in amount after 2029 and end after 2032.

Both sets of tax credits are expected to increase demand for batteries and encourage more US domestic manufacturing of batteries. If in the future, Congress were to repeal or cut back the incentives, it could have an adverse impact on our business, financial condition, and results of operations.

In general, subsidies and incentives may expire on a particular date, end when the allocated funding is exhausted or be reduced or terminated as renewable energy adoption rates increase or as a result of legal challenges, the adoption of new statutes or regulations or the passage of time. These reductions or terminations often occur without warning.

25

In addition, several jurisdictions have adopted renewable portfolio standards, which mandate that a certain portion of electricity delivered by utilities to customers each year must come from renewable energy resources. Utilities must either generate the renewable electricity themselves or buy renewable energy credits ("REC"s) from independent generators who have been awarded them for generating renewable electricity. Utilities may buy such RECs bundled with renewable electricity. An REC allows the utility to add this electricity to its renewable portfolio requirement total without actually expending the capital for generating facilities. However, there can be no assurances that such policies will continue.

If subsidies and incentives applicable to alternative energy implementation or usage are reduced or eliminated, or the regulatory landscape otherwise becomes less favorable, then there could be reduced demand for alternative energy solutions, which could have an adverse impact on our business, financial condition, and results of operations. See Part I, Item I - Business - Regulations for further discussion of government programs and incentives.

***Changes in the U.S. trade environment, including the imposition of import tariffs, could adversely affect the amount or timing of our revenues, results of operations or cash flows.***

We currently procure the felt required for our batteries and the electrical cables for the Eos CubeCube™ from China, as we believe that the materials procured from our Chinese suppliers currently have the best overall performance and price compared to domestic alternatives. Trade tensions between the United States and China have led to certain increased tariffs and trade restrictions. There can be no guarantee that these developments will not negatively impact the price of the felt used in our products. We believe we could obtain a similar performing felt and electrical cabling in the United States, but such sources would likely also charge a higher cost than our current suppliers, which would negatively impact our gross margins. It is difficult to predict what further trade-related actions governments may take, which may include additional or increased tariffs and trade restrictions, and we may be unable to quickly and effectively react to such actions, which could result in supply shortages and increased costs.

***We have operations in the United States, which exposes us to multiple federal, state and local regulations. Changes in applicable law, regulations or requirements, or our material failure to comply with any of them, can increase our costs and have other negative impacts on our business.***

Applicable laws and requirements address multiple aspects of our operations, such as worker safety, consumer rights, privacy, employee benefits and more, and can often have different requirements in different jurisdictions. Changes in these requirements, or any material failure to comply with them, could increase our costs, affect our reputation, limit our business, drain management's time and attention or otherwise, generally impact our operations in adverse ways.

***We are subject to complex and evolving laws, regulations, rules, standards and contractual obligations regarding data privacy and cybersecurity, which could increase the cost of doing business, compliance risks and potential liability.***

We are subject to complex and evolving laws, regulations, rules, standards and contractual obligations governing data privacy and cybersecurity and any failure to comply with these laws, regulations, rules, standards and contractual obligations could expose us to liability and/or reputational damage. Compliance with these laws, regulations, rules and standards may require us to change our policies, procedures and technology for cybersecurity, which could, among other things, make us more vulnerable to operational failures and to monetary penalties for breach of such laws, regulations, rules and standards.

In the U.S., there are numerous federal, state and local data privacy and cybersecurity laws and regulations governing the collection, sharing, use, retention, disclosure, security, storage, transfer and other processing of personal information. At the federal level, we are subject to, among other laws and regulations, the rules and regulations promulgated under the authority of the Federal Trade Commission (which has the authority to regulate and enforce against unfair or deceptive acts or practices in or affecting commerce, including acts and practices with respect to data privacy and cybersecurity). Moreover, the U.S. Congress has recently considered, and is currently considering, various proposals for more comprehensive data privacy and cybersecurity legislation, to which we may be subject if passed. At the U.S. state level, we may be subject to laws and regulations such as the California Consumer Privacy Act as amended by the California Privacy Rights Act (collectively, the "CCPA"), which broadly defines personal information and gives California residents expanded privacy rights and protections, such as affording them the right to access and request deletion of their information and to opt out of certain sharing and sales of personal information. Numerous other states also have enacted, or are in the process of enacting or considering, comprehensive state-level data privacy and cybersecurity laws and regulations that share similarities with the CCPA. Moreover, laws in all 50 U.S. states require businesses to provide notice under certain circumstances to consumers whose personal information has been disclosed as a result of a data breach.

Further, while we strive to publish and prominently display privacy policies that are accurate, comprehensive, and compliant with applicable laws, regulations, rules and industry standards, we cannot ensure that our privacy policies and other statements regarding our practices will be sufficient to protect us from claims, proceedings, liability or adverse publicity relating to data privacy and cybersecurity. Although we endeavor to comply with our privacy policies, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other documentation that provide promises and assurances about data privacy and cybersecurity can subject us to potential government or legal action if they are found to be deceptive, unfair, or misrepresentative of our actual practices. Any concerns about our data privacy and cybersecurity practices, even if unfounded, could damage our reputation and adversely affect our business.

Any failure or perceived failure by us to comply with our privacy policies, or applicable data privacy and cybersecurity laws, regulations, rules, standards or contractual obligations, or any compromise of security that results in unauthorized access to, or unauthorized loss, destruction, use, modification, acquisition, disclosure, release or transfer of personal information, may result in requirements to modify or cease certain operations or practices, the expenditure of substantial costs, time and other resources, proceedings or actions against us, legal liability, governmental investigations, enforcement actions, claims, fines, judgments, awards, penalties, sanctions and costly litigation (including class actions). Any of the foregoing could harm our reputation, distract our management and technical personnel, increase our costs of doing business, adversely affect the demand for our products and services, and ultimately result in the imposition of liability, any of which could have a material adverse effect on our business, financial condition and results of operations.

***We could be adversely affected by any violations of the FCPA, the U.K. Bribery Act, and other foreign anti-bribery laws, as well as violations against export controls and economic embargo regulations.***

The FCPA prohibits companies and their intermediaries from making improper payments to foreign government officials for the purpose of obtaining or retaining business. Other countries in which we operate also have anti-bribery laws, some of which prohibit improper payments to government and non-government persons and entities. Our policies mandate compliance with these anti-bribery laws. However, we currently operate in and intend to further expand into, many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. In addition, due to the level of regulation in our industry and related energy industries, our entry into certain jurisdictions may require substantial government contact where norms can differ from U.S. standards. Although we expect to maintain strict internal control policies and procedures designed to guard against improper conduct, there can be no guarantee that our employees, agents, and business partners will not take actions in violation of our internal control policies. In the event that we believe or have reason to believe that our employees or agents have or may have violated applicable laws, including anti-corruption laws, we may be required to investigate or have outside counsel investigate the relevant facts and circumstances, and detecting, investigating and resolving actual or alleged violations can be expensive and require significant time and attention from senior management. Any violation of U.S. federal and state and non-U.S. laws, regulations and policies could result in substantial fines, sanctions, civil and/or criminal penalties, and curtailment of operations in the United States or other applicable jurisdictions. In addition, actual or alleged violations could damage our reputation and ability to do business. Any of the foregoing could materially adversely affect our business, financial condition and results of operations.

Furthermore, we are subject to the export controls and economic embargo rules and regulations of the United States, including, but not limited to, the Export Administration Regulations and trade sanctions against embargoed countries, which are administered by the Office of Foreign Assets Control within the Department of the Treasury, as well as the laws and regulations administered by the Department of Commerce. These regulations limit our ability to market, sell, distribute or otherwise transfer our products or technology to prohibited countries or persons. While we do not conduct business with sanctioned and embargoed countries and we expect to maintain strict internal controls policies and procedures designed to guard against improper conduct, a determination that we have failed to comply, whether knowingly or inadvertently, may result in substantial penalties, including fines and enforcement actions and civil and/or criminal sanctions, the disgorgement of profits and the imposition of a court-appointed monitor, as well as the denial of export privileges, and may have an adverse effect on our reputation.

28

---

## Risks Related to Intellectual Property

***If we fail to protect, or incur significant costs in defending, our intellectual property and other proprietary rights, then our business and results of operations could be materially harmed.***

Our success depends to a significant degree on our ability to protect our intellectual property and other proprietary rights. We rely on a combination of patent, trademark, copyright, trade secret and unfair competition laws, as well as confidentiality and other contractual provisions with our customers, suppliers, employees, and others, to establish and protect our intellectual property and other proprietary rights. Our ability to enforce these rights is subject to general litigation risks, as well as uncertainty as to the enforceability of our intellectual property rights in various countries. When we seek to enforce our rights, we may be subject to claims that our intellectual property rights are invalid or not enforceable. Our assertion of intellectual property rights may result in another party seeking to assert claims against us, which could harm our business. Our inability to enforce intellectual property rights under any of these circumstances would likely harm our competitive position and business.

We have been issued patents in, or have patent applications pending in the United States, North America, Europe, South America, Asia and Australia. We cannot guarantee that any of our pending applications will be approved or that our existing and future intellectual property rights will be sufficiently broad to protect our proprietary technology, and any failure to obtain such approvals or finding that our intellectual property rights are invalid or unenforceable could force us to, among other things, rebrand or redesign our affected products. In countries where we have not applied for patent protection or where effective intellectual property protection is not available to the same extent as in the United States, we may be at greater risk that our proprietary rights will be misappropriated, infringed, or otherwise violated.

27

---

Our intellectual property may be stolen or infringed upon, upon, misappropriated or otherwise violated. Despite our implementation of security measures, our IT systems and those of our service providers are vulnerable to circumstances beyond our reasonable control which may lead to the theft of our intellectual property or trade secrets or business disruption, including inappropriate retention or disclosure of trade secrets by current or former employees. To the extent that any disruption or security breach results in a loss or damage to our data or an inappropriate disclosure of confidential information, it could cause significant damage to our reputation, affect our relationships with our customers, suppliers and employees and lead to claims against the company. Any lawsuits that we may initiate to protect our significant investment in our intellectual property also may

consume management and financial resources for long periods of time and may not result in favorable outcomes, which may adversely affect our business, results of operations or financial condition.

***Third parties may assert that we are infringing upon their intellectual property rights, which could divert management's attention, cause us to incur significant costs, and prevent us from selling or using the technology to which such rights relate.***

Our competitors and other third parties hold numerous patents related to technology used in our industry. From time to time, we may be subject to claims of intellectual property right infringement and related litigation, and, if we gain greater recognition in the market, we will face a higher risk of being the subject of claims that we have violated others' intellectual property rights. While we believe that our products and technology do not infringe in any material respect upon any valid intellectual property rights of third parties, we cannot be certain that we would be successful in defending against any such claims. If we do not successfully defend or settle intellectual property claims, we could be liable for significant monetary damages and could be prohibited from continuing to use certain technology, business methods, content, or brands. To avoid a prohibition, we could seek a license from the applicable third party, which could require us to pay significant royalties, increasing our operating expenses. If a license is not available at all or not available on reasonable terms, then we may be required to develop or license a non-violating alternative, either of which could require significant effort and expense. If we cannot license or develop a non-violating alternative, we would be forced to limit or stop sales of our offerings and may be unable to effectively compete. Any of these results would adversely affect our business, financial condition, and results of operations.

29

---

#### **Risks Related to Our Securities**

***To the extent that any shares of common stock are issued upon exercise of any of the warrants, the number of shares eligible for resale in the public market would increase.***

We have 7,326,654 outstanding warrants exercisable to purchase 7,326,654 shares of common stock at an certain exercise price of \$11.50 prices per share. See Note 13 - Warrants Liability for further discussion. To the extent that any shares of common stock are issued upon exercise of any of the warrants to purchase shares of common stock, there will be an increase in the number of shares of common stock eligible for resale in the public market. Sales of a substantial number of such shares in the public market could adversely affect the market price of our common stock.

***Provisions in our Charter and Delaware law may have the effect of discouraging lawsuits against our directors and officers.***

28

---

Our Charter requires, unless we consent in writing to the selection of an alternative forum, that (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders, (iii) any action asserting a claim against us, our directors, officers or employees arising pursuant to any provision of the DGCL or our Charter or our bylaws, or (iv) any action asserting a claim against us or our directors, officers or employees governed by the internal affairs doctrine may be brought only in the Court of Chancery in the State of Delaware, except any claim (A) as to which the Court of Chancery of the State of Delaware determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within 10 days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, (C) for which the Court of Chancery does not have subject matter jurisdiction, or (D) any action arising under the Securities Act of 1933, as amended ("Securities Act"), as to which the Court of Chancery and the federal district court for the District of Delaware shall have concurrent jurisdiction. If an action is brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder's counsel. Although we believe that this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, a court may determine that this provision is unenforceable, and to the extent it is enforceable, the provision may have the effect of discouraging lawsuits against our directors and officers, although our stockholders will not be deemed to have waived our compliance with federal securities laws and the rules and regulations thereunder.

Notwithstanding the foregoing, our Charter provides that the exclusive forum provision will not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Although we believe that this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers.

***Provisions in our Charter may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management.***

Our Charter contains provisions that may hinder unsolicited takeover proposals that stockholders may consider to be in their best interests. We are also subject to anti-takeover provisions under Delaware law, which could delay or prevent a change of control. Together these provisions may make it more difficult to remove management and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our securities. These provisions include:

- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- a classified board of directors with three-year staggered terms, which could delay the ability of stockholders to change the membership of a majority of the Board;
- the right of our Board to elect a director to fill a vacancy created by the expansion of our Board or the resignation, death or removal of a director in certain circumstances, which prevents stockholders from being able to fill vacancies on our Board;

30

- 
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
  - advance notice procedures that stockholders must comply with in order to nominate candidates to our Board or to propose matters to be acted upon at a meeting of stockholders, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of the Company; and
  - the requirement that a meeting of stockholders may only be called by members of our Board or the stockholders holding a majority of our shares, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors.

***Our stock price may be volatile and may decline regardless of our operating performance.***

29

---

Fluctuations in the price of our securities could contribute to the loss of part or all your investment. The trading price of our securities could be volatile and subject to wide fluctuations in response to various factors, some of which are beyond our control. Any of the factors listed below could have a material adverse effect on your investment in our securities and our securities may trade at prices significantly below the price you paid for them. In such circumstances, the trading price of our securities may not recover and may experience a further decline.

Factors affecting the trading price of our securities may include:

- actual or anticipated fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to us;
- changes in the market's expectations about our operating results;
- success of competitors;
- our operating results failing to meet the expectation of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning us or the industries in which we operate in general;
- operating and stock price performance of other companies that investors deem comparable to us;
- our ability to market new and enhanced products on a timely basis;
- changes in laws and regulations affecting our business;
- commencement of, or involvement in, litigation involving us;
- changes in our capital structure, such as future issuances of securities or the incurrence of additional debt;
- the volume of shares of our common stock available for public sale;
- any major change in our board of directors or management;
- sales of substantial amounts of our common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic, political, market conditions such as recessions, inflation, interest rates, fuel prices, international currency fluctuations and acts of war or terrorism.

***Future resales of our common stock may cause the market price of our securities to drop significantly, even if our business is doing well.***

Broad market and industry factors may materially harm the market price of our securities irrespective of our operating performance. The stock market in general, and Nasdaq, have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the companies affected. The trading prices and valuations of these stocks, and of our securities, may not be predictable. A loss of investor confidence in the market for the stocks of other companies that investors perceive to be

like us could depress our stock price regardless of our business, prospects, financial conditions, or results of operations. A decline in the market price of our securities also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future.

***There can be no assurance that the Warrants will be in the money at the time they become exercisable, and they may expire worthless.***

***The exercise price for the outstanding warrants is \$11.50 per share of common stock. There can be no assurance that the warrants will be in the money following the time they become exercisable and prior to their expiration, and as such, the Warrants may expire worthless.***

***There can be no assurance that our common stock will be able to comply with the continued listing standards of Nasdaq.***

31

---

The shares of our common stock and warrants are listed on Nasdaq. If Nasdaq delists the common stock from trading on its exchange for failure to meet the listing standards, we and our stockholders could face significant material adverse consequences including:

- a limited availability of market quotations for our securities;
- a determination that our common stock is a "penny stock," which will require brokers trading in our common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our common stock;

30

- 
- a limited amount of analyst coverage; and
  - a decreased ability to issue additional securities or obtain additional financing in the future.

***We do not intend to pay dividends on our common stock in the foreseeable future and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.***

We have never declared or paid cash dividends on our common stock. We currently do not anticipate paying any cash dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on our financial condition, results of operations, capital requirements, general business conditions and other factors that our board of directors may deem relevant.

***We are a "smaller reporting company" and, because we have opted to use the reduced reporting requirements available to us, certain investors may find investing in our securities less attractive.***

As a smaller reporting company, we are permitted to comply with scaled-back disclosure obligations in our SEC filings compared to other issuers, including with respect to disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We have elected to adopt the accommodations available to smaller reporting companies. Until we cease to be a smaller reporting company, the scaled-back disclosure in our SEC filings will result in less information about our company being available than for other public companies. If investors consider our common stock less attractive as a result of our election to use the scaled-back disclosure permitted for smaller reporting companies, there may be a less active trading market for our common stock and our share price may be more volatile.

We are also a non-accelerated filer under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and we are not required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002. Therefore, our internal controls over financial reporting will not receive the level of review provided by the process relating to the auditor attestation included in annual reports of issuers that are subject to the auditor attestation requirements. In addition, we cannot predict if investors will find our common stock less attractive because we are not required to comply with the auditor attestation requirements. We cannot predict if investors will find our securities less attractive because we rely on these available exemptions. If some investors find our securities less attractive as a result, there may be a less active trading market for our securities and the market price of our securities may be more volatile.

#### ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

#### ITEM 1C. CYBERSECURITY

At Eos, we leverage a cybersecurity model that focuses on four key areas: prevention, detection, assessment, and remediation through an array of internal and external systems, along with the expertise of third-party service providers. This model is supported internally by Eos' Information Technology Department ("ITD"), along with expertise of external cybersecurity experts. Our model is also supported through security awareness training for all employees during the onboarding process and on a regular basis thereafter.

Our Board of Directors has overall oversight responsibility for our cybersecurity model. Our overarching cybersecurity programs are under the direction of the Eos leadership team, and directly supported by the efforts of the ITD. The ITD, led by the Director of ITD, reports to the Chief Financial Officer ("CFO") of the Company. With over 7 years of experience leading cybersecurity teams and programs, our Director of ITD leverages a combination of internal and external systems and security experts to keep our CFO informed of potential risks to the organization. The Director of ITD is responsible for identifying, considering, and assessing material cybersecurity risks on an ongoing basis, establishing processes to ensure that such potential cybersecurity risk exposures are monitored, putting in place appropriate mitigation measures and maintaining cybersecurity programs and systems. Management reports material cybersecurity risks to our Board of Directors on an annual basis. In addition, our management follows a risk-based escalation process to notify the Board of Directors outside of the regular reporting cycle when they identify an emerging risk or material issue.

In 2023, we did not identify any cybersecurity threats that have materially affected or are reasonably likely to materially affect our business strategy, results of operations, or financial condition. However, despite our efforts, we cannot eliminate all risks from cybersecurity threats, or provide assurances that we have not experienced an undetected cybersecurity incident. For more information about these risks, please see Part I, Item 1A- Risk Factors in this Annual Report on Form 10-K.

## ITEM 2. PROPERTIES

Our corporate headquarters are located in Edison, New Jersey, in an office consisting of approximately 63,000 square feet of office, testing and product design space. We have a ten-year lease on our corporate headquarters, which expires on September 14, 2026.

Our manufacturing facility is located in the Turtle Creek, Pittsburgh area in Pennsylvania. In January 2022, the Company entered into a new lease agreement for a building next to our existing manufacturing site. We expanded our annual manufacturing capacity from approximately 260 MWh to approximately 800+ MWh. In 2023, we entered into lease agreements for additional space and facilities in 2022. The leases of the facility expire on December 31, 2026.

Turtle Creek, Pittsburgh. See Note 14, *Leases* for further discussion. We believe that our existing properties are in good condition and are sufficient and suitable for the conduct of our business for the foreseeable future. To the extent we need to increase our footprint as our business grows, we expect that additional space and facilities will be available.

## ITEM 3. LEGAL PROCEEDINGS

From time to time, the Company may be involved in litigation relating to claims arising out of the Company's operations. While the outcomes of these types of claims are uncertain, management does not expect that the ultimate costs to resolve these matters will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

As The following is also disclosed in Note 17, 16, *Commitments and Contingencies* to our consolidated financial statements included elsewhere in this Annual Report, Report.

### Class Action Complaints

On March 8, 2023, a class action lawsuit (the "Delman Complaint") was filed in the Court of Chancery of the State of Delaware by plaintiff Richard Delman (the "Delman Plaintiff") against certain defendants including the Company's former directors (the "Delman Defendants"). Neither the Company nor Eos Energy Storage LLC were named as a defendant in the Delman Complaint, but each was under identified as a previously-reported investigation by relevant non-party, and the U.S. Department of Justice (the "DOJ") for underpayment of certain custom duties in past years in connection with imports of batteries and battery components manufactured abroad. Company has indemnification obligations relating to the lawsuit. On July 7, 2022 February 1, 2024, the Company entered into parties to the Delman Complaint agreed to a settlement agreement binding Settlement Term Sheet (the "Settlement Agreement" "Settlement") with whereby the DOJ and Vincent Icolari ("Relator") Delman Plaintiff agreed to resolve the investigation. The investigation resulted from Delman Complaint in exchange for a qui tam lawsuit (the "Civil Action") filed settlement payment of \$8.5 million, consisting of cash payments previously made by the Relator Company of approximately \$1.0 million and an additional cash payment of approximately \$7.5 million funded by the Company's D&O liability insurance policies. The settlement is subject to confirmatory discovery and approval by the Court of Chancery.



On August 1, 2023, a class action lawsuit was filed in December 2019 alleging violations of the False Claims Act. Pursuant to the terms of the Settlement Agreement, Eos Energy has agreed to pay a total of \$1.0 million to the United States District Court of New Jersey by plaintiff William Houck (the "Houck Complaint") against the Company and \$0.1 million to Relator's counsel, against three individual officers: the Company's Chief Executive Officer, its former Chief Financial Officer, and its current Chief Financial Officer (with the Company, the "Houck Defendants"). The Houck Complaint alleges that the Houck Defendants violated federal securities laws by making knowingly false or misleading statements about the Company's contractual relationship with a customer and about the size of the Company's order backlog and commercial pipeline. The Company has fully settled denied the allegations of wrongdoing in the Houck Complaint and intends to continue to vigorously defend against this liability as of December 31, 2022.

action.

#### ITEM 4. MINE SAFETY DISCLOSURES

None.

## PART II

#### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES

##### Market Information

EOS's Eos's shares of common stock and warrants are traded on The Nasdaq Capital Market under the ticker symbols "EOSE" and "EOSEW", respectively.

As of February 22, 2023 February 27, 2024, there were 258 260 holders of record of EOS Eos common stock and 3 holders of record of EOS warrants.

stock.

##### Dividend Policy

We have never declared or paid cash dividends on our common stock. We currently do not anticipate paying any cash dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on our financial condition, results of operations, and capital requirements, general business conditions and other factors that our board of directors may deem relevant.

##### Recent Sales of Unregistered Securities

None.

#### ITEM 6. [Reserved]

#### ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our consolidated financial statements and related notes thereto included elsewhere in this Annual Report. In addition to historical information, this discussion contains forward-looking statements that involve risks, uncertainties and assumptions that could cause actual results to differ materially from management's expectations. Factors that could cause such differences are discussed in "Forward-Looking Statements" and "Risk Factors."

32 34

## Overview

The Company was originally incorporated offers an innovative Znyth™ technology battery energy storage system ("BESS") designed to provide the operating flexibility to manage increased grid complexity and price volatility resulting from an overall increase in Delaware on June 3, 2019 as renewable energy generation and a special purpose acquisition company under congested grid coming from an increase in electricity demand growth. The Company's BESS is a validated chemistry with accessible non-precious earth components in a durable design that is intended to deliver results in even the name B. Riley Principal Merger Corp. II. ("BMRG"), most extreme temperatures and conditions. The system is designed to be safe, flexible, scalable, sustainable and manufactured in order the United States, using raw materials primarily sourced in the United States. We believe the Company's flagship Gen 2.3™ battery module and its newest Z3™ battery module are the core of its innovative systems. The Z3 battery module is the only US designed and manufactured battery module that today provide utilities, independent power producers, renewables developers, and C&I customers with an alternative to acquire one or more businesses, lithium-ion and lead-acid monopolar batteries for critical 3- to 12-hour discharge duration applications. We believe the Z3 battery will transform how utility, industrial, and commercial customers store power.



In addition to its BESS, the Company currently offers: (a) a BMS which provides a remote asset monitoring capability and service to track the performance and health of the Company's BESS and to proactively identify future system performance issues through predictive analytics; (b) project management services to ensure the process of implementing the Company's BESS are coordinated in conjunction with the customer's overall project plans; (c) commissioning services that ensure the customer's installation of the BESS meets the performance expected by the customer; and (d) long-term maintenance plans to maintain optimal operating performance of the Company's systems.

The Company's growth strategy contemplates increasing sales of battery energy storage systems and related software and services through a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or a similar business combination. Upon the closing of a business combination with Eos Energy Storage, LLC on November 16, 2020 (the "Merger"), the Company changed its name to "Eos Energy Enterprises, Inc." direct sales team and sales channel partners. The Company's common shares started trading under the ticker NASDAQ: EOSE on November 16, 2020.

On April 9, 2021, the Company acquired, from Holtec, the 51% interest in Hi-Power that was not already owned by the Company. Following the consummation of the transaction, Hi-Power became a 100% indirect, wholly-owned subsidiary of the Company current and the obligations of the parties under the Hi-Power joint venture terminated.

The Company designs, develops, manufactures, and markets innovative zinc-based energy storage solutions for utility-scale, microgrid, target customers include utilities, project developers, independent power producers and commercial & industrial ("C&I") applications. The Company has developed a broad range of intellectual property with multiple patents covering unique battery chemistry, mechanical product design, energy block configuration and a software operating system (Battery Management System). The Battery Management System ("BMS") software uses proprietary Eos-developed algorithms and includes ambient and battery temperature sensors, as well as voltage and electric current sensors for the electrical strings and the system. The Company focuses on designing, developing, producing and selling safe, reliable, long-lasting, low-cost turn-key alternating current ("AC") integrated systems using Eos' direct current ("DC") Battery Energy Storage System ("BESS"). The Company's primary applications focus on integrating battery storage solutions with: (1) renewable energy systems that are connected to the utility power grid; (2) renewable energy systems that are not connected to the utility power grid; (3) storage systems utilized to relieve congestion; and (4) storage systems to assist C&I customers in reducing their peak energy usage or participating in the utilities ancillary and demand response markets. The Company has a manufacturing facility in Turtle Creek, Pennsylvania to produce DC energy blocks with an integrated BMS. The Company's primary market is North America with opportunistic growth opportunities in Europe, Oceania, Africa, and Asia. The Company has one operating and reportable segment. companies.

## Business Trends

As an SEC-registered and Nasdaq-listed company, we are required to implement procedures and processes to address public company regulatory requirements and customary practices and have, and will continue to, hire additional personnel in this context. We have incurred additional annual expenses as a public company for, among other things, directors' and officers' liability insurance, director fees, internal and external accounting, legal, administrative resources, including increased personnel costs, and audit and other professional service fees.

Inflation and cost factors - During 2023, the effects of the Federal Reserve's interest rate hikes in 2022 and in the first half of 2023 had an impact on reducing inflation. This eased many investor concerns and worked to stabilize the cost of purchasing supplies and raw materials for companies.

### U.S. Department of Energy's (DOE) Renewable Energy Project and Efficient Energy Loan Program

In August 2023, the DOE issued a Conditional Commitment Letter to the Company for a loan of an aggregate principal amount of up to \$398.6 million through the DOE's Clean Energy Financing Program. The Conditional Commitment Letter follows an extensive technical, financial and commercial due diligence process by the DOE. If finalized, the loan is expected to fund 80% of eligible costs of the Company's planned manufacturing expansion in Turtle Creek, Pennsylvania.

Eligible costs include capital expenditures and other costs associated with ramping up the manufacturing lines and facility. Eligible cost include start-up and shakedown costs, as well as certain material and labor costs before efficiencies are met. The Company is currently operating in a period of global economic working to finalize the loan documents with the DOE and geopolitical uncertainty, which has been exacerbated by the ongoing military conflict between Russia and Ukraine. Although the length and impact of the ongoing military conflict to fulfill certain conditions precedent. Eos is highly unpredictable, the conflict in Ukraine has led to market disruptions, including significant volatility in commodity prices, credit and capital markets, an increase in cybersecurity incidents as well as additional supply chain disruptions. The Company's business has not been materially impacted by the ongoing military conflict in Ukraine as of the date of this filing, however, we continue to monitor these developments. See Part 1, Item 1A - Risk Factors section for further discussion.

The novel coronavirus ("COVID-19") outbreak has had an adverse effect on the Company's workforce and operations, as well as the operations of its customers, distributors, suppliers and contractors. Management continues to monitor for a potential resurgence of COVID-19 and remains focused on maintaining protective measures to ensure the safety, health and welfare of the Company's workforce. A potential resurgence of COVID-19 may impact the Company's financial condition and results of operations in the future. Refer to Part 1, Item 1A - Risk Factors section for further discussion. spending eligible costs now that would be reimbursable at first funding.

33 35

## *Inflation Reduction Act of 2022 ("IRA")*

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 into law. The IRA features has significant economic incentives for both energy storage customers and manufacturers for projects placed in service after December 31, 2022. One of the most important features of the IRA legislation is that it offers a 10-year term tax credit, whereas historically similar industrial credits have been shorter in duration. Customers placing new energy storage facilities in service after this date may will be allowed to claim at least a thirty percent investment tax credit ("ITC") under certain conditions. The IRA also offers an extra ten percent credit if the project is in an "energy community" and another ten percent credit if the project satisfies domestic content requirements, which will be set forth when the implementing regulations are finalized. The ten percent bonus for domestic

content could represent a strategic advantage for the Company resulting from our the Company's near-sourcing and Made in America strategy, and we currently anticipate that projects utilizing Eos batteries will qualify for the bonus.

Starting in 2023, there are also meaningful PTC Production Tax Credits under Internal Revenue Code 45X ("PTC"), that can be claimed on battery components manufactured in the US U.S. and sold to customers, which could apply U.S. or foreign customers. These tax credits available to the Company, including credits manufacturers include a credit for ten percent of the cost incurred to make electrode active materials in addition to credits of \$35 per kWh of capacity of battery cells and \$10 per kWh of capacity of battery modules. These credits are cumulative, meaning the Company expects to that companies will be able to claim each of the available tax credits based on the battery components produced and sold through 2029, after which the PTC will begin to gradually phase down through 2032. In June 2023, the IRS issued temporary and proposed regulations related to applicable tax credit amount for each component. The IRA directs the Internal Revenue Service to pay manufacturers the cash value, also known as transferability and direct pay provisions of PTCs for making battery components, the Inflation Reduction Act. The Company has reviewed these regulations and therefore, these believes they do not have a material impact on the financial statements.

These credits may are expected to be a new source of cash flow for Eos. The direct pay option is valid for up to five tax years, after which any such tax credits can be sold to other companies for cash. Eos in the future.

#### Company Highlights

- In November 2022, January 2023, several investors, including Clear Creek Investments, LLC, Ardsley Advisory Partners LP, and AltEnergy, LLC, and others, made a \$13.75 million investment in the Company announced an order by purchasing the Company's 26.5% Convertible Senior PIK Notes due 2026. The proceeds of this funding supported the Company's strategic growth initiatives. See Note 12, *Borrowings* to our consolidated financial statements included elsewhere in this Annual Report for a 35 MWh energy storage system capable of 10-hour discharge duration. The order, worth \$13.5 million, is funded by a grant through the CEC's LDES Program as part of a project being carried out by Indian Energy, a 100 percent Native American-owned business, to create a first-of-its-kind resilient clean energy microgrid, further discussion.
- In September 2022, February 2023, the Company announced it was invited an initial 47 MWh renewables plus storage project with one of the largest operators of energy storage in the U.S., along with a separate long-term agreement that contributes 4GWh to the Company's pipeline.
- During 2023, the Company issued three convertible promissory notes with an aggregate principal amount of \$35.0 million in a private placement to YA II PN, Ltd. ("Yorkville") under the second, third and fourth supplemental agreements to the Standby Equity Purchase Agreement (SEPA). During 2023, Yorkville delivered Investor Notices requiring the Company to issue and sell an aggregate of 20,993,417 shares of common stock to Yorkville to offset all outstanding amounts owed to Yorkville under the outstanding Promissory Notes. See Note 12, *Borrowings* to our consolidated financial statements included elsewhere in this Annual Report for further discussion.
- In February 2023, the Company completed the first Eos Cube powered by the next-generation Eos Z3™ battery.
- In April 2023, the Company issued 16,000,000 shares of the Company's common stock at a purchase price of \$2.50 per share in a registered direct offering. The Company issued in a concurrent private placement unregistered warrants to purchase up to an aggregate of 16,000,000 shares of common stock. The gross proceeds to the Company from the offering were \$40.0 million, before deducting advisory fees and other offering expenses payable by the Company.

36

- In May 2023, the Company issued 3,601,980 shares of the Company's common stock at a purchase price of \$2.221 per share in a registered direct offering. The Company issued in a concurrent private placement unregistered warrants to purchase up to an aggregate of 3,601,980 shares of common stock. The gross proceeds to the Company from the offering were \$8.0 million, before deducting advisory fees and other offering expenses payable by the Company.
- On August 23, 2023, the Company and Yorkville terminated the SEPA, as amended, by mutual written consent. At the time of termination, there were no outstanding borrowings, advance notices or shares of Common Stock to be issued under the SEPA. In addition, there were no fees due diligence stage by the Company or Yorkville in connection with the termination of the SEPA.
- In August 2023, the Company signed a Master Supply Agreement with ACRO Automation Systems to partner in the design, development, and implementation of its state-of-the-art high output manufacturing lines. ACRO is a recognized leader in high-speed, custom designed, automated manufacturing systems.
- In August 2023, the Company announced Project AMAZE —American Made Zinc Energy, a \$500 million planned expansion and a significant milestone to build 8 GWh of clean energy storage production capacity.
- In August 2023, the U.S. Department of Energy's ("DOE") Renewable Energy and Efficient (DOE) issued a Conditional Commitment Letter to the Company for a loan of an aggregate principal amount of up to \$398.6 million through the DOE's Clean Energy Loan Financing Program. The DOE Loan Programs Office's ("LPO") invitation to Eos to enter into full Conditional Commitment Letter follows an extensive technical, financial and commercial due diligence represents an important progression in process by the LPO's evaluation DOE. If finalized, the loan is expected to fund 80% of Eos' loan application. This stage includes LPO performing its due diligence of Eos' project to expand manufacturing to support at least 3GWh of production capacity. During this stage, the Company and LPO are working to negotiate a term sheet setting out the principal terms and conditions eligible costs of the loan. However, the DOE invitation to the due diligence stage is not an assurance that the DOE will offer a conditional commitment, or that the Company will secure a loan under the DOE Loan Program. Company's planned manufacturing expansion in Turtle Creek, Pennsylvania.

- In September 2022, October 2023, the Company announced that Jeff Bornstein, McNeil, former Chief Financial Operating Officer, and Executive Vice Chairman President of GE and Managing Partner at Generation Capital Partners and Whipstick Ventures, Enphase, joined the Company's Board of Directors.
- In 2022, December 2023, the Company announced that Eos and Pine Gate Renewables, a leading renewable energy company focused on development and strategic financing of solar and storage projects throughout the United States, entered into a \$100 million Senior Secured Term Loan Credit Agreement (the "Senior Secured Term Loan") memorandum of understanding (MOU) to expand their existing partnership with Atlas Credit Partners (ACP) Post Oak Credit I LLC, as administrative agent for a minimum additional volume of 500MWh. The partnership between the lenders two companies launched in 2021 with projects in South Carolina and collateral agent for the secured parties. The Company made total borrowings of \$100 million under the Senior Secured Term Loan, composed of borrowings on July 29, 2022, August 4, 2022, and December 7, 2022 of \$85.1 million, \$9.6 million, and \$5.3 million, respectively. Utah.
- During 2022, In December 2023, the Company, entered into in a common stock Standby Equity Purchase Agreement ("SEPA") with YA II PN, Ltd. an affiliate of Yorkville Advisors. The SEPA gives the Company the right, but not the obligation, to sell up to \$75.0 million of common equity to Yorkville at times of the Company's choosing during the two-year term of the agreement. For the year ended December 31, 2022, funds raised under the SEPA were \$14.5 million. See Note 20, Shareholders' Equity to our consolidated financial statements included elsewhere in this Annual Report.

34

- During 2022, the Company entered into a Sales Agreement (the "Sales Agreement") with Cowen and Company, LLC ("Cowen"), with respect to an at-the-market ("ATM") public offering, program under which the Company may offer and sell, from time to time at its sole discretion, issued 34,482,759 shares of its common stock par value \$0.0001 per and 34,482,759 common share, having an aggregate warrants. The combined offering price to the public of up each share of common stock and accompanying one common warrant was \$1.45. The common warrants have an exercise price of \$1.60 per share, are exercisable immediately, and expire five years following the date of issuance. Gross proceeds to \$100 million through Cowen as its sales agent and/or principal. the Company from the offering was \$50.0 million, before deducting advisory fees and other offering expenses of approximately \$2.7 million.
- For the year ended December 31, 2022 December 31, 2023, funds raised under the ATM were \$38.6 million, net of commissions.
- In July 2022, the Company announced recognized the deduction IRA's Production Tax Credit of \$3.3 million as a reduction of cost of goods sold on the "Eos Ingenuity Lab," a site focused on expanding the Company's R&D capacity as it designs future generations consolidated statement of its Znyth™ technology battery operations and forges a path toward rapid manufacturing and deployment of its energy storage systems. comprehensive loss, respectively.
- In June 2022, Bridgelink Commodities, LLC increased the Bridgelink master supply agreement to 1 GWh of energy storage systems for deliveries over the next three years with an incremental order value of \$181 million for new project installations and also issued a separate 40 MWh order valued at \$13 million.
- In June 2022, a 300 MWh master supply agreement was signed with a leading Northeast solar developer for front of the meter stand-alone storage and solar storage applications that provide energy shifting and ancillary services with deliveries forecasted over the next three years.

35 37

Results of Operations

Revenue

	For the Years Ended December 31,
	For the Years Ended December 31,
(\$ in thousands)	
(\$ in thousands)	

(\$ in thousands)	(\$ in thousands)	2022	2021	\$ Change	% Change	2023	2022	\$ Change	% Change
Revenue	Revenue	\$17,924	\$4,598	\$13,326	290 %				
Revenue									
Revenue						\$ 16,378	\$ 17,924	\$ (1,546)	(9) %

The Company generates revenues from the delivery of its BESSs BESS and service-related solutions. The Company expects revenues to increase as it scales production to meet customer demand.

Revenue increased by \$13.3 million, or 290% from \$4.6 million remained relatively flat for the year ended December 31, 2021 December 31, 2023 compared to \$17.9 million for the year ended December 31, 2022. The increase in revenue was primarily driven by the Company's increase in production and delivery of its energy storage systems and, to a lesser extent, other equipment.

Certain customer projects were deferred out of 2022 and into 2023 and beyond, primarily as a result of the recent passage of the IRA. The IRA includes subsidies for both energy storage customers and manufacturers, which are effective for projects placed in service after December 31, 2022.

#### Cost of goods sold

For the Years Ended December 31,									
For the Years Ended December 31,									
(\$ in thousands)									
(\$ in thousands)									
(\$ in thousands)	(\$ in thousands)	2022	2021	\$ Change	% Change	2023	2022	\$ Change	% Change
Cost of goods sold	Cost of goods sold	\$153,260	\$46,483	\$106,777	230 %				
Cost of goods sold									
Cost of goods sold						\$ 89,798	\$ 153,260	\$ (63,462)	(41) %

Cost of goods sold primarily consists of direct costs relating to direct labor, direct material and overhead that is directly tied to product manufacturing, engineering, procurement and construction ("EPC"), project delivery, commissioning, and start-up test procedures, and other indirect costs. Other indirect procedures. Indirect costs include included in cost of goods sold are manufacturing overhead such as manufacturing engineering, equipment maintenance, environmental health and safety, quality and production control procurement, transportation, logistics, depreciation and facility-related costs. As a nascent technology with a new manufacturing process that is early in its product lifecycle, the Company still faces significant costs associated with production start-up, commissioning of various components, modules, and subsystems and other related costs. The Company expects its cost of goods sold to exceed revenues in the near term as it continues to scale production and prepares BESSs battery energy storage systems delivered to customers to go-live.

Cost of goods sold increased decreased by \$106.8 million \$63.5 million, or 230% 41% from \$46.5 million for the year ended December 31, 2021 to \$153.3 million for the year ended December 31, 2022 to \$89.8 million for the year ended December 31, 2023. The increase decrease in cost of goods sold from 2022 to 2023 was driven by the following: (a) an increase in production volumes and related manufacturing costs; (b) higher freight costs and material costs primarily due to volume approximately 44% fewer containers delivered to customers in 2023 compared to 2022. Also, the Company reduced and inflation; (c) concluded Gen 2.3 battery system production in the first half of 2023, and ramped up the Gen Z3™ manufacturing process. The focus on Gen Z3 battery system research and development in 2023, and the reduced material orders and other ancillary costs on the retired Gen 2.3. battery system contributed to the decrease in cost of goods sold from 2022. Additionally, all 2022 expenses were related to the higher manufacturing scrap and rework costs and production inefficiencies; and (d) cost Gen 2.3 battery system. However, in 2023, expenses from the higher EPC and commissioning cost Gen 2.3 battery systems were replaced with lower cost Gen Z3 battery system expenses.

#### Research and development expenses

For the Years Ended December 31,									
For the Years Ended December 31,									
(\$ in thousands)									
(\$ in thousands)									
(\$ in thousands)	(\$ in thousands)	2022	2021	\$ Change	% Change	2023	2022	\$ Change	% Change
R&D expenses	R&D expenses	\$18,469	\$19,154	\$ (685)	(4) %				
R&D expenses									
R&D expenses						\$ 18,708	\$ 18,469	\$ 239	1 %

Research and development expenses consist primarily of salaries and other personnel-related costs, materials, third-party services, depreciation, and amortization of intangible assets.

36

Research and development costs decreased increased by \$0.7 million \$0.2 million or 4% 1% from \$19.2 million for the year ended December 31, 2021, to \$18.5 million for the year ended December 31, 2022, to \$18.7 million for the year ended December 31, 2023. The decrease increase in research and development costs was primarily driven by a decrease of \$3.4 million in higher payroll and personnel costs, for higher materials and supplies, partially offset by increases of \$1.4 million for outside professional services, \$0.5 million of payroll and personnel costs, \$0.6 million of stock compensation costs and \$0.2 million of facility costs. lower third party services.

38

#### Selling, general and administrative expenses

For the Years Ended December 31,									
For the Years Ended December 31,									
(\$ in thousands)									
(\$ in thousands)									
(\$ in thousands)	(\$ in thousands)	2022	2021	\$ Change	% Change	2023	2022	\$ Change	% Change
SG&A expenses	SG&A expenses	\$60,623	\$42,998	\$17,625	41 %				
SG&A expenses									
SG&A expenses						\$ 53,650	\$ 60,623	\$ (6,973)	(12) %

Selling, general and administrative expenses primarily consist of payroll and personnel-related, outside professional services, facilities, depreciation, travel, marketing, and public company costs.

Selling, general and administrative expenses increased decreased by \$17.6 million \$7.0 million or 41% 12%, from \$43.0 million for the year ended December 31, 2021 to \$60.6 million for the year ended December 31, 2022 to \$53.7 million for the year ended December 31, 2023. The increase decrease was primarily driven by decreases in outside consulting expenses of \$7.2 million, duties and insurance fees of \$1.5 million, and legal and professional costs of \$0.3 million, offset by increases of \$10.8 million in \$1.2 million of payroll and personnel costs and \$8.9 million \$0.8 million of outside service expenses, partially offset by decreases of \$1.9 million in stock compensation facility costs.

#### Loss on pre-existing agreement

				For the Years Ended December 31,	
(\$ in thousands)				2022	2021
Loss on pre-existing agreement				\$ —	\$ 30,368

The Company incurred a loss on a pre-existing agreement of \$30.4 million for the year ended December 31, 2021 due to the termination of the joint venture agreement with Holtec during the second quarter of 2021.

#### Loss from write-down on property, plant and equipment

For the Years Ended December 31,
----------------------------------

For the Years Ended December 31,				For the Years Ended December 31,	
(\$ in thousands)	(\$ in thousands)	2022	2021	2023	2022
Loss from write-down on PP&E	Loss from write-down on PP&E	\$6,846	\$50		
Loss from write-down on PP&E					
Loss from write-down on PP&E					

The Company incurred a loss losses of \$7.2 million and \$6.8 million from the write-down on write-downs of property, plant and equipment for the year years ended December 31, 2022, compared to \$0.1 million December 31, 2023 and 2022, respectively. The 2023 amount is a result of higher costs for disposal of equipment and tooling that was used for manufacturing of the Gen 2.3 battery, but cannot be repurposed for the year ended December 31, 2021. The increase in loss is due to replacement of equipment, outsourcing of certain production processes, and a shift in production from the current generation Gen 2.3 BESS to the next generation Eos Z3 system.

Grant expense, net

(\$ in thousands)	For the Years Ended December 31,	
	2022	2021
Grant (income) expense, net	\$ (16)	\$ 269

Grant (income) expense, net includes grant-related expenses net of grant income received pursuant to grant agreements with the California Energy Commission ("CEC"). The change in grant (income) expense, net, for the years ended December 31, 2022 and 2021 relates to the timing of grant activity and recovery of expenses from the CEC grant.

battery production.

Interest expense, net

For the Years Ended December 31,				For the Years Ended December 31,	
(\$ in thousands)	(\$ in thousands)	2022	2021	2023	2022
Interest expense, net	Interest expense, net	\$ (7,915)	\$ (604)		
Interest expense, net					
Interest expense, net					

Interest expense, net includes accrued interest, amortization of debt issuance costs and debt discounts, and interest income. Interest expense, net increased by \$7.3 million \$10.9 million for the year ended December 31, 2022 December 31, 2023, compared to the year ended December 31, 2021 December 31, 2022. These increases are a result This increase is primarily due to 12 months of higher interest expense recognized due in 2023 related to interest on the Senior Secured Term Loan, which was issued in July 2022, and from a further draw on the equipment financing facility compared to five months of expense in 2022. Additionally, the Senior Secured Term Loan has a variable interest rate, therefore, higher 2023 interest rates contributed to the increase. See Note 11, Borrowings for detail of interest expense recognized for the Senior Secured Term Loan for the years ended December 31, 2023 and 2022.

Interest expense - related party

For the Years Ended December 31,
----------------------------------

For the Years Ended December 31,				For the Years Ended December 31,	
(\$ in thousands)	(\$ in thousands)	2022	2021	2023	2022
Interest expense - related party	Interest expense - related party	\$ (10,898)	\$ (4,597)		
Interest expense - related party					
Interest expense - related party					

Interest expense, related party includes accrued interest, and the amortization of debt issuance costs and debt discounts. Interest expense - related party increased by \$6.3 million \$26.6 million for the year ended December 31, 2022 December 31, 2023, compared to the year ended December 31, 2021 December 31, 2022. 2022 reflects a full year of interest expense and amortization of debt issuance costs recognized in 2022 for the 2021 Convertible Notes - Related Party and the Yorkville Convertible Promissory Note - Related Party. In 2021, there was only interest expense and amortization of debt issuance costs for the 2021 Convertible Notes- Related Party, which were issued in July 2021.

#### Remeasurement of equity method investment

(\$ in thousands)	For the Years Ended December 31,	
	2022	2021
Remeasurement of equity method investment	\$ —	\$ (7,480)

39

For the year ended December 31, 2021 December 31, 2023, we in addition to interest expense on outstanding debt, the Company recognized a \$7.5 million loss losses on our equity method investment the issuances of Yorkville Convertible Promissory Notes in Hi-Power. The loss the amount of \$17.6 million and AFG Convertible Notes in the amount of \$2.9 million. These losses were recorded because the fair value of these notes exceeded the total net proceeds received at issuance. See Note 12, Borrowings for further discussion.

#### Change in fair value of warrants

For the years ended December 31, 2023 and 2022, the change in fair value of warrants was a result composed of the remeasurement of our 49% ownership in Hi-Power due to our acquisition of the remaining 51% interest previously held by Holtec. The Company consolidated Hi-Power for the full year of 2022, therefore, it was not accounted for as an equity method investment for the year ended December 31, 2022. items below:

#### Gain on change

(\$ in thousands)	For the Year Ended December 31, 2023		
	Loss on issuance	Gain on Change in Fair Value	Net (Loss) Gain
IPO warrants	—	23	23
April 2023 Transaction	(26,366)	18,330	(8,036)
May 2023 Transaction	(5,267)	3,403	(1,864)
December 2023 Public Offering	\$ (21,294)	\$ 6,191	\$ (15,103)
Change in fair value of warrants	\$ (52,927)	\$ 27,947	\$ (24,980)

(\$ in thousands)	For the Year Ended December 31, 2022		
	Loss on issuance	Gain on Change in Fair Value	Net (Loss) Gain
IPO warrants	—	848	848
Change in fair value of warrants	\$ —	\$ 848	\$ 848

#### Change in fair value of derivatives - related parties

(\$ in thousands)	For the Years Ended December 31,	
	2023	2022
Change in fair value of derivatives - related parties	\$ 9,983	\$ 10,880

The gain on change in the fair value of derivatives - related parties, is composed includes the change in fair value of the following:



(\$ in thousands)	For the Years Ended December 31,	
	2022	2021
Change in fair value, embedded derivatives - related party	\$ 10,880	\$ 17,507
Change in fair value, warrants liability - related party	848	1,775
Gain on change in fair value of derivatives - related parties	\$ 11,728	\$ 19,282

The 2021 Convertible Notes Payable - Related Party, and the December Yorkville Convertible Promissory Notes contain conversion features that are accounted for as embedded derivatives and remeasured at its fair value at each balance sheet date. The decrease in the embedded derivatives' fair value, as well as the warrants liability's fair value, our convertible debt (See Note 12, *Borrowings*) for the year ended December 31, 2022 December 31, 2023, compared to the year ended December 31, 2021, is December 31, 2022. The change was largely a result of the change in the value Company's stock price.

#### Loss on debt extinguishment

(\$ in thousands)	For the Years Ended December 31,	
	2023	2022
Loss on debt extinguishment	\$ (3,510)	\$ (942)

The Company recognized a loss on debt extinguishment of the underlying asset, the Company's common stock.

38

#### Income from equity in unconsolidated joint venture

(\$ in thousands)	For the Years Ended December 31,	
	2022	2021
Income from equity in unconsolidated joint venture	\$ —	\$ 440

Income from equity in unconsolidated joint venture \$3.5 million for the year ended December 31, 2021 includes the results of the Company's joint venture Hi-Power before it became a wholly-owned subsidiary of the Company on April 9, 2021. Subsequent to the acquisition, Hi-Power's operational results have been consolidated within the Company's consolidated statements of operations and comprehensive loss, therefore, there is no income or loss recognized December 31, 2023 from the joint venture issuance of common stock upon Yorkville's redemption of their Convertible Promissory Notes. See Note 12, *Borrowings* for the year ended December 31, 2022.

#### (Loss) gain on debt (extinguishment)/forgiveness

(\$ in thousands)	For the Years Ended December 31,	
	2022	2021
(Loss) gain on debt (extinguishment)/forgiveness	\$ (942)	\$ 1,273

further discussion.

The Company recognized a loss on debt extinguishment of \$0.9 million for the year ended December 31, 2022 from repayment of the Hi-Power note payable.

The Company recognized a gain on debt forgiveness

40

#### Other expense

(\$ in thousands)	For the Years Ended December 31,	
	2023	2022
Other expense	\$ (1,795)	\$ (477)



Other expense of \$1.3 million \$1.8 million for the year ended December 31, 2021 December 31, 2023 primarily includes equity issuance costs from forgiveness of the Paycheck Protection Program loan approved by the Small Business Administration under the CARES Act. April, May, and December 2023 equity and warrant issuances. See Note 13, Warrants Liability for further discussion.

Other (expense) income

(\$ in thousands)	For the Years Ended December 31,	
	2022	2021
Other (expense) income	\$ (477)	\$ 2,194

Other (expense) income expense of (\$0.5) million \$0.5 million for the year ended December 31, 2022 included includes commitment fees of (\$1.1) million \$1.1 million paid upon signing of the SEPA, partially offset by a \$0.5 million gain from settlement of the SEPA advance.

During the year ended December 31, 2021, the Company recognized income of \$2.2 million from the sale of state net operating losses and research and development credit carryforwards in accordance with the New Jersey Economic Development Authority Technology Business Tax Certificate Transfer Program.

Income tax expense

		For the Years Ended December 31,	
		2022	2021
Income tax expense	\$ 51	\$ —	
Income tax expense			
Income tax expense			

Income tax expense of approximately \$0.03 million and \$0.1 million was recorded for the year years ended December 31, 2022. December 31, 2023 and 2022. The taxes are attributable to taxable earnings from the Company's foreign operations which were insignificant for all periods presented. There was no income tax expense recorded for the year ended December 31, 2021.

Liquidity and Capital Resources

Liquidity and Going Concern

As a growth company in the early commercialization stage of its lifecycle, Eos is subject to inherent risks and uncertainties associated with the development of an enterprise. In this regard, substantially all of the Company's efforts to date have been devoted to the development and manufacturing of battery energy storage systems and complimentary products and services, recruitment of management and technical staff, deployment of capital to expand the Company's operations to meet customer demand and raising capital to fund the Company's development. As a result of these efforts, the Company has incurred significant losses and negative cash flows from operations since its inception and expects to continue to incur such losses and negative cash flows for the foreseeable future until such time that the Company can reach a scale of profitability to sustain its operations.

In order to execute its development strategy, the Company has historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively "outside capital") to fund its cost structure and expects to continue to rely on outside capital for the foreseeable future. While the Company believes it will eventually reach a scale of profitability to sustain its operations, there can be no assurance the Company will be able to achieve such profitability or do so in a manner that does not require its continued reliance on outside capital. Moreover, while the Company has historically been successful in raising outside capital, there can be no assurance the Company will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to the Company.

As of the date the accompanying consolidated financial statements were issued (the "issuance date"), management evaluated the significance of the following negative financial conditions in accordance with Accounting Standard Codification 205-40, Going Concern:

- Since its inception, the Company has incurred significant losses and negative cash from operations in order to fund its development. During the year ended December 31, 2022 December 31, 2023, the Company incurred a net loss of \$(229.8) million, \$229.5 million, incurred negative cash flows from operations of \$(196.9) million, \$145.0 million, and had an accumulated deficit of \$(646.3) million \$875.8 million as of December 31, 2022 December 31, 2023.

- As of ~~December 31, 2022~~ December 31, 2023, the Company had ~~\$17.1 million~~ \$69.5 million of unrestricted cash and cash equivalents available to fund the Company's operations, no additional borrowings available to fund its operations under pre-existing financing arrangements (see Note ~~13, 12~~, Borrowings) and negative working capital of ~~\$(5.4) million~~, \$61.5 million, inclusive of ~~\$5.6 million~~ \$3.3 million of outstanding debt that is currently scheduled to mature within the next twelve months beyond the issuance date.
- While the Company has available capacity under certain pre-existing arrangements to issue shares of the Company's common stock, including under the SEPA and the ATM at-the-market ("ATM") offering program, (see also Note ~~20, 19~~, Shareholders' Equity Deficit) to aid in funding the Company's operations, the Company's ability to secure such funding is dependent upon certain conditions, such as investors' willingness to purchase the Company's common stock and at a price that is acceptable to the Company. Accordingly, as of the issuance date there is no assurance the Company will be able to secure funding under these pre-existing arrangements or on terms that are acceptable to the Company.
- Similarly, while the Company has historically been successful in raising additional outside capital to fund the Company's operations, as of the issuance date no assurance can be provided the Company will be successful in obtaining additional outside capital or on terms that are acceptable to the Company. In this regard, the Company is currently in continues to progress through the process of negotiating additional outside capital under the U.S. Department of Energy's Energy ("DOE") Loan Guarantee Solicitation Programs Office's ("LPO") process for Applications its Title XVII loan. In August 2023, the DOE issued a Conditional Commitment Letter to the Company for Renewable a loan of an aggregate principal amount of up to \$398.6 million through the DOE's Clean Energy Projects Financing Program. Certain technical, legal, and Efficient Energy Projects (the "DOE Loan Program"). As financial conditions must be met and due diligence to the satisfaction of the issuance date, DOE must be completed before the DOE enters into definitive financing documents with the Company remains in and funds the due diligence phase of negotiations with the DOE, however, there loan. There can be no assurance that the Company will be able to secure such a loan or on terms that are acceptable to the Company.

- The Company is required to remain in compliance with a quarterly minimum financial liquidity covenant under its Senior Secured Term Loan. While the Company was in compliance with this covenant as of ~~December 31, 2022~~ December 31, 2023, and expects to remain in compliance as of ~~March 31, 2023~~ March 31, 2024, absent the Company's ability to secure additional outside capital, the Company may be unable to remain in compliance with this covenant beginning on ~~June 30, 2023~~ June 30, 2024 and thereafter. In the event the Company is unable to remain in compliance with the minimum financial liquidity covenant and the other nonfinancial covenants required by the Senior Secured Term Loan, and the Company is further unable to cure such noncompliance or secure a waiver, Atlas may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among other things, entering into a forbearance agreement with the Company, and/or asserting its rights in the Company's assets securing the loan. Moreover, the Company's other lenders may exercise similar rights and remedies under the cross-default provisions of their respective borrowing arrangements with the Company.
- Absent an ability to secure additional outside capital in the near term, the Company will be unable to meet its obligations as they become due over the next twelve months beyond the issuance date.
- In the event the Company's ongoing efforts to raise additional outside capital prove unsuccessful, management will be required to seek other strategic alternatives, which may include, among others, a significant curtailment in the Company's operations, a sale of certain of the Company's assets, a sale of the entire Company to strategic or financial investors, and/or allowing the Company to become insolvent.

These uncertainties raise substantial doubt about the Company's ability to continue as a going concern. The accompanying consolidated financial statements have been prepared on the basis that the Company will continue to operate as a going concern, which contemplates that the Company will be able to realize assets and settle liabilities and commitments in the normal course of business for the foreseeable future. Accordingly, the accompanying consolidated financial statements do not include any adjustments that may result from the outcome of these uncertainties.

## Financing Arrangements

The Company has historically relied on outside capital to fund its cost structure and expects this reliance to continue for the foreseeable future until the Company reaches profitability through its planned revenue generating activities. During 2022, 2023, the Company closed on the following capital transactions:

- On January 18, 2023, the Company raised \$13.8 million from the issuance of the AFG Convertible Notes, which mature in June 2026.
- In April 2023, the Company issued 16,000,000 shares of the Company's common stock Standby Equity Purchase Agreement with YA II PN, Ltd, at a purchase price of \$2.50 per share in a registered direct offering. The Company also issued in a concurrent private placement unregistered warrants to purchase up to an affiliate aggregate of Yorkville Advisors. 16,000,000 shares of common stock. The gross proceeds to the Company from the offering were \$40.0 million, before deducting advisory fees and other offering expenses payable by the Company.
- In May 2023, the Company issued 3,601,980 shares of the Company's common stock at a purchase price of \$2.221 per share in a registered direct offering. The Company also issued in a concurrent private placement unregistered warrants to purchase up to an aggregate of 3,601,980 shares of common stock. The gross proceeds to the Company from the offering were \$8.0 million, before deducting advisory fees and other offering expenses payable by the Company.
- For the year ended December 31, 2022 December 31, 2023, total funds raised under the SEPA, inclusive of net proceeds received from the Yorkville Convertible Promissory Notes, were \$14.5 million \$35.6 million. See Note 20, Shareholders' Equity to our consolidated financial statements included elsewhere in this Annual Report.
- a Sales Agreement with Cowen, with respect to an at-the-market Under the ATM offering program. For program, for the year ended December 31, 2022 December 31, 2023, funds raised under the ATM were \$38.6 million Company sold 37,126,137 shares raising proceeds of \$92.9 million, net of commissions. See Note 20, Shareholders' Equity fees paid to our consolidated financial statements included elsewhere in this Annual Report. Cowen, at an average selling price of \$2.58 per share.
- In December 2023, the Company issued in a \$100.0 million Senior Secured Term Loan Credit Agreement with Atlas Credit Partners (ACP) Post Oak Credit I LLC. For the year ended December 31, 2022, the funds raised from borrowings under the Senior Secured Term Loan were \$100.0 million. The Senior Secured Term Loan contains customary affirmative and negative covenants, which limit the Company's and its subsidiaries' ability to incur indebtedness, make restricted payments, including cash dividends on combined public offering (i) 34,482,759 shares of its common stock make certain investments, loans and advances, enter into mergers and acquisitions, sell, assign, transfer or otherwise dispose (ii) accompanying common warrants to purchase one share of its assets, enter into transactions with its affiliates and engage in sale and leaseback transactions, among other restrictions. It also requires common stock for each share of common stock sold. The gross proceeds to the Company to hold enough available liquidity as of from the last day of each fiscal quarter to meet the Interest Escrow Required Amount (as defined in the Senior Secured Term Loan) offering were \$50.0 million, which is calculated as the aggregate amount of the four immediately following interest payments on loans under the Senior Secured Term Loan. See Note 13, before deducting underwriting fees and selling concessions at closing. Borrowings to our consolidated financial statements included elsewhere in this Annual Report.
- an additional \$4.2 million from Trinity Capital Inc. under the \$25.0 million equipment financing facility (the "Equipment Financing Facility"), which was entered into during 2021. See Note 13, Borrowings to our consolidated financial statements included elsewhere in this Annual Report.

41

See Note 13, 12, Borrowings, and Note 20, 19, Shareholders' Equity Deficit for all of the Company's outstanding debt and equity transactions.

## Capital Expenditures

We expect The Company expects capital expenditures and working capital requirements to increase as we seek it seeks to execute on our its growth strategy. Total capital expenditures for the year years ended December 31, 2023 and December 31, 2022 were \$29.3 million and \$20.1 million. These expenses were, respectively. The increase in capital expenditures in 2023 was primarily used to purchase additional equipment driven by costs incurred for development and to automate certain construction of a fully automated manufacturing processes line that will increase our capacity be used for the Z3™ battery in 2024 and efficiency. Our capital expenditure years thereafter. These costs are classified as Construction in Progress (see Note 6, Property, Plant and working capital requirements may change depending on many factors, including but not limited to, the overall performance of existing equipment, our sales pipeline, our operating results and any adjustments in our operating plan necessary in response to industry conditions, competition or unexpected events. Equipment for further discussion).

43

## Discussion and Analysis of Cash Flows

The Company relies heavily on private placement of convertible notes, term loans, equipment financing and issuance of common stock, stock and warrants. Our short-term working capital needs are primarily related to funding of debt interest payments, repayment of debt principal, product manufacturing, research and development, and general corporate expenses. The Company's long-term working capital needs are primarily related to repayment of long-term debt obligations and capital expenses for capacity expansion and maintenance, equipment upgrades and repair of equipment. We have taken steps to conserve working capital and reduce expenses to better manage cash outflows.

The following table summarizes our cash flows from operating, investing and financing activities for the periods presented.

		For the Years Ended December 31,				
		For the Years Ended December 31,				
				For the Years Ended December 31,		
(\$ in thousands)	(\$ in thousands)	2022	2021	(\$ in thousands)	2023	2022
Net cash used in operating activities	Net cash used in operating activities	\$ (196,857)	\$ (116,147)			
Net cash used in investing activities	Net cash used in investing activities	(17,170)	(23,336)			
Net cash provided by financing activities	Net cash provided by financing activities	139,544	123,322			

### Cash flows from operating activities:

Our cash flows used in operating activities to date have primarily been composed of costs related to research and development, manufacturing of our initial energy storage products, project commissioning and other selling, general and administrative activities. As we continue to expand commercial production, we expect our

Net cash used in operating activities of \$145.0 million for the year ended December 31, 2023 was primarily driven by a net loss of \$229.5 million, adjusted for non-cash items of \$94.2 million. Non-cash items included stock-based compensation expense, depreciation and amortization, non-cash interest expense, changes in fair value of warrants and derivatives, and loss from the write-down of property, plant and equipment. The net cash outflows from changes in operating assets and liabilities of \$9.7 million was primarily driven by decrease in accounts payable of \$11.5 million, increase in contract assets of \$6.3 million, increase in other receivables of \$7.5 million, and increase in grant receivables of \$3.0 million, partially offset by an increase in accrued expenses related to personnel, manufacturing, research and development and selling, general and administrative activities to increase of \$19.3 million.

Net cash used in operating activities of \$196.9 million for the year ended December 31, 2022 was primarily driven by a net loss of \$229.8 million, adjusted for non-cash items of \$31.0 million. Non-cash items included stock-based compensation expense, depreciation and amortization, non-cash interest accretion and amortization of debt issuance costs, expense, changes in fair value of warrants and derivatives, and loss from the write-down of property, plant and equipment. The net cash inflows from changes in operating assets and liabilities of \$2.0 million was primarily driven by an increase in accounts payable and accrued expenses of \$23.4 million, an increase in contract liabilities of \$4.0 million, and a decrease in vendor deposits of \$6.8 million. These inflows were partially offset by an increase in inventory of \$10.3 million and a decrease in the Hi-Power note payable of \$19.6 million.

Net cash used in operating activities of \$116.1 million for the year ended December 31, 2021 was primarily driven by a net loss of \$124.2 million, adjusted for non-cash items of \$11.0 million. Non-cash items included stock-based compensation expense, depreciation and amortization, remeasurement of the Hi-Power JV equity and changes in the fair value of derivatives. The net cash outflow from changes in operating assets and liabilities was \$2.9 million for the year ended December 31, 2021, primarily driven by an increase in the Hi-Power notes payable of \$18.7 million and an increase in accounts payable and accrued expenses of \$7.1 million, partially offset by an increase in inventory of \$10.1 million, increase in vendor deposits of \$7.4 million, decrease in provision for firm purchase commitment of \$5.5 million, and increase in accounts receivable of \$1.9 million.

#### Cash flows from investing activities:

Net cash flows used in investing activities of \$17.2 \$29.5 million for the year ended December 31, 2023 were composed of increase in property, plant and equipment of \$29.3 million, which includes costs incurred for development and construction of a fully automated manufacturing line that will be used for the Z3™ battery in 2024 and years thereafter.

Net cash flows used in investing activities of \$17.2 million for the year ended December 31, 2022 were primarily composed of payments made for purchases of property, plant and equipment of \$20.1 million, note receivable advanced to a customer of \$0.3 million, partially offset by proceeds from notes receivable of \$3.2 million.

Net cash flows used in investing activities of \$23.3 for the year ended December 31, 2021 were primarily composed of purchases of property, plant and equipment of \$15.6 million, investment in joint venture of \$4.0 million, notes receivable advanced to customers of \$4.9 million and payments made for the Hi-Power acquisition of \$0.2 million, partially offset by proceeds from notes receivable of \$1.3 million.

44

#### Cash flows from financing activities:

Net cash provided by financing activities was \$227.9 million for the year ended December 31, 2023. This was primarily from the issuance of common stock and warrants in the amount of \$192.2 million, as well net proceeds received from the issuance of Yorkville Convertible Promissory Notes and AFG Convertible Notes, totaling \$48.1 million. The proceeds were partially offset by equity issuance costs of \$5.0 million, debt issuance costs related to the Yorkville Convertible Promissory Notes, AFG Convertible Notes and Senior Secured Term Loan of \$4.2 million, payments on the equipment financing facility of \$2.9 million and share repurchases from employees for tax withholding purposes of \$0.6 million.

Net cash provided by financing activities of \$139.5 million in for the year ended December 31, 2022, was primarily from net proceeds received from the Senior Secured Term Loan of \$98.0 million, issuance of common stock under the ATM program of \$38.6 million \$43.6 million, issuance of Yorkville Convertible Promissory Notes of \$9.3 million, issuance of common stock under the SEPA of \$5.0 million, and an increase in the equipment financing facility of \$4.2 million. The proceeds were partially offset by debt issuance costs related to the Senior Secured Term Loan of \$12.4 million, payments on the equipment financing facility of \$1.9 million, and \$1.0 million for share repurchases from employees for tax withholding purposes.

Net cash provided by financing activities purposes of \$123.3 million for the year ended December 31, 2021, primarily due to the proceeds received from issuance of the 2021 Convertible Notes of \$100 million, equipment financing of \$7.0 million, warrants exercised of \$20.1 million, and options exercised of \$1.1 million, partially offset by debt issuance costs associated with the 2021 Convertible Notes and the equipment financing facility of \$4.4 million \$1.0 million.

#### Contractual Obligations

We have The Company has certain obligations and commitments to make future payments under contracts. As of December 31, 2022 December 31, 2023, this is comprised of the following:

- Open purchase obligations of \$0.2 million \$0.1 million, related to a supply purchase agreement with a minimum volume commitment. See Note 17, 16, Commitments and Contingencies to our consolidated financial statements included elsewhere in this Annual Report.
- Future lease payments, including interest, under non-cancellable operating and financing leases of \$6.5 million \$6.1 million. The leases expire at various dates prior to 2028. See Note 15, 14, Leases to our consolidated financial statements included elsewhere in this Annual Report.
- Principal and Interest payments related to the following debt obligations. See Note 13, 12, Borrowings to our consolidated financial statements included elsewhere in this Annual Report.

	Future Debt Payments	
Yorkville AFG Convertible Promissory Note Notes - due June 2023* 2026 (1)	\$	2,000 32,468
2021 Convertible Notes Payable – due June 2026(1)		134,261 134,262
Senior Secured Term Loan - due March 2026		148,445 131,838
Equipment financing facility - due April 2025 and April 2026		6,578 10,561
Total	\$	295,268 305,145

\* Amounts owed under (1) As of December 31, 2023, the Yorkville Company is obligated to repay future contractual interest payments for the 2021 Convertible Promissory Note were offset by the issuance of common shares in January 2023- See Note 21, Subsequent Events to our consolidated financial statements included elsewhere in this Annual Report. Notes and AFG Convertible Notes in-kind.

43

## Critical Accounting Estimates

Our consolidated financial statements are prepared in conformity with U.S. generally accepted accounting principles. In preparing our consolidated financial statements, we make assumptions, judgments, and estimates on historical experience and various other factors that we believe to be reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions or conditions. We regularly reevaluate our assumptions, judgments, and estimates. In addition to the below, for further information regarding

45

Critical accounting estimates are those estimates that involve a significant level of estimation uncertainty and could have a material impact on our critical accounting policies, refer to Note 2, Summary financial condition or results of Significant Accounting Policies to our consolidated financial statements included elsewhere in this Annual Report. operations.

### Warranty Liability

The Company generally provides a standard warranty for a period of two years. We also provide extended warranties and performance guarantees, which are identified as separate performance obligations in the Company's contracts with customers. We accrue warranty reserves at the time of recording the sale. Warranty reserves include management's best estimate of the projected costs to repair or to replace any items under warranty, which is based on various factors including actual claim data to date, results of lab testing, factory quality data, and field monitoring. Due to limited claim experience since commercialization of our product, and the potential for variability in these underlying factors, the difference between our estimated costs and our actual costs could be material to our consolidated financial statements. If actual product failure rates or the frequency or severity of reported claims differ from our estimates, we may be required to revise our estimated warranty liability. We will also update actual warranty experience to determine warranty reserves as such experience becomes available. We review our reserves at least quarterly, seeking to ensure that our accruals are adequate in meeting expected future warranty obligations, and we will adjust our estimates as needed. Initial warranty data can be limited at the early stage in the commercialization of our products and, the adjustments that we record may be material. Thus, it is likely that as we sell additional BESS, we will acquire additional information on the projected costs to repair or replace items under warranty and may need to make additional adjustments. As adjustments (See Note 9, Accrued Expenses to our consolidated financial statements included elsewhere in this Annual Report).

### Warrants Liability

The Company estimated the fair value of December 31, 2022 the April 2023 warrants, the May 2023 warrants, and 2021, we had \$3.8 million the December 2023 warrants using the Black-Scholes model at inception and \$2.1 million on subsequent valuation dates. This model incorporates inputs such as the stock price of the Company, exercise price, risk-free interest rate, expected volatility, and time to expiration. The expected volatility involves unobservable inputs classified as Level 3 of the fair value hierarchy. The sensitivity of the fair value calculation to this assumption could create materially different results under different conditions or using different assumptions. See Note 15, Fair Value Measurement to our consolidated financial statements included elsewhere in warranty reserves, respectively. Adjustments to warranty reserves are recorded in cost of goods sold. this Annual Report.

### Convertible Notes and Embedded Derivatives

Some of our debt financings contain embedded derivatives, such as conversion features in our 2021 Convertible Notes Payable - Related Party. The Company evaluates each debt agreement to determine whether any embedded features require bifurcation from the debt host in accordance with ASC 815, Derivatives and Hedging ("ASC 815"). If the embedded feature requires bifurcation from its debt host, the Company will account for it as either a derivative liability or as a derivative in equity. The Company uses valuation models to estimate the fair value of the embedded derivatives. For the valuation of the embedded derivative related to conversion features in the 2021 Convertible Notes- Related Party, Notes and the Company uses AFG Convertible Notes using a binomial lattice model at inception and on subsequent valuation dates. This model incorporates inputs such as the stock price of the Company, dividend yield, risk-free interest rate, the effective debt yield and expected volatility. Certain inputs The effective debt yield and volatility involve unobservable inputs and are classified as level Level 3 of the fair value hierarchy (see Note 16, Fair Value Measurement to our consolidated financial statements included elsewhere in this Annual Report). hierarchy. The sensitivity of the fair value calculation to these methods, assumptions, and estimates included could create materially different results under different conditions or using different assumptions. See Note 15, Fair Value Measurements to our consolidated financial statements included elsewhere in this Annual Report.

44

## Business Combinations

We have accounted for business combinations using the purchase method of accounting where the cost is allocated to the underlying net tangible and intangible assets acquired, based on their respective fair values. Identifiable assets acquired and liabilities assumed are recognized and measured as of the acquisition date at fair value. Goodwill is recognized to the extent by which the aggregate of the acquisition-date fair value of the consideration transferred exceeds the recognized basis of the identifiable assets acquired, net of assumed liabilities. The Company used information available to make fair value determinations and engaged independent valuation specialists to assist management in the fair value determination for the acquisition of Hi-Power. The fair value is determined using the income approach, cost approach and/or market approach. Determining the fair value of purchase consideration, assets acquired, liabilities assumed, as well as the Joint Venture agreement the Company terminated in connection with the acquisition requires management's judgment. The fair value determination of the Joint Venture agreement and of the consideration transferred in exchange for the Hi-Power business involves the use of significant estimates and assumptions, including, but not limited to, the selection of appropriate valuation methodology, projected cash flows and the discount rate. The Company believes the estimates applied to be based on reasonable assumptions, but these estimates are inherently uncertain. If any of our assumptions or judgements used to determine fair value of the assets acquired, are ultimately incorrect, we could experience material impairment losses.

45 46

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

### Liquidity Risk

Liquidity risk arises from the general funding needs of the Company's activities and in the management of the Company's assets and liabilities. Our exposure to liquidity risk is dependent on our ability to raise funds to meet our obligations and sustain operations. We manage liquidity risk by continuously monitoring our actual and forecasted working capital requirements to ensure there is capital to meet short-term, long-term obligations, including our liquidity covenants under the Senior Secured Term Loan (see Note 13, 12, Borrowings to our consolidated financial statements included elsewhere in this Annual Report). As disclosed in Note 1, Overview to our consolidated financial statements included elsewhere in this Annual Report, there is a substantial doubt about the Company's ability to continue as a going concern. In order to execute its development strategy, the Company has historically relied on outside capital to fund its cost structure and expects to continue to rely on outside capital for the foreseeable future. While the Company believes it will eventually reach a scale of profitability to sustain its operations, there can be no assurance the Company will be able to achieve such profitability or do so in a manner that does not require its continued reliance on outside capital. Moreover, while the Company has historically been successful in raising outside capital, there can be no assurance the Company will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to the Company.

### Foreign Currency Risk

The Company has two foreign domiciled subsidiaries, one in Italy and the other in India, which currently have minimal operating activity. We may in the future be impacted by foreign currency translation losses in these countries.

Our revenue contracts are made in U.S. dollars. We make purchases from certain vendors from other countries as well. However, all pricing and liabilities from the purchase are denominated in U.S. dollars and we are not exposed to the risk from exchange rate movements.

### Equity Price Risk

Equity price risk arises from security price volatility. The Company is subject to this risk due to its private placement warrants. The the warrants issued, since they are measured at fair value per value. See Note 15, Fair Value Measurement for warrant was \$0.24 valuations and \$2.85 fair values, as of December 31, 2022 December 31, 2023 and 2021, respectively, which was exposed to equity price risk. We estimate that a hypothetical 10% change in quoted security prices would impact our warrants liability by \$8 and \$93 as of December 31, 2022 and 2021, 2022, respectively.

46 47

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Please see our Financial Statements beginning on page F-1 of this Annual Report on Form 10-K.

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.



## ITEM 9A. CONTROLS AND PROCEDURES

### Evaluation of Disclosure Controls and Procedures

Our management, under the supervision of our Chief Executive Officer (CEO) and our Chief Financial Officer (CFO), has carried out an evaluation of 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 **December 31, 2022** **December 31, 2023**. **Based upon** **As initially disclosed in our Annual Report on Form 10-K filed with the SEC on February 25, 2021, our management identified material weaknesses in our internal control over financial reporting. As described below, while our management, with the oversight of the Audit Committee of our Board of Directors, has made progress towards remediating the material weaknesses, our management determined that the material weaknesses have not yet been remediated. Accordingly, based on our management evaluation, the CEO and CFO have concluded** **as of December 31, 2022**, that our disclosure controls and procedures were not effective as of **such date** **December 31, 2023** due to the material weaknesses in internal control over financial reporting described in "Management's Report on Internal Control Over Financial Reporting" below.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to management, including our CEO and our CFO, to allow timely decisions regarding required disclosure.

In light of the material weaknesses described below, we performed additional analyses, reconciliations, and other post-closing procedures to determine that our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles. Accordingly, management concluded that the consolidated financial statements included in this report fairly present in all material respects our financial condition, results of operations and cash flows for the periods presented.

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f) and based upon the criteria established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("the COSO Framework"). Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of our financial reporting and preparation of our financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding controls, and therefore can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, our internal control over financial reporting may not prevent or detect all misstatements, including the possibility of human error, the circumvention or overriding of controls, or fraud. Effective internal controls can only provide reasonable assurance with respect to the preparation and fair presentation of financial statements.

Management, including our CEO and CFO, assessed the Company's internal control over financial reporting and concluded that they were not effective as of **December 31, 2022** **December 31, 2023**. In making this assessment, management used the criteria set forth by the COSO framework. Based on this evaluation, our management concluded that our internal control over financial reporting was not effective as of **December 31, 2022** **December 31, 2023** due to the material weaknesses resulting from our lack of a formalized internal control framework in accordance with COSO, inadequate segregation of duties in the financial reporting process, lack of review and approval of journal entries, and a lack of management review controls.

47 48

### Management's Remediation Plan

**We have** **In response to the material weaknesses, management, with oversight of the Audit Committee has identified and implemented, and continue** **begun to implement certain steps to remediate the material weaknesses. The Company hired an independent accounting firm to assist with the remediation efforts to improve efforts.**

**While the effectiveness** **Company has made progress with the remediation of our internal control over financial reporting and disclosure controls and procedures. These these material weaknesses during 2023, the remediation efforts are ongoing. The following remedial actions have been identified ongoing, because additional time is needed to complete the remediation and initiated as allow for the internal controls to be tested by management. Our continued internal control remediation efforts include the following:**

- **Developed a framework to identify risks of** **December 31, 2022** **material misstatement to our consolidated financial statements and made progress towards designing appropriate controls to mitigate those risks.**
- **We hired several full-time accounting resources with appropriate levels of experience** **Made progress towards enhancing existing policies and reallocated responsibilities across the finance organization. This measure provides for segregation of duties to ensure the appropriate level of knowledge procedures and experience is applied based on risk developing new policies and complexity of transactions and tasks under review.**
- **We engaged a professional accounting services firm procedures to assist us** **our finance organization in recording transactions appropriately.**
- **We are in the design process of designing accounting processes to provide a more timely and documentation detailed review of our formal policies, processes complex and non-routine areas.**
- **Engaged external experts to complement internal resources and to provide support related to more complex applications of GAAP, tax, and internal controls. We will continue to utilize outside resources, as necessary, to supplement our internal team.**
- **Redesigning accounting period-end close control activities over reconciliations and journal entries, including review and approval controls, for complying with the Sarbanes-Oxley Act.**

- We developed a project plan for and the implementation of internal an automated financial close solution.
- Designed general information technology controls over financial reporting across and in the organization process of implementing such controls.
- Enhanced communications with the Audit Committee of the Board of Directors related to the Company's progress on the remediation of these material weaknesses. The Company also continues to formally report quarterly to the Audit Committee and have begun executing on that the Board regarding progress against the remediation plan. Specifically, we have designed certain controls across all of our business cycles and are currently integrating these controls into our processes.

The process of implementing an effective financial reporting system is a continuous effort that requires us to anticipate and react to changes in our business and the economic and regulatory environments and to expend significant resources to maintain a financial reporting system that is adequate to satisfy our reporting obligations. As we continue to evaluate and take actions to improve our internal control over financial reporting, we will further refine our remediation plan and take additional actions to address control deficiencies or modify certain of the remediation measures described above.

While progress has been made to enhance our internal control over financial reporting, we are still in the process of designing, implementing, documenting, and testing the effectiveness of these processes, procedures and controls. Additional time is required to complete the implementation and to assess and ensure the sustainability of these procedures. We will continue to devote significant time and attention to these remedial efforts. However, the material weakness weaknesses cannot be considered remediated until the applicable remedial controls are fully implemented, have operated for a sufficient period of time and management has concluded that these controls are operating effectively.

#### Changes in Internal Control over Financial Reporting

Other than the actions taken as described in Management's Remediation Initiatives Plan above to improve the Company's internal control over financial reporting, there have been no changes in our internal control over financial reporting during the quarter ended December 31, 2022 December 31, 2023 that materially affected, or which are reasonably likely to materially affect, our internal control over financial reporting.

#### ITEM 9B. OTHER INFORMATION

##### Delaware Section 205 Petition

On November 12, 2020 February 28, 2024, B. Riley Principal Merger Corp. II ("BMRG"), Audrey Zibelman notified the predecessor board of directors (the "Board") of the Company of her decision not to stand for reelection to the Board at the expiration of her current term at the Company's 2024 Annual Meeting of Stockholders (the "2024 Annual Meeting"). Ms. Zibelman's decision not to stand for reelection is not the result of any disagreement with the Company held a special meeting of stockholders (the "BMRG Special Meeting") to approve certain matters on any matter relating to the business combination between BMRG and Eos Energy Storage LLC.

One of these matters was a proposal to amend and restate BMRG's certificate of incorporation in order to, among other things, increase the number of authorized shares of common stock from 125,000,000 shares of common stock, consisting of 100,000,000 shares of Class A common stock and 25,000,000 shares of Class B common stock, to 200,000,000 shares of common stock, and to reclassify all Class A common stock and Class B common stock as a single class of common stock (the "Charter Amendment Proposal"). The Charter Amendment Proposal was approved by a majority of the outstanding shares of Class A common stock and Class B common stock of BMRG as of the record date for the BMRG Special Meeting, voting together as a single class, although voting records indicate that a majority of each of the shares of Class A common stock and Class B common stock also approved the Charter Amendment Proposal. After the BMRG Special Meeting, BMRG and Eos Energy Storage LLC closed the business combination and the Company's certificate of incorporation, as amended to give effect to the Charter Amendment Proposal, became effective.

48

A recent ruling by the Delaware Court of Chancery introduced uncertainty as to whether Section 242(b)(2) of the Delaware General Corporation Law (the "DGCL") would have required the Charter Amendment Proposal to be approved by separate votes of the majority of BMRG's then-outstanding shares of Class A common stock and Class B common stock. The Company had been proceeding with the understanding that the Charter Amendment Proposal and the amendment and restated certificate of incorporation are valid. In light of this recent ruling, however, to resolve potential uncertainty with respect to the Company's capital structure, the Company has filed a petition in the Delaware Court of Chancery under Section 205 of the DGCL to seek validation of the Charter Amendment Proposal. Section 205 of the DGCL permits the Court of Chancery, in its discretion, to ratify and validate potentially defective corporate acts.

On February 27, 2023, the Court of Chancery approved the Company's request for relief and entered an order under Section 205 of the Delaware General Corporation Law (1) declaring the Company's Third Amended and Restated Certificate of Incorporation (the "Charter"), including the filing and effectiveness thereof, as validated and effective retroactive to the date of its filing with the Office of the Secretary of State of the State of Delaware on November 16, 2020, and all amendments effected thereby and (2) ordering that the Company's securities (and the issuance of the securities) described in the Petition and any other securities issued in reliance on the validity of the Charter are validated and declared effective, each as of the original issuance dates. operations, policies, practices or otherwise.

#### ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

49

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2023 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended **December 31, 2022** **December 31, 2023**.

#### Codes of Business Conduct and Ethics

Our board of directors has adopted a Code of Business Conduct and Ethics that applies to all officers, directors and employees, which is available on our website at <https://investors.eose.com> under "Governance Documents". We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding amendments to, or waiver from, a provision of our Code of Business Conduct and Ethics and by posting such information on the website address and location specified above.

### ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2023 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended **December 31, 2022** **December 31, 2023**.

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item, including Securities Authorized for Issuance Under Equity Plans, is incorporated by reference to our Proxy Statement relating to our 2023 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended **December 31, 2022** **December 31, 2023**.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2023 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended **December 31, 2022** **December 31, 2023**.

### ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2023 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended **December 31, 2022** **December 31, 2023**.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

**(1) Financial statement.** The consolidated financial statements and Reports of Independent Registered Accounting Firm are listed in the "Index to Financial Statements" beginning on page F-1.

**(2) Financial Statement Schedules and Other Financial Information.** No financial statement schedules are submitted because either they are not applicable or because the required information is included in the consolidated financial statements or notes thereto.

50

**(3) Exhibits.** Filed as part of this Annual Report are the following exhibits:

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
2.1	<a href="#">Agreement and Plan of Merger, dated as of September 7, 2020, by and among the Company, BMRG Merger Sub, LLC, BMRG Merger Sub II, LLC, Eos Energy Storage LLC, New Eos Energy LLC and AltEnergy Storage VI, LLC (incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K filed with the SEC on September 8, 2020).</a>	Form 8-K	File No. 001-39291	2.1	September 8, 2020
3.1*	<a href="#">Third Amended and Restated Certificate of Incorporation of the Company, as amended</a>				

3.2	<a href="#">Second Amended and Restated Bylaws of the Company</a>	Form 8-K	File No. 001-39291	3.2	May 19, 2022
4.1	<a href="#">Specimen Common Stock Certificate</a>	Form 8-K	File No. 001-39291	4.1	November 20, 2020
4.2	<a href="#">Specimen Warrant Certificate</a>	Form 8-K	File No. 001-39291	4.2	November 20, 2020
4.3	<a href="#">Eos Energy Enterprises, Inc. 5%/6% Convertible Senior PIK Toggle Note due 2026</a>	Form 8-K	File No. 001-39291	4.1	July 7, 2021
4.4	<a href="#">Warrant Agreement, dated May 19, 2020, by and between the Registrant and Continental Stock Transfer &amp; Trust Company</a>	Form 8-K	File No. 001-39291	4.1	May 22, 2020
4.5	<a href="#">Description of Securities</a>	Form 10-K	File No. 001-39291	4.5	February 25, 2022
4.6	<a href="#">Indenture, dated April 7, 2022, between the Company and Wilmington Trust, National Association, as trustee (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed with the SEC on April 13, 2022)</a>	Form 8-K	File No. 001-39291	10.1	April 13, 2022

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
2.1	<a href="#">Agreement and Plan of Merger, dated as of September 7, 2020, by and among the Company, BMRG Merger Sub, LLC, BMRG Merger Sub II, LLC, Eos Energy Storage LLC, New Eos Energy LLC and AltEnergy Storage VI, LLC (incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K filed with the SEC on September 8, 2020)</a>	Form 8-K	File No. 001-39291	2.1	September 8, 2020
3.1	<a href="#">Third Amended and Restated Certificate of Incorporation of the Company, as amended</a>	Form 10-K	File No. 001-39291	3.1	February 28, 2023
3.2	<a href="#">Second Amended and Restated Bylaws of the Company</a>	Form 8-K	File No. 001-39291	3.2	May 19, 2022
4.1	<a href="#">Specimen Common Stock Certificate</a>	Form 8-K	File No. 001-39291	4.1	November 20, 2020
4.2	<a href="#">Specimen Warrant Certificate</a>	Form 8-K	File No. 001-39291	4.2	November 20, 2020
4.3	<a href="#">Eos Energy Enterprises, Inc. 5%/6% Convertible Senior PIK Toggle Note due 2026</a>	Form 8-K	File No. 001-39291	4.1	July 7, 2021
4.4	<a href="#">Warrant Agreement, dated May 19, 2020, by and between the Registrant and Continental Stock Transfer &amp; Trust Company</a>	Form 8-K	File No. 001-39291	4.1	May 22, 2020
4.5	<a href="#">Description of Securities</a>	Form 10-K	File No. 001-39291	4.5	February 25, 2022
4.6	<a href="#">Indenture, dated April 7, 2022, between the Company and Wilmington Trust, National Association, as trustee (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed with the SEC on April 13, 2022)</a>	Form 8-K	File No. 001-39291	10.1	April 13, 2022

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
4.7	<a href="#">Convertible Promissory Note, dated as of June 13, 2022, between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	4.1	June 13, 2022
4.8	<a href="#">Convertible Promissory Note dated as of December 29, 2022 between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	4.1	December 29, 2022
10.1	<a href="#">Sponsor Earnout Letter</a>	Form 8-K	File No. 001-39291	10.8	November 20, 2020
10.2	<a href="#">Eos Energy Enterprises, Inc. 2020 Incentive Plan</a>	Form 8-K	File No. 001-39291	10.10	November 20, 2020
10.3	<a href="#">Form of Indemnity Agreement</a>	Form 8-K	File No. 001-39291	10.13	November 20, 2020
10.4	<a href="#">Employment Agreement, dated February 24, 2021, by and between the Company and Joseph Mastrangelo</a>	Form 8-K	File No. 001-39291	99.1	March 2, 2021
10.5	<a href="#">Offer Letter, dated February 19, 2021, by and between the Company and Jody Markopoulos</a>	Form 8-K	File No. 001-39291	10.1	March 12, 2021
10.6	<a href="#">Employment Agreement, dated March 25, 2021, by and between the Company and Sagar Kurada</a>	Form 8-K	File No. 001-39291	10.1	March 31, 2021
10.7	<a href="#">Unit Purchase Agreement, dated April 8, 2021</a>	Form 8-K	File No. 001-39291	10.1	April 14, 2021
10.8	<a href="#">Form of Transition Services Agreement (Included in Exhibit 10.08)</a>	Form 8-K	File No. 001-39291	10.2	April 14, 2021
10.9	<a href="#">Amended and Restated Registration Rights Agreement, dated May 10, 2021, by and between the Registrant, B. Riley Principal Sponsor Co. II, LLC and the other parties thereto</a>	Form 8-K	File No. 001-39291	4.01	May 10, 2021
10.10	<a href="#">Amended and Restated Registration Rights Agreement, dated May 10, 2021, by and among the Company and the security holders party thereto</a>	Form 8-K	File No. 001-39291	4.02	May 10, 2021

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
4.7	<a href="#">Convertible Promissory Note, dated as of June 13, 2022, between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	4.1	June 13, 2022
4.8	<a href="#">Convertible Promissory Note dated as of December 29, 2022 between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	4.1	December 29, 2022
4.9	<a href="#">Form of Note (including Indenture incorporated by reference therein)</a>	Form 8-K	File No. 001-39291	4.1	January 19, 2023

4.10	<a href="#">Convertible Promissory Note dated as of February 1, 2023 made by Eos Energy Enterprises, Inc. in favor of YA II PN, LTD</a>	Form 8-K	File No. 001-39291	4.1	February 02, 2023
4.11	<a href="#">Convertible Promissory Note dated as of March 17, 2023 between Eos Energy Enterprises, Inc. and YA II PN, LTD</a>	Form 8-K	File No. 001-39291	4.1	March 17, 2023
4.12	<a href="#">Convertible Promissory Note dated as of April 10, 2023 between Eos Energy Enterprises, Inc. and YA II PN, LTD</a>	Form 8-K	File No. 001-39291	4.1	April 11, 2023
4.13	<a href="#">Form of Common Stock Purchase Warrant, dated as of April 12, 2023</a>	Form 8-K	File No. 001-39291	4.1	April 14, 2023
4.14	<a href="#">Form of Common Stock Purchase Warrant, dated as of May 15, 2023</a>	Form 8-K	File No. 001-39291	4.1	May 17, 2023
4.15	<a href="#">Indenture, dated May 25, 2023, between the Company and Wilmington Trust, National Association, as trustee</a>	Form 8-K	File No. 001-39291	4.1	May 25, 2023
4.16	<a href="#">Form of Note, dated as of May 25, 2023</a>	Form 8-K	File No. 001-39291	4.2	May 25, 2023
4.17	<a href="#">Form of Common Stock Purchase Warrant</a>	Form 8-K	File No. 001-39291	4.1	December 15, 2023
10.1	<a href="#">Sponsor Earnout Letter</a>	Form 8-K	File No. 001-39291	10.8	November 20, 2020

52

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
10.11	<a href="#">Investment Agreement, dated as of July 6, 2021, by and among Eos Energy Enterprises, Inc. and Spring Greek Capital, LLC</a>	Form 8-K	File No. 001-39291	10.1	July 7, 2021
10.12	<a href="#">Master Equipment Financing Agreement, dated September 30, 2021</a>	Form 8-K	File No. 001-39291	10.1	October 5, 2021
10.13	<a href="#">Guaranty Agreement, dated September 30, 2021</a>	Form 8-K	File No. 001-39291	10.2	October 5, 2021
10.14	<a href="#">Separation Agreement, dated December 13, 2021, by and between the Company and Sagar Kurada</a>	Form 8-K	File No. 001-39291	10.01	December 14, 2021
10.15	<a href="#">Employment Agreement, dated December 13, 2021, by and between the Company and Randall B. Gonzales</a>	Form 8-K	File No. 001-39291	10.02	December 14, 2021
10.16	<a href="#">Employment Letter, dated December 29, 2021 by and between the Company and John Tedone, (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed with the SEC on February 14, 2022)</a>	Form 8-K	File No. 001-39291	10.1	February 14, 2022

10.17	<a href="#">Standby Equity Purchase Agreement, dated April 28, 2022, by and between Eos Energy Enterprises, Inc. and YA II PN, Ltd. (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed with the SEC on April 28, 2022).</a>	Form 8-K	File No. 001-39291	10.1	April 28, 2022
10.18	<a href="#">Joinder to Investment Agreement, dated May 1, 2022 among Eos Energy Enterprises, Inc., Spring Creek Capital, LLC and Wood River Capital, LLC</a>	Form 10-Q	File No. 001-39291	10.3	May 9, 2022
10.19	<a href="#">Amendment No. 1 to the Standby Equity Purchase Agreement, dated as of April 28, 2022, between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	10.1	June 13, 2022

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
10.2	<a href="#">Eos Energy Enterprises, Inc. 2020 Incentive Plan</a>	Form 8-K	File No. 001-39291	10.10	November 20, 2020
10.3	<a href="#">Form of Indemnity Agreement</a>	Form 8-K	File No. 001-39291	10.13	November 20, 2020
10.4	<a href="#">Employment Agreement, dated February 24, 2021, by and between the Company and Joseph Mastrangelo</a>	Form 8-K	File No. 001-39291	99.1	March 2, 2021
10.5	<a href="#">Offer Letter, dated February 19, 2021, by and between the Company and Jody Markopoulos</a>	Form 8-K	File No. 001-39291	10.1	March 12, 2021
10.6	<a href="#">Employment Agreement, dated March 25, 2021, by and between the Company and Sagar Kurada</a>	Form 8-K	File No. 001-39291	10.1	March 31, 2021
10.7	<a href="#">Unit Purchase Agreement, dated April 8, 2021</a>	Form 8-K	File No. 001-39291	10.1	April 14, 2021
10.8	<a href="#">Form of Transition Services Agreement (Included in Exhibit 10.08)</a>	Form 8-K	File No. 001-39291	10.2	April 14, 2021
10.9	<a href="#">Amended and Restated Registration Rights Agreement, dated May 10, 2021, by and between the Registrant, B. Riley Principal Sponsor Co. II, LLC and the other parties thereto</a>	Form 8-K	File No. 001-39291	4.01	May 10, 2021
10.10	<a href="#">Amended and Restated Registration Rights Agreement, dated May 10, 2021, by and among the Company and the security holders party thereto</a>	Form 8-K	File No. 001-39291	4.02	May 10, 2021
10.11	<a href="#">Investment Agreement, dated as of July 6, 2021, by and among Eos Energy Enterprises, Inc. and Spring Greek Capital, LLC</a>	Form 8-K	File No. 001-39291	10.1	July 7, 2021
10.12	<a href="#">Master Equipment Financing Agreement, dated September 30, 2021</a>	Form 8-K	File No. 001-39291	10.1	October 5, 2021
10.13	<a href="#">Guaranty Agreement, dated September 30, 2021</a>	Form 8-K	File No. 001-39291	10.2	October 5, 2021



Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
10.20	<a href="#">Supplemental Agreement, dated as of June 13, 2022, to the Standby Equity Purchase Agreement dated as of April 28, 2022 between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	10.2	June 13, 2022
10.21	<a href="#">Senior Secured Term Loan Credit Agreement, dated as of July 29, 2022, by and among Eos Energy Enterprises, Inc., the lenders party thereto, and ACP Post Oak Credit I LLC, as administrative agent and collateral agent.</a>	Form 8-K	File No. 001-39291	10.1	August 1, 2022
10.22	<a href="#">Guarantee and Collateral Agreement, dated as of July 29, 2022, by and among Eos Energy Enterprises, Inc., the other grantors named therein and ACP Post Oak Credit I LLC, as collateral agent</a>	Form 8-K	File No. 001-39291	10.2	August 1, 2022
10.23	<a href="#">Commitment Increase Agreement, dated as of August 4, 2022, by and among Eos Energy Enterprises, Inc., the guarantors party thereto, ACP Post Oak Credit I LLC, as administrative agent and lender, and certain other lenders party thereto</a>	Form 8-K	File No. 001-39291	10.1	August 5, 2022
10.24	<a href="#">Sales Agreement, dated August 5, 2022, by and between Eos Energy Enterprises, Inc. and Cowen and Company, LLC</a>	Form 8-K	File No. 001-39291	10.2	August 5, 2022
10.25	<a href="#">Amended Director Compensation Policy, dated as of September 7, 2022</a>	Form 8-K	File No. 001-39291	10.1	September 9, 2022
10.26	<a href="#">Amendment No. 2 to the Standby Equity Purchase Agreement dated as of November 14, 2022 between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	10.1	November 14, 2022

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
10.14	<a href="#">Separation Agreement, dated December 13, 2021, by and between the Company and Sagar Kurada</a>	Form 8-K	File No. 001-39291	10.01	December 14, 2021
10.15	<a href="#">Employment Agreement, dated December 13, 2021, by and between the Company and Randall B. Gonzales</a>	Form 8-K	File No. 001-39291	10.02	December 14, 2021
10.16	<a href="#">Employment Letter, dated December 29, 2021 by and between the Company and John Tedone</a>	Form 8-K	File No. 001-39291	10.1	February 14, 2022
10.17	<a href="#">Standby Equity Purchase Agreement, dated April 28, 2022, by and between Eos Energy Enterprises, Inc. and YA II PN, Ltd.</a>	Form 8-K	File No. 001-39291	10.1	April 28, 2022
10.18	<a href="#">Joinder to Investment Agreement, dated May 1, 2022 among Eos Energy Enterprises, Inc., Spring Creek Capital, LLC and Wood River Capital, LLC</a>	Form 10-Q	File No. 001-39291	10.3	May 9, 2022

10.19	<a href="#">Amendment No. 1 to the Standby Equity Purchase Agreement, dated as of April 28, 2022, between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	10.1	June 13, 2022
10.20	<a href="#">Supplemental Agreement, dated as of June 13, 2022, to the Standby Equity Purchase Agreement dated as of April 28, 2022 between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	10.2	June 13, 2022
10.21	<a href="#">Senior Secured Term Loan Credit Agreement, dated as of July 29, 2022, by and among Eos Energy Enterprises, Inc., the lenders party thereto, and ACP Post Oak Credit I LLC, as administrative agent and collateral agent.</a>	Form 8-K	File No. 001-39291	10.1	August 1, 2022

54

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
10.27	<a href="#">Commitment Increase Agreement, dated as of December 7, 2022, by and among Eos Energy Enterprises, Inc. the guarantors party thereto, and ACP Post Oak Credit LLC.</a>	Form 8-K	File No. 001-39291	10.1	December 8, 2022
10.28	<a href="#">Amendment No. 3 dated as of December 29, 2022 to the Standby Equity Purchase Agreement dated as of April 28, 2022 between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	10.1	December 29, 2022
10.29	<a href="#">Second Supplemental Agreement dated as of December 29, 2022 to the Standby Equity Purchase Agreement dated as of April 28, 2022 between Eos Energy Enterprises, Inc. and YA II PN, LTD.</a>	Form 8-K	File No. 001-39291	10.1	December 29, 2022
10.30	<a href="#">Separation Agreement, dated January 20, 2023, by and between the Company and Randall Gonzales</a>	Form 8-K	File No. 001-39291	10.1	January 20, 203
10.31	<a href="#">Employment Agreement, dated January 20, 2023, by and between the Company and Nathan Kroeker</a>	Form 8-K	File No. 001-39291	10.2	January 20, 203
21.1*	<a href="#">Subsidiaries of the Company</a>				
23.1*	<a href="#">Consent of Independent Registered Public Accounting Firm</a>				
24.1*	Power of Attorney (included on the signature page herein)				
31.1*	<a href="#">Certification of the Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				

Incorporated by Reference

Exhibit Number	Description of Document	Schedule/Form	File Number	Exhibit	Filing date
10.22	<a href="#">Guarantee and Collateral Agreement, dated as of July 29, 2022, by and among Eos Energy Enterprises, Inc., the other grantors named therein and ACP Post Oak Credit I LLC, as collateral agent</a>	Form 8-K	File No. 001-39291	10.2	August 1, 2022
10.23	<a href="#">Commitment Increase Agreement, dated as of August 4, 2022, by and among Eos Energy Enterprises, Inc., the guarantors party thereto, ACP Post Oak Credit I LLC, as administrative agent and lender, and certain other lenders party thereto</a>	Form 8-K	File No. 001-39291	10.1	August 5, 2022
10.24	<a href="#">Sales Agreement, dated August 5, 2022, by and between Eos Energy Enterprises, Inc. and Cowen and Company, LLC</a>	Form 8-K	File No. 001-39291	10.2	August 5, 2022
10.25	<a href="#">Amended Director Compensation Policy, dated as of September 7, 2022</a>	Form 8-K	File No. 001-39291	10.1	September 9, 2022
10.27	<a href="#">Commitment Increase Agreement, dated as of December 7, 2022, by and among Eos Energy Enterprises, Inc., the guarantors party thereto, and ACP Post Oak Credit LLC</a>	Form 8-K	File No. 001-39291	10.1	December 8, 2022
10.30	<a href="#">Separation Agreement, dated January 20, 2023, by and between the Company and Randall Gonzales</a>	Form 8-K	File No. 001-39291	10.1	January 20, 2023
10.31	<a href="#">Employment Agreement, dated January 20, 2023, by and between the Company and Nathan Kroeker</a>	Form 8-K	File No. 001-39291	10.2	January 20, 2023
10.32	<a href="#">Investment Agreement, dated January 18, 2023, by and among Eos Energy Enterprises, LLC and the purchasers listed therein</a>	Form 8-K	File No. 001-39291	10.1	January 19, 2023

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
10.33	<a href="#">Limited Consent Agreement, dated as of January 17, 2023, among Eos Energy Enterprises, LLC, the lenders party thereto, and ACP Post Oak Credit I LLC, as administrative agent</a>	Form 8-K	File No. 001-39291	10.2	January 19, 2023
10.38	<a href="#">Form of Securities Purchase Agreement, dated as of April 12, 2023</a>	Form 8-K	File No. 001-39291	10.1	April 14, 2023
10.39	<a href="#">Form of Securities Purchase Agreement, dated as of May 15, 2023</a>	Form 8-K	File No. 001-39291	10.1	May 17, 2023

10.40	<a href="#">Amendment No. 1 to Common Stock Sales Agreement, dated August 23, 2023, by and between Eos Energy Enterprises, Inc. and Cowen and Company, LLC</a>	Form 8-K	File No. 001-39291	10.1	August 23, 2023
10.41	<a href="#">Master Supply Agreement, dated August 23, 2023, by and between HI-POWER, LLC and ACRO Automation Systems, Inc.</a>	Form 8-K	File No. 001-39291	10.2	August 23, 2023
10.42	<a href="#">Employment Agreement, dated August 27, 2023, by and between the Company and Sumeet Puri</a>	Form 8-K	File No. 001-39291	10.1	August 28, 2023
10.43*	<a href="#">Separation Agreement, dated January 19, 2024, by and between the Company and Melissa Berube</a>				
10.44*	<a href="#">Employment Agreement, dated January 17, 2024, by and between the Company and Michael Silberman</a>				
21.1	<a href="#">Subsidiaries of the Company</a>	Form 10-K	File No. 001-39291	21.1	February 28, 2023
23.1*	<a href="#">Consent of Independent Registered Public Accounting Firm</a>				
24.1*	Power of Attorney (included on the signature page herein)				

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		
			File Number	Exhibit	Filing date
31.1*	<a href="#">Certification of the Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				
31.2*	<a href="#">Certification of the Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				
32.1*+	<a href="#">Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>				
32.2*+	<a href="#">Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>				
97*	<a href="#">Policy relating to recovery of compensation</a>				
101.SCH	XBRL Taxonomy Extension Schema Document				
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				
104*	Inline XBRL for the cover page of this Annual Report on Form 10-K, included in the Exhibit 101 Inline XBRL Document Set				

57

Exhibit Number	Description of Document	Schedule/Form	Incorporated by Reference		Filing date
			File Number	Exhibit	
†	Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.				
*	Filed herewith.				
+	The certifications furnished in Exhibit 32.1 and Exhibit 32.2 hereto are deemed to accompany this Annual Report on Form 10-K and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, except to the extent that the registrant specifically incorporates it by reference.				

56 58

# EOS ENERGY ENTERPRISES, INC

## Index to Financial Statements

	PAGE
<b>Financial Statements</b>	
<u>Report of Independent Registered Public Accounting Firm</u> (PCAOB ID No. 34)	F-2
<u>Consolidated Balance Sheets as of December 31, 2022 2023 and 2021 2022</u>	F-4
<u>Consolidated Statements of Operations and Comprehensive Comprehensive Loss for the Years Ended December 31, 2022 2023 and 2021 2022</u>	F-6
<u>Consolidated Statements of Shareholders' (Deficit) Equity for the Years Ended December 31, 2022 2023 and 2021 2022</u>	F-7
<u>Consolidated Statements of Cash Flows for the Years Ended December 31, 2022 2023 and 2021 2022</u>	F-8
<u>Notes to Consolidated Financial Statements</u>	F-10 to F-44

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Eos Energy Enterprises, Inc.

### Opinion on the Financial Statements

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

### Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered recurring losses from operations that raise and may be unable to remain in compliance with a financial covenant required by a borrowing arrangement absent the Company's ability to secure additional outside capital, which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### Basis for Opinion

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

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

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

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Convertible Notes Payable and Warrants Liability - Refer to Note Notes 12 and 13 to the financial statements

Critical Audit Matter Description

The Company's 2021 Convertible Notes and AFG Convertible Notes (collectively "the Convertible Notes") contain an embedded conversion feature features that is are required to be bifurcated from the 2021 Convertible Notes and measured at fair value at each reporting period.

The Company estimates the fair value of the embedded conversion feature using a binomial lattice model at the inception and on subsequent valuation dates. This model incorporates inputs such as the stock price of the Company, dividend yield, risk-free interest rate, the effective debt yield, and expected volatility. The effective debt yield and the expected volatility involve unobservable inputs.

The Company's April 2023 Transaction, May 2023 Transaction, and the December 2023 Public Offering include warrants that are required to be measured at fair value at each reporting period. The Company estimates the fair value of the warrants using a Black-Scholes model at the inception and on subsequent valuation dates. This model incorporates inputs such as the stock price of the Company, exercise price, risk-free interest rate, expected volatility, and time to expiration. The expected volatility involves unobservable inputs.

Unlike the fair value of financial instruments that are readily observable and therefore more easily independently corroborated, the valuation of the embedded conversion feature features and warrants is inherently subjective and involves the use of complex modeling tools. Auditing the fair value of the embedded conversion feature fair value features and warrants requires a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the valuation of (1) the embedded conversion feature features in the 2021 Convertible Notes and (2) warrants included the following, among others:

- With the assistance of our fair value specialists, we evaluated the reasonableness of management's valuation methodology and the significant assumptions used in determining the fair value of the embedded conversion feature features and warrants by:
  - Testing the source information underlying the fair value of the embedded conversion feature features and warrants and the mathematical accuracy of the calculation. calculations.
  - Developing an independent estimate of the inputs and compared those to the inputs used in the fair value of the embedded conversion feature. features and warrants.
- We evaluated the competency and objectivity of management's expert engaged by the Company to perform the valuation of the embedded conversion feature. features and warrants.

/s/ Deloitte & Touche LLP

New York, NY

February 28, 2023 March 4, 2024

We have served as the Company's auditor since 2017.

EOS ENERGY ENTERPRISES, INC.  
CONSOLIDATED BALANCE SHEETS  
(In thousands, except share and per share amounts)

		December 31,	
		2022	2021
		December 31,	December 31,
		2023	2022
ASSETS	ASSETS		
Current assets:	Current assets:		
Current assets:			
Current assets:			
Cash and cash equivalents			
Cash and cash equivalents			
Cash and cash equivalents	Cash and cash equivalents	\$ 17,076	\$104,831



Restricted cash	Restricted cash	2,725	861
Accounts receivable, net	Accounts receivable, net	1,666	1,916
Inventory, net	Inventory, net	23,260	12,976
Vendor deposits	Vendor deposits	4,789	16,653
Notes receivable, net		36	103
Contract assets, current	Contract assets, current	1,859	1,369
Prepaid expenses	Prepaid expenses	2,289	2,595
Grant receivable			
Other receivables			
Other current assets	Other current assets	1,447	1,268
<b>Total current assets</b>	<b>Total current assets</b>	55,147	142,572
Property, plant and equipment, net	Property, plant and equipment, net	27,169	12,890
Property, plant and equipment, net			
Property, plant and equipment, net			
Intangible assets, net	Intangible assets, net	240	280
Goodwill	Goodwill	4,331	4,331
Notes receivable, net		827	3,547
Operating lease right-of-use asset, net	Operating lease right-of-use asset, net	4,316	3,468
Long-term restricted cash	Long-term restricted cash	11,422	—
Other assets, net	Other assets, net	3,336	2,087
<b>Total assets</b>	<b>Total assets</b>	\$106,788	\$169,175
<b>LIABILITIES</b>	<b>LIABILITIES</b>		
<b>LIABILITIES</b>			
<b>LIABILITIES</b>			
Current liabilities:			
Current liabilities:			
Current liabilities:	Current liabilities:		
Accounts payable	Accounts payable	\$ 34,669	\$ 12,531
Accounts payable			
Accounts payable			

Accrued expenses	Accrued expenses	15,359	7,674
Accounts payable and accrued expenses - related parties		—	1,200
Operating lease liability, current	Operating lease liability, current	1,106	1,084
Note payable, current		—	4,926
Long-term debt, current	Long-term debt, current	2,872	1,644
Convertible notes payable - related party	Convertible notes payable - related party	2,688	—
Contract liabilities, current	Contract liabilities, current	3,850	849
Other current liabilities	Other current liabilities	32	9
<b>Total current liabilities</b>	<b>Total current liabilities</b>	<b>60,576</b>	<b>29,917</b>
Long-term liabilities:	Long-term liabilities:		
Long-term liabilities:			
Long-term liabilities:			
Operating lease liability	Operating lease liability	4,130	3,224
Notes payable		—	13,769
Operating lease liability			
Operating lease liability			
Long-term debt	Long-term debt	87,321	4,727
Convertible notes payable - related party	Convertible notes payable - related party	82,950	84,148
Contract liabilities, long-term	Contract liabilities, long-term	956	—
Warrants - related party		78	926
Warrants			
Other liabilities	Other liabilities	3,488	17
<b>Total long-term liabilities</b>	<b>Total long-term liabilities</b>	<b>178,923</b>	<b>106,811</b>
<b>Total liabilities</b>	<b>Total liabilities</b>	<b>239,499</b>	<b>136,728</b>

	December 31,	
	2022	2021
<b>Commitments and Contingencies (Note 17)</b>		
<b>SHAREHOLDERS' (DEFICIT) EQUITY</b>		
Common Stock, \$0.0001 par value, 300,000,000 and 200,000,000 shares authorized, 82,653,781 and 53,786,632 shares outstanding at December 31, 2022 and 2021, respectively	9	5
Preferred stock, \$0.0001 par value, 1,000,000 shares authorized, no shares outstanding at December 31, 2022 and 2021	—	—
Additional paid in capital	513,614	448,969
Accumulated deficit	(646,340)	(416,527)
Accumulated other comprehensive income	6	—
<b>Total shareholders' (deficit) equity</b>	<b>(132,711)</b>	<b>32,447</b>
<b>Total liabilities and shareholders' (deficit) equity</b>	<b>\$ 106,788</b>	<b>\$ 169,175</b>

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

		For the Years Ended December 31,
	2022	2021
		For the Years Ended December 31,
		For the Years Ended December 31,
		For the Years Ended December 31,
	2023	
	2023	
	2023	
Revenue		
Revenue		

<b>Revenue</b>	<b>Revenue</b>		
Total revenue	Total revenue	\$ 17,924	\$ 4,598
Total revenue			
Total revenue			
<b>Costs and expenses</b>			
<b>Costs and expenses</b>			
<b>Costs and expenses</b>	<b>Costs and expenses</b>		
Cost of goods sold	Cost of goods sold	153,260	46,483
Cost of goods sold			
Cost of goods sold			
Research and development expenses			
Research and development expenses			
Research and development expenses	Research and development expenses	18,469	19,154
Selling, general and administrative expenses	Selling, general and administrative expenses	60,623	42,998
Loss on pre-existing agreement		—	30,368
Selling, general and administrative expenses			
Selling, general and administrative expenses			
Loss from write-down of property, plant and equipment	Loss from write-down of property, plant and equipment	6,846	50
Grant (income) expense, net		(16)	269
Loss from write-down of property, plant and equipment			
Loss from write-down of property, plant and equipment			
Grant income, net			
Grant income, net			
Grant income, net			
<b>Total costs and expenses</b>			
<b>Total costs and expenses</b>			
<b>Total costs and expenses</b>	<b>Total costs and expenses</b>	239,182	139,322
<b>Operating loss</b>	<b>Operating loss</b>	(221,258)	(134,724)
<b>Operating loss</b>			
<b>Operating loss</b>			
<b>Other (expense) income</b>			
<b>Other (expense) income</b>			
<b>Other (expense) income</b>	<b>Other (expense) income</b>		
Interest expense, net	Interest expense, net	(7,915)	(604)
Interest expense, net			
Interest expense, net			
Interest expense – related party	Interest expense – related party	(10,898)	(4,597)
Remeasurement of equity method investment		—	(7,480)
Gain on change in fair value of derivatives - related parties		11,728	19,282
Income from equity in unconsolidated joint venture		—	440
(Loss) gain on debt (extinguishment)/forgiveness		(942)	1,273
Other (expense) income		(477)	2,194
Interest expense – related party			
Interest expense – related party			
Change in fair value of warrants			
Change in fair value of warrants			

Change in fair value of warrants				
Change in fair value of derivatives - related parties				
Change in fair value of derivatives - related parties				
Change in fair value of derivatives - related parties				
Loss on debt extinguishment				
Loss on debt extinguishment				
Loss on debt extinguishment				
Other expense				
Other expense				
Other expense				
<b>Loss before income taxes</b>				
<b>Loss before income taxes</b>				
<b>Loss before income taxes</b>	<b>Loss before income taxes</b>	\$	(229,762)	\$ (124,216)
Income tax expense	Income tax expense		51	—
Income tax expense				
Income tax expense				
<b>Net loss</b>				
<b>Net loss</b>				
<b>Net loss</b>	<b>Net loss</b>	\$	(229,813)	\$ (124,216)
<b>Other comprehensive income</b>	<b>Other comprehensive income</b>			
<b>Other comprehensive income</b>				
<b>Other comprehensive income</b>				
Foreign currency translation adjustment, net of tax				
Foreign currency translation adjustment, net of tax				
Foreign currency translation adjustment, net of tax	Foreign currency translation adjustment, net of tax		6	—
<b>Comprehensive loss</b>	<b>Comprehensive loss</b>	\$	(229,807)	\$ (124,216)
<b>Comprehensive loss</b>				
<b>Comprehensive loss</b>				
<b>Basic and diluted loss per share attributable to common shareholders</b>				
<b>Basic and diluted loss per share attributable to common shareholders</b>				
<b>Basic and diluted loss per share attributable to common shareholders</b>	<b>Basic and diluted loss per share attributable to common shareholders</b>			
<b>Basic</b>	<b>Basic</b>	\$	(3.68)	\$ (2.36)
Basic				
Basic				
Diluted				
Diluted				
Diluted	Diluted	\$	(3.68)	\$ (2.36)
<b>Weighted average shares of common stock</b>	<b>Weighted average shares of common stock</b>			
<b>Weighted average shares of common stock</b>				
<b>Weighted average shares of common stock</b>				
Basic				
Basic				
Basic	Basic		62,439,857	52,664,349
Diluted	Diluted		62,439,857	52,664,349
Diluted				
Diluted				

## Table of Contents

Common Stock											Common Stock	Additional Paid in Capital
	Shares	Amount	Common Stock	Additional Paid in Capital	Contingently Issuable Common Stock	Accumulated Other Comprehensive Income	Accumulated Deficit	Total				
Balances on December 31, 2020	48,943,082	\$ 5	\$395,491	\$17,600	\$—	\$(292,311)	\$ 120,785					
Release of sponsor earnout shares from restriction	859,000	—	—	—	—	—	—					
Issuance of earnout shares	1,999,185	—	17,600	(17,600)	—	—	—					
Stock-based compensation	—	—	15,058	—	—	—	15,058					
Exercise of options	123,837	—	1,074	—	—	—	1,074					
Exercise of warrants	1,747,746	—	20,099	—	—	—	20,099					
Release of restricted stock units	154,600	—	—	—	—	—	—					
Cancellation of shares used to settle payroll tax withholding	(40,818)	—	(353)	—	—	—	(353)					
Net loss	—	—	—	—	—	(124,216)	(124,216)					
	Shares											
	Shares											
	Shares											
Balances on December 31, 2021												
Balances on December 31, 2021												
Balances on December 31, 2021	53,786,632	\$ 5	\$448,969	\$ —	\$—	\$(416,527)	\$ 32,447					
Stock-based compensation	—	—	13,794	—	—	—	13,794					
Exercise of warrants	600	—	7	—	—	—	7					
Release of restricted stock units	704,178	—	—	—	—	—	—					
Cancellation of shares used to settle payroll tax withholding	(203,951)	—	(978)	—	—	—	(978)					
Issuance of common stock under June 2022												
Promissory Note	3,393,663	1	7,534	—	—	—	7,535					
Issuance of common stock under ATM program	20,539,603	2	38,624	—	—	—	38,626					
Issuance of common stock	3,967,939	1	4,603	—	—	—	4,604					

under SEPA								
Issuance of common stock								
Commitment fee for SEPA settled by common stock	Commitment fee for SEPA settled by common stock	465,117	—	1,061	—	—	—	1,061
Foreign currency translation adjustment	Foreign currency translation adjustment	—	—	—	—	6	—	6
Net loss	Net loss	—	—	—	—	—	(229,813)	(229,813)
<b>Balances on December 31, 2022</b>	<b>Balances on December 31, 2022</b>	82,653,781	\$ 9	\$513,614	\$ —	\$ 6	\$(646,340)	\$(132,711)
Stock-based compensation								
Exercise of stock options								
Release of restricted stock units								
Cancellation of shares used to settle payroll tax withholding								
Issuance of common stock								
Foreign currency translation adjustment								
Net loss								
<b>Balances on December 31, 2023</b>								

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

**EOS ENERGY ENTERPRISES, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands, except share and per share amounts)

	December 31,	
	2022	2021
	December 31,	December 31,
	December 31,	December 31,
	December 31,	
	2023	
	2023	
	2023	
<b>Cash flows from operating activities</b>		



Cash flows from operating activities			
Cash flows from operating activities	Cash flows from operating activities		
Net loss	Net loss	\$ (229,813)	\$ (124,216)
Net loss			
Net loss			
Adjustment to reconcile net loss to net cash used in operating activities			
Adjustment to reconcile net loss to net cash used in operating activities			
Adjustment to reconcile net loss to net cash used in operating activities	Adjustment to reconcile net loss to net cash used in operating activities		
Stock-based compensation	Stock-based compensation	13,794	15,058
Stock-based compensation			
Stock-based compensation			
Depreciation and amortization			
Depreciation and amortization			
Depreciation and amortization	Depreciation and amortization	6,814	2,613
Loss from write-down of property, plant and equipment	Loss from write-down of property, plant and equipment	6,846	50
Loss from write-down of property, plant and equipment			
Loss from write-down of property, plant and equipment			
Amortization of right-of-use assets	Amortization of right-of-use assets	865	924
Remeasurement of equity method investment		—	7,480
Income from equity in unconsolidated joint venture		—	(440)
Interest accretion and amortization of debt issuance costs		1,886	—
Interest accretion and amortization of debt issuance costs - related party		4,584	2,950
Amortization of right-of-use assets			
Amortization of right-of-use assets			
Non-cash interest expense			
Non-cash interest expense			
Non-cash interest expense			
Non-cash interest expense - related party			
Non-cash interest expense - related party			
Non-cash interest expense - related party			
Commitment fee for SEPA settled by common stock - related party	Commitment fee for SEPA settled by common stock - related party	1,061	—
Loss (gain) on debt extinguishment/(forgiveness)		942	(1,273)
Gain on change in fair value of derivatives - related parties		(11,728)	(19,282)
Commitment fee for SEPA settled by common stock - related party			
Commitment fee for SEPA settled by common stock - related party			
Loss on debt extinguishment			
Loss on debt extinguishment			
Loss on debt extinguishment			

Change in fair value of warrants		
Change in fair value of warrants		
Change in fair value of warrants		
Change in fair value of derivatives - related parties		
Change in fair value of derivatives - related parties		
Change in fair value of derivatives - related parties		
Other	Other	5,918 2,900
Other		
Other		
Changes in operating assets and liabilities:		
Changes in operating assets and liabilities:		
Changes in operating assets and liabilities:	Changes in operating assets and liabilities:	
Prepaid expenses	Prepaid expenses	304 (284)
Prepaid expenses		
Prepaid expenses		
Inventory		
Inventory		
Inventory	Inventory	(10,284) (10,096)
Accounts receivable	Accounts receivable	234 (1,916)
Accounts receivable		
Accounts receivable		
Vendor deposits		
Vendor deposits		
Vendor deposits	Vendor deposits	6,808 (7,419)
Contract assets	Contract assets	(631) (1,369)
Contract assets		
Contract assets		
Grant receivable		
Grant receivable		
Grant receivable		
Accounts payable		
Accounts payable		
Accounts payable	Accounts payable	19,516 5,823
Accrued expenses	Accrued expenses	5,079 2,581
Accrued expenses		
Accrued expenses		
Accounts payable and accrued expenses-related parties	Accounts payable and accrued expenses-related parties	(1,200) (1,317)
Provision for firm purchase commitments		— (5,475)
Accounts payable and accrued expenses-related parties		
Accounts payable and accrued expenses-related parties		
Operating lease liabilities		
Operating lease liabilities		
Operating lease liabilities	Operating lease liabilities	(785) (846)
Contract liabilities	Contract liabilities	3,957 772
Contract liabilities		
Contract liabilities		
Note payable	Note payable	(19,637) 18,695

Note payable			
Note payable			
Other receivables			
Other receivables			
Other receivables			
Other	Other	(1,387)	(2,060)
Other			
Other			
Net cash used in operating activities			
Net cash used in operating activities			
Net cash used in operating activities	Net cash used in operating activities	(196,857)	(116,147)
Cash flows from investing activities	Cash flows from investing activities		
Cash flows from investing activities			
Cash flows from investing activities			
Investment in notes receivable			
Investment in notes receivable			
Investment in notes receivable	Investment in notes receivable	(261)	(4,907)
Proceeds from notes receivable	Proceeds from notes receivable	3,163	1,320
Business acquisition, net of cash acquired		—	(160)
Investment in joint venture		—	(4,000)
Proceeds from notes receivable			
Proceeds from notes receivable			
Purchases of intangible assets			
Purchases of intangible assets			
Purchases of intangible assets			
Purchases of property, plant and equipment	Purchases of property, plant and equipment	(20,072)	(15,589)
Purchases of property, plant and equipment			
Purchases of property, plant and equipment			
Net cash used in investing activities			
Net cash used in investing activities			
Net cash used in investing activities	Net cash used in investing activities	(17,170)	(23,336)
Cash flows from financing activities	Cash flows from financing activities		
Cash flows from financing activities			
Cash flows from financing activities			
Proceeds from issuance of convertible notes payable – related party, net of discount	Proceeds from issuance of convertible notes payable – related party, net of discount	9,310	100,000
Proceeds from issuance of convertible notes payable – related party, net of discount			
Proceeds from issuance of convertible notes payable – related party, net of discount			
Payment of debt issuance costs - related party			
Payment of debt issuance costs - related party			
Payment of debt issuance costs - related party			
Proceeds received from the Senior Secured Term Loan, net of discount			

Proceeds received from the Senior Secured Term Loan, net of discount

Proceeds received from the Senior Secured Term Loan, net of discount

Payment of debt issuance costs

Payment of debt issuance costs

Payment of debt issuance costs

**EOS ENERGY ENTERPRISES, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands, except share and per share amounts)

		December 31,	
		2022	2021
Payment of debt issuance costs - related party		(304)	—
Proceeds received from the Senior Secured Term Loan, net of discount		97,992	—
Payment of debt issuance costs		(12,398)	(4,370)
		December 31,	
		December 31,	
		December 31,	
		2023	
		2023	
		2023	
Principal payments on finance lease obligations	Principal payments on finance lease obligations	(14)	(11)
Repayment of other financing		—	(94)
Principal payments on finance lease obligations			
Principal payments on finance lease obligations			
Proceeds from equipment financing facility			
Proceeds from equipment financing facility			
Proceeds from equipment financing facility	Proceeds from equipment financing facility	4,216	7,000
Repayment of equipment financing facility	Repayment of equipment financing facility	(1,913)	(455)
Issuance of common stock under ATM program, net of commissions		38,626	—
Issuance of common stock under SEPA		5,000	—
Repayment of equipment financing facility			
Repayment of equipment financing facility			
Issuance of common stock and warrants			
Issuance of common stock and warrants			
Issuance of common stock and warrants			
Payment of equity issuance costs			
Payment of equity issuance costs			
Payment of equity issuance costs			
Proceeds from exercise of stock options			
Proceeds from exercise of stock options			
Proceeds from exercise of stock options	Proceeds from exercise of stock options	—	1,074

Proceeds from exercise of public warrants	Proceeds from exercise of public warrants	7	20,099
Proceeds from exercise of public warrants			
Proceeds from exercise of public warrants			
Repurchase of shares from employees for income tax withholding purposes	Repurchase of shares from employees for income tax withholding purposes	(978)	(353)
Other		—	432
Repurchase of shares from employees for income tax withholding purposes			
Repurchase of shares from employees for income tax withholding purposes			
<b>Net cash provided by financing activities</b>			
<b>Net cash provided by financing activities</b>			
Net cash provided by financing activities	Net cash provided by financing activities	139,544	123,322
Effect of foreign exchange on cash, cash equivalents and restricted cash	Effect of foreign exchange on cash, cash equivalents and restricted cash	14	—
Net decrease in cash, cash equivalents and restricted cash		(74,469)	(16,161)
Effect of foreign exchange on cash, cash equivalents and restricted cash			
Effect of foreign exchange on cash, cash equivalents and restricted cash			
<b>Net increase (decrease) in cash, cash equivalents and restricted cash</b>			
<b>Net increase (decrease) in cash, cash equivalents and restricted cash</b>			
<b>Net increase (decrease) in cash, cash equivalents and restricted cash</b>			
Cash, cash equivalents and restricted cash, beginning of year	Cash, cash equivalents and restricted cash, beginning of year	105,692	121,853
Cash, cash equivalents and restricted cash, beginning of year			
Cash, cash equivalents and restricted cash, beginning of year			
Cash, cash equivalents and restricted cash, end of year			
Cash, cash equivalents and restricted cash, end of year			
Cash, cash equivalents and restricted cash, end of year	Cash, cash equivalents and restricted cash, end of year	\$ 31,223	\$ 105,692
Non-cash investing and financing activities:	Non-cash investing and financing activities:		
<b>Non-cash investing and financing activities:</b>			
<b>Non-cash investing and financing activities:</b>			
Right-of-use operating lease assets in exchange for lease liabilities			
Right-of-use operating lease assets in exchange for lease liabilities			
Right-of-use operating lease assets in exchange for lease liabilities	Right-of-use operating lease assets in exchange for lease liabilities	2,112	4,351

Fixed assets acquired with finance lease	Fixed assets acquired with finance lease	147	21
Fixed assets acquired with finance lease			
Fixed assets acquired with finance lease			
Accrued and unpaid capital expenditures			
Accrued and unpaid capital expenditures			
Accrued and unpaid capital expenditures	Accrued and unpaid capital expenditures	2,626	576
Issuance of convertible notes for interest paid-in-kind	Issuance of convertible notes for interest paid-in-kind	6,267	2,900
Issuance of common stock under June 2022 Promissory Note		7,534	—
Issuance of convertible notes for interest paid-in-kind			
Issuance of convertible notes for interest paid-in-kind			
Issuance of common stock upon settlement of Yorkville Convertible Notes			
Issuance of common stock upon settlement of Yorkville Convertible Notes			
Issuance of common stock upon settlement of Yorkville Convertible Notes			
Accrued and unpaid debt issuance costs			
Accrued and unpaid debt issuance costs			
Accrued and unpaid debt issuance costs	Accrued and unpaid debt issuance costs	5,536	—
Supplemental disclosures	Supplemental disclosures		
Supplemental disclosures			
Supplemental disclosures			
Cash paid for interest			
Cash paid for interest			
Cash paid for interest	Cash paid for interest	\$ 5,766	\$ 157

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

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

## 1. Overview

Eos Energy Enterprises, Inc. (the “Company,” “we,” “us,” “our,” and “Eos”) designs, develops, manufactures, and markets innovative energy storage solutions for utility-scale, microgrid, and commercial & industrial (“C&I”) applications. Eos developed a broad range of intellectual property with multiple patents covering unique battery chemistry, mechanical product design, energy block configuration and a software operating system (Battery Management System). The Company has only one operating and reportable segment.

### *Liquidity and Going Concern*

As a growth company in the early commercialization stage of its lifecycle, Eos is subject to inherent risks and uncertainties associated with the development of an enterprise. In this regard, substantially all of the Company’s efforts to date have been devoted to the development and manufacturing of battery energy storage systems and complimentary products and services, recruitment of management and technical staff, deployment of capital to expand the Company’s operations to meet customer demand and raising capital to fund the

Company's development. As a result of these efforts, the Company has incurred significant losses and negative cash flows from operations since its inception and expects to continue to incur such losses and negative cash flows for the foreseeable future until such time that the Company can reach a scale of profitability to sustain its operations.

In order to execute its development strategy, the Company has historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively "outside capital") to fund its cost structure and expects to continue to rely on outside capital for the foreseeable future. While the Company believes it will eventually reach a scale of profitability to sustain its operations, there can be no assurance the Company will be able to achieve such profitability or do so in a manner that does not require its continued reliance on outside capital. Moreover, while the Company has historically been successful in raising outside capital, there can be no assurance the Company will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to the Company.

As of the date the accompanying consolidated financial statements were issued (the "issuance date"), management evaluated the significance of the following negative financial conditions in accordance with Accounting Standard Codification 205-40, Going Concern:

- Since its inception, the Company has incurred significant losses and negative cash from operations in order to fund its development. During the year ended **December 31, 2022** **December 31, 2023**, the Company incurred a net loss of **\$(229,813)**, **\$229,506**, incurred negative cash flows from operations of **\$(196,857)**, **\$145,018**, and had an accumulated deficit of **\$(646,340)** **\$875,846** as of **December 31, 2022** **December 31, 2023**.
- As of **December 31, 2022** **December 31, 2023**, the Company had **\$17,076** **\$69,473** of unrestricted cash and cash equivalents available to fund the Company's operations, **no additional borrowings available to fund its operations under pre-existing financing arrangements (see Note 13, Borrowings) and negative working capital of \$(5,429), \$61,461**, inclusive of **\$5,560** **\$3,332** of outstanding debt that is currently scheduled to mature within the next twelve months beyond months. Additionally, the **issuance date**, **Company has no additional borrowings available under pre-existing financing arrangements to fund its operations (see Note 12, Borrowings)**.
- **While the** **The** Company has available capacity under **certain pre-existing arrangements** **its ATM offering program** to issue shares of the Company's common stock, **including under the SEPA and the ATM offering program**, (see also Note **20**, **19**, **Shareholders' Equity Deficit**) to aid in funding the Company's **operations**, **operations**. However, the Company's ability to secure such funding is dependent upon certain conditions, such as investors' willingness to purchase the Company's common stock and at a price that is acceptable to the Company. Accordingly, as of the issuance date there is no assurance the Company will be able to secure funding under these pre-existing arrangements or on terms that are acceptable to the Company.

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 1. Overview (cont.)

- Similarly, while the Company has historically been successful in raising additional outside capital to fund the Company's operations, as of the issuance date no assurance can be provided **that** the Company will be successful in obtaining additional outside capital or on terms that are acceptable to the Company. In this regard, the Company **is currently in** **continues to progress through** the **process of negotiating additional outside capital under the U.S. Department of Energy's Energy ("DOE") Loan Guarantee Solicitation Program Office's ("LPO") process for Applications** **its Title XVII loan**. In August 2023, the DOE issued a conditional commitment letter to the Company for **Renewable** a loan of an aggregate principal amount up to \$398,600 through the DOE's Clean Energy **Projects Financing Program**. Certain technical, legal, and **Efficient Energy Projects (the "DOE Loan Program")**. As financial conditions must be met and due diligence to the satisfaction of the **issuance date**, **DOE must be completed before the DOE enters into definitive financing documents with the Company** **remains in and funds the due diligence phase of negotiations with the DOE, however, there loan**. **There** can be no assurance that the Company will be able to secure such loan or on terms that are acceptable to the Company.
- The Company is required to remain in compliance with a quarterly minimum financial liquidity covenant under its Senior Secured Term Loan. While the Company was in compliance with this covenant as of **December 31, 2022** **December 31, 2023**, and expects to remain in compliance as of **March 31, 2023** **March 31, 2024**, absent the Company's ability to secure additional outside capital, the Company may be unable to remain in compliance with this covenant beginning on **June 30, 2023** **June 30, 2024** and thereafter. In the event the Company is unable to remain in compliance with the minimum financial liquidity covenant and the other nonfinancial covenants required by the Senior Secured Term Loan, and the Company is further unable to cure such noncompliance or secure a waiver, Atlas may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among other things, entering into a forbearance agreement with the Company, and/or asserting its rights in the Company's assets securing the loan. Moreover, the Company's other lenders may exercise similar rights and remedies under the cross-default provisions of their respective borrowing arrangements with the Company.
- Absent an ability to secure additional outside capital in the near term, the Company will be unable to meet its obligations as they become due over the next twelve months beyond the issuance date.
- In the event the Company's ongoing efforts to raise additional outside capital prove unsuccessful, management will be required to seek other strategic alternatives, which may include, among others, a significant curtailment in the Company's operations, a sale of certain of the Company's assets, a sale of the entire Company to strategic or financial investors, and/or allowing the Company to become insolvent.

These uncertainties raise substantial doubt about the Company's ability to continue as a going concern. The accompanying consolidated financial statements have been prepared on the basis that the Company will continue to operate as a going concern, which contemplates that the Company will be able to realize assets and settle liabilities and commitments in the normal course of business for the foreseeable future. Accordingly, the accompanying consolidated financial statements do not include any adjustments that may result from the outcome of these uncertainties.

#### 2. Summary of Significant Accounting Policies

##### *Principles of Consolidation*



The Company follows accounting standards established by the Financial Accounting Standards Board ("FASB") to ensure consistent reporting of financial condition, results of operations and cash flows. References to accounting principles generally accepted in the United States ("GAAP") in these notes are to the FASB Accounting Standards Codification™ ("ASC") and related updates ("ASU"). The financial statements include the accounts of the Company and its subsidiaries and have been prepared in accordance with GAAP. All intercompany transactions and balances have been eliminated in consolidation.

#### Reclassification of Prior Year Presentation

Certain prior year amounts have been reclassified for consistency with the current year presentation.

### EOS ENERGY ENTERPRISES, INC. NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

## 2. Summary of Significant Accounting Policies (cont.)

### Foreign Currency

The Company follows the provisions of ASC 830, *Foreign Currency Matters*. The Company's foreign subsidiaries use the local currency of their respective countries as their functional currency. The assets and liabilities of foreign operations are translated at the exchange rates in effect at the balance sheet date. The operating results of foreign operations are translated at weighted average exchange rates. The related translation gains or losses are reported as a separate component of shareholders' (deficit) equity in accumulated other comprehensive loss. Gains and losses from foreign currency transactions, which were insignificant for years ended December 31, 2022, December 31, 2023 and 2021, 2022, are included as other income (expense) in the consolidated statements of operations and comprehensive loss.

### Use of Estimates

The preparation of financial statements in conformity with GAAP requires 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 financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from those estimates.

*The most significant estimates in the consolidated financial statements include the calculation of the warranty liability and valuation of embedded derivatives within certain of our debt obligations.*

### Allowance for Expected Credit Losses

The Company evaluates the creditworthiness of its customers. If the collection of any specific receivable is doubtful, an allowance is recorded in the allowance for expected credit losses. As of December 31, 2022, December 31, 2023 and 2021, 2022, the allowances for expected credit loss related to Accounts Receivable was \$3, \$26 and \$9, \$3, respectively. The Company also has an immaterial allowance related to its Notes Receivable, net, which is included in Other Assets on the accompanying consolidated balance sheets.

### Business Combinations

*The Company accounts for the acquisition of a business using the acquisition method of accounting and allocates the purchase price of acquired entities to the underlying tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values, with any excess recorded as goodwill. The operating results of acquired businesses are included in the Company's results of operations beginning as of their effective acquisition dates. Additional information regarding acquisitions can be found in Note 3, Acquisition.*

### Cash, Cash Equivalents, and Restricted Cash

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. Cash and cash equivalents are recorded at cost, which approximates fair value.

### Embedded derivatives

Some of our debt financings contain embedded derivatives, such as conversion features in our Convertible Notes- Related Party, as well as in our Yorkville Convertible Promissory Note, features. The Company evaluates each debt agreement to determine whether the embedded derivative feature requires bifurcation from the host liability, in which case would require to be accounted for as a derivative liability. The Company uses valuation models to estimate the fair value of the embedded derivatives. The change in fair value of the embedded derivatives is presented separately on the consolidated statements of operations and comprehensive loss.

### Earnings (loss) Per Share

In accordance with the provisions of ASC Topic 260, *Earnings per Share*, basic earnings per share ("EPS") is computed by dividing earnings available to common shareholders by the weighted average number of shares of common stock outstanding during the period. Other potentially dilutive common shares, and the related impact to earnings, are considered when calculating EPS on a diluted basis. See Note 20, 19, Shareholders' Equity Deficit for further information.

### EOS ENERGY ENTERPRISES, INC. NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

## 2. Summary of Significant Accounting Policies (cont.)

#### Fair Value of Financial Instruments

The carrying amounts for the Company's financial instruments classified as current consist of cash and cash equivalents, restricted cash, accounts receivable, notes receivable, contract assets, accounts payable, warrants, convertible notes payable — related party, contract liabilities and liabilities, including long-term debt.

The carrying value of cash and cash equivalents, restricted cash, accounts receivable, contract assets, contract liabilities and accounts payable approximate are considered to be representative of their fair value due to their the short maturities, maturity of these instruments.

#### EOS ENERGY ENTERPRISES, INC.

#### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 2. Summary of Significant Accounting Policies (cont.)

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Inputs that are generally unobservable and typically reflect management's estimate of assumptions that market participants would use in pricing the asset or liability.

#### Goodwill

Goodwill consists of the excess of the purchase price over the fair value of identifiable net assets of businesses acquired. Goodwill is reviewed for impairment each year using a qualitative or quantitative process that is performed at least annually or whenever events or circumstances indicate a likely reduction in the fair value of a reporting unit below its carrying amount.

Prior to performing a quantitative evaluation, an assessment of qualitative factors may be performed to determine whether it is more likely than not that the fair value of a reporting unit exceeds the carrying value. If it is determined that it is unlikely that the carrying value exceeds the fair value, the Company is not required to complete the quantitative goodwill impairment evaluation. If it is determined that the carrying value may exceed fair value when considering qualitative factors, a quantitative goodwill impairment evaluation is performed. When performing the quantitative evaluation, if the carrying value of the reporting unit exceeds its fair value, an impairment loss equal to the difference will be recorded.

The Company completed the annual goodwill impairment test as of November 30, 2022 November 30, 2023, using a qualitative assessment for the reporting unit. The Company concluded that it is more likely than not that the fair value of the reporting unit is greater than the carrying amount, and a quantitative goodwill impairment test was not necessary. As a result of the annual assessment, there were no impairment charges for the year ended December 31, 2022 December 31, 2023.

#### Government Grants

The Company records grants received or recognizes a grant receivable from government agencies as an offset once it is probable that (1) the Company is eligible to receive the grant and (2) the Company is able to comply with the relevant conditions of the grant. The grant money shall be recognized on a systematic basis over the periods in which the entity recognizes the related costs expenses or losses for which the grants are grant money is intended to compensate the Company. The costs of satisfying the Company's obligations under the respective grant agreements are recognized as expense when incurred. Once the expenses are approved by the government agencies the Company records the grant receivable and related grant income. Grants received from government agencies for which expenses have not been incurred are included within accrued expenses, compensate.

#### Impairment of Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. An assessment is performed to determine whether the depreciation and amortization of long-lived assets over their remaining lives can be recovered through projected undiscounted future cash flows. The amount of any long-lived asset impairment is measured based on fair value and is charged to operations in the period in which a long-lived assets impairment is determined by management. During the fourth quarter of 2022, the Company recorded a loss from write-down of property, plant and equipment (see Note 7, Property, Plant & Equipment for further discussion).

#### EOS ENERGY ENTERPRISES, INC.

#### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 2. Summary of Significant Accounting Policies (cont.)

#### Income Taxes and Deferred Taxes

The Company complies with the accounting and reporting requirements of FASB ASC Topic 740, *Income Taxes* ("ASC 740"). Income taxes are computed under the asset and liability method reflecting both current and deferred taxes, which reflect the tax impact of all events included in the financial statements. The balance sheet approach (i) reflects a current tax liability or asset recognized for estimated taxes payable or refundable on tax returns for the current and prior years, (ii) reflects a deferred tax liability or asset recognized for the estimated future tax effects attributable to temporary differences and carryforwards, (iii) measures current and deferred tax liabilities and assets using the enacted tax rate of

which the effects of future changes in tax laws or rates are not anticipated, and (iv) reduces deferred tax assets, if necessary, by the amount of any tax benefits that, based on available evidence, are not expected to be realized.

ASC 740 prescribes a recognition threshold and a measurement attribute for financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. The Company recognizes deferred tax assets only to the extent that management concludes these assets are more-likely-than-not to be realized. Significant judgement is required in assessing and estimating the more-likely-than-not tax consequences of the events included in the financial statements. Management considers all available positive and negative evidence, including future reversals of existing temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as income tax expense. The Company records uncertain tax positions in accordance with ASC 740 on the basis of a two-step process in which (i) management determines whether it is more-likely-than-not that the tax position will be sustained on the technical merits of the position and (ii) for those tax positions that meet the more-likely-than-not recognition threshold, the Company recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

#### *Intangible Assets, net*

Intangible assets are stated at their historical cost and amortized on a straight-line basis over their expected useful lives.

#### *Inventory, net*

Inventories are stated at the lower of cost or net realizable value. Cost is computed using standard cost which approximates actual cost on a first-in, first-out basis. The Company records inventory when it takes delivery and title to the product according to the terms of each supply contract.

The Company evaluates its ending inventories for excess quantities and obsolescence. A valuation allowance is recorded for inventories that management considers excess or obsolete. Management considers forecasted demand in relation to the inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining excess and obsolescence and net realizable value adjustments. Once inventory is written down and a new cost basis is established, it is not written back up if demand increases.

#### *Leases*

The Company accounts for its leases under ASU 2016-02, *Leases* ("ASC 842"). Under ASC 842, the right-of-use ("ROU") assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. The discount rate used to calculate the present value represents our incremental borrowing rate and is calculated based on the treasury yield curve that is commensurate with the term of each lease, and a spread representative of our borrowing costs. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Leases may be classified as either operating leases or finance leases. Leases with an initial term of 12 months or less are excluded from the scope of ROU assets and liabilities, as allowed by ASC 842.

### **EOS ENERGY ENTERPRISES, INC.**

#### **NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

(In thousands, except share and per share amounts)

## **2. Summary of Significant Accounting Policies (cont.)**

The Company has lease agreements with lease and non-lease components. The Company has elected the practical expedient to account for non-lease components as part of the lease component for all asset classes. The majority of the Company's lease agreements are real estate leases.

#### *Property, Plant and Equipment, net*

Equipment is stated at cost, less accumulated depreciation. Depreciation is computed on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are amortized on a straight-line basis over the shorter of the estimated useful lives of the improvements or the life of the lease. Maintenance and repair expenditures are expensed as incurred. Expenditures which significantly improve or extend the life of an asset are capitalized.

#### *Construction in Progress*

Included in property, plant, and equipment is construction in progress. Costs related to the design, development, and construction of large capital projects are accumulated in construction in progress until the project is complete. A construction project is considered substantially complete upon the cessation of construction and development activities. Once the project is substantially complete and ready for its intended use these costs are amortized on a straight-line basis over the asset's estimated useful life. A portion of construction in progress also includes capitalized interest. Interest costs incurred during construction of large capital projects are capitalized as construction in progress until the underlying asset is ready for its intended use, at which point the interest costs are amortized as depreciation expense over the life of the underlying asset. Interest is capitalized using a weighted average effective interest rate applicable to borrowings outstanding during the period to which it is applied.

#### *Research and Development Expenses*

Research and development costs are expensed as incurred, which include materials, supplies, salaries, benefits and other costs related to research, development and testing of products.

#### *Revenue Recognition*

Revenue is earned from the sales, installation, and commissioning of BESS, the terms of which are dictated by supply agreements the Company enters into with its customers. Revenue is recognized to depict the transfer of promised goods and/or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring the promised goods and/or services to the customer. As most contracts contain multiple goods delivered to the customer at different times, the

transaction price is allocated to each good based on the relative standalone selling price and revenue is recognized when or as the performance obligation is satisfied. The Company uses either the expected cost-plus margin approach or adjusted market assessment approach to estimate the standalone selling prices of its goods and services.

#### Product Revenue

Product revenue is comprised of revenue from the BESS, along with other products, including inverters and spare parts, and is recognized at the point in time at which control passes, the determination of which is made in accordance with ASC 606, based on indicators of control. Generally, passage of control will be determined based upon the shipping terms, which vary by contract. Many of the Company's contracts with customers contain some component of variable consideration. The Company estimates variable consideration, such as refunds, penalties including liquidated damages, and the customer's right to return, using the expected value method, and adjusts transaction price for its estimate of variable consideration. We update our estimates of variable consideration and adjust the transaction price accordingly by recording an adjustment to net revenue and refund liability with respect to variable consideration such as penalties, refunds, and credits to customers. The Company has concluded that its estimation of variable consideration results in an adjustment to the transaction price such that it is probable that a significant reversal of cumulative revenue would not occur in the future.

Shipping and handling costs are included in cost of goods sold. Sales tax collected from customers are recorded on a net basis and therefore, not included in revenue. Sales tax is recorded as a liability (payable) until remitted to governmental authorities.

### **EOS ENERGY ENTERPRISES, INC.**

#### **NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

(In thousands, except share and per share amounts)

## **2. Summary of Significant Accounting Policies (cont.)**

#### Service Revenue

Service revenue includes commissioning, installation and engineering, procurement and construction revenue. As the customer simultaneously receives and consumes the benefits provided by the Company's performance, these performance obligations are satisfied over time. The Company uses an input method to measure progress towards satisfaction. If at any time management determines that in the case of a particular contract total costs will exceed total contract revenue, a provision for the entire anticipated contract loss is recorded at that time.

### **EOS ENERGY ENTERPRISES, INC.**

#### **NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

(In thousands, except share and per share amounts)

## **2. Summary of Significant Accounting Policies (cont.)**

#### Warranty related revenue

In addition to a standard two-year limited warranty against defects, the Company offers customers the option to purchase an extended warranty, a maintenance and monitoring service and/or a performance guarantee. As the standard two-year limited warranty is classified as an assurance-type warranty, based on criteria set forth in ASC 606, it is not accounted for as a separate performance obligation. The extended warranty, maintenance and monitoring service warranty and performance guarantee, however, represent distinct services and are accounted for as separate performance obligations based on a time-lapsed measure of progress resulting in a ratable recognition of revenue over the respective performance period. For these performance obligations, at any time if management determines that in the case of a particular warranty that total costs will exceed total warranty revenue, a provision for the entire anticipated warranty loss is recorded at that time and included in warranty liability on the consolidated balance sheets.

#### Contract Assets and Contract Liabilities

The Company recognizes contract assets for certain contracts in which revenue recognition performance obligations have been satisfied, however invoicing to the customer has not yet occurred. Contract liabilities primarily relate to advance consideration received from customers in advance of the Company's satisfying performance obligations under contractual arrangements. Contract balances are reported in a net contract asset or liability position on a contract-by-contract basis at the end of each reporting period. Payment terms are generally aligned with meeting various contractual milestones, beginning with purchase order execution and extending through manufacturing release, ready to ship, delivery and commissioning.

#### Practical Expedients and Exemptions

As permitted by ASC 606, *Revenue from Contracts with Customers* ("ASC 606"), the Company elected to use certain practical expedients. The Company treats costs associated with obtaining new contracts as expenses when incurred if the amortization period of the asset recognized by the Company is one year or less.

#### Segments

The Company's chief operating decision-maker ("CODM") is its Chief Executive Officer and President. Operating segments are defined as components of an entity for which separate financial information is available and that is regularly reviewed by the CODM in deciding how to allocate resources to an individual segment and in assessing performance. The Company's CODM reviews financial information presented on a consolidated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance. As such, the Company has determined that it operates in one operating and one reportable segment.

#### Stock-Based Compensation

Stock-based compensation is estimated at the grant date based on the fair value of the award and is recognized as expense over the requisite service period of the award. **The For stock option awards, the** Company uses the Black-Scholes option pricing model to estimate the fair **value of value. For restricted stock units awards and generally these awards only**

have service conditions. The Company recognizes compensation cost on a straight-line basis over the requisite service period of the award, which is generally the award vesting term. For awards with performance conditions, we recognize compensation costs using an accelerated attribution method over the vesting period. Compensation costs are recognized only if it is probable that the performance condition will be satisfied. Determining the appropriate fair value model and related assumptions requires judgment, including estimating volatility of the Company's common stock and expected terms. The expected volatility rates are estimated based on historical and implied volatilities of comparable publicly traded companies. The expected term represents the average time that the options that vest are expected to be outstanding based on the vesting provisions, which is determined through the simplified method, since ("RSU") the Company does not have sufficient historical experience regarding uses the exercise Company's stock price on date of options. The Company has elected grant to recognize forfeitures as incurred, estimate fair value.

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

## 2. Summary of Significant Accounting Policies (cont.)

The Company recognizes compensation cost on a straight-line basis over the requisite service period of the award, which is generally the award vesting period. Stock options generally have a term of five to ten years and vest over periods ranging from three months to two years. Restricted Stock Units ("RSU") generally vest over periods from one to three years. For awards with performance conditions, stock-based compensation expense is recognized on a straight-line basis based on management's estimation of achievement of performance conditions. The estimated performance conditions primarily relate to achievement of sales and financing targets. The Company recognizes forfeitures as incurred.

#### Warranty liability

Warranty obligations are incurred in connection with the sale of the Company's products. Costs to provide for warranty obligations are estimated and recorded as a liability at the time of recording the sale. Warranty reserves include management's best estimate of the projected costs to repair or to replace any items under warranty, which is based on various factors, including the use of actual claim data to date, results of lab testing, factory quality data, and field monitoring.

#### Recently Adopted Recent Accounting Pronouncements

In November 2021, October 2023, the Financial Accounting Standards Board (FASB) FASB issued Accounting Standards ASU 2023-06, *Disclosure Agreements - Codification Amendments in Response to the SEC's Disclosure Update (ASU) 2021-10, and Simplification Initiative* Disclosures by Business Entities about Government Assistance ("Topic 832"). This amendment will impact various disclosure areas, including the statement of cash flows, accounting changes and error corrections, earnings per share, debt, equity, derivatives, and transfers of financial assets. The amendments in this Update require ASU 2023-06 will be effective on the date the related disclosures about transactions with a government that have been accounted for are removed from Regulation S-X or Regulation S-K by analogizing to a grant or contribution accounting model to increase transparency about (1) the types of transactions, (2) SEC, and will no longer be effective if the accounting for SEC has not removed the transactions, and (3) the effect of the transactions on an entity's financial statements, applicable disclosure requirement by June 30, 2027. Early adoption is prohibited. The Company adopted is currently assessing the potential impact this standard prospectively as of January 1, 2022, amendment could have on its disclosures.

In December 2023, the FASB released ASU 2023-09, *Improvements to Income Tax Disclosures*, which requires additional disclosures related to the effective tax rate reconciliation and taxes paid. The adoption of this standard update did not have amendment is effective for periods beginning after December 15, 2024, and the Company is currently evaluating the impact on its financial statements and related disclosures.

There were no other accounting standards or updates during the year ended December 31, 2023 that had a material impact on the Company's consolidated financial statements.

#### Accounting Pronouncements Not Yet Adopted

In October 2021, the FASB issued ASU 2021-08, *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. The amendments in this standard update address diversity and inconsistency related to the recognition and measurement of contract assets and contract liabilities acquired in a business combination and require that an acquirer recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with ASC 606. This standard update is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years and should be applied prospectively to business combinations occurring on or after the effective date of the amendments. Early adoption of the standard is permitted, including adoption in an interim period. The Company has assessed the standard and concluded that this would only be applicable for acquisitions that the Company enters into prospectively only if the target company has contract assets and contract liabilities.

## 3. Acquisition

On April 8, 2021, the Company entered into a unit purchase agreement (the "Purchase Agreement") with Holtec Power, Inc. ("Holtec"). In accordance with the terms and conditions of the Purchase Agreement, the Company purchased from Holtec the remaining 51% interest in HI-POWER, LLC ("Hi-Power") that was not already owned by the Company. Hi-Power was incorporated as a joint venture between the Company and Holtec in 2019. In connection with the transaction, the Company also entered into a transition services agreement and a sublease with Holtec. The transaction closed on April 9, 2021 (the "Acquisition Date"). Following the consummation of the transactions set forth in the Purchase Agreement (the "Transactions"), Hi-Power became a 100% indirect, wholly-owned subsidiary of the Company and the obligations of the parties under the Hi-Power joint venture terminated.

The aggregate purchase price of \$25,000 was to be paid in annual increments of \$5,000 beginning on May 31, 2021, as evidenced by a secured promissory note secured by the assets of the Company. The Purchase Agreement also required that the Company pay to Holtec, on the closing of the Transactions, cash equal to \$10,283. Total payments to Holtec under this Purchase Agreement will be \$35,283. During the third quarter of 2022, the Company repaid all outstanding amounts under the Purchase Agreement, which resulted in a loss on debt extinguishment of \$942.

The fair value of these payments was \$33,474 at the Acquisition Date and included \$32,750 allocated to the termination of a pre-existing agreement with Holtec and \$724 allocated to the acquisition.

The obligations and rights of both parties under the pre-existing joint venture agreement were terminated at the time of acquisition and \$32,750 of the fair value of the consideration transferred was allocated to the termination of the agreement, which resulted in a loss on the pre-existing agreement of \$30,368 for the year ended December 31, 2021.

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 3. Acquisition (cont.)

Prior to the acquisition of the remaining 51% ownership interest in Hi-Power, the Company accounted for its initial 49% ownership interest in Hi-Power as an unconsolidated joint venture under the equity method of accounting. In connection with the acquisition of the remaining 51% ownership interest in Hi-Power, the Company's consolidated financial statements include all of the accounts of Hi-Power, and all intercompany balances and transactions have been eliminated in consolidation. The results of operations of Hi-Power have been included in the Company's consolidated financial statements since the date of acquisition.

The consideration transferred for our now 100% ownership interest in connection with the acquisition, net of intercompany balances between the Company and Hi-Power, totaled \$418, of which \$205 represents the fair value of the Company's previously held 49% ownership interest in Hi-Power. In accordance with ASC 805, *Business Combinations*, the Company remeasured the previously held 49% ownership interest in Hi-Power at its Acquisition Date fair value. As of the Acquisition Date, a loss of \$7,480 was recognized in earnings for the remeasurement of the previously held 49% ownership interest.

The following table summarizes the fair values of the assets acquired and liabilities assumed as of the acquisition date:

	Amount
Inventory	\$ 2,666
Vendor deposits	818
Property, plant and equipment, net	74
Goodwill	4,331
Accounts payable and accrued expenses	(3,634)
Provision for firm purchase commitments	(3,890)
Net assets acquired, net of cash and cash equivalents of \$53 <sup>(1)</sup>	\$ 365

<sup>(1)</sup> Net assets acquired exclude the intercompany balance between Eos and Hi-Power and cash acquired.

The Company expects the goodwill recognized as part of the acquisition will be deductible for U.S. income tax purposes. The Company also incurred insignificant non-consideration acquisition expenses including legal and accounting services related to the acquisition, which are recorded in selling, general and administrative expenses on the Company's consolidated statements of operations and comprehensive loss.

#### 4. Revenue Recognition

The Company's revenues comprised of the following:

		For the Years Ended December 31,	
		2022	2021
		For the Years Ended December 31,	
		2023	For the Years Ended December 31, 2022
Product revenue	Product revenue	\$ 17,429	\$4,562
Service revenue	Service revenue	495	36
Total revenues	Total revenues	\$ 17,924	\$4,598

For the year ended December 31, 2023, we had two customers who accounted for 49.9% and 45.2% of the total revenue. For the year ended December 31, 2022, we had one customer who accounted for 80.8% of the total revenue. For the year ended December 31, 2021, we had two customers, who accounted for 36.8% and 21.4% of the total revenue.

#### Contract Balances

The following table provides information about contract assets and contract liabilities from contracts with customers. Contract assets - current and contract liabilities, current and long-term are included separately on the consolidated balance sheets and contract assets, long-term are included under other assets, net assets.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**4.3. Revenue Recognition (cont.)**

		December 31,	
		2022	2021
		December 31,	
		2023	2022
Contract assets	Contract assets	\$2,000	\$1,369
Contract liabilities	Contract liabilities	\$4,806	\$ 849

Contract assets increased by \$631 \$6,322 during the year ended December 31, 2022 December 31, 2023 due to recognition of revenues for which invoicing has not yet occurred. Contract liabilities increased by \$3,957 \$1,804 during the year ended December 31, 2022 December 31, 2023, reflecting \$4,639 \$10,434 in customer advance payments, partially offset by the recognition of \$682 \$8,630 of revenue during the year ended December 31, 2022 December 31, 2023 that was included in the contract liability balance at the beginning of the period.

Contract liabilities of \$3,850 \$3,070 as of December 31, 2022 December 31, 2023 are expected to be recognized within the next twelve months and contract liabilities, long-term of \$956 \$3,540 are expected to be recognized as revenue over approximately the next three years, within more than a year. Contract assets of \$1,859 \$6,386 as of December 31, 2022 December 31, 2023 are expected to be recognized as accounts receivable within the next twelve months. Long-term months and long-term contract assets of \$141 \$1,936 are expected to be recognized as accounts receivable over approximately the next three years, within more than a year.

**5.4. Cash, Cash Equivalents and Restricted Cash**

Restricted cash - current consists of escrow deposits related to U.S. Custom Bonds insurance and escrow deposits related to our credit card program agreements. Additionally, long-term

Long-term restricted cash relates to interest that is required to be held in escrow per the Senior Secured Term Loan Agreement in an amount equal to the aggregate amount of the next four immediately following quarterly interest payments owed as of the balance sheet date (see Note 13, 12, Borrowings for further discussion).

Cash, cash equivalents, and restricted cash reported within the accompanying consolidated balance sheets that sum to the total of the same such amounts presented in the accompanying consolidated statements of cash flows consisted of the following:

		December 31,	
		2022	2021
Cash and cash equivalents		\$ 17,076	\$ 104,831
Restricted cash <sup>(1)</sup>		2,725	861
Long-term restricted cash		11,422	—
Total cash, cash equivalents, and restricted cash		\$ 31,223	\$ 105,692

<sup>(1)</sup> Restricted cash, current.

		December 31,	
		2023	2022
Cash and cash equivalents		\$ 69,473	\$ 17,076
Restricted cash - current		3,439	2,725
Long-term restricted cash		11,755	11,422
Total cash, cash equivalents, and restricted cash		\$ 84,667	\$ 31,223

**6.5. Inventory**

The following table provides information about inventory balances:

		December 31,	
		2022	2021
		December 31,	
		2023	2022
Raw materials	Raw materials	\$22,899	\$11,898



Work-in-process	Work-in-process	361	43
Finished goods	Finished goods	—	1,035
Total Inventory, net	Total Inventory, net	\$23,260	\$12,976

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 7.6. Property, Plant and Equipment, Net

The following table provides information about property, plant and equipment, net balances:

		December 31,			
		Useful lives	2022	2021	
		December 31,		December 31,	
		Useful lives	2023	2022	
Equipment	Equipment	5 10 years	\$ 23,653	\$ 13,489	
Finance lease	Finance lease	5 years	379	226	
Furniture	Furniture	5 10 years	1,868	808	
Leasehold improvements	Leasehold improvements	Lesser of useful life/remaining lease	6,303	2,933	
Tooling	Tooling	2 3 years	6,926	3,053	
Construction in progress	Construction in progress				
Total	Total		39,129	20,509	
Less: Accumulated depreciation	Less: Accumulated depreciation		(11,960)	(7,619)	
Total property, plant and equipment, net	Total property, plant and equipment, net		\$ 27,169	\$ 12,890	

Depreciation expense related to property, plant and equipment was \$6,774 \$9,668 and \$2,573 \$6,774 during the years ended December 31, 2022 December 31, 2023 and 2021 2022, respectively. For the years ended December 31, 2022 December 31, 2023 and 2021 2022, the Company recorded a loss from write-down of property, plant and equipment of \$6,846 \$7,159 and \$50, \$6,846, respectively, mainly due to replacement of equipment, outsourcing of certain production processes, and the shift in production from the current generation Gen 2.3 BESS battery system to the next generation Z3 Z3™ battery system.

Included in construction in progress assets is capitalized interest costs of \$966 as of December 31, 2023. Depreciation will commence after the assets under construction are placed in service.

8.

#### 7. Intangible Assets

Intangible assets consisted of various patents valued at \$400, which represents the cost to acquire the patents. These patents are determined to have useful lives and are amortized into the results of operations over ten years. During the years ended December 31, 2022 December 31, 2023 and 2021 2022, the Company recorded amortization expense of \$40 for each period, related to patents.

During the year ended December 31, 2023, the Company also capitalized \$138 of costs for internal-use software. The software has a useful life and is amortized into the results of operations over 3 years. The Company recorded amortization expense of \$43 for the year ended December 31, 2023, related to software.

Estimated future amortization expense of intangible assets as of December 31, 2022 December 31, 2023 are as follows:





Accrued legal and professional expenses	Accrued legal and professional expenses	840	826
Provision for contract losses	Provision for contract losses	2,561	—
Insurance premium payable, current <sup>(2)</sup>	Insurance premium payable, current <sup>(2)</sup>	2,607	—
Other	Other	2,809	1,667
Total accrued expenses	Total accrued expenses	\$ 15,359	\$ 7,674

<sup>(1)</sup> Refer to the table below for the warranty reserve activity.

<sup>(2)</sup> Refer to Note 13, 12, Borrowings for additional information.

The following table summarizes warranty reserve activity:

		For the Years Ended December 31,			
		2022	2021		
		For the Years Ended December 31,		For the Years Ended December 31,	
		2023	2023	2022	
Warranty reserve - beginning of period	Warranty reserve - beginning of period	\$ 2,112	\$ —		
Additions for current year deliveries	Additions for current year deliveries	2,460	2,343		
Changes in the warranty reserve estimate	Changes in the warranty reserve estimate	1,284	—		
Warranty costs incurred	Warranty costs incurred	(2,020)	(231)		
Warranty reserve - end of period	Warranty reserve - end of period	\$ 3,836	\$2,112		

## 11. Grant Expense, Net 10. Government Grants

### California Energy Commission

From time-to-time, the Company has entered into grant agreements with the California Energy Commission ("CEC") for conducting studies to demonstrate the benefits of certain energy-saving technologies to utility companies and consumers in the State of California. Under such agreements, the Company is entitled to receive reimbursement of costs incurred by the Company covered by the grants.

For the years ended December 31, 2022 and 2021, the Company received \$1,007 and \$— in reimbursement payments, respectively, from the CEC. As of December 31, 2022 and 2021, the Company had grant receivables in the amounts of \$263 and \$1,020, which were included in other current assets in the

consolidated balance sheets. There was no deferred grant income as of December 31, 2022 and 2021. Related expenses incurred by the Company are offset against grant income earned or received from the CEC.

During the years ended December 31, 2022 and 2021, grant (income) expense, net was \$(16) and \$269, respectively.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

(In thousands, except share and per share amounts)

**10. Government Grants (cont.)**

12. As of December 31, 2023 and 2022, the Company had grant receivables in the amounts of \$0 and \$263 from the CEC recorded in the accompanying consolidated balance sheets, respectively. There was no deferred grant income as of December 31, 2023 and 2022. Related expenses incurred by the Company are offset against grant income earned or received from the CEC.

During the years ended December 31, 2023 and 2022, grant (income) expense, net was \$0 and \$(16), respectively related to the CEC.

***Inflation Reduction Act of 2022 ("IRA")***

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 into law. The IRA has significant economic incentives for both energy storage customers and manufacturers for projects placed in service after December 31, 2022. Starting in 2023, there are Production Tax Credits under Internal Revenue Code 45X ("PTC"), that can be claimed on battery components manufactured in the U.S. and sold to U.S. or foreign customers. These tax credits available to manufacturers include a credit for ten percent of the cost incurred to make electrode active materials in addition to credits of \$35 per kWh of capacity of battery cells and \$10 per kWh of capacity of battery modules. These credits are cumulative, meaning that companies will be able to claim each of the available tax credits based on the battery components produced and sold through 2029, after which the PTC will begin to gradually phase down through 2032. In June 2023, the IRS issued temporary and proposed regulations related to applicable tax credit transferability and direct pay provisions of the Inflation Reduction Act. The Company has reviewed these regulations and believes they do not have a material impact on the financial statements.

Since the PTC is a refundable credit (i.e., a credit with a direct-pay option available), the PTC is outside the scope of ASC 740. Therefore, the Company accounts for the PTC under a government grant model. GAAP does not address the accounting for government grants received by a business entity that are outside the scope of ASC 740. The Company's accounting policy is to analogize to IAS 20, *Accounting for Government Grants and Disclosure of Government Assistance*, under IFRS Accounting Standards. Under IAS 20, once it is reasonably assured that the entity will comply with the conditions of the grant, the grant money should be recognized on a systematic basis over the periods in which the entity recognizes the related expenses or losses for which the grant money is intended to compensate. The Company recognizes grants once it is probable that both of the following conditions will be met: (1) the Company is eligible to receive the grant and (2) the Company is able to comply with the relevant conditions of the grant.

The PTC is recorded as the applicable items become finished goods and the conditions in the preceding paragraph are met. For the year ended December 31, 2023, the Company recognized PTC of \$3,256 as a reduction of cost of goods sold on the consolidated statement of operations and comprehensive loss. As of December 31, 2023, grant receivable related to the PTC of \$3,256 is recorded in the consolidated balance sheets.

**11. Related Party Transactions**

***2021 Convertible Notes Payable***

In July 2021, the Company issued \$100,000 aggregate principal amount of convertible notes to Spring Creek Capital, LLC, a wholly-owned, indirect subsidiary of Koch Industries, Inc., a related party due to its beneficial ownership exceeding 10% of the Company's Common Shares (the "2021 Convertible Notes"). In connection with these 2021 Convertible Notes, the Company paid \$3,000 to B. Riley Securities, Inc., also a related party, who acted as a placement agent. Refer to Note 13, 12, *Borrowings*, for additional information.

***Loss on pre-existing agreement AFG Convertible Notes***

For In January 2023, the year ended December 31, 2021, Company issued and sold \$13,750 of 26.5% Convertible Senior PIK Notes due 2026 ("AFG Convertible Notes") to Great American Insurance Company, Ardsley Partners Renewable Energy, LP, CCI SPV III, LP, Denman Street LLC, John B. Bending Irrevocable Children's Trust, John B. Berding, and AE Convert, LLC (together, the "Purchasers"). AE Convert LLC, a loss on pre-existing agreement Delaware limited liability company is managed by Russell Stidolph, a related party as Mr. Stidolph is a director of \$30,368 was recorded in the Company. In connection with the acquisition issuance and sale of Hi-Power. See Note 3, *Acquisition* for additional information.

***Disgorgement of short swing profits***

For the year ended December 31, 2021, AFG Convertible Notes, the Company received \$432 from its then affiliated company B. Riley Securities, Inc. resulting from a disgorgement of short swing profits under Section 16 (b) of entered into an investment agreement (the "Investment Agreement") with the Exchange Act. This amount was recognized as an increase Purchasers. Refer to Additional paid in capital as a capital contribution from stockholder when it was earned.

***Warrants liability***

The Company issued private warrants to an affiliated company owned by B. Riley Financial, Inc. which were outstanding as of December 31, 2022 and 2021. See Note 14, 12, *Warrants Liability - Related Party Borrowings*, for additional information.

***Standby Equity Purchase Agreement***

On April 28, 2022, the Company entered into the Standby Equity Purchase Agreement with YA II PN, Ltd. Pursuant to the SEPA, the Company has the right, but not the obligation, to sell to Yorkville shares of its common stock at the Company's request. See Note 20, *Shareholders' Equity* for additional information.

On June 13, 2022, the Company issued and sold a convertible promissory note with an aggregate principal amount of \$7,500 in a private placement to Yorkville under a supplemental agreement dated as of June 13, 2022 to the SEPA. On December 29, 2022, the Company issued and sold a convertible promissory note with an aggregate principal amount of \$2,000 in a private placement to Yorkville under a supplemental agreement dated as of December 29, 2022 to the SEPA. See Note 13, *Borrowings* for additional information.

#### Settlement Agreement

As disclosed at the time of the Merger Agreement, prior to the execution and delivery of the Merger Agreement, certain unitholders of EES ("Hellman parties") asserted claims ("Threatened Claims") against another director and affiliated investors, including AltEnergy Storage VI, LLC (the "Securityholder Representative"), questioning the dilutive effect of a certain historical security issuances on the former EES common unitholders.

Under the Merger Agreement, the Securityholder Representative had the obligation to defend against the Threatened Claims, and the Company had the obligation to advance or cause to be advanced to the Securityholder Representative up to \$5,000 of defense costs, subject to a deductible of \$2,000 (the "Deductible"), in connection with the investigation, defense, or settlement of any Threatened Claims. The Deductible was to be borne by the Company, and any additional amounts advanced were reimbursable by the former unitholders of EES.

On December 1, 2021, a Settlement Agreement was entered into between Hellman Parties and the Securityholder Representative pursuant to which, 300,000 Eos Shares ("Settlement Shares") would be transferred to the Hellman parties from the EES unitholders at the time of merger.

### EOS ENERGY ENTERPRISES, INC. NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (In thousands, except share and per share amounts)

#### 12.11. Related Party Transactions (cont.)

##### Standby Equity Purchase Agreement (SEPA)

On ~~December 28, 2021~~ April 28, 2022, the independent members of Company entered into the Board approved a contribution of \$1,200 towards the Settlement. The approval was based on the independent members of the Board's business judgment that, among other reasons, such a contribution (i) would ensure that SEPA under which the Company would had the right, but not have the obligation, to spend the entire \$2,000 Deductible towards the costs sell to Yorkville shares of defense of any litigation, (ii) would avoid the additional cost, distraction, uncertainty, and overhang of litigation relating to the Mergers, (iii) would benefit its common stock at the Company's future relationships with its long-term investors, and (iv) would generate future goodwill with such investors during an important growth stage of the Company. As the Company's contribution benefits certain Eos shareholders at the time of the Merger Agreement, including AltEnergy LLC and B. Riley Financial Inc, who are considered as related parties owning more than 5% of the equity interest in request. On August 23, 2023, the Company this transaction is considered, reviewed and approved Yorkville terminated the SEPA, as a related party transaction.

On December 29, 2021, an amendment to the Settlement Agreement between the Hellman Parties amended, by mutual written consent. See Note 12, *Borrowings* for pre-advance loans in form of convertible promissory notes and the Securityholder Representative was entered into, pursuant to which, \$1,200 of the value represented by the Settlement Shares was to be paid in cash, representing the equivalent of 140,023 of the Settlement Shares.

The Company accrued \$1,200 in accounts payable and accrued expenses - related party on December 31, 2021, which was paid on January 4, 2022. The remaining 159,977 in Settlement Shares were transferred to the Hellman parties from the former EES unitholders, on a pro rata basis, on December 29, 2021. Note 19, *Shareholders' Deficit* for additional information.

#### 13.12. Borrowings

The Company's borrowings consist of the following related and third-party borrowings:

	December 31, 2022		December 31, 2021	
	Borrowing		Borrowing	
	Outstanding	Carrying Value*	Outstanding	Carrying Value*
Yorkville Convertible Promissory Note - due June 2023	\$ 2,000	\$ 2,688	\$ —	\$ —
2021 Convertible Notes Payable – due June 2026	109,167	82,950	102,900	84,148
Senior Secured Term Loan - due March 2026	100,000	81,616	—	—
Note Payable - Hi-Power	—	—	20,000	18,695
Equipment financing facility - due April 2025	8,577	8,577	6,389	6,371
Total borrowings	219,744	175,831	129,289	\$ 109,214
Current portion	5,560	5,560	6,570	6,570
Total borrowings, non-current	\$ 214,184	\$ 170,271	\$ 122,719	\$ 102,644

	Maturity Date	December 31, 2023		December 31, 2022	
		Borrowing		Borrowing	
		Outstanding	Carrying Value*	Outstanding	Carrying Value*
2021 Convertible Notes Payable	June 2026	115,815	94,386	109,167	82,950

Senior Secured Term Loan	March 2026	100,000	85,624	100,000	81,616
AFG Convertible Note	June 2026	17,429	18,139	—	—
Equipment financing facility	April 2026	5,718	5,710	8,577	8,577
Yorkville Convertible Promissory Note	June 2023	\$ —	\$ —	\$ 2,000	\$ 2,688
<b>Total borrowings</b>		<b>238,962</b>	<b>203,859</b>	<b>219,744</b>	<b>\$ 175,831</b>
Current portion		3,332	3,332	5,560	5,560
Total borrowings, non-current		\$ 235,630	\$ 200,527	\$ 214,184	\$ 170,271

\*Carrying value includes unamortized deferred financing costs, unamortized discounts, and fair value of embedded derivative liabilities.

#### Yorkville Convertible Promissory Notes - Related Party

On June 13, 2022, the Company issued and sold a convertible promissory note (the "June 2022 Promissory Note") with a stated principal amount of \$7,500 in a private placement to Yorkville under a Supplemental Agreement to the SEPA (the "Supplemental Agreement"). The June 2022 Promissory Note had a maturity date of September 15, 2022, and was issued with a 2% original issue discount, debt issuance costs of \$125, bears interest only upon the occurrence of an Event of Default (as defined in the SEPA) for so long as it remains uncured. Upon the occurrence of an Event of Default, interest will begin to accrue at a rate of 15% per year.

The June 2022 Promissory Note gives Yorkville the right, but not the obligation, to convert principal and accrued interest into shares of the Company's common stock at a conversion price of \$2.21 any time prior to the maturity date, subject to terms and conditions of the June 2022 Promissory Note. In July and August 2022, pursuant to the terms of the Supplemental Agreement, Yorkville delivered six Investor Notices requiring the Company to issue and sell an aggregate of 3,393,663 shares of common stock at a price of \$2.21 per share to Yorkville, in order to offset all outstanding amounts owed to Yorkville under the June 2022 Promissory Note. Interest expense on the June 2022 Promissory Note was \$309 for the year ended December 31, 2022. As of December 31, 2022, the outstanding balance of the June 2022 Promissory Note was zero.

### EOS ENERGY ENTERPRISES, INC.

#### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 13. Borrowings (cont.)

On December 29, 2022, the Company issued a convertible promissory note (the "December 2022 Promissory Note") with an aggregate principal amount of \$2,000 in a private placement to Yorkville under a second supplemental agreement to the SEPA. The December 2022 Promissory Note has a maturity date of June 29, 2023, and was issued with an original issue discount of 2%, debt issuance costs of \$179, and an annual interest rate of 5% which shall increase to an annual rate of 15% upon an Event of Default (as defined in the SEPA) for so long as it remains uncured. The December 2022 Promissory Note is convertible into shares of the Company's common stock at a conversion price equal to the lower of \$1.1779 or 96.5% of the lowest daily volume weighted average price of the Company's common stock during the seven consecutive trading days immediately preceding the conversion date (the "Conversion Price").

**Mandatory Payments** - If, any time after the Issuance Date, and from time to time thereafter, the daily VWAP is less than the Floor Price for five consecutive Trading Days (the last such day of each such occurrence, a "Triggering Date"), then the Company shall make weekly payments in an amount equal to the sum of (i) \$1,000,000 of Principal (or the outstanding Principal if less than such amount), (ii) the "Payment Premium" - defined as an amount equal to 3% of the Principal amount of a payment being made by the Company paid in cash, and (iii) accrued and unpaid interest as of each payment date. The obligation of the Company to make weekly payments shall cease if at any time after the Triggering Date the daily VWAP is greater than the Floor Price for a period of five consecutive Trading Days, unless a subsequent Triggering Date occurs.

**Conversion Rights** - In January 2023, Yorkville has the right, but not the obligation, to convert principal and accrued interest into shares of the Company's common stock at the Conversion Price any time prior to the Maturity Date, subject to the terms and conditions of the December 2022 Promissory Note. At any time that there is an outstanding balance owed under the December 2022 Promissory Note, Yorkville may, pursuant to the terms of the Second Supplemental Agreement, deliver delivered Investor Notices to require requiring the Company to issue and sell an aggregate of 1,953,612 shares of common stock under the SEPA at the Conversion Price in order to repay the Yorkville to offset all outstanding amounts owed by the Company to the Holder Yorkville under the December 2022 Promissory Note. In addition, while there is

During the first half of 2023, the Company issued three additional convertible promissory notes (the "2023 Promissory Notes") with an outstanding balance owed aggregate principal amount of \$35,000 in a private placement to Yorkville under the December 2022 Promissory Note, the Company must use any Advance requested by the Company pursuant second, third and fourth supplemental agreements to the SEPA, to repay respectively. The fair values of the amounts owed by 2023 Promissory Notes at issuance was greater than the proceeds received. As such, the Company recorded the excess of fair value of the issued 2023 Promissory Notes over the proceeds received as interest expense - related party in the amount of \$17,571, which is reflected in the consolidated statements of operations and comprehensive loss.

On various dates during the first half of 2023, Yorkville delivered Investor Notices requiring the Company to the Holder issue and sell an aggregate of 20,993,417 shares of common stock to Yorkville to offset all outstanding amounts owed to Yorkville under the December 2022 outstanding 2023 Promissory Note. The shares issuable upon conversion are subject to the Exchange Cap. See Note 20, *Shareholders' Equity* for further discussion regarding the Exchange Cap. Notes.

**Optional Redemption** - The Company has recognized a loss on debt extinguishment from the right, but not the obligation, to redeem early a portion or all amounts outstanding under the December 2022 Promissory Note provided that (i) the Company provides the Holder with at least five trading days' prior written notice (each, a "Redemption Notice") issuance of its desire to exercise an Optional Redemption, and (ii) the VWAP of the Company's common stock on each of the ten trading days immediately prior to the Redemption Notice is less than the conversion price.

**Event of Default Put Option** - Upon the occurrence of an Event of Default, interest will begin to accrue at a rate of 15% per year and Yorkville may elect to accelerate the repayment of each installment.

**Contingent Interest upon Event of Default** - If any Event of Default has occurred and is continuing, then the full unpaid Principal amount of from the December 2022 Promissory Note and the 3% Payment Premium, together with interest and other amounts owed 2023 Promissory Notes (collectively referred to as the date "Yorkville Promissory Notes") of acceleration shall become at Yorkville's election, immediately due and payable in cash.

**Embedded Derivatives** - The number of shares issuable for conversion of the December 2022 Promissory Note is subject to the Exchange Cap limitation under the SEPA, unless shareholder approval is obtained. Therefore, at issuance, shareholder approval is an explicit input that can adjust the number of shares issuable upon settlement. Because shareholder approval is not an input that is indexed to the Company's shares, the conversion feature is not indexed to the Company's own stock. Therefore, the conversion feature does not qualify \$3,510 for the scope exception to derivative accounting year ended December 31, 2023, which is reflected in the consolidated statements of operations and bifurcation is required at issuance.comprehensive loss.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**13. 12. Borrowings (cont.)**

*In addition to the Embedded derivatives- Yorkville Convertible Promissory Notes - Related party*

The conversion feature the optional redemption feature, the events of default put option and the contingent interest upon event of default feature, are embedded features that require bifurcation. The embedded derivative features were bundled into a single embedded derivative, bifurcated and accounted for as a derivative liability measured at fair value.

The fair value each of the embedded Yorkville Promissory Notes discussed above did not qualify for the scope exception to derivative in the December 2022 accounting, therefore bifurcation was required for each issuance. Upon extinguishment of each Yorkville Promissory Note, was estimated using the intrinsic and discounted cash flow model at inception and on subsequent valuation dates. These models incorporate inputs such as the stock price of the Company and its debt yield. The assumptions used to determine the fair value of the embedded derivatives at issuance and at year-end were as follows:

	December 29, 2022	December 31, 2022
EOSE Common Stock Price	\$ 1.17	\$ 1.48
Debt Yield	25.00 %	25.00 %

As adjusted to fair value. This remeasurement resulted in net gains of December 29, 2022 and December 31, 2022 \$6,922 for the year ended December 31, 2023, the fair value of the embedded derivative was \$419 and \$1,027, respectively. The loss from the which is included in change in fair value of the embedded derivative for the year ended December 31, 2022 amounted to \$608 and is included derivatives - related parties on the consolidated statements of operations and comprehensive income (loss). The fair value loss.

As of December 31, 2023, there were no outstanding amounts under the December 2022 Yorkville Promissory Note at issuance was \$2,299, which was greater than the proceeds received. The Company recorded the difference as interest expense at inception. The December 2022 Promissory Note was fully converted into common shares in January 2023, see Note 21, *Subsequent Events* for additional information.

The carrying value of the December 2022 Promissory Note is as follows:

	December 31, 2022
Principal	\$ 2,000
Unamortized debt discount	(160)
Unamortized debt issuance costs	(179)
Embedded derivative liability	1,027
Aggregate carrying value	\$ 2,688

**Notes.**

*2021 Convertible Notes Payable - Related Party*

On July 6, 2021, the Company entered into an investment agreement with Spring Creek Capital, LLC, a wholly-owned, indirect subsidiary of Koch Industries. The investment agreement provides for the issuance and sale to Koch of convertible notes in the aggregate principal amount of \$100,000. The maturity date of the 2021 Convertible Notes is June 30, 2026, subject to earlier conversion, redemption, or repurchase.

**Contractual Interest Rates** - The 2021 Convertible Notes bear interest at a rate of 5% per year if interest is paid in cash, or 6% per year if interest is paid in-kind. Interest on the 2021 Convertible Notes is payable semi-annually in arrears on June 30 and December 30.

**Conversion Rights** - The 2021 Convertible Notes are convertible at the option of the holder at any time until the business day prior to the maturity date, including in connection with a redemption by the Company. The 2021 Convertible Notes will be convertible into shares of the Company's common stock based on an initial conversion rate of 49.9910 shares of the Company's common stock, which is equal to an initial conversion price of approximately \$20.00 per share, in each case subject to customary anti-dilution and other adjustments. For the years ended December 31, 2022 and 2021, there were no adjustments to conversion rate. As of December 31, 2022 and 2021, 5,457,348 and 5,144,074 shares, respectively, of the Company's common stock were issuable upon conversion of the 2021 Convertible Notes including the principal and interest payment in-kind. The Company has the right to settle conversions in shares of common stock, cash, or any combination thereof.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**13. Borrowings (cont.)**

**Optional Redemption** - On or after June 30, 2024, the 2021 Convertible Notes will be redeemable by the Company in the event that the closing sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides the redemption notice at a redemption price of 100% of the principal amount of such 2021 Convertible Notes, plus accrued and unpaid interest.

If, following the Company's delivery of a redemption notice, the 2021 Convertible Notes are converted pursuant to the holders' conversion rights, the Company is required to make an additional cash payment to the converting holder equal to the present value of all interest payments the holder would have been entitled to receive had such 2021 Convertible Notes remained outstanding until June 30, 2026 (the "interest make-whole payment"). The present value is calculated using a discount rate equal to the risk-free rate plus 50 basis points and assuming interest accrued at the cash interest rate of 5% per year.

**Contingent Redemption** - With certain exceptions, upon the occurrence of certain events, fundamental changes described in the 2021 Convertible Notes Agreement, the holders of the 2021 Convertible Notes may require that the Company repurchase all or part of the principal amount of the Notes at a purchase price of 100% of the principal amount of such 2021 Convertible Notes, plus accrued and unpaid interest.

**Embedded Derivatives** - The interest make-whole payment can be triggered only in connection with an induced conversion, and therefore represents an adjustment to the settlement amount of the embedded conversion feature. Because this adjustment is calculated in a manner in which the cash payout may exceed the time value of the embedded conversion feature, the embedded conversion feature is precluded from being considered indexed to the Company's own stock. Therefore, the embedded conversion feature does not qualify for the scope exceptions to derivative accounting prescribed by ASC 815.

The Company estimated the fair value of the embedded conversion feature using a binomial lattice model at the inception and on subsequent valuation dates. This model incorporates inputs such as the stock price of the Company, dividend yield, risk-free interest rate, the effective debt yield and expected volatility. The effective debt yield and volatility involve unobservable inputs classified as Level 3 of the fair value hierarchy (see Note 16, *Fair Value Measurement*).

The assumptions used to determine the fair value of the embedded conversion feature are as follows:

	December 31,	
	2022	2021
Term	3.50 years	4.50 years
Dividend yield	— %	— %
Risk-free interest rate	4.1 %	1.2 %
Volatility	80.0 %	60.0 %
Effective debt yield	25.0 %	19.0 %

As of December 31, 2022 and 2021, the fair value of the embedded conversion feature was \$918 and \$12,359 respectively. The gain from the change in the fair value of the embedded derivative conversion features for the years ended December 31, 2022 and 2021 amounted to \$11,488 and \$17,507, respectively.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**13.12. Borrowings (cont.)**

Interest expense recognized on the 2021 Convertible Notes is as follows:

		For the Years Ended December 31,	
		2022	2021
	For the Years Ended December 31,	For the Years Ended December 31,	
	2023	2023	2022
Contractual interest expense	Contractual interest expense	\$ 6,267	\$2,900



Amortization of debt discount	Amortization of debt discount	3,588	1,545
Amortization of debt issuance costs	Amortization of debt issuance costs	388	152
Total	Total	<u>\$10,243</u>	<u>\$4,597</u>

The carrying value for the 2021 Convertible Notes is as follows:

		December 31,	
		2022	2021
		December 31,	
		2023	2022
Principal	Principal	\$109,167	\$102,900
Unamortized debt discount	Unamortized debt discount	(24,733)	(28,321)
Unamortized debt issuance costs	Unamortized debt issuance costs	(2,402)	(2,790)
Embedded derivative liability	Embedded derivative liability	918	12,359
Aggregate carrying value	Aggregate carrying value	<u>\$ 82,950</u>	<u>\$ 84,148</u>

In The gain from the change in fair value of the embedded derivative liability for the years ended December 31, 2023 and 2022 was \$840 and \$11,488, respectively. See Note 15, *Fair Value Measurement* for the assumptions used to determine the fair value of the embedded derivative. The Company is obligated to repay all contractual interest attributable to the 2021 Convertible Notes in-kind on a semi-annual basis, in accordance with the terms under the Senior Secured Term Loan, the Company is obligated to repay in-kind all contractual interest attributable to the 2021 Convertible Notes. Loan.

During the year ended December 31, 2022 December 31, 2023, contractual interest in-kind of \$6,267 \$6,648 was recorded as an increase to the 2021 Convertible Notes' principal balance on the consolidated balance sheet.

#### AFG Convertible Notes - Related Party

On January 18, 2023, the Company entered into the Investment Agreement with the Purchasers relating to the issuance and sale to the Purchasers of \$13,750 in aggregate principal amount of the Company's AFG Convertible Notes.

**Contractual Interest Rates** - The AFG Convertible Notes bear interest at a rate of 26.5% per annum, which is entirely paid-in-kind. All interest payments are made through an increase in the principal amount of the outstanding AFG Convertible Notes or through the issuance of additional notes (such interest is referred to herein as "PIK Interest"). Interest on the AFG Convertible Notes is payable semi-annually in arrears on June 30 and December 30, commencing on June 30, 2023. It is expected that the Notes will mature on June 30, 2026, subject to earlier conversion, redemption or repurchase.

**Conversion Rights** - The AFG Convertible Notes are convertible at the option of the holder (the "Conversion Option") at any time until the business day prior to the maturity date, including in connection with a redemption by the Company. The AFG Convertible Notes are convertible into shares of the Company's common stock, par value \$0.0001 per share, based on an initial conversion price of approximately \$1.67 per share subject to customary anti-dilution and other adjustments. The Company has the right to settle conversions in shares of common stock, cash, or any combination thereof.

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 12. Borrowings (cont.)

**Optional Redemption** - On or after June 30, 2024, provided that the Company has obtained stockholder approval, the AFG Convertible Notes are redeemable by the Company in the event that the closing sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides the redemption



notice. The redemption price will be equal to the then current principal amount of the AFG Convertible Notes (inclusive of all PIK Interest), plus the aggregate amount of all interest payments on the AFG Convertible Notes that the holders of the AFG Convertible Notes to be redeemed would have been entitled to receive had the AFG Convertible Notes remained outstanding to the maturity date.

**Contingent Redemption** - With certain exceptions, upon the occurrence of certain events and fundamental changes described in the AFG Convertible Notes Agreement, the holders of the AFG Convertible Notes may require that the Company repurchase all or part of the principal amount of the AFG Convertible Notes at a purchase price of 100% of the principal amount of the AFG Convertible Notes, plus accrued and unpaid interest.

**Embedded Derivative** - The Conversion Option includes an exercise contingency, which requires the Company to obtain shareholder approval for conversions subject to the Exchange Cap. If shareholder approval is not obtained, following commercially reasonable efforts, the Company will be required to settle the conversion in excess of the Exchange Cap in cash. Since settlement in cash may be required in absence of shareholder approval, the embedded conversion feature fails the equity classification guidance in ASC 815 and is thus precluded from being classified in equity. Therefore, the embedded conversion feature is required to be bifurcated from the AFG Convertible Notes and accounted for at fair value at each reporting date, with changes in fair value recognized on the consolidated statements of operations and comprehensive loss.

The fair value of the AFG Convertible Notes at issuance was \$16,623, which was greater than the proceeds received. The Company recorded the difference of \$2,873 as interest expense on the accompanying consolidated statement of operations and comprehensive loss.

Interest expense recognized on the AFG Convertible Notes is as follows:

	Year Ended	
	December 31, 2023	
Contractual interest expense	\$	3,679
Amortization of debt discount		743
Amortization of debt issuance costs		209
Total	\$	4,631

The balance for the AFG Convertible Notes is as follows:

	December 31, 2023	
Principal	\$	17,429
Unamortized debt discount		(2,835)
Unamortized debt issuance costs		(800)
Embedded conversion feature		4,345
Aggregate carrying value	\$	18,139

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**12. Borrowings (cont.)**

The gain from the change in fair value of the embedded derivative for the year ended December 31, 2023 amounted to \$2,106. See Note 15, *Fair Value Measurement* for the assumptions used to determine the fair value of the embedded derivative as of December 31, 2023 and as of the date of issuance. The Company is obligated to repay all contractual interest attributable to the AFG Convertible Notes in-kind on a semi-annual basis, in accordance with the terms of the Investment Agreement. During the year ended December 31, 2023, contractual interest in-kind of \$3,679 was recorded as an increase to the AFG Convertible Notes' principal balance on the consolidated balance sheet.

**Senior Secured Term Loan**

On July 29, 2022 (the "Closing Date"), the Company entered into a \$100,000 Senior Secured Term Loan Credit Agreement with Atlas Credit Partners (ACP) Post Oak Credit I LLC (Atlas), as administrative agent for the lenders and collateral agent for the secured parties. As of December 31, 2022, the Company had total borrowings of \$100,000 under the Senior Secured Term Loan, composed of borrowings on July 29, 2022, August 4, 2022, and December 7, 2022 of \$85,106 and \$9,574, and \$5,320, respectively.

The Senior Secured Term Loan is scheduled to mature on the earlier of (i) July 29, 2026, and (ii) 91 days prior to the current maturity date of the 2021 Convertible Notes of June 30, 2026. The Company has the right at any time to prepay any Borrowing in whole or in part in an amount of not less than \$500.

The Company used the proceeds from the Senior Secured Term Loan to (i) fund growth investments and for general corporate purposes including corporate-level research and development investments, (ii) expand the manufacturing facility of the Company's wholly owned subsidiary, Hi-Power, (iii) redeem in full the Company's existing indebtedness to Holtec (see Note 3, *Acquisition* for further discussion) and (iv) pay certain insurance premiums, interest reserves, fees and expenses incurred in connection with the Senior Secured Term Loan agreement.

The outstanding principal balance of the Senior Secured Term Loan bears interest, at the applicable margin plus, at the Company's election, either (i) the benchmark secured overnight financing rate ("SOFR"), which is a per annum rate equal to (y) the Adjusted Term SOFR plus 0.2616%, or (ii) the alternate base rate ("ABR"), which is a per annum rate equal to the greatest of (x) the U.S. Prime Lending Rate, (y) the NYFRB Rate (as defined in the Senior Secured Term Loan Agreement) plus 0.5% and (z) the SOFR. The applicable

margin under the Credit Agreement is 8.5% per annum with respect to SOFR loans, and 7.5% per annum with respect to ABR loans. Interest on the Senior Secured Term Loan accrues at a variable interest rate, and interest payments are due quarterly. The Company may elect to convert SOFR Loans to ABR (and ABR Loans to SOFR).

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 13. Borrowings (cont.)

As of December 31, 2023, the interest rate in effect for the Senior Secured Term Loan's fourth quarter of 2023 interest payment was 14.15%.

Any repayment of principal prior to the second anniversary of the issuance date is subject to a call premium. The call premium is equal to the present value of all interest payments due through June 30, 2024, calculated using a discount rate equal to the applicable treasury rate as of the repayment date plus 50 basis points. The Company deemed that the fair value of the embedded derivative features which qualify for bifurcation was de minimis.

Concurrently, the Company entered into a Guarantee and Collateral Agreement which secures and guarantees the Senior Secured Term Loan with substantially all the assets of the Company and its subsidiaries, other than the Company's equity interests in Hi-Power and assets of Hi-Power. Additionally, interest is required to be escrowed in an amount equal to the aggregate amount of the four immediately following interest payments owed based on the Loans. At December 31, 2022, principle outstanding. This amount was \$11,755 at December 31, 2023. This escrowed interest of \$11,422 amount is presented in Long-term classified as restricted cash on the consolidated balance sheets.

The agreements also contain customary affirmative and negative covenants. They limit the Company's and its subsidiaries' ability to incur indebtedness, make restricted payments, including cash dividends on its common stock, make certain investments, loans and advances, enter into mergers and acquisitions, sell, assign, transfer or otherwise dispose of its assets, enter into transactions with its affiliates and engage in sale and leaseback transactions, among other restrictions. Furthermore, the limitation on the Company's ability to incur indebtedness also (i) limits the amount of debt under the SEPA Loans that the Company may have outstanding at any time to \$15,000, and (ii) requires payment in kind of principal and interest on each of the SEPA Pre-Advance Loans (if any) and in kind on the 2021 Convertible Notes. Additionally, the Company may not permit Liquidity (as defined in the Senior Secured Term Loan) as of the last day of each fiscal quarter to be less than the Interest Escrow Required Amount (as defined in the Senior Secured Term Loan), which is calculated as the aggregate amount of the four immediately following interest payments under the Senior Secured Term Loan. While the Company was in compliance with this covenant as of December 31, 2022 December 31, 2023, and currently expects to remain in compliance as of March 31, 2023 March 31, 2024, absent the Company's ability to secure additional outside capital, the Company may be unable to remain in compliance with this covenant beginning on June 30, 2023 June 30, 2024 and thereafter (see Note 1, Overview) for further discussion).

Debt issuance costs of \$885 and original issue discounts of \$2,008 were recognized for all amounts borrowed under the Senior Secured Term Loan. These fees shall be amortized to interest expense, utilizing the effective interest method through loan maturity. Debt issuance costs also include credit wrap insurance premiums of \$16,953 for all amounts borrowed under the Senior Secured Term Loan. The credit wrap insurance provides the Lender with a guarantee on the Company's credit risk. In the event the Senior Secured Term Loan remains outstanding on the first, second and third anniversaries of the closing date, the Company will be required to pay additional insurance premiums equal to 3%, 3%, and 2%, respectively of the Senior Secured Term Loan balance then outstanding. The debt issuance fees shall be amortized to interest expense, utilizing the effective interest method through loan maturity.

The following table summarizes interest expense recognized on the Senior Secured Term Loan:

	For the Year-Ended December 31,	
	2022	
Contractual interest expense	\$	4,887
Amortization of debt discount		142
Amortization of debt issuance costs		1,320
<b>Total</b>	<b>\$</b>	<b>6,349</b>

	For the Years Ended December 31,			
	2023		2022	
Contractual interest expense	\$	13,943	\$	4,887
Amortization of debt discount		407		142
Amortization of debt issuance costs		3,601		1,320
<b>Total</b>	<b>\$</b>	<b>17,951</b>	<b>\$</b>	<b>6,349</b>

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 13. Borrowings (cont.)

The carrying value of the Senior Secured Term Loan is as follows:

	December 31, 2022
Principal	\$ 100,000
Unamortized debt discount	(1,866)
Unamortized debt issuance costs	(16,518)
Aggregate carrying value	\$ 81,616

	December 31,	
	2023	2022
Principal	\$ 100,000	\$ 100,000
Unamortized debt discount	(1,459)	(1,866)
Unamortized debt issuance costs	(12,917)	(16,518)
Aggregate carrying value	\$ 85,624	\$ 81,616

#### Equipment Financing facility

The Company entered into an agreement on September 30, 2021 with Trinity Capital Inc. ("Trinity") for a \$25,000 equipment financing facility, the proceeds of which will be used to acquire certain manufacturing equipment, subject to Trinity's approval. Each draw is executed under a separate payment schedule (a "Schedule") that constitutes a separate financial instrument. The financing fees included in each Schedule are established through monthly payment factors determined by Trinity. Such monthly payment factors are based on the Prime Rate reported in The Wall Street Journal in effect on the first day of the month in which a Schedule is executed.

Date of Draw	Gross Amount of Initial Draw	Coupon Interest Rate	Debt Issuance Costs
September 2021	\$ 7,000	14.3%	\$ 175
September 2022	4,216	16.2%	96
Total Equipment Financing loans	\$ 11,216		\$ 271

In addition to the above fees, a commitment fee of \$188 was paid at the 2021 closing of the equipment financing facility. On September 30, 2022, the equipment facility's unused commitment of \$13,784 expired.

As of December 31, 2022, December 31, 2023 and December 31, 2021, total equipment financing debt outstanding was \$8,577, \$5,710 and \$6,371, \$8,577, respectively of which \$2,872, \$3,332 and \$1,644, \$2,872 are recorded as a current liability on the consolidated balance sheets, respectively. For the years ended December 31, 2022, December 31, 2023 and 2021, the Company recognized \$922, \$1,111 and \$157, \$922 as interest expense attributable to the equipment financing agreement, respectively.

#### Other Borrowings

#### Note Payable – Hi-Power 13. Warrants Liability

The Company has issued private placement warrants to various counterparties since the initial public offering ("IPO"), some of which are exercisable and outstanding as of December 31, 2023 and December 31, 2022.

In connection with the Hi-Power acquisition (see Note 3, Acquisition), April 2023, the Company agreed issued 16,000,000 shares of common stock and 16,000,000 private placement warrants to pay an aggregate purchase price shares of \$25,000. Principal payments of \$5,000 were paid common stock, and in May 2021, 2023, the Company issued another 3,601,980 shares of common stock and 2022, 3,601,980 private placement warrants to purchase shares of common stock (the "April 2023 Transaction" and "May 2023 Transaction", respectively). The proceeds from the April 2023 Transaction and May 2023 Transaction were \$40,000, and \$8,000, respectively. The fair value of the note payable was estimated using active market quotes, based on the Company's incremental borrowing rates for similar types of borrowing arrangements, which were Level 2 inputs (see Note 16, Fair Value Measurement). As of December 31, 2021, notes payable included a current portion of \$4,926 warrants and a long-term portion of \$13,769, respectively. The Note was extinguished during the third quarter of 2022 with proceeds from the Senior Secured Term Loan. The Company recognized a loss of \$942 from debt extinguishment common stock for the year ended December 31, 2022.

#### 14. Warrants Liability - Related Party

Private placement warrants issued to April 2023 Transaction and May 2023 Transaction at issuance was \$66,366 and \$13,267, respectively, which was greater than the Sponsor of BMRG in its initial public offering on May 22, 2020 became exercisable on May 22, 2021. These warrants are classified proceeds. As such, the Company recorded the excess as Level 2 financial instruments losses in the fair value hierarchy (see Note 16, Fair Value Measurement). They are valued on the basis amounts of the quoted price \$26,366 and \$5,267, respectively, as a component of the Company's public warrants, adjusted for insignificant difference between the public warrants and the private placement warrants. As of December 31, 2022 and 2021, 325,000 private warrants were outstanding with a change in fair value of \$78 warrants in the Company's consolidated statements of operations and \$926, respectively. These amounts are included comprehensive loss. The Company paid \$2,328 in underwriting fees at closing related to the Transactions.

The April 2023 Transaction and the May 2023 Transactions at issuance were considered a related party transaction due to the number of common shares and warrants issued. The ownership percentage exceeded the thresholds defined by SEC and US GAAP for a related party. However, as of December 31, 2023, all shareholders and warrant holders did not exceed the related party threshold. As such, the warrants liability - related party as disclosed on the consolidated balance sheets, sheets and elsewhere in this document are not classified as related party.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**14. 13. Warrants Liability - Related Party** (cont.)

In December 2023, the Company issued in a combined public offering (i) 34,482,759 shares of its common stock and (ii) accompanying common warrants to purchase one share of common stock for each share of common stock sold (the "December 2023 Public Offering"). The change in gross proceeds to the Company from the December 2023 Public Offering were \$50,000, before deducting underwriting fees at closing. The offering price for each share of common stock and accompanying warrant was \$1.45. The fair value of the warrants and common stock for the years ended December 31, 2022 and 2021 amounted to \$848 and \$1,775, respectively. The change has been recognized December 2023 Public Offering at issuance was \$71,294, which was greater than the proceeds. As such, the Company recorded the excess as losses in loss (gain) on the amount of \$21,294, as a component of change in fair value of derivatives - related parties warrants in the Company's consolidated statements of operations and comprehensive loss.

**15. Leases** The Company paid \$2,500 in underwriting fees at closing and incurred an additional \$175 in legal fees related to the offering.

The Company leases machinery, manufacturing facilities, office space, land, 2023 warrants do not qualify for equity classification guidance in ASC 815-40 and equipment under both operating are measured at fair value at each reporting period.

The amount of warrants outstanding and finance leases. Lease assets and lease liabilities fair value for all warrants as of December 31, 2022 December 31, 2023 and 2021 were 2022 are as follows:

		December 31,	
		2022	2021
Classification on Balance Sheet			
<b>Assets</b>			
ROU operating lease assets	Operating lease right-of-use asset, net	\$ 4,316	\$ 3,468
Finance lease assets	Property, plant and equipment, net	153	28
<b>Total lease assets</b>		<b>\$ 4,469</b>	<b>\$ 3,496</b>
		December 31,	
		2022	2021
Classification on Balance Sheet			
<b>Liabilities</b>			
<b>Current</b>			
Operating lease liability	Operating lease liability, current	\$ 1,106	\$ 1,084
Finance lease liability	Other current liabilities	32	8
<b>Long-term</b>			
Operating lease liability	Operating lease liability	4,130	3,224
Finance lease liability	Other liabilities	126	17
<b>Total lease liabilities</b>		<b>\$ 5,394</b>	<b>\$ 4,333</b>

	December 31, 2023		December 31, 2022	
	Warrants		Warrants Outstanding	
	Outstanding	Fair Value		Fair Value
IPO warrants	274,400	\$ 55	325,000	\$ 78
April 2023 warrants	16,000,000	6,276	—	—
May 2023 warrants	3,601,980	1,544	—	—
December 2023 warrants	34,482,759	19,586	—	—
<b>Total</b>	<b>54,359,139</b>	<b>\$ 27,461</b>	<b>325,000</b>	<b>\$ 78</b>

**Operating lease costs** For all warrants in aggregate, the change in fair value for the years ended December 31, 2022 December 31, 2023 and 2021, were \$1,370 2022 has been recognized in change in fair value of warrants on the Company's consolidated statements of operations and \$1,158, respectively. As of December 31, 2022 and 2021, the weighted average remaining term (in years) comprehensive loss. The fair value for the operating leases was 3.82 and 4.15 years, respectively and warrants are included in warrants liability on the weighted average discount rate was 10.4% and 3.3%, respectively. As of December 31, 2022 and 2021, the weighted average remaining term (in years) consolidated balance sheets. See Note 15, Fair Value Measurements for the finance leases was 3.94 and 3.47 years, respectively, and the weighted average discount rate was 19.9% and 12.5%, respectively. further information.

Future minimum lease payments as of December 31, 2022 were as follows:

	Operating leases	Finance leases	Total
2023	\$ 1,538	\$ 60	\$ 1,598
2024	1,617	60	1,677
2025	1,701	55	1,756
2026	1,420	35	1,455
2027	—	19	19
Total minimum lease payments	\$ 6,276	\$ 229	\$ 6,505
Less amounts representing interest	(1,040)	(71)	(1,111)
Present value of minimum lease payments	\$ 5,236	\$ 158	\$ 5,394

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**14. Leases**

**15. Leases (cont.)** The Company leases machinery, manufacturing facilities, office space, land, and equipment under both operating and finance leases. Lease assets and lease liabilities as of December 31, 2023 and 2022 were as follows:

		December 31,	
Classification on Balance Sheet		2023	2022
<b>Assets</b>			
ROU operating lease assets	Operating lease right-of-use asset, net	\$ 4,033	\$ 4,316
Finance lease assets	Property, plant and equipment, net	209	153
<b>Total lease assets</b>		<b>\$ 4,242</b>	<b>\$ 4,469</b>
		December 31,	
Classification on Balance Sheet		2023	2022
<b>Liabilities</b>			
<b>Current</b>			
Operating lease liability	Operating lease liability, current	\$ 1,496	\$ 1,106
Finance lease liability	Other current liabilities	100	32
<b>Long-term</b>			
Operating lease liability	Operating lease liability	3,350	4,130
Finance lease liability	Other liabilities	88	126
<b>Total lease liabilities</b>		<b>\$ 5,034</b>	<b>\$ 5,394</b>

Operating lease costs for the years ended December 31, 2023 and 2022, were \$1,573 and \$1,370, respectively. As of December 31, 2023 and 2022, the weighted average remaining term (in years) for the operating leases was 2.77 and 3.82 years, respectively and the weighted average discount rate was 16.0% and 10.4%, respectively. As of December 31, 2023 and 2022, the weighted average remaining term (in years) for the finance leases was 2.54 and 3.94 years, respectively, and the weighted average discount rate was 26.3% and 19.9%, respectively.

Future minimum lease payments as of December 31, 2023 were as follows:

	Operating leases	Finance leases	Total
2024	\$ 2,063	\$ 135	\$ 2,198
2025	2,175	56	2,231
2026	1,610	35	1,645
2027	—	19	19

Total minimum lease payments	\$ 5,848	\$ 245	\$ 6,093
Less amounts representing interest	(1,002)	(57)	(1,059)
Present value of minimum lease payments	\$ 4,846	\$ 188	\$ 5,034

#### Lessor

The Company currently leases BESS to one customer with a 20-year term through sales-type leases. Leases offered by the Company include purchase options during the lease term with a bargain purchase option at the end of the term. At the time of accepting a lease that qualifies as a sales-type lease, the Company records the gross amount of lease payments receivable, estimated residual value of the leased equipment and unearned finance income. The unearned finance income is recognized interest income over the lease term using the interest method.

### EOS ENERGY ENTERPRISES, INC.

#### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 14. Leases (cont.)

For the years ended December 31, 2022, December 31, 2023 and 2021, 2022, the Company recognized revenue of \$1,166\$0 and \$353\$1,166 from the sales-type lease, respectively. Net sales-type lease receivables of \$1,471\$1,512 and \$347,\$1,471, net of unearned finance income are recorded under other assets on the consolidated balance sheets as of December 31, 2022, December 31, 2023 and 2021, 2022, respectively.

#### 16. 15. Fair Value Measurement

The Company's financial instruments consist of cash and cash equivalents, restricted cash, accounts receivable, notes receivable, net, contract assets, long-term restricted cash, accounts payable, warrants, convertible notes payable — related party, contract liabilities and long-term debt, and warrants liability- related party.

Accounting standards establish a hierarchy which prioritizes the inputs to valuation techniques used to measure fair value into three levels. The fair value hierarchy gives the highest priority to quoted market prices (unadjusted) in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly, debt.

Accounting standards require financial assets and liabilities to be classified based on the lowest level of input that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement requires judgment and may affect the valuation of the fair value of assets and liabilities and their placement within the fair value hierarchy levels.

The carrying value of cash and cash equivalents, restricted cash, accounts receivable, contract assets, long-term restricted cash, contract liabilities and accounts payable are considered to be representative of their fair value due to the short maturity of these instruments.

The table below summarizes the fair values of certain liabilities that are included within the Company's accompanying consolidated balance sheets, and their designations among the three fair value measurement categories:

	December 31, 2022			December 31, 2021		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
<b>Liabilities</b>						
Private placement warrants	\$ —	\$ 78	\$ —	\$ —	\$ 926	\$ —
Embedded derivative liabilities	\$ —	\$ —	\$ 1,945	\$ —	\$ —	\$ 12,359

	December 31, 2023			December 31, 2022		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
<b>Liabilities</b>						
Warrants	\$ —	\$ 55	\$ 27,406	\$ —	\$ 78	\$ —
Embedded derivatives	\$ —	\$ —	\$ 4,423	\$ —	\$ —	\$ 1,945

#### Warrants

The following IPO warrants are classified as Level 2 financial instruments in the table presents a roll-forward above. They are valued on the basis of the activity quoted price of the embedded derivative liabilities within our 2021 Convertible Notes Company's public warrants, adjusted for insignificant difference between the public warrants and the private placement warrants.

The April 2023 warrants, May 2023 warrants, and the December 2022 Promissory Note (see Note 13, Borrowings for further discussion). These liabilities were measured at 2023 warrants are classified as Level 3 financial instruments in the table above. The Company estimated the fair value of these warrants using the Black-Scholes model at inception and on a recurring basis using significant subsequent valuation dates. This model incorporates inputs such as the stock price of the Company, risk-free interest rate, volatility, and time to expiration. The volatility involves unobservable inputs (Level 3).

	2022	2021
--	------	------

Balance at beginning of the period	\$	12,359	\$	—
Additions		466		29,866
Change in fair value included in earnings		(10,880)		(17,507)
Balance at end of the period	\$	1,945	\$	12,359

classified as Level 3 of the fair value hierarchy.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**16. 15. Fair Value Measurement (cont.)**

The inputs used to determine the fair value of the April 2023 warrants, May 2023 warrants, and the December 2023 warrants are as follows:

<b>April 2023 warrants</b>	<b>December 31, 2023</b>		<b>April 12, 2023</b>	
Time to expiration		4.79 years		5.51 years
Common stock price	\$	1.09	\$	2.61
Risk-free interest rate		3.8 %		3.4 %
Volatility		70.0 %		70.0 %
<b>May 2023 warrants</b>	<b>December 31, 2023</b>		<b>May 15, 2023</b>	
Time to expiration		4.54 years		5.17 years
Common stock price	\$	1.09	\$	2.31
Risk-free interest rate		3.8 %		3.4 %
Volatility		70.0 %		70.0 %
<b>December 2023 warrants</b>	<b>December 31, 2023</b>		<b>December 14, 2023</b>	
Time to expiration		4.96 years		5.00 years
Common stock price	\$	1.09	\$	1.32
Risk-free interest rate		3.8 %		3.9 %
Volatility		70.0 %		70.0 %

**Embedded derivatives**

The Company estimated the fair value of the embedded conversion features in the 2021 Convertible Note and AFG Convertible Note using a binomial lattice model at inception and on subsequent valuation dates. This model incorporates inputs such as the stock price of the Company, dividend yield, risk-free interest rate, the effective debt yield and expected volatility. The effective debt yield and volatility involve unobservable inputs classified as Level 3 of the fair value hierarchy.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**15. Fair Value Measurement (cont.)**

The inputs used to determine the fair value of the embedded derivative liabilities are as follows:

<b>2021 Convertible Note</b>	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Term	2.50 years	3.50 years
Dividend yield	— %	— %
Risk-free interest rate	4.1 %	4.1 %
Volatility	70.0 %	80.0 %
Effective debt yield	40.0 %	25.0 %

AFG Convertible Note	December 31, 2023	January 18, 2023
Term	2.50 years	3.45 years
Dividend yield	— %	— %
Risk-free interest rate	4.1 %	3.6 %
Volatility	70.0 %	70.0 %
Effective debt yield	40.0 %	40.0 %

### Level 3

The following table summarizes the changes in the fair value of liabilities that are included within the Company's accompanying consolidated balance sheets and are designated as Level 3:

	For the Years Ended December 31,	
	2023	2022
<b>Embedded derivatives</b>		
Balance at beginning of the period	\$ 1,945	\$ 12,359
Additions	30,619	466
Change in fair value of derivatives - related party	(28,141)	(10,880)
Balance at end of the period	<u>\$ 4,423</u>	<u>\$ 1,945</u>
<b>Warrants</b>		
Balance at beginning of the period	\$ —	\$ —
Additions	55,330	—
Change in fair value of warrants	(27,924)	—
Balance at end of the period	<u>\$ 27,406</u>	<u>\$ —</u>

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

### 15. Fair Value Measurement (cont.)

The estimated fair value of financial instruments not carried at fair value in the consolidated balance sheets was as follows:

	Level in fair value hierarchy	December 31, 2022		December 31, 2021	
		Carrying Value	Fair Value	Carrying Value	Fair Value
Notes receivable	Notes receivable	3	\$ 863	\$ 677	\$ 3,650
Note payable- Hi-Power		3	—	—	18,695
2021 Convertible Notes*	2021 Convertible Notes*	3	82,950	62,421	84,148
Senior Secured Term Loan	Senior Secured Term Loan	3	81,616	77,576	—
AFG Convertible Notes*					



Equipment financing facility	Equipment financing facility	3	8,577	6,282	6,371	5,951
December 2022 Promissory Note*		3	2,688	2,908	—	—
Yorkville Convertible Notes*						
Total	Total	\$	176,694	\$149,864	\$112,864	\$97,588

\*Includes the embedded derivative liabilities.

## 17.16. Commitments and Contingencies

### Lease commitments

The Company has lease commitments under lease agreements. See Note 15.14, *Leases*, for additional information.

### Minimum Volume Commitment

In June 2022, the Company entered into a long-term supply agreement with a minimum volume commitment with a third party, which provides services to process certain raw materials. Any purchase order issued under this supply agreement will be non-cancellable. To the extent the Company fails to order the guaranteed minimum volume defined in the contract at the end of the term, the Company is required to pay the counterparty an amount equal to the shortfall, if any, multiplied by a fee. As of December 31, 2022, the Company had open purchase commitments of \$242,113 under this agreement. The Company believes that the probability of failing to meet the minimum volume commitment is remote and no shortfall penalty has been accrued as of December 31, 2022.

### Legal Proceedings

#### Department of Justice Class Action Complaints

On July 7, 2022, a class action lawsuit (the "Delman Complaint") was filed in the Court of Chancery of the State of Delaware by plaintiff Richard Delman (the "Delman Plaintiff") against certain defendants including the Company's former directors (the "Delman Defendants"). Neither the Company nor Eos Energy Storage LLC were named as a defendant in the Delman Complaint, but each was identified as a relevant non-party, and the Company has indemnification obligations relating to the lawsuit. On February 1, 2024, the Company entered into parties to the Delman Complaint agreed to a settlement agreement with binding Settlement Term Sheet (the "Settlement") whereby the U.S. Department of Justice (DOJ) and Vincent Icolari ("Relator") Delman Plaintiff agreed to resolve the Delman Complaint in exchange for a settlement payment of \$8,500, consisting of cash payments previously disclosed investigation made by the DOJ for underpayment Company of certain custom duties in past years in connection with imports approximately \$1,000 and an additional cash payment of batteries and battery components manufactured abroad. The investigation resulted from a qui tam lawsuit (the "Civil Action") filed approximately \$7,500 funded by the Relator in December 2019 alleging violations Company's D&O liability insurance policies. The settlement is subject to confirmatory discovery and approval by the Court of the False Claims Act.

Pursuant to the terms of the settlement agreement, the Company has agreed to pay a total of \$1,017 to the United States Department of Justice and \$70 to Relator's counsel. Upon receipt of such payments, the DOJ and the Relator have agreed to release the Company from civil monetary and administrative claims under the False Claims Act and the Relator has agreed to release the Company from any claims related to the Civil Action. The Company has fully settled this liability as of December 31, 2022.

#### SEC Subpoena

In April 2022, the Company received a subpoena from the U.S. Securities and Exchange Commission ("SEC"). On August 29, 2022, the Company received a letter from the SEC informing the Company that the SEC's investigation relating to the subpoena has concluded without any recommendation for enforcement action as to the Company.

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

## 17.16. Commitments and Contingencies (cont.)

### Delaware Section 205 Petition

On November 12, 2020, August 1, 2023, B. Riley Principal Merger Corp. II ("BMRG"), a class action lawsuit was filed in the predecessor to United States District Court of New Jersey by plaintiff William Houck (the "Houck Complaint") against the Company held a special meeting of stockholders (the "BMRG Special Meeting") to approve certain matters relating to and against three individual officers: the business combination between BMRG Company's Chief Executive Officer, its former Chief Financial Officer, and Eos Energy Storage LLC.

One of these matters was a proposal to amend and restate BMRG's certificate of incorporation in order to, among other things, increase its current Chief Financial Officer (with the number of authorized shares of common stock from 125,000,000 shares of common stock, consisting of 100,000,000 shares of Class A common stock and 25,000,000 shares of Class B common stock, to 200,000,000 shares of common stock, and to reclassify all Class A common stock and Class B common stock as a single class of common stock (the "Charter Amendment Proposal") Company, the "Houck Defendants"). The Charter Amendment Proposal was approved Houck Complaint alleges that the Houck Defendants violated federal securities laws by making knowingly false or misleading statements about the Company's contractual relationship with a majority customer and about the size of the outstanding shares of Class A common stock Company's order backlog and Class B common stock of BMRG as of the record date for the BMRG Special Meeting, voting together as a single class, although voting records indicate that a majority of each of the shares of Class A common stock and Class B common stock also approved the Charter Amendment

Proposal. After the BMRG Special Meeting, BMRG and Eos Energy Storage LLC closed the business combination and the Company's certificate of incorporation, as amended to give effect to the Charter Amendment Proposal, became effective.

A recent ruling by the Delaware Court of Chancery introduced uncertainty as to whether Section 242(b)(2) of the Delaware General Corporation Law (the "DGCL") would have required the Charter Amendment Proposal to be approved by separate votes of the majority of BMRG's then-outstanding shares of Class A common stock and Class B common stock.

commercial pipeline. The Company had been proceeding with has denied the understanding that the Charter Amendment Proposal and the amendment and restated certificate allegations of incorporation are valid. In light of this recent ruling, however, to resolve potential uncertainty with respect to the Company's capital structure, the Company filed a petition wrongdoing in the Delaware Court of Chancery under Section 205 of the DGCL Houck Complaint and intends to seek validation of the Charter Amendment Proposal. Section 205 of the DGCL permits the Court of Chancery, in its discretion, continue to ratify and validate potentially defective corporate acts.

On February 27, 2023, the Court of Chancery approved the Company's request for relief and entered an order under Section 205 of the Delaware General Corporation Law (1) declaring the Company's Third Amended and Restated Certificate of Incorporation (the "Charter"), including the filing and effectiveness thereof, as validated and effective retroactive to the date of its filing with the Office of the Secretary of State of the State of Delaware on November 16, 2020, and all amendments effected thereby and (2) ordering that the Company's securities (and the issuance of the securities) described in the Petition and any other securities issued in reliance on the validity of the Charter are validated and declared effective, each as of the original issuance dates. vigorously defend against this action.

## 18.17. Stock-Based Compensation

Stock-based compensation expense included in the consolidated statements of operations and comprehensive loss was as follows:

		For the years ended December 31,	
		2022	2021
		For the years ended December 31,	
		2023	2022
Stock options	Stock options	\$ 3,002	\$ 3,809
Restricted stock units	Restricted stock units	10,792	11,249
Total	Total	\$13,794	\$15,058

The stock compensation has been recorded in cost of goods sold, research and development expenses and selling, general and administrative expenses.

The following table summarizes stock option activity during the years ended December 31, 2022 December 31, 2023 and 2021: 2022:

	Units	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)
Options Outstanding at December 31, 2021	2,023,460	\$ 9.51	6.3
Granted	3,275,224	1.33	
Cancelled/Forfeited	(953,872)	4.84	
Options Outstanding at December 31, 2022	4,344,812	4.37	7.7
Granted	649,865	2.27	
Cancelled/Forfeited	(504,550)	2.39	
Exercised	(262,500)	1.35	
Options Outstanding at December 31, 2023	4,227,627	4.47	5.2
Options Exercisable at December 31, 2023	3,590,262	4.86	5.3

A summary of restricted stock units (RSU) activity for the years ended December 31, 2023 and 2022 is as follows:

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

## 18.17. Stock-Based Compensation (cont.)

	Units	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)
<b>Options Outstanding at December 31, 2020</b>	<b>2,143,636</b>	<b>\$ 9.19</b>	<b>9.5</b>
Granted	114,429	18.07	
Cancelled/Forfeited	(110,768)	13.02	
Exercised	(123,837)	8.67	
<b>Options Outstanding at December 31, 2021</b>	<b>2,023,460</b>	<b>9.51</b>	<b>6.3</b>
Granted	3,275,224	1.33	
Cancelled/Forfeited	(953,872)	4.84	
<b>Options Outstanding at December 31, 2022</b>	<b>4,344,812</b>	<b>4.37</b>	<b>7.7</b>
<b>Options Exercisable at December 31, 2022</b>	<b>2,314,963</b>	<b>6.13</b>	<b>7.1</b>

A summary of restricted stock units (RSU) activity for the years ended December 31, 2022 and 2021 is as follows:

	Units	Weighted-Average Grant- Date Fair Value	Units	Weighted-Average Grant-Date Fair Value
<b>RSUs Outstanding at December 31, 2020</b>	<b>42,318</b>	<b>\$ 13.46</b>		
Granted	2,580,670	16.62		
Cancelled/Forfeited	(273,632)	14.98		
Vested	(154,600)	16.50		
<b>RSUs Outstanding at December 31, 2021</b>	<b>2,194,756</b>	<b>16.36</b>		
Granted	2,557,263	2.87		
Cancelled/Forfeited	(1,051,951)	8.55		
Vested	(704,178)	15.02		
<b>RSUs Outstanding at December 31, 2022</b>	<b>2,995,890</b>	<b>7.89</b>		
Granted				
Cancelled/Forfeited				
Vested				
<b>RSUs Outstanding at December 31, 2023</b>				

In 2022, 2023, the Company reserved an additional 2,537,866 8,000,000 shares for the Amended and Restated 2020 Incentive Plan. As of December 31, 2022 December 31, 2023 and 2021, 2022, 5,015,893 and 994,108 and 2,282,906 shares remain for future issuance, respectively. Options generally have a term of five to ten years and vest over periods ranging from three months to five two years. RSUs generally vest over periods from three one to four three years.

During the year ended December 31, 2022 December 31, 2023, the Company granted 75,000 40,000 RSUs and 2,325,000 0 options with performance and service conditions. Stock compensation is recognized on a straight-line basis over the requisite service period of the award, which is generally the award vesting term. For awards with performance conditions, compensation expense is recognized using an accelerated attribution method over the vesting period. The performance conditions primarily relate to achievement of sales and financing targets. In December 2022, June 2023, the Company modified 625,000 of 550,000 performance-based stock options that were issued in June 2022 and December 2022 by extending the period to meet certain performance conditions. As of December 31, 2022 During the year ended December 31, 2023, there all performance conditions were 15,000 met for these 550,000 options, therefore accelerating the vesting and 1,575,000 performance-based RSUs and stock options, respectively, respective expense.

As of December 31, 2022 December 31, 2023, total unrecognized stock compensation expense was \$16,314 \$15,314 of which \$14,604 \$15,051 was attributable to unvested RSUs and \$1,710 \$263 attributable to unvested stock options. Compensation expense for these unvested awards is expected to be recognized over a weighted-average remaining vesting period of 0.5 0.4 years for stock options and 1.5 2.3 years for RSUs.

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**18. Stock-Based Compensation (cont.)**

The weighted average assumptions used to determine the fair value of stock options granted in 2022 2023 and 2021 2022 are as follows:

	2022	2021
Volatility	61.36 %	58.86 %
Risk free interest rate	3.27 %	0.67 %
Expected life (years)	4.67	4.18
Dividend yield	0 %	0 %

The RSUs issued were valued at the stock price of the Company on the date of the grant.

	2023	2022
Volatility	62.60 %	61.36 %
Risk free interest rate	4.07 %	3.27 %
Expected life (years)	3.00	4.67
Dividend yield	0 %	0 %

The weighted average grant date fair value of all stock options granted was \$0.72 \$1.02 and \$8.08 \$0.72 per option for the years ended December 31, 2022 December 31, 2023 and 2021 2022, respectively.

**19. 18. Income Taxes**

The Company is subject to regulation under U.S., Italy and India tax laws, regulations and policies. Changes to these laws or regulations may affect the Company's tax liability, return on investments and business operations.

**Earnings before income taxes**

Net income (losses) before income taxes were as follows:

	For the years ended December 31,	
	2022	2021
U.S.	\$ (229,923)	\$ (124,216)
Non-U.S.	161	—
Total income (loss) before income tax	\$ (229,762)	\$ (124,216)

**Income expense (benefit)**

Income tax expense (benefit) for the years ended December 31, 2023 and 2022 was as follows:

	For the years ended December 31,	
	2022	2021
Current expense (benefit):		
U.S. federal	\$ —	\$ —
U.S. state and local	—	—
Non-U.S.	51	—
Total current income tax (benefit) provision	\$ 51	\$ —
Deferred expense (benefit):		
U.S. federal	\$ —	\$ —
U.S. state and local	—	—
Non-U.S.	—	—
Total deferred income tax (benefit) provision	—	—
Total income tax (benefit) provision	\$ 51	\$ —

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**19, 18. Income Taxes (cont.)**

	For the years ended December 31,	
	2023	2022
U.S.	\$ (229,585)	\$ (229,923)
Non-U.S.	110	161
Total income (loss) before income tax	\$ (229,475)	\$ (229,762)

**Income expense (benefit)**

Income tax expense (benefit) was as follows:

	For the years ended December 31,	
	2023	2022
Current expense (benefit):		
U.S. federal	\$ —	\$ —
U.S. state and local	—	—
Non-U.S.	31	51
Total current income tax (benefit) provision	\$ 31	\$ 51
Deferred expense (benefit):		
U.S. federal	\$ —	\$ —
U.S. state and local	—	—
Non-U.S.	—	—
Total deferred income tax (benefit) provision	—	—
Total income tax (benefit) provision	\$ 31	\$ 51

The Company has a tax provision of \$31 and \$51 for the year years ended December 31, 2022 December 31, 2023 and 2022, respectively, due to foreign taxable income and the generation of U.S. taxable losses offset by a valuation allowance, discussed below, on the deferred tax assets. The Company has a tax provision of \$— for the year ended December 31, 2021 due to the generation of U.S. taxable losses offset by a valuation allowance on the deferred tax assets.

**Reconciliation of US U.S. Federal Statutory income tax rate to actual income tax rate**

The reconciliation from the statutory U.S. federal income tax rate to the effective tax rate is as follows:

	For the years ended December 31,	
	2022	2021
Income (loss) before income taxes	\$ (229,762)	\$ (124,216)
Statutory U.S. federal income tax (21%)	(48,250)	(26,085)
State and local income tax	(12,051)	(6,592)
Income taxed at rates other than statutory	17	—
Non-deductible convertible debt	(2,220)	(3,676)
Non-deductible warrant cost	(178)	(373)
Stock-based compensation	1,622	274
Valuation allowance	60,444	36,541
Other	667	(89)
Total income tax expense	\$ 51	\$ —
Effective tax rate	—	—

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**18. Income Taxes (cont.)**

	For the years ended December 31,	
	2023	2022
Income (loss) before income taxes	\$ (229,475)	\$ (229,762)
Statutory U.S. federal income tax (21%)	(48,190)	(48,250)
State and local income tax	330	(12,051)
Income taxed at rates other than statutory	8	17
Non-deductible convertible debt	8,420	(2,220)
Non-deductible warrant cost	(5)	(178)
Stock-based compensation	1,687	1,622
Non-deductible officers compensation	2,580	—
Valuation allowance	34,821	60,444
Other	380	667
Total income tax expense	\$ 31	\$ 51
Effective tax rate	—	—

The reported income tax provision differs from the amount computed by applying the statutory **US U.S.** federal income tax rate of 21% to the income before income taxes primarily due to pretax losses **in the U.S.** for which no tax benefit has been provided, non-deductible convertible debt, as well as stock-based compensation.

**Deferred Income Taxes**

The Company records deferred income taxes to reflect the net tax effects of temporary differences, if any, between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes. The components of deferred tax assets and liabilities at **December 31, 2022** **December 31, 2023** and **2021** **2022** were as follows:

**EOS ENERGY ENTERPRISES, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**19. 18. Income Taxes (cont.)**

	December 31,	
	2022	2021
Deferred tax assets:		
NOL carryforwards	\$ 121,142	\$ 63,203
Capital loss carryforwards	235	710
Tax credit carryforwards	65	65
Goodwill	7,427	8,471
Capitalized research & experimental costs	3,952	—
Stock-based compensation	4,819	4,455
Accruals and reserves	1,678	1,586
Organizational costs	140	162
Lease liability	1,413	1,185
Fixed assets	316	—
Interest limitation	—	1,430
Inventory	663	1,448
Transaction costs	266	301
Deferred tax assets, gross	\$ 142,116	\$ 83,016
Valuation allowance	(140,858)	(80,415)
Total deferred tax assets, net	\$ 1,258	\$ 2,601
Deferred tax liabilities:		
Fixed assets	—	(1,073)
Right of use asset	(1,194)	(954)

Note payable	—	(497)
Intangibles	(63)	(77)
Other	(1)	—
Deferred tax liabilities	(1,258)	(2,601)
Total deferred tax asset (liability)	\$ —	\$ —

As of December 31, 2022, the Company's net deferred tax balances consist primarily of U.S. federal and state net operating losses ("NOLs") available for carry forward, tax amortizable goodwill in excess of financial statement goodwill, stock-based compensation, and capitalized research and experimental ("R&E") costs. As of December 31, 2021, the Company's net deferred tax balances consist primarily of U.S. federal and state NOLs as available for carry forward and tax amortizable goodwill in excess of financial statement goodwill.

	December 31,	
	2023	2022
Deferred tax assets:		
NOL carryforwards	\$ 152,380	\$ 121,142
Capital loss carryforwards	235	235
Tax credit carryforwards	65	65
Goodwill	6,735	7,427
Capitalized research & experimental costs	8,213	3,952
Stock-based compensation	3,819	4,819
Accruals and reserves	2,503	1,678
Organizational costs	124	140
Lease liability	1,309	1,413
Fixed assets	268	316
Inventory	977	663
Transaction costs	244	266
Deferred tax assets, gross	\$ 176,872	\$ 142,116
Valuation allowance	(175,680)	(140,858)
Total deferred tax assets, net	\$ 1,192	\$ 1,258
Deferred tax liabilities:		
Right of use asset	(1,144)	(1,194)
Intangibles	(41)	(63)
Other	(7)	(1)
Deferred tax liabilities	(1,192)	(1,258)
Total deferred tax asset (liability)	\$ —	\$ —

The Tax Cuts & Jobs Act of 2017 ("TCJA") mandated that R&E costs incurred in tax years beginning after December 31, 2021 must be capitalized and amortized over five years if the research is performed in the United States and over 15 years if performed outside the United States. As of December 31, 2023 and December 31, 2022, the Company has capitalized and will amortize these costs over the required periods.

During 2021, the Company participated in a tax certificate transfer program with the state of New Jersey and sold a portion of its available prior year New Jersey state NOLs, in varying amounts from tax years 2017 through 2019. The deferred tax balances and related disclosures above reflect the adjusted attribute carryforwards and associated deferred tax assets post-sale of the prior years' attributes. The Company did not participate in the program during 2022.

#### EOS ENERGY ENTERPRISES, INC.

#### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 19. Income Taxes (cont.)

The Company maintains a valuation allowance where it is more-likely-than-not that all or a portion of a deferred tax asset may not be realized. Changes in the valuation allowance are included in the Company's income tax provision in the period of change. In determining whether a valuation allowance is required, the Company evaluates factors such as prior earnings history, expected future earnings, reversal of existing taxable temporary differences, carry back and carry forward periods and tax planning strategies that could potentially enhance the likelihood of the realization of a deferred tax asset. As of December 31, 2022, all deferred tax assets related to the U.S. Management The Company has determined that it is more-likely-than-not more-likely-than-not that the Company it will not be able to utilize its U.S. deferred tax assets at December 31, 2022 December 31, 2023 and 2021 2022 due to a history of cumulative losses. As such, the Company has a valuation allowance against its net deferred tax assets.

The valuation allowance increased by \$60,444 \$34,822 between December 31, 2022 December 31, 2023 and 2021. 2022. The increase was primarily attributable to an increase in NOL carryforwards. At December 31, 2022 December 31, 2023, the valuation allowance is \$140,858, \$175,680, of which \$1,762 will would be allocated to additional paid-in capital

when if released. The remaining valuation allowance of \$139,096 will \$173,918 would be released through continuing operations.

EOS ENERGY ENTERPRISES, INC.  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS  
(In thousands, except share and per share amounts)

18. Income Taxes (cont.)

Net Operating Losses & Tax Credits

As of December 31, 2022 December 31, 2023 and 2021, 2022, the Company has federal research and development tax credits ("R&D credit") of approximately \$3,733 for both years, which begin to expire in varying amounts from 2031 – 2038, subject to the annual limitation described below. In addition, the Company has state R&D credits of approximately \$65 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, which will expire in 2024.

The Company has NOL carryforwards for tax purposes and other deferred tax assets that are available to offset future taxable income, subject to the annual limitation described below.

As of December 31, 2022 December 31, 2023 and 2021, 2022, the Company has gross federal NOL carryforwards of approximately \$485,351 \$638,507 and \$263,270, \$485,351, respectively. As of December 31, 2022 December 31, 2023 and 2021, 2022, the Company has state NOL carryforwards of approximately \$228,333 and \$235,679, and \$125,855, respectively. Regarding the federal NOL for the year ended December 31, 2022 December 31, 2023, \$89,051 begins to expire in varying amounts from 2032 through 2036, while \$396,300 \$549,456 has an indefinite carryforward period. Regarding the state NOL carryforwards for the year ended December 31, 2022 December 31, 2023, \$233,566 begin \$222,764 begins to expire in varying amounts from 2033 through 2042, 2043, while \$2,113 \$5,569 has an indefinite carryforward period. The U.S. (federal and state) operating loss carryforwards and credits may be subject to an annual limitation due to the "change in ownership" provisions of the Internal Revenue Code, and similar state provisions. The In 2020, the Company determined that the merger transaction constitutes a change of ownership as defined under Internal Revenue Code Section 382 and Section 383. Based on management's Section 382 Limitation Analysis, it is expected that all NOL carryforwards that existed as of the transaction date will be allowable under Section 382, however, 382. Subsequent changes in ownership could have occurred through December 31, 2023, which could further severely limit the use of losses. Management believes such limitation will not have a material adverse effect on the financial statements as the Company is currently in a net loss position, and the deferred tax asset on the Company's NOL carryforward is offset by a full valuation allowance. Management will further evaluate the impact, if any, on the allowable net operating loss carryforward. Based on management's Section 383 Limitation Analysis, it is expected that as of December 31, 2022 December 31, 2023 and December 31, 2021 December 31, 2022, \$3,733 of federal R&D credits will expire unused.

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 into law. There are two major corporate tax provisions included in the Act. In general, the IRA was signed into law that includes creates a new 15% corporate alternative minimum tax based upon ("CAMT") on any corporation that has (or has had) average annual "adjusted financial statement income ("book minimum tax") and income" for a three-year period preceding the tax incentives year that exceeds \$1 billion. The CAMT is effective for energy and climate initiatives, among other provisions, tax years beginning after December 31, 2022. The IRA also imposes on publicly traded U.S. corporations a 1% excise tax on certain repurchases of their stock. The excise tax is effective for stock repurchases after December 31, 2022. The Company is does not expected to be impacted by expect the book minimum tax given its extensive losses. The Company continues to assess the tax incentives aforementioned provisions in the legislation IRA to have any material impact on the Company's financial statements.

In addition to the CAMT discussed above, the IRA has production tax credits that could impact pre-tax income, effective tax rate, or valuation of deferred tax assets. are discussed in Note 10, Government Grants.

Unrecognized Tax Benefits

The Company is subject to income taxes in the United States (federal and state), India, and Italy. Significant judgment is required in evaluating the Company's tax positions and determining the Company's provision for income taxes. During the ordinary course of business, there are transactions and calculations for which the ultimate tax determination is uncertain. The Company records a liability for uncertain tax positions on the basis of a two-step process in which (i) management determines whether it is more-likely-than-not that the tax position will be sustained on the technical merits of the position and (ii) for those tax positions that meet the more-likely-than-not recognition threshold, the Company recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

EOS ENERGY ENTERPRISES, INC.  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS  
(In thousands, except share and per share amounts)

19. 18. Income Taxes (cont.)

The Company has unrecognized tax benefits associated with uncertain tax positions as of December 31, 2022 December 31, 2023 and 2021, 2022 as follows:

For the years ended December 31, 2022 2021			
For the years ended December 31,		For the years ended December 31,	
2023	2023	2022	



Gross unrecognized tax benefits as of January 1	Gross unrecognized tax benefits as of January 1	\$719	\$722
Additions:	Additions:		
Current year tax positions	Current year tax positions		
Current year tax positions	Current year tax positions	—	—
Prior year tax positions	Prior year tax positions	—	—
Rate change	Rate change	(34)	(3)
Settlements	Settlements	—	—
Lapse of statute of limitations	Lapse of statute of limitations	—	—
Gross unrecognized tax benefits as of December 31	Gross unrecognized tax benefits as of December 31	\$685	\$719

The total amount of gross unrecognized tax benefits was \$685 \$680 and \$719 \$685 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively. The decrease in gross unrecognized tax benefits in 2022 2023 was due to a change in state deferred tax rate.

Included in the balance of unrecognized tax benefits at December 31, 2022 December 31, 2023 are potential benefits of nil that, if recognized, would affect the effective tax rate on income from continuing operations. The open tax years for federal returns are 2020 and forward, and the open tax years for state tax returns are generally 2019 and forward. Net operating losses and R&D credits generated in closed years and utilized in open years are subject to adjustment by the tax authorities. The Company is not currently under examination by any taxing jurisdiction.

The Company regularly assesses the adequacy of its provision for income tax contingencies in accordance with ASC 740, *Income Taxes*. As a result, the Company may adjust the reserves for unrecognized tax benefits for the impact of new facts and developments, such as changes to interpretation of relevant tax law, assessments from taxing authorities, settlements with tax authorities and lapses of statute of limitations.

## 20. 19. Shareholders' Equity Deficit

### Preferred Shares

The Company is authorized to issue 1,000,000 shares of preferred stock with such designations, voting and other rights and preferences as may be determined from time to time by the Company's board of directors. At December 31, 2022 December 31, 2023 and 2021, 2022, there were no shares of preferred stock issued or outstanding.

### Common Stock

On June 28, 2022, the Company's shareholders approved an amendment The Company is authorized to the Company's Third Amended and Restated Certificate of Incorporation to increase the authorized issue 300,000,000 shares of common stock with at \$0.0001 par value from 200,000,000 to 300,000,000, value. The holders of the Company's common stock are entitled to one vote for each share. share held. At December 31, 2022 December 31, 2023 and 2021, 2022, there were 82,653,781 199,133,827 and 53,786,632 82,653,781 shares of common stock issued and outstanding.

### Contingently Issuable Common Treasury Stock

In connection with For the Merger transaction, years ended December 31, 2023 and 2022, the Company recorded treasury stock of \$633 and \$978 for shares withheld from employees to cover the payroll tax liability of RSUs vested, respectively. The treasury stock was obligated to issue within five years from the closing date to each unitholder Eos Energy Storage, LLC ("EES") its pro-rata proportion of a one-time issuance of an aggregate of 2,000,000 Shares (the "Earnout Shares" or "Contingently Issuable Common Stock"), within five business days after (i) the closing share price of the Company's shares traded equaling or exceeding \$16.00 per share for any 20 trading days within any consecutive 30-trading day period during the Earnout Period or (ii) a Change of Control during the Earnout Period (each of clauses (i) and (ii), a "Triggering Event"). immediately retired.

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

## 20. 19. Shareholders' Equity Deficit (cont.)

On January 22, 2021, the Triggering Event for the issuance of the Earnout Shares occurred as the Company's stock price exceeded \$16.00 per share for 20 trading days within a consecutive 30-trading day period during the Earnout Period. Accordingly, 1,999,185 Shares were issued to the unitholders of EES. Public Warrants

## Sponsor Earnout Shares

Pursuant to the Sponsor Earnout letter signed in connection with the Merger, 1,718,000 shares of common stock issued and outstanding held by BMRG ("Sponsor Earnout Shares") were subject to certain transfer and other restrictions, under which (a) 859,000 Sponsor Earnout Shares ("Block A Sponsor Earnout Shares") were restricted from being transferred unless and until either, for a period of five years after the Closing, (i) the share price of our common stock equals or exceeds \$12.00 per share for any 20 trading days within any consecutive 30-trading day period or (ii) a change of control occurs for a share price equaling or exceeding \$12.00 per share, and (b) the remaining 859,000 Sponsor Earnout Shares ("Block B Sponsor Earnout Shares") were subject to similar restrictions except that the threshold is increased from \$12.00 to \$16.00. If after the five-year period, there are no triggering events, the Sponsor Earnout Shares will be forfeited and canceled for no consideration. If after the five-year period, only the triggering event described in clause (a) above has occurred, the remaining 859,000 Sponsor Earnout Shares described in clause (b) will be forfeited and canceled for no consideration.

On January 22, 2021, as the Company's stock price exceeded \$16.00 per share for 20 trading days within a consecutive 30-trading day period, Block B Sponsor Earnout Shares were released from restriction.

## Treasury Stock

For the years ended December 31, 2022 and 2021, in 2020, the Company recorded treasury stock of \$978 issued public and \$353 for shares withheld from employees to cover the payroll tax liability of RSUs vested, respectively. The treasury stock was immediately retired.

## Public and Private Warrants

The Company sold private warrants to purchase 9,075,000 shares of the Company's common stock in the stock. Each public offering on May 22, 2020. Each Public Warrant warrant entitles the holder to purchase a share of common stock at a price of \$11.50 per share. For the years ended December 31, 2022 December 31, 2023 and 2021, 2022, 0 and 600 and 1,747,746 public warrants were exercised, respectively. On December 31, 2022 December 31, 2023 and 2021, 2022, there were 7,001,654 7,052,254 and 7,002,254 7,001,654 public warrants outstanding, respectively.

See Note 13, In addition to the public warrants, there are also Warrants Liability for private warrants outstanding as of December 31, 2022 December 31, 2023 and 2021 2022.

## April 2023 Transaction and May 2023 Transaction

As discussed in Note 13, Warrants Liability, the April 2023 Transaction consisted of issuance of 16,000,000 shares of common stock at a price of \$2.50 per share. The Company also issued 16,000,000 private placement warrants to purchase 16,000,000 shares of common stock. The warrants have an exercise price of \$3.14 per share, became exercisable in October 2023 and expire five and one-half years from the date of issuance (see Note 14, 13, Warrants Liability - Related Party for further discussion).

The May 2023 Transaction consisted of issuance of 3,601,980 shares of common stock at a price of \$2.221 per share. The Company also issued 3,601,980 private placement warrants to purchase 3,601,980 shares of common stock. The warrants have an exercise price of \$2.50 per share, and became exercisable in July 2023. The warrants expire five years from the date they were initially exercisable (see Note 13, Warrants Liability for further discussion).

The gross proceeds to the Company from the April and May Transactions were \$40,000 and \$8,000, respectively, before deducting underwriting fees.

## December 2023 Public Offering

In December 2023, the Company issued in a combined public offering (i) 34,482,759 shares of its common stock and (ii) accompanying common warrants to purchase one share of common stock for each share of common stock sold. The gross proceeds to the Company from the offering were \$50,000, before deducting underwriting fees. The offering price for each share of common stock and accompanying warrant was \$1.45. Each warrant has an exercise price of \$1.60 per share, is immediately exercisable and will expire on the fifth anniversary of the original issuance date (see Note 13, Warrants Liability for further discussion).

## Standby Equity Purchase Agreement

On April 28, 2022, the Company entered into the SEPA with Yorkville. Pursuant to the SEPA, as amended, the Company has the right, but not the obligation, to sell to Yorkville up to \$75,000 of shares of its common stock at the Company's request at any time during the commitment period, which commenced on April 28, 2022 and will end on the earlier of (i) May 1, 2024, or (ii) the date on which Yorkville shall have made payment of advances requested by the Company totaling up to the commitment amount of \$75,000. Each sale the Company requests under the SEPA (an "Advance") may be for a number of shares of common stock with an aggregate value of up to \$20,000. The SEPA provides for shares to be sold to Yorkville at 97.0% of market price.

Upon the Company's entry into and subject Pursuant to the terms and conditions set forth in the SEPA, 465,117 shares were issued to Yorkville in April 2022 as consideration for its irrevocable commitment to purchase shares of common stock, pursuant to the SEPA, as shown in the consolidated statement of shareholders' equity. stock. The fair value of these shares of \$1,061 was recorded as other expense in the consolidated statements of operations and comprehensive loss. loss for the year ended December 31, 2022.

Subject to For the mutual consent year ended December 31, 2023, total funds raised under the SEPA, inclusive of Yorkville and proceeds received from the Company, from time to time 2023 Promissory Notes, were \$35,550. Total shares issued under the Company may request, and Yorkville shall provide, pre-advance loans (each, a "Pre-Advance Loan") each in SEPA for the principal amount not to exceed \$50,000, pursuant to a promissory note on terms and conditions to be agreed by both parties. year ended December 31, 2023 were 23,630,937.

## EOS ENERGY ENTERPRISES, INC.

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

## 20. 19. Shareholders' Equity Deficit (cont.)

On June 13, 2022, the Company issued and sold a Convertible Promissory Note with a principal amount of \$7,500 in a private placement to Yorkville under the Supplemental Agreement. The Promissory Note was issued with a 2% original issue discount, bears interest only upon the occurrence of an Event of Default, and had a maturity date of

September 15, 2022. The Promissory Note gives Yorkville the right, but not the obligation, to convert principal and accrued interest into shares of the Company's common stock at a conversion price of \$2.21 any time prior to the maturity date, subject to the terms and conditions of the Promissory Note (see Note 13, Borrowings).

In July and August 2022, pursuant to the terms of the Supplemental Agreement, Yorkville delivered six Investor Notices requiring the Company to issue and sell an aggregate of 3,393,663 shares of common stock at a price of \$2.21 per share to Yorkville, in order to offset all outstanding amounts owed to Yorkville under the June 2022 Promissory Note

On December 29, 2022, the Company and Yorkville entered into Amendment No. 3 to the SEPA, to (i) decrease the commitment amount under the SEPA to \$75,000; and (ii) reinstitute the Exchange Cap (as defined in the SEPA), which amounts to 19.99% of the outstanding shares of common stock immediately prior to entering into Amendment No. 3, and applies to all subsequent issuances of common stock under the SEPA, together with any issuances of convertible promissory notes issued by the Company to Yorkville as a Pre-Advance loan.

In January 2023, Yorkville delivered Investor Notices requiring the Company to issue and sell an aggregate of 1,953,612 shares of common stock to Yorkville, in order to offset all outstanding amounts owed to Yorkville under the December 2022 Promissory Note. See Note 13, Borrowings and Note 21, Subsequent Events for further discussion.

For the year ended December 31, 2022, total funds raised under the SEPA, inclusive of proceeds received from the Convertible December 2022 Promissory Notes, Note, were \$14,500. Total shares issued under the SEPA for the year ended December 31, 2022 were 7,361,602.

On August 23, 2023, the Company and Yorkville terminated the SEPA, as amended, by mutual written consent. At the time of termination, there were no outstanding borrowings, advance notices or shares of Common Stock to be issued under the SEPA. In addition, there were no fees due by the Company or Yorkville in connection with the termination of the SEPA.

#### At-the-Market Offering Program

On August 5, 2022, the Company entered into the Sales Agreement with Cowen and Company, LLC, with respect to an at-the-market offering program under which the Company may offer and sell, from time to time at its sole discretion, shares of its common stock, par value \$0.0001 per share, having an aggregate offering price of up to \$100,000 (the "Placement Shares") through Cowen as its sales agent and/or principal. On August 23, 2023, Amendment No. 1 to the ATM increased the maximum aggregate offering price from \$100,000 to \$200,000.

The Company will pay Cowen a commission equal to 3.0% of the gross sales proceeds of any Placement Shares sold. The Company will also reimburse Cowen for certain expenses incurred in connection with the Sales Agreement. The Sales Agreement will terminate upon the earlier of (i) the sale of all Placement Shares subject to the Sales Agreement or (ii) termination of the Sales Agreement in accordance with the terms and conditions set forth therein.

During the year ended December 31, 2023, the Company sold 37,126,137 shares raising net proceeds of \$92,916, net of fees paid to Cowen, at an average selling price of \$2.58 per share, included in the consolidated statement of shareholders' equity.

During the year ended December 31, 2022, the Company sold 20,539,603 shares raising net proceeds of \$38,626, net of fees paid to Cowen, at an average selling price of \$1.94 per share, included in the consolidated statement of shareholders' equity.

#### Earnings (loss) Per Share

Basic earnings per share ("EPS") is computed by dividing earnings available to common shareholders by the weighted average number of shares of common stock outstanding during the period. Other potentially dilutive common shares, and the related impact to earnings, are considered when calculating EPS on a diluted basis. As the Company incurred a net loss for the years ended December 31, 2022, December 31, 2023 and 2021, 2022, the potential dilutive shares from stock options, restricted stock units, warrants, and convertible redeemable notes were excluded from the calculation of diluted net loss per share because their effect would have been anti-dilutive for the periods presented. Therefore, basic and diluted EPS are computed using the same number of weighted average shares for the years ended December 31, 2022, December 31, 2023 and 2021, 2022.

### EOS ENERGY ENTERPRISES, INC.

#### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

#### 20. Shareholders' Equity (cont.)

The following potentially dilutive shares were excluded from the calculation of diluted net loss per share because their effect would have been anti-dilutive for the periods presented:

	For the years ended December 31,	
	2022	2021
Stock options and restricted stock units	7,340,702	4,218,216
Public and private placement warrants	7,326,654	7,327,254
Convertible Notes	7,422,371	5,144,074

#### 21. Subsequent Events

##### Yorkville

In January 2023, pursuant to the terms of the SEPA and the Second Supplemental Agreement, Yorkville delivered Investor Notices requiring the Company to issue and sell an aggregate of 1,953,612 shares of common stock to Yorkville to offset all outstanding amounts owed to Yorkville under the December 2022 Promissory Note.

On February 1, 2023, the Company issued and sold a convertible promissory note with an aggregate principal amount of \$5,000 (the "February 2023 Promissory Note") in a private placement to Yorkville under the Second Supplemental Agreement. On February 23, 2023 and February 27, 2023, Yorkville delivered Investor Notices pursuant to which, effective

February 28, 2023, Yorkville would offset all amounts due under the February 2023 Promissory Note in connection with Yorkville's purchase of an aggregate of 3,879,706 shares of common stock of the Company under the SEPA. Following the issuance of the shares, there would be no amount outstanding under the February 2023 Promissory Note.

Convertible Note Issuance

On January 18, 2023, the Company entered into an investment agreement (the "Investment Agreement") with Great American Insurance Company, Ardsley Partners Renewable Energy, LP, CCI SPV III, LP, Denman Street LLC, John B. Berding Irrevocable Children's Trust, John B. Berding, and AE Convert, LLC, a Delaware limited liability company managed by Russell Stidolph, a related party as Mr. Stidolph is a director of the Company (together, the "Purchasers") relating to the issuance and sale to the Purchasers of \$13,750 in aggregate principal amount of the Company's 26.5% Convertible Senior PIK Notes due 2026. The transactions contemplated by the Investment Agreement closed on January 18, 2023.

Delaware Section 205 Petition

On November 12, 2020, BMRG, the predecessor to the Company, held the BMRG Special Meeting to approve certain matters relating to the business combination between BMRG and Eos Energy Storage LLC.

One of these matters was a proposal to amend and restate BMRG's certificate of incorporation in order to, among other things, increase the number of authorized shares of common stock from 125,000,000 shares of common stock, consisting of 100,000,000 shares of Class A common stock and 25,000,000 shares of Class B common stock, to 200,000,000 shares of common stock, and to reclassify all Class A common stock and Class B common stock as a single class of common stock (the "Charter Amendment Proposal"). The Charter Amendment Proposal was approved by a majority of the outstanding shares of Class A common stock and Class B common stock of BMRG as of the record date for the BMRG Special Meeting, voting together as a single class, although voting records indicate that a majority of each of the shares of Class A common stock and Class B common stock also approved the Charter Amendment Proposal. After the BMRG Special Meeting, BMRG and Eos Energy Storage LLC closed the business combination and the Company's certificate of incorporation, as amended to give effect to the Charter Amendment Proposal, became effective.

A recent ruling by the Delaware Court of Chancery introduced uncertainty as to whether Section 242(b)(2) of the DGCL would have required the Charter Amendment Proposal to be approved by separate votes of the majority of BMRG's then-outstanding shares of Class A common stock and Class B common stock.

	For the years ended December 31,	
	2023	2022
Stock options and restricted stock units	9,675,085	7,340,702
Warrants	61,411,393	7,326,654
Convertible Notes	16,226,124	7,422,371

EOS ENERGY ENTERPRISES, INC.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(In thousands, except share and per share amounts)

21.20. Subsequent Events(cont.)

The Company had been proceeding On January 8, 2024, Hi-Power entered into an Amended and Restated Manufacturing Purchase and Supply Agreement (the "Supply Agreement") with TETRA Technologies, Inc. ("TETRA"), a Delaware corporation, to govern the understanding that the Charter Amendment Proposal provision of TETRA PureFlow® zinc bromide and the amendment manufacturing and restated certificate provision of incorporation are valid. In light Eos's proprietary electrolyte solution (collectively, the "Products") by TETRA to Eos. Pursuant to the Supply Agreement, TETRA has provided certain volume supply commitments in exchange for serving as Eos' preferred supplier of this recent ruling, however, the Products. As Eos's preferred supplier, Eos has agreed to purchase 100% of its requirement of zinc bromide products, including TETRA PureFlow® zinc bromide, and 75% of its requirement of Eos' proprietary electrolyte solution from TETRA, and has provided TETRA a right of first refusal prior to entering into a supply agreement for such Products from a third-party. The Supply Agreement does not contain any minimum purchase volume requirements. As part of the Supply Agreement, TETRA is granted a non-exclusive, non-sub-licensable, non-transferable license to Hi-Power's proprietary electrolyte formula, solely in connection with manufacturing and provision of Eos' proprietary electrolyte solution to Eos. The Supply Agreement expires on December 31, 2027 and contains customary default provisions, liquidated damages, suspension clauses and remedies in the event of any uncured default by Hi-Power.

On January 31, 2024, Hi-Power entered into a Pricing Agreement ("Pricing Agreement") with SHPP US LLC ("Sabic") to govern the pricing terms for sales of certain resin (the "Product") to Hi-Power authorized purchasers by Sabic. Pursuant to the Pricing Agreement, Sabic has provided certain pricing commitments in exchange for serving as Hi-Power's exclusive supplier of the Products. As Hi-Power's exclusive supplier, Hi-Power has agreed to require that its authorized suppliers purchase 100% of Hi-Power's requirement of Product from Sabic. The Pricing Agreement also contains certain minimum purchase volume requirements, in exchange for which Sabic granted Hi-Power and/or its authorized suppliers the exclusive right to purchase the Product within the market space of zinc-bromine bi-polar electrodes for use in stationary utility storage. The Pricing Agreement expires on December 31, 2028.

On February 1, 2024, the Company entered into a binding Settlement Term Sheet (the "Settlement") to resolve potential uncertainty with respect to the Company's capital structure, the Company filed a petition pending stockholder class complaint brought by Richard Delman in the Delaware Court of Chancery under Section 205 of the DGCL to seek validation of the Charter Amendment Proposal. Section 205 of the DGCL permits the Court of Chancery in its discretion, to ratify and validate potentially defective corporate acts.

On February 27, 2023, the Court of Chancery approved the Company's request for relief and entered an order under Section 205 of the Delaware General Corporation Law (1) declaring the Company's Third Amended and Restated Certificate of Incorporation (the "Charter"), including the filing and effectiveness thereof, as validated and effective retroactive to the date of its filing with the Office of the Secretary of State of the State of Delaware on November 16, 2020, and all amendments effected thereby and (2) ordering that the Company's securities (and the issuance ("Delman Complaint") against certain of the securities) described Company's former directors that served prior to the Company's business combination transaction in 2020. Neither the Company or Eos Energy Storage LLC was named as a defendant in the Petition complaint, but each was identified as a relevant non-party and any other securities issued the Company owes certain indemnification obligations relating to the lawsuit to the Company's former directors. Pursuant to the Settlement, the Delman Plaintiff agreed to resolve the Delman Complaint in reliance on exchange for a settlement payment of \$8,500, consisting of cash payments previously made by the validity Company of approximately \$1,000 and an additional cash payment of approximately \$7,500 funded by the Charter are validated Company's D&O liability insurance policies. The settlement is subject to confirmatory discovery and declared effective, each as approval by the Court of the original issuance dates. Chancery.

ITEM 16. FORM 10-K SUMMARY

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Edison, State of New Jersey, on February 28, 2023 March 4, 2024.

EOS ENERGY ENTERPRISES, INC.

By: /s/ Nathan Kroeker  
Chief Financial Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Joseph Mastrangelo and Nathan Kroeker and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the United States Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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

Name	Position	Date
/s/ Joseph Mastrangelo	Chief Executive Officer and Director	February 28, 2023 March 4, 2024
Joseph Mastrangelo	(Principal Executive Officer)	
/s/ Nathan Kroeker	Chief Financial Officer	February 28, 2023 March 4, 2024
Nathan Kroeker	(Principal Financial Officer)	
/s/ John TedoneSumeet Puri	Chief Accounting Officer	February 28, 2023 March 4, 2024
John TedoneSumeet Puri	(Principal Accounting Officer)	
/s/ Jeffrey Bornstein	Director	February 28, 2023 March 4, 2024
Jeffrey Bornstein		
/s/ Alex Dimitrief	Director	February 28, 2023 March 4, 2024
Alex Dimitrief		
/s/ Audrey Zibelman	Director	February 28, 2023
Audrey Zibelman		
/s/ Claude Demby	Director	February 28, 2023 March 4, 2024
Claude Demby		
/s/ Jeffrey McNeil	Director	March 4, 2024
Jeffrey McNeil		
/s/ Russell Stidolph	Director	February 28, 2023 March 4, 2024
Russell Stidolph		
/s/ Marian "Mimi" Walters	Director	February 28, 2023 March 4, 2024
Marian "Mimi" Walters		
/s/ Audrey Zibelman	Director	March 4, 2024
Audrey Zibelman		

 slide1

THIRD AMENDED TRANSITION RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
EOS ENERGY ENTERPRISES, INC.

Effective November 16, 2020 RESIGNATION AGREEMENT AND GENERAL RELEASE This TRANSITION AND RESIGNATION AGREEMENT AND GENERAL RELEASE (this "Agreement") is made as of this \_\_\_\_ day of January 2024, by and between Melissa Berube, with an address at 852 Northeast Emerson St, Portland, OR 97211, USA ("Executive"), as amended on June 28, 2022

#### ARTICLE I NAME

The name of the corporation is and Eos Energy Enterprises, Inc., with offices at 3920 Park Avenue, Edison, NJ 08820 (the "Corporation" "Company").

#### ARTICLE II PURPOSE

WHEREAS, Executive has been employed by the Company as the General Counsel, Chief Compliance Officer, and Corporate Secretary; WHEREAS, the Company and Executive entered into an Employment Agreement dated as of July 29, 2022 (the "Employment Agreement"); WHEREAS, on January 17, 2024, the Company and Executive reached a mutual understanding regarding Executive's employment with the Company, which will terminate effective January 31, 2024 (the "Separation Date"); WHEREAS, pursuant to the Company's Freedom PTO policy, Executive has no accrued, unused vacation or PTO time; and WHEREAS, the Company and Executive are now mutually desirous of fully and finally setting forth the parties' respective rights and obligations and resolving any and all issues, claims, potential claims, disputes and disagreements between them amicably and in an orderly fashion. NOW, THEREFORE, the parties intending to be legally bound, mutually agree as follows: 1. Executive's Severance of Employment; Coverage Under the Company's Group Health Insurance Plans; Continuation Coverage; Payment Therefor. (a) The purpose parties agree that Executive's employment with the Company shall cease for all purposes effective on the Separation Date. Executive shall have no duties, responsibilities, or authority and shall not hold herself out after the Separation Date as an employee, agent or representative of the Corporation is Company and shall have no authority to engage bind the Company or any of its affiliates in any lawful act manner. (b) In accordance with Section 7(g) of the Employment Agreement, effective January 31, 2024, Executive hereby resigns from all positions held by Executive with the Company and its affiliates. Executive agrees to execute letters of resignation and/or activity for which corporations other documents as may be organized required or requested by the Company and otherwise cooperate fully and take all steps reasonable and necessary to effectuate or evidence the resignation(s) set forth in this Section. (c) As of the Separation Date, Executive shall not be eligible to participate in, or be covered by, any employee benefit plan or program offered by or through the Company, and Executive shall not receive any benefits or payments from the Company, except as otherwise provided in this Agreement, under the DGCL. terms of applicable benefits plans, or by law. (d) Without regard to whether Executive signs this Agreement, Executive will:

#### ARTICLE III REGISTERED AGENT

slide2

The address: 2. (i) be paid any base salary that is accrued but unpaid as of the Separation Date on the first business day after the Separation Date; and (ii) in accordance with Section 7(e) of the Employment Agreement, receive (i) a pro rata base salary payment of \$42,303.57, less applicable taxes and withholding deductions, (ii) a one-time contribution of \$1,269.10 to Executive's 401K (Safe Harbor) account, at New Castle, State of Delaware, 19801, which is equivalent to Executive's base salary plus eligible benefits, from February 1, 2024, through March 17, 2024 (the "Remainder Notice Period"), payable on the first business day after the Separation Date; (iii) continue to be covered through January 31, 2024, under the Company's group health, dental and vision insurance plans (collectively, the "Health Insurance Plans") with the same coverage, deductibles and other plan conditions as existed on the Separation Date. Effective February 1, 2024, Executive will be offered to exercise her rights under the provisions of the Company's registered agent at such address is The Corporation Trust Company.

#### ARTICLE IV CAPITALIZATION

Section 4.1 **Reclassification; Authorized Capital Stock** Consolidated Omnibus Budget Reconciliation Act of 1986, as amended ("COBRA").

(a) **Effective upon** Should Executive elect to continue her Health Insurance Plans under COBRA, the **Effective Time**, Company will reimburse up to Seven Hundred dollars (\$700) gross on a monthly basis for her COBRA premiums until the earlier of (i) **each share** August 31, 2024, or (ii) the date on which the Executive becomes eligible for coverage under a successor employer's group health insurance program, it being understood that Executive shall have an affirmative obligation to notify the Company of **Class A Common Stock, par value \$0.0001 per share, of her** reemployment with a successor employer. (e) During the



Corporation that was issued Remainder Notice Period, Executive agrees to be available by telephone, video call and outstanding or held in treasury immediately prior email to assist the Company with any and all open transition related business issues, including but not limited to, the Effective Time (the "Old Class A Common") shall automatically transition of Executive's job duties and immediately responsibilities, however, both parties understand and agree that such post-separation support does not represent continued employment of Executive, and additionally, Company understands and agrees that Executive will not provide legal advice, and both parties understand and agree that such support will not constitute legal advice, counsel or legal guidance. Additionally, Executive will not be reclassified into one share expected to extend or provide such consultation or support in any manner that might interfere with Executive's availability for subsequent employment with any new employer. 2. Payment of Common Stock Accruals; No Other Vested Rights. Executive acknowledges that Executive has received full payment for all time worked through the execution of this Agreement, and has received all salary, wages, commissions, bonuses, sick pay, personal leave pay, severance pay, vacation pay, or other compensation or benefits or form of remuneration of any kind or nature, other than that specifically provided for in this Agreement.

---

slide3

3.3. Severance Payment which Forms the Consideration for Executive's Waiver and General Release of All Claims. In exchange for Executive's timely signing (and not revoking) this Agreement and releasing and waiving claims that Executive may have against the Company and/or other Releasees, Executive's compliance with the other terms and conditions of this Agreement, following the Effective Date of this Agreement (as defined below), the Company agrees to provide Executive the following severance pay and benefits, which Executive acknowledges and agrees exceed any payment, benefit, or other thing of value to which Executive might otherwise be entitled under any policy, plan or procedure of the Company and/or any prior agreement, understanding or arrangement between Executive and the Company: (a) Executive will receive severance pay equal to the total gross amount of Three Hundred Thirty-Four Thousand Seven Hundred Fifty Dollars (\$334,750), less applicable taxes and withholding deductions, which will be paid in installments on the Company's regularly scheduled payroll dates over a twelve (12)-month period commencing on the next regular payroll date immediately following March 31, 2024; (b) If the applicable performance targets have been achieved in accordance with the Bonus Plan (as defined in the Employment Agreement) for the calendar year of 2023 (as determined by the Board (or applicable committee thereof) following the end of 2023), Executive will receive bonus under the Bonus Plan for the 2023 calendar year commensurate with any other executive's bonus amount, based on actual performance, payable in accordance with the Bonus Plan; (c) Executive's outstanding restricted stock unit awards, granted on July 28, 2021, February 9, 2022, and July 5, 2023 shall fully vest as of the Effective Date of this Agreement (and otherwise be settled within thirty (30) days of the Effective Date in accordance with the terms of the applicable award agreements pursuant to which such restricted stock units were granted and the Company's Amended and Restated 2020 Incentive Plan (as amended, the "Plan")); (d) With respect to Executive's outstanding stock option award, granted on June 16, 2022: (i) to the extent vested as of the Separation Date, such stock option shall remain outstanding and exercisable and shall be amended to have an exercise-by date that is coterminous with the expiration of the applicable Option Period ("Option Period" and "Date of Grant" have the meaning assigned to them in the Company's 2020 Equity Incentive Plan); and (ii) to the extent unvested as of the Separation Date, such stock option shall fully vest as of the Effective Date of this Agreement and shall also be amended to have an exercise-by date that is coterminous with the expiration of the applicable Option Period (ten years from the Date of Grant). Such stock option shall otherwise remain subject to the terms and conditions of the applicable award agreement pursuant to which such stock option was granted and the Plan. 4. Executive's General Release and Waiver of All Claims: (a) General Release. In consideration for the payment and benefits to be provided in accordance with Section 3 above, Executive, on behalf of Executive and Executive's family, agents, representatives, heirs, executors, trustees, administrators, attorneys, successors and

slide4

4 assigns (the "Releasers"), hereby irrevocably and unconditionally release, settle, cancel, acquit, discharge and acknowledge to be fully satisfied, and covenant not to sue the Company and [REDACTED] of its respective past and/or present parents, subsidiaries, affiliates, successors and assigns, and each of their respective predecessors, and past and/or present directors, managers, officers, employees, agents or other representatives, and employee benefit plans of the Company or its affiliates, including, but not limited to, trustees and administrators of these plans, in each case, in their individual and/or representative capacities (collectively, the "Releasees") from any and all claims, contractual or otherwise, demands, costs, rights, causes of action, charges, debts, liens, promises, obligations, complaints, losses, damages and all liability of whatever kind and nature, whether known or unknown, suspected or unsuspected and hereby waive any and all rights that he, she or it ever had, now has, or which may arise in the future from the beginning of time up to and including the date Executive signs this Agreement. Without limiting the generality of the foregoing, this release includes but is not limited to all claims under, without limitation: (i) any and all claims arising from or relating to Executive's employment at, or termination of employment with, the Company, any contract (express or implied), including without limitation the Employment Agreement, and any work performed by Executive for the Company in any capacity, and any claim for equitable relief or recovery of punitive, compensatory, or other damages or monies, attorneys' fees, or any tort; (ii) any and all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Genetic Information Nondiscrimination Act, the Sarbanes-Oxley Act, the False Claims Act, the Occupational Safety and Health Act, the Immigration Reform and Control Act, the Labor Management Relations Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA), the Equal Pay Act, the Employee Retirement Income Security Act (ERISA) (regarding unvested benefits) or COBRA or similar state law, the Civil Rights Act of 1991, Section 1981 of U.S.C., Title 42, the Fair Credit Reporting Act (FCRA), the Worker Adjustment and Retraining Notification (WARN) Act, New Jersey Wage and Hour Law, N.J.S.A. §§ 34-11-56a, et seq.; New Jersey Equal Pay Act, N.J.S.A. §34:11-56.2; New Jersey Smoker's Rights Act, N.J.S.A. §§ 34:6B-1, et seq.; New Jersey Lie Detector Test Law, N.J.S.A. §§ 2C:40A-1, et seq.; New Jersey Jury Duty Employee Protection Law, N.J.S.A. 2B:20-17; New Jersey Worker Freedom From Employer Intimidation Act, N.J.S.A. §§ 34:19-9 et seq.; New Jersey Fair Credit Reporting Act, N.J.S.A. § 56:11-28, et seq.; New Jersey Security and Financial Empowerment Act, N.J.S.A. §§ 34:11C-1, et seq.; Millville Dallas Airmotive Plant Job Loss Notification Act, N.J.S.A. §§ 34:21-1, et seq.; New Jersey Military Leave Law, N.J.S.A. §38:23C-20; New Jersey Employment Protection for Volunteer Emergency Responder Law, N.J.S.A. § 40A:14-214(b); New Jersey Social Media Privacy Law, N.J.S.A. § 34:6B-6; New Jersey Opportunity to Compete Act, 34:6B-11 et seq.; New Jersey Conscientious Employee Protection Act, N.J.S.A. §§ 34:19-1, et seq.; New Jersey Civil Rights Act, N.J.S.A. §§ 10:6-1, et seq.; New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1, et seq.; the retaliation provisions of the New Jersey Workers' Compensation Law, N.J.S.A. §§ 34:15-39.1 to 34:15-39.3; the New Jersey Earned Sick Leave Law; Oregon Fair Employment Practices Act (Or. Rev. Stat. §§ 659A.001 et seq., 659A.029 et seq., 659A.082 et seq., 659A.086 et seq., 659A.103 et seq., 659A.300 et seq.); Oregon Equal Pay Law (Or. Rev. Stat. § 552.210 et seq.); Oregon Family and Medical Leave Act (Or. Rev. Stat. § 659A.150 et seq.); Oregon Paid Leave (Or. Rev. Stat. §§ 657B

slide5

§ et seq.); Oregon Sick Leave (Or. Rev. Stat. §§ 653.601 et seq.); Oregon Whistleblower Protection Act (Or. Rev. Stat. § 659A.199 et seq.); Oregon Discrimination Against Worker Applying for Workers' Compensation Benefits (Or. Rev. Stat. § 659A.040 et seq.); Oregon Military Family Leave Act (Or. Rev. Stat. §§ 410.619, 657.100 et seq., 659A.090 et seq.); Oregon Court Leave Law (Or. Rev. Stat. § 659A.190 et seq.); Oregon's Initiating or Aiding Administrative, Criminal, or Civil Proceeding Law (Or. Rev. Stat. § 659A.230 et seq.); Oregon Genetic Testing Law (Or. Rev. Stat. § 659A.303); Oregon Smokers' Rights Law (Or. Rev. Stat. § 659A.315); Oregon Bone Marrow Donor Leave Law (Or. Rev. Stat. § 659A.312); Oregon Hours of Labor Laws (Or. Rev. Stat. § 652.010 et seq.); Oregon Payment of Wages Laws (Or. Rev. Stat. § 652.110 et seq.); Oregon Safe Employment Act (Or. Rev. Stat. § 654.001 et seq.); including any amendments to any of the foregoing; however, the identification of specific statutes is for purposes of example only, and the omission of any specific statute or law shall not limit the scope of this general release in any manner; (iii) any and all claims arising from violations of any local, state or federal whistleblower law; and any other federal, state, local, or foreign law (whether equal employment opportunity laws, rules, statutory, regulatory, or otherwise) that may be legally waived and released; (iv) any and all claims arising under tort, contract, and quasi-contract law, including but not limited to claims of breach of an express or implied contract, including without limitation any claims under the Employment Agreement, wrongful or retaliatory discharge, fraud, defamation, negligent or intentional infliction of emotional distress, tortious interference with a contract or prospective business advantage, breach of contract related to personnel policies, procedures, handbooks, compensation or benefit agreements or policies, any covenant of good faith and fair dealing, or any express or implied contract of any kind, promissory estoppel, detrimental reliance, invasion of privacy, false imprisonment, nonphysical injury, personal injury or sickness, or any other harm; (v) any and all claims for compensation of any type whatsoever, including but not limited to claims for wages, salary, bonuses, commissions, short or long term incentive compensation, vacation, sick pay, and severance pay; and (vi) any and all claims for monetary or equitable relief, including but not limited to attorneys' fees, back pay, front pay, reinstatement, experts' fees, medical fees or expenses, costs and disbursements, punitive damages, liquidated damages, and penalties. (b) Claims Not Released. Executive is not releasing claims arising after Executive signs this Agreement, claims related to enforcement of this Agreement, any rights or claims Executive may have to workers' compensation or unemployment benefits, claims for accrued, vested benefits under any employee retirement plan of the Company or for reimbursement under any group health or disability plan in which Executive

participated in accordance with the terms of such plans and applicable law, and/or any claims or rights which cannot be waived by law. Further, in no event shall any released claims include any right of Executive to indemnification, the Company's by-laws and amended and restated certificate of incorporation, in each case in accordance with Delaware law. The Company expressly reaffirms its obligation to

slide6

8. Indemnify Executive following the Separation Date to the extent required by these instruments and applicable law. (c) Reservation of Rights. Nothing in this Agreement or any of the provisions above shall be construed to prohibit or limit Executive from: (i) responding truthfully to a valid subpoena; (ii) filing a charge or complaint with, initiating, testifying, assisting, or participating in any manner in an investigation conducted by a governmental agency, including the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Equal Employment Opportunity Commission and/or any state or local human rights agency; (iii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which Executive is entitled; or (iv) filing, testifying or participating in or otherwise assisting in a proceeding relating to, or reporting, an alleged violation of any federal, state or municipal law relating to fraud or any rule or regulation of the Securities and Exchange Commission ("SEC"), the Commodity Futures Trading Commission ("CFTC") or any self-regulatory organization (including, but not limited to, the Financial Industry Regulatory Authority), or making other disclosures that are protected under the whistleblower provisions of federal or state law or regulation or engaging in any Covered Actions as described below in Section 5. Prior authorization of the Company shall not be required to make any reports or disclosures under this Section 4(c) and Executive is not required to notify the Company that Executive has made such reports or disclosures. Nevertheless, Executive acknowledges and agrees that by virtue of the General Release set forth in Section 4(a) above, Executive has waived any relief available to Executive (including without limitation, monetary damages, equitable relief and reinstatement) under any of the claims and/or causes of action waived in this Agreement. Therefore, except as set forth herein, Executive agrees that Executive will not seek or accept any award or settlement from any source or proceeding (including but not limited to any proceeding brought by any other person or by any government agency) with respect to any claim or right waived in this Agreement. This Agreement does not, however, waive or release Executive's right to receive a monetary award from the SEC or CFTC for information provided to the SEC or CFTC. (d) Executive represents and warrants that Executive has not assigned any such claims or authorized any other person, group or entity to assert such claims on Executive's behalf. 5. No Other Claims. As further consideration and inducement for this Agreement, Executive agrees, represents and covenants that, except as otherwise set forth herein, Executive has not filed, caused to be filed, or otherwise pursued any charges, complaints or claims of any nature (judicial or administrative) (on Executive's own behalf and/or on behalf of any other person and/or on behalf of or as a member of any alleged class of person) against any of the Releasees, including, but not limited to, any charges or complaints against any Releasee with any international, federal, state, or local agency charged with the enforcement of any law or any self-regulatory organization. Except as provided in Section 4(c) and except as otherwise set forth herein, Executive covenants not to file any action, suit, complaint, claim, grievance, demand for arbitration or other proceeding against any of the Releasees, either individually or as a member of a class in any class or collective action, in any court or other forum with regard to any claim, demand, liability, obligation or matter arising out of Executive's employment with the Company, separation from employment, or otherwise. Except

slide7

7 as provided in Section 4(c) and except as otherwise set forth herein, Executive waives any right to become, and promises not to voluntarily become, a member of any class in a case in which any claim or claims are asserted against any of the Releasees involving any act or event occurring from the first day of the world through the date of Executive's execution of this Agreement. If any claim is brought on Executive's behalf against any of the Releasees involving any events occurring from the first day of the world through the Effective Date of this Agreement (as defined below), or if Executive learns that Executive is named as a member of any class in a case in which any claim or claims are asserted against any of the Releasees involving any events occurring from the first day of the world through the Effective Date of this Agreement, then, except as otherwise set forth herein, Executive shall (i) promptly provide written notification of said claim to the Company, (ii) withdraw in writing and with prejudice from said claim or class, and (iii) forward a copy of Executive's withdrawal to the Company. If, notwithstanding the foregoing promises, Executive violates this Section 5, Executive shall be required, to the maximum extent permitted by law, to indemnify and hold harmless the Releasees from and against any and all demands, assessments, judgments, costs, damages, losses and liabilities, and attorneys' fees and other expenses which result from, or are incident to, such violation, except as to claims pursuant to the federal Age Discrimination in Employment Act (ADEA). Notwithstanding any of the foregoing, nothing herein prohibits Executive from initiating or participating in any charges, actions, or proceedings before, or engaging in communications with, the SEC and/or the CFTC about possible fraud or other securities law violations (defined herein as "Covered Actions"), either prospectively after the date Executive signs this Agreement or prior to the date Executive signs this Agreement. 6. Affirmations. Executive agrees that Executive has been paid and/or received all leave (paid or unpaid), compensation, wages, bonuses, severance, or termination pay, commissions, notice period, and/or benefits to which Executive may have been entitled and that no other remuneration or benefits are due to Executive, except as set forth in this Agreement. Executive affirms that Executive has had no known workplace injuries or occupational diseases. Executive also represents that Executive has disclosed to the Company any information Executive has concerning any fraudulent or unlawful conduct involving any of the Releasees. 7. Confidentiality. (a) Company Information. Executive acknowledges and agrees that, except as set forth in Section 4(c), all information obtained by or disclosed to Executive at any time during Executive's employment with the Company which is not generally known to the public, including, but not limited to, information concerning the Company's claims or rating practices, methods of operation, processes, marketing techniques, practices, policies, programs and procedures, and/or personnel data, that are strictly confidential and/or proprietary to the Company and that constitute trade secrets of the Company, shall not be disclosed, discussed, or revealed to any persons, entities or organizations outside of the Company, without prior written approval of the Company. Notwithstanding the foregoing, non-compliance with the disclosure provisions of this Agreement shall not subject Executive to criminal or civil liability under any Federal or State trade secret law for the disclosure of a Company trade secret: (i) in confidence to a Federal, State or local government official, either directly or indirectly, or to an attorney in confidence solely for the purpose of reporting or investigating a suspected violation of law; (ii) in a complaint or other

Slide8

8 document filed in a lawsuit or other proceeding, provided that any complaint or document containing the trade secret is filed under seal; or (ii) to an attorney representing Executive in a lawsuit for retaliation by the Company for reporting a suspected violation of law or to use the trade secret information in that court proceeding, provided that any document containing the trade secret is filed under seal and Executive does not disclose the trade secret, except pursuant to court order. (b) Agreement Terms. Executive also agrees that, except as set forth in Section 4(c), the terms and conditions of this Agreement and any and all actions by the parties in accordance therewith, are strictly confidential and, with the exception of Executive's counsel, accounting and tax advisors and Executive's personal planning advisors, spouse and immediate family, or as required by applicable law (or under applicable SEC disclosure rules), have not and will not be disclosed, discussed, or revealed to any other persons, entities, or organizations, whether within or outside the Company, without prior written approval of the Company. The Executive further agrees to take all reasonable steps necessary to ensure that confidentiality is maintained by any of the individuals or entities referenced above to whom disclosure is authorized and agree to accept responsibility for any breach of confidentiality by said individuals or entities referenced above. 8. Return of the Company's Property/Cooperation in Transition. Executive agrees and represents that as of the Separation Date, Executive (a) will have returned to the Company all equipment and/or other property belonging to it, including financial records and related information, regardless of the manner in which such information is stored, which has been or is in Executive's care, custody, possession or control; (b) will have not retained any such item in Executive's possession, custody or control; and (c) understands that the Company has relied upon Executive's representation and that the return of such property is an express condition of this Agreement. Executive further acknowledges and agrees that the Company shall have no obligation to make the payment(s) and provide the benefits referred to in Section 3 above unless and until Executive has satisfied all Executive's obligations pursuant to this Section. 9. Mutual Non-Disparagement. Except as set forth in Section 4(c), Executive expressly agrees to refrain from uttering, or inducing others to utter, any disparaging remarks concerning any Releasees, or making, or inducing others to make, any other statement, oral or written, which portrays any Releasee in an unfavorable light or subjects he, she or it or its products or services to scorn, obloquy or ridicule. The Company agrees that (i) it will not make any statement that is critical, disparaging, or derogatory about, or that injure the reputation of, Executive, and (ii) it will instruct its officers, directors and Chief People Officer to refrain from making any statements that are critical, disparaging, or derogatory about, or which injure the reputation of, Executive. 10. No Voluntary Testimony. (a) Except as set forth in Section 4(c), Executive agrees that Executive not will voluntarily participate, cooperate, aid, or give testimony in any action or proceeding brought against, or which in any way relates to any of the Releasees in any forum, whether administrative, arbitral or judicial, on behalf of Executive or of any other party or interest.

slide9



9 (b) Except as set forth in Section 4(c), Executive further agrees that, in the event Executive is subpoenaed by any person or entity or is contacted via means other than legal process to provide information or participate in any proceeding against or in any manner involving any Releasee or in any way related to Executive's employment with the Company, Executive shall give notice to the Company, Attn: Chief People Officer, 3920 Park Avenue Edison, NJ 08837, email:

rdesai@eose.com and legal@eose.com, as soon as practicable but in no event more than three (3) days from receipt thereof. 11. Cooperation. Executive agrees that she will cooperate with the Releasees and their respective counsel in connection with any matter that Executive worked on during her employment with the Company, and any investigation or litigation relating to any matter that occurred during her employment in which Executive was involved or of which Executive has knowledge. Executive understands and agrees that this cooperation includes, but shall not be limited to, making herself available to the Company and its attorneys upon reasonable notice for interviews and factual investigations; appearing at the Company's request to give testimony; volunteering to the Company pertinent information; and turning over all relevant documents to the Company that are or may come into Executive's possession. 12. Employment Verification. Executive agrees to refer all requests for references from prospective employers to the Chief People Officer at the Company, who will comply with Company policy to provide only dates of employment, last position held and, if requested by Executive in writing, Executive's salary as of the Separation Date. 13. Other Agreements. Executive agrees that, at all times in the future, Executive will remain bound by the terms of the Restrictive Covenants contained in Sections 8 and 9 of the Employment Agreement (the "Restrictive Covenants"), which are incorporated by reference as though fully set forth herein. To the extent that any provision of the Restrictive Covenants is in conflict with any provision of this Agreement, the Company shall have the right to enforce the agreement that affords it the greater right or protection. 14. No Admission of Liability. By entering into this Agreement, neither the Company nor any other Releasees admit (i) that they violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrongdoing whatsoever against Executive or otherwise, (ii) any liability whatsoever to Executive or to any other person arising out of any claims or potential claims which might have been asserted by Executive, and both the Company and the Releasees, for themselves and all others released by this Agreement, expressly deny any and all such liability.

---

Slide10

10.15. Taxes. All payments and other compensation described in this Agreement are subject to withholding for taxes and other applicable deductions in the amounts and at the times that the Company determines are required or authorized by law. Regardless of the amount withheld, you are solely responsible for all taxes in respect of your compensation (including imputed compensation), except the employer's **Class B Common Stock, par value \$0.0001 per share**, employment taxes, Sections 11(i) ("Section 409A") and 11(i) ("Section 280G"). **Corporation** Employment Agreement are incorporated by reference as though fully set forth herein, mutatis mutandis. 16. Severability. If any provision of this Agreement (or aspect of any provision) is held by a court of competent jurisdiction to be illegal, void or unenforceable, such provision (or aspect of any provision) shall have no effect; however, the remaining provisions shall be enforced to the maximum extent possible; provided, however, if the release and waiver above is deemed to be illegal, void or unenforceable, you agree, to enter into a valid release satisfactory to the Company, or at your option, to return the amounts received as consideration for this Agreement. Further, if a court should determine **was issued** any portion of this Agreement is overbroad or unreasonable, such provision shall be given effect to the maximum extent possible by narrowing or enforcing in part that aspect of the provision found overbroad or unreasonable. 17. Entire Agreement. With the exception of the portions of the Employment Agreement that are expressly incorporated by reference herein, Executive acknowledges **outstanding** agrees that this Agreement constitutes the complete understanding between the Company and Executive, supersedes any and all agreements, understandings, and discussions, whether written **held oral** between Executive and any of the Releasees with respect to the subject matter herein, and Executive agrees that Executive is not relying on any promises or representations not contained **treasury immediately** this Agreement. To the extent that any provision of the Restrictive Covenants is in conflict with any provision contained herein, the Company shall have the right to enforce the agreement that affords it the greater right or protection. No other promises or agreements shall be binding unless in writing and signed by both the Company and you after the Effective Date of this Agreement. 18. Joint Participation in Preparation of Agreement. The parties hereto participated jointly in the negotiation and preparation of this Agreement, and each party has had the opportunity to obtain the advice of legal counsel and to review, comment upon, and redraft it. Accordingly, it is agreed that no rule of construction shall apply against any party in favor of any party. This Agreement shall be construed as if the parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

slide11

11.19. Attorneys' Fees and Costs. As further mutual consideration for the promises set forth herein, the Company and Executive agree that they each are responsible for their own attorneys' fees and costs, and each agrees that they will not seek from the other reimbursement for attorneys' fees and/or costs incurred in or relating to any matters addressed in this Agreement. 20. Choice of Law, Enforcement. This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey without reference to any conflicts of law provisions. Additionally, any action to enforce the terms of this Agreement shall be commenced in a court of competent jurisdiction in New Jersey. Both parties consent to personal jurisdiction in federal and state courts in New Jersey. 21. Waiver of Jury Trial. EXECUTIVE AND THE COMPANY KNOWINGLY, VOLUNTARILY, IRREVOCABLY, AND UNCONDITIONALLY WAIVE ANY RIGHT EXECUTIVE OR IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE BETWEEN EXECUTIVE AND THE COMPANY, INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE BASED ON, ARISING OUT OF, OR RELATING TO THIS AGREEMENT OR THE BREACH OR ENFORCEMENT OF THIS AGREEMENT. 22. Headings. The headings in this Agreement are used for ease of reference only, and should not be used as aids in interpreting this Agreement. 23. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. Facsimile or other electronic signatures shall be treated as original signatures for all purposes. 24. Acceptance and Effective Date. (a) Executive has twenty-one (21) days from receipt of this Agreement to consider it and may sign it any time after the Separation Date up to and including the twenty-first day after Executive received it. Executive agrees that any modification to this Agreement, material or otherwise, does not restart, extend, or effect in any way the original twenty-one day consideration period. This Agreement shall not become effective until the eighth day after Executive signs it ("Effective Date"), and Executive may at any time **Time** Date revoke this Agreement by giving notice in writing of such revocation to Roma Desai, Company's Chief People Officer, 3920 Park Avenue Edison, NJ 08837, email: rdesai@eose.com and legal@eose.com. Executive is advised to consult with an attorney before signing this Agreement. In the event Executive does not accept this Agreement as set forth above, or if the offer is revoked by the Company prior to the Effective Date, or in the event Executive revokes this Agreement.

Slide12

12 during the revocation period, this Agreement, including but not limited to the obligation of the Company to provide the payments and other consideration referred to in Section 3 above, shall be deemed automatically null and void. (b) You may accept this Agreement by signing it and delivering it to Roma Desai, Company's Chief People Officer, 3920 Park Avenue Edison, NJ 08837, email: rdesai@eose.com and legal@eose.com in the time period specified above. This Agreement will not be effective or accepted if signed by you prior to your Separation Date and/or if modified by you unilaterally without the express written consent/agreement of the Company. 25. ACKNOWLEDGMENTS. BY SIGNING BELOW, EXECUTIVE HEREBY ACKNOWLEDGES THAT EXECUTIVE: (A) HAS CAREFULLY READ THIS AGREEMENT IN ITS ENTIRETY; (B) HAS HAD AN OPPORTUNITY TO CONSIDER THE TERMS AND CONDITIONS OF THIS AGREEMENT FOR AT LEAST TWENTY-ONE (21) CALENDAR DAYS; (C) IS HEREBY ADVISED BY THE COMPANY TO CONSULT WITH AN ATTORNEY OF EXECUTIVE'S CHOICE BEFORE SIGNING THIS AGREEMENT; (D) FULLY UNDERSTANDS THE SIGNIFICANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND HAS DISCUSSED THEM WITH AN ATTORNEY OF EXECUTIVE'S CHOICE, OR HAS HAD A REASONABLE OPPORTUNITY TO DO SO; AND (E) IS SIGNING THIS AGREEMENT VOLUNTARILY AND OF EXECUTIVE'S OWN FREE WILL AND AGREES TO ABIDE BY ALL THE TERMS AND CONDITIONS CONTAINED HEREIN. IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and delivered. [SIGNATURES FOLLOW ON NEXT PAGE]

 slide13

13 EXECUTIVE COMPANY Eos Energy Enterprises, Inc. By: Melissa Berube Authorized Signatory Date Signed: Date Signed: Date originally provided to Executive: January 17, 2024



slide1



Employment Agreement This Employment Agreement (this "Agreement") is dated as of January 17, 2024 (the "Old Class B Common" "Effective Date") shall automatically, and immediately is made by and between Eos Energy Enterprises, Inc., a Delaware corporation, and its subsidiaries (the "Company"), and Michael Willis Silberman ("Executive"). W i t n e s s e t h: WHEREAS, the Company is a publicly-traded entity whose common stock is listed on The Nasdaq Capital Market ("Nasdaq"); WHEREAS, the Company desires to hire and to continue to employ Executive with the Company on the terms and conditions set forth in this Agreement, and Executive desires to be reclassified into one share of Common Stock, so employed, in each case, without further action on the terms and conditions set forth herein. NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises contained herein, and for other good and valuable consideration, the Company and Executive hereby agree as follows: 1. Agreement to Employ; No Conflicts Upon the terms and subject to the conditions of this Agreement, the Company hereby agrees to employ Executive, and Executive hereby accepts such employment by the Company. Executive represents and warrants that (a) Executive is entering into this Agreement voluntarily, and that Executive's employment hereunder and compliance with the terms and conditions hereof will not conflict with or result in the breach by Executive of any holder agreement to which Executive is a party or by which Executive may be bound; (b) Executive has not violated, and in connection with Executive's employment with the Company will not violate, any non-competition, non-solicitation or other similar covenant or agreement by which Executive is or may be bound; and (c) in connection with Executive's employment by the Company, Executive will not use any confidential or proprietary information Executive may have obtained in connection with Executive's services to any prior employer. 2. Term; Position and Responsibilities (a) Term. The Company shall employ Executive for a term commencing January 22, 2024 (the "Commencement Date") and continuing until Executive's employment terminates pursuant to Section 7. The period during which Executive is employed pursuant to this Agreement shall be referred to as the "Employment Period". (b) Position and Responsibilities. During the Employment Period, Executive shall serve as the General Counsel, Chief Compliance Officer, and Corporate Secretary of the Old Class A Common Company, reporting to the Chief Executive Officer of the Company (the "CEO"). Executive shall have such duties and responsibilities as are customarily assigned to individuals serving in such position for a publicly-traded company, and such other duties consistent with Executive's position as the CEO specifies from time to time.



slide2



2 (c) Location. Executive's principal place of employment shall be Dallas, Texas. At the Company's expense (on a nontaxable or **Old Class B Common**.

**(b)** equivalent basis), Executive shall be required, as needed to travel to the Company's locations in Edison, New Jersey, and Turtle Creek, Pennsylvania, or such other locations as the Company may periodically designate. Executive is not considered a resident or employee of the State of New Jersey or the Commonwealth of Pennsylvania for employment law or tax purposes. (d) Executive shall devote all of Executive's skill, knowledge, and business time to the conscientious performance of such duties and responsibilities, except for vacation time (as set forth in Section 6(b)), absence for sickness or similar disability, and time spent performing services for any charitable, religious or community organizations, so long as such services do not materially interfere with the performance of Executive's duties hereunder. 3. Base Salary As compensation for the services to be performed by Executive during the Employment Period, the Company shall pay Executive a base salary at an annualized rate of \$340,000.00, increasing to \$350,000 effective on July 1, 2024, payable in accordance with the Company's standard payroll practices. The total number amount of shares of all classes of capital stock, each with a par value of \$0.0001 per share, which the Corporation is authorized to issue is 301,000,000 shares, consisting of (a) 300,000,000 shares of common stock (the "**Common Stock**") and (b) 1,000,000 shares of preferred stock (the "**Preferred Stock**").

**Section 4.2 Preferred Stock.** The Base Salary (as defined below) will be reviewed by the Board of Directors of the **Corporation** Company, or a committee thereof (the "**Board**" "**Board**") is hereby annually during the Employment Period, which may increase (but not decrease except in accordance with Section 7(c)(iii) (C)) Executive's Base Salary in its sole discretion at that time. The annual base salary payable to Executive under this Section 3 shall hereinafter be referred to as the "Base Salary". 4. Incentive Compensation (a) Annual Cash Bonus. Except as otherwise expressly **authorized to provide out** set forth in Section 7(f)(i)(B)(II) below, for each full calendar year of the **unissued shares** Company that ends during the Employment Period, Executive shall be eligible to participate in the annual bonus plan established and approved by the Board (or applicable committee thereof) (the "Bonus Plan") on the terms and conditions set forth therein, with a target annual bonus opportunity of 50% of Base Salary. (b) Equity Compensation. (i) Subject to approval by the **Preferred** Board (or applicable committee thereof) and Executive's commencement of employment on the Commencement Date, the Company will grant to Executive 250,000 Restricted Stock **for one or more series of Preferred Stock and to establish** Units (as defined in the Company's 2020 Incentive Plan, as amended from time to time (the "Plan")) (the "Initial Grant"), on the **number** Commencement Date (the "Initial Grant Date"). (ii) Commencing with the Company's regular annual equity grant cycle in the 2024 calendar year, and for each calendar year during the term of Shares to be included in each such series and to **fix** Executive's employment with the voting rights, if any, designations, powers, preferences and relative, participating, optional, special and other rights, if any, of each such series and any qualifications, limitations and **restrictions thereof, as** Company, Executive shall be **stated in the resolution or resolutions adopted** eligible for and shall receive annual equity awards, commensurate with Executive's position (each an "Annual Grant"), each as determined by the Board **providing for** (or applicable committee thereof) in its sole discretion in accordance with its then-current equity grant procedures applicable to Section 16 Officers of the **issuance of** Company, with each such **series and** included in a certificate of designation (a "**Preferred Stock**").

Designation") filed pursuant Annual Grant subject to the DGCL, terms of the Plan (or any successor thereto) and a form of award agreement

---



slide3

3 issued thereunder (which shall include, without limitation, vesting and forfeiture conditions); provided that notwithstanding anything to the contrary, if any other Section 16 Officers of the Company were to receive an annual grant of equity in any calendar year, then Executive shall also receive an Annual Grant in any such calendar year. For purposes of this provision, "Section 16 Officers" mean an "officer" of the Company as defined in the rules promulgated under Section 16 of the Securities Exchange Act of 1934 (the "Exchange Act"), and any officer of the Company that the Company's Board of Directors has determined from time to time is subject to the reporting requirements of Section 16 of the Exchange Act. (iii) All Restricted Stock Units in the Initial Grant and in each Annual Grant, if any shall (i) be issued in accordance with the Plan, (ii) be evidenced by and subject to an award agreement entered into by Executive and the Board is hereby expressly vested with Company, and (iii) vest as to (A) one-third of the authority Restricted Stock Units on the first anniversary of the respective Date of Grant (or, if earlier, upon a Change in Control (as defined in the Plan)), (B) one-third of the Restricted Stock Units on the second anniversary of the respective Date of Grant (or, if earlier, upon a Change in Control), and (C) one-third of the Restricted Stock Units on the third anniversary of the respective Date of Grant Date (or, if earlier, upon a Change in Control), in each case, subject to Executive's continued employment through the applicable vesting date (except as provided below). 5. Employee Benefits During the Employment Period, Executive (and, to the full extent provided by law, now or hereafter, to adopt any such resolution or resolutions.

#### Section 4.3 Common Stock.

##### (a) Voting.

(i) Except as otherwise required by law or this Third Amended eligible, Executive's dependents and Restated Certificate (including any Preferred Stock Designation), the holders of the Common Stock shall exclusively possess all voting power with respect to the Corporation.

(ii) Except as otherwise required by law or this Third Amended and Restated Certificate (including any Preferred Stock Designation), the holders of shares of Common Stock beneficiaries) shall be entitled to one vote participate in any defined contribution plan, any insurance program and any medical and other health benefit plan, in each case, sponsored by the Company for each its employees on terms and conditions set forth in such share on each matter properly submitted programs and plans (as amended from time to the stockholders on which the holders time). 6. Expenses; Vacation (a) Business Travel, Lodging, etc. The Company shall reimburse Executive for reasonable business, travel, lodging, meal and other reasonable expenses incurred by Executive in connection with Executive's performance of the Common Stock are entitled to vote.

(iii) Except as otherwise required by law or this Third Amended and Restated Certificate (including any Preferred Stock Designation), at any annual or special meeting of the stockholders of the Corporation, holders of the Common Stock shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Notwithstanding the foregoing, except as otherwise required by law or this Third Amended and Restated Certificate (including any Preferred Stock Designation), holders of shares of Common Stock shall not be entitled to vote on any amendment to this Third Amended and Restated Certificate (including any amendment to any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series of Preferred Stock, are entitled exclusively, either separately or together services hereunder in accordance with the holders of one or more other such series, Company's expense policy applicable to vote thereon pursuant its senior level executives as in effect from time to this Third Amended and Restated Certificate (including any Preferred Stock Designation) or time. (b) Vacation. During the DGCL.

(b) Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding series of the Preferred Stock, the holders of shares of Common Stock Employment Period, Executive shall be entitled to receive such dividends and other distributions (payable paid personal time off in cash, property or capital stock of accordance with the Corporation) when, Company's paid personal time off policy applicable to its employees as and if declared thereon by the Board in effect from time to time out time. 7. Termination of any assets Employment (a) Termination Due to Death or funds of Disability. During the Corporation legally available therefor and Employment Period, Executive's employment shall share equally on a per share basis in such dividends and distributions.

(c) Liquidation, Dissolution or Winding Up of the Corporation. Subject to applicable law and the rights, if any, of the holders of any outstanding series of the Preferred Stock, automatically terminate in the event of Executive's death, and may be terminated by the Company due to Executive's Disability (as defined below). For the purposes of this Agreement, "Disability" shall mean a physical or mental disability that prevents the performance by Executive of Executive's essential duties under this Agreement for a continuous period of 180 days or longer, or for 360 days or more in any voluntary 24-month period; provided, that, the Company will comply with all obligations to provide reasonable accommodation of any disability of Executive consistent with applicable law.



slide4



4 (b) Termination by the Company. During the Employment Period, the Company may terminate Executive's employment with the Company with **involuntary liquidation, dissolution** without Cause. For purposes of this Agreement, "Cause" shall mean (i) any failure by Executive to perform Executive's material duties hereunder (other than any such breach **winding up** failure due to Executive's physical or mental illness or legally protected leave of absence); (ii) any failure by Executive to cooperate, if reasonably requested by the Company, with any investigation or inquiry into Executive's or the Company's business practices, whether internal or external, including, but not limited to, Executive's refusal to be deposed or to provide truthful testimony at any trial or inquiry that has caused or is reasonably expected to result in material injury to the Company or any of its affiliates; (iii) Executive engaging in fraud, willful misconduct, gross negligence or dishonesty that has caused or is reasonably expected to result in material injury to the Company or any of its affiliates; (iv) any breach by Executive of any fiduciary duty owed to the Company or any of its affiliates that has caused or is reasonably expected to result in material injury to the Company or any of its affiliates; (v) Executive's conviction of, or entering a plea of guilty or nolo contendere to, a crime that constitutes a felony; or (vi) any material breach by Executive of any of Executive's obligations hereunder or under any other written agreement or covenant with the Company or any of its affiliates that has caused or is reasonably expected to result in material injury to the Company or any of its affiliates; provided, that, for each of subparts (i), (ii), (iv), and (vi) above, the Company will provide Executive with (x) written notice specifying such alleged failure or breach and (y) 60 days to cure. (c) Termination by Executive. During the Employment Period, Executive may terminate Executive's employment with the Company with or without Good Reason. For purposes of this Agreement, "Good Reason" shall mean a termination by Executive of Executive's employment hereunder if (i) any **Corporation**, following events occur without Executive's consent, (ii) within 90 days **payment or provision for payment** Executive learns **debts** occurrence of such event; Executive notifies the Company in writing that such event has occurred describing such event in reasonable detail **demanding cure**, and (iii) such event is not cured within 30 days after Executive so notifies the Company. (A) a material diminution in Executive's authority, duties or responsibilities that Executive has on the date hereof or may subsequently acquire in accordance with Section 2(b). (B) a material adverse change in the reporting structure applicable to Executive. (C) a material reduction in the rate of Base Salary or the target annual bonus opportunity. (D) the Company's failure to obtain an agreement from any successor to the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no succession had taken place, except where such assumption occurs by operation of law. or (F) any material breach by the Company of any of its material obligations hereunder. (d) Notice of Termination. Any termination of Executive's employment by the Company pursuant to Section 7(a) (other than in the event of Executive's death), or Section 7(b), or by Executive pursuant to Section 7(c), shall be communicated by a written Notice of Termination addressed to the **liabilities** party to this Agreement. A "Notice of Termination" shall mean a notice stating that Executive's employment with the Company has been or will be terminated. (e) Date of Termination. As used in this Agreement, the term "Date of Termination" shall mean (i) if Executive's employment is terminated by Executive's death, the date of Executive's death; (ii) if Executive's employment is terminated by the Company pursuant to



slide5

5 Section 7(a) due to Executive's Disability, 30 days after the date on which the Notice of Termination is given; provided, that, if Executive shall have returned to the performance of Executive's duties on a full-time basis during such 30-day period, such Notice of Termination shall be of no force or effect; (ii) if Executive's employment is terminated by the Company for Cause or by Executive for Good Reason, the date any applicable cure period expires (and, if there is no applicable cure period, the date specified in the Notice of Termination); provided, that if a party is entitled to cure the nature of such termination and so cures prior to the expiration of the applicable cure period, the date specified in the Notice of Termination shall be of no force or effect; and (iv) if Executive's employment is terminated by the Company for any other reason, the date specified in the Notice of Termination (which shall be 60 days after the date of such notice) and, if no such notice is given, 60 days after the date of termination of employment; provided, that, if notice of less than 60 days is provided, the Company will provide Executive with full pay and benefits in lieu of notice for an amount of time equal to (A) such 60-day period, less (B) the actual number of days' notice provided to Executive. (f) Payments Upon Certain Terminations. (i) Termination Without Cause or for Good Reason. If (A) the Company shall terminate Executive's employment without Cause as set forth in Section 7(b) or (B) Executive shall terminate Executive's employment for Good Reason as set forth in Section 7(c), in each case, during the Employment Period, the Company shall pay or provide to Executive: (A) any accrued and unpaid Base Salary and vacation earned through the Date of Termination (including any pay in lieu of notice), which shall be paid on the tenth day after the Date of Termination (or, if such day is not a business day, the next business day after such day); plus (B) as liquidated damages in respect of claims based on provisions of this Agreement and provided that Executive executes and delivers (and does not revoke) a general release of all claims in the form attached as Exhibit A hereto within 60 days following the Date of Termination; (i) twelve months' Base Salary which shall be paid in periodic installments on the Company's regular payroll dates, beginning with the next payroll date immediately following the expiration of the 60th day following the Date of Termination; plus (ii) if the applicable performance targets have been achieved in accordance with the Bonus Plan for the year of termination (as determined by the Board (or applicable committee thereof) following the end of such year), a prorated bonus under the Bonus Plan for the year of termination in an amount equal to (A) the bonus Executive would have otherwise received under the Bonus Plan for the year of termination, multiplied by (B) a fraction, the numerator of which is the number of days Executive was employed by the Company during such calendar year and the denominator of which is 365, payable in accordance with the Bonus Plan; plus (iii) full vesting of all equity awards (other than any awards subject to performance-based vesting), including, without limitation, the Restricted Units.



slide6

6 granted pursuant to Section 4(b) above, in each case, to the extent not yet vested (collectively, Section 7(f)(i)(B)(I) through (III), the "Severance"). (ii) Termination for Any Other Reason. If Executive's employment is terminated for any reason other than those specified in Section 7(f)(i) during the Employment Period, the Company shall pay Executive on the tenth day after the Date of Termination (or, if such day is not a business day, the next business day after such day), any accrued and unpaid Base Salary and vacation earned through the Date of Termination. (iii) Effect of Termination on Other Plans and Programs. In the event that Executive's employment with the Company is terminated for any reason, Executive shall be entitled to receive all the remaining assets amounts payable and benefits accrued under any otherwise applicable plan, policy, program or practice of the Corporation available for distribution to its stockholders, ratably Company in proportion which Executive was a participant immediately prior to the number Date of shares of Common Stock held by them.

Section 4.4 Rights and Options. The Corporation has the authority to create and issue rights, warrants and options entitling the holders thereof to acquire from the Corporation any shares of its capital stock of any class or classes, with such rights, warrants and options to be evidenced by or in instrument(s) approved by the Board. The Board is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants or options; provided, however, that the consideration to be received for any shares of capital stock issuable upon exercise thereof may not be less than the par value thereof.

## ARTICLE V BOARD OF DIRECTORS

**Section 5.1 Board Powers.** The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Third Amended and Restated Certificate or the Bylaws of the Corporation ("Bylaws"), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Third Amended and Restated Certificate and any Bylaws adopted by the stockholders; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

### **Section 5.2 Number, Election and Term.**

(a) The number of directors of the Corporation, other than those who may be elected by the holders of one or more series of the Preferred Stock voting separately by class or series, and subject to the terms of the Director Nomination Agreement, dated as of November 16, 2020, by and among the Corporation and the other parties thereto (as it may be amended and/or restated, the "Director Nomination Agreement"), shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the Board.

(b) Subject to Section 5.5 hereof, the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II and Class III. The Board is authorized to assign members of the Board already in office to Class I ("Class I Directors"), Class II ("Class II Directors") or Class III ("Class III Directors"). The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the Effective Time, the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the Effective Time, and the term of the initial Class III Directors shall expire at the third annual meeting of the stockholders of the Corporation following the Effective Time. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the Effective Time, each of the successors elected to replace the class of directors whose term expires at that annual meeting shall be elected for a three-year term or until the election and qualification of their respective successors in office, subject to their earlier death, resignation or removal. Subject to Section 5.5 hereof, if the number of directors that constitutes the Board is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors constituting the Board shorten the term of any incumbent director. Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. The Board is hereby expressly authorized, by resolution or resolutions thereof, to assign members of the Board already in office to the aforesaid classes (and therefore such classification) at the Effective Time, in each case, Termination in accordance with the DGCL terms thereof; provided, that, if Executive's employment is terminated without Cause or for Good Reason, Executive shall not be entitled to receive any payments or benefits under any such plan, policy, program or practice providing any severance or incentive compensation and the terms provisions of this Section 7 shall supersede the provisions of any such plan, policy, program or practice. (g) Resignation Upon Termination. Effective as of the Director Nomination Agreement.

(c) Unless date of Executive's termination of employment with the Company, Executive shall resign, in writing, from all positions then held by Executive with the Company and its affiliates unless otherwise requested by the Company and agreed to by Executive. (h) Cessation of Professional Activity. Upon delivery of a Notice of Termination by any party or a notice pursuant to Section 2(a), the Company may relieve Executive of Executive's responsibilities described in Section 2(b) and require Executive to immediately cease all professional activity on behalf of the Company, in any such case, without such suspension or cessation constituting a termination by the Company without Cause or providing Executive with grounds to terminate Executive's employment for Good Reason. 8. Restrictive Covenants (a) Unauthorized Disclosure. During the Employment Period and following any termination thereof, without the prior written consent of a duly authorized representative of the Company except as provided for in Section 9(g) and except to the extent required by an order of a court having competent jurisdiction or under subpoena from an appropriate government agency, in which event, Executive shall use Executive's best efforts to consult with the Company prior to responding to any such order or subpoena, and except as authorized in performance of Executive's duties hereunder, Executive shall not use or disclose any confidential or proprietary trade secrets, customer lists, drawings, designs, marketing plans, management organization information (including, but not limited to, data and other information relating to the Company or any subsidiary thereof (the "Company Group"), or to the members of the boards of directors of the Company Group, or to the management of the Company Group), operating policies or manuals, business plans, financial records, or other financial, commercial, business or technical information (i) relating to the Company Group or (ii) that the Bylaws shall so require, Company Group may receive belonging to customers or others who do business with the election of directors need not be by written ballot. Company Group (collectively, "Confidential Information") to

### **Section 5.3 Newly Created Directorships and Vacancies. Subject**

slide7



7 any third Person (defined below) unless such Confidential Information has been previously disclosed to the terms of the Director Nomination Agreement and to Section 5.5 hereof, newly created directorships resulting from an increase public generally or is in the number public domain (in each case, other than by reason of directors and any vacancies Executive's breach of this Section 8(a)). (b) Non-Solicitation of Employees. During the period beginning on the Board resulting from death, resignation, retirement,

---

disqualification, removal date hereof and ending twelve months after the termination of Executive's employment with the Company (the "Restriction Period"), Executive shall not, directly or indirectly, for Executive's own account or for the account of any other natural person, partnership, limited liability company, association, corporation, company, trust, business trust, governmental authority or other cause may be filled solely and exclusively by entity (each, a majority vote of the remaining directors then "Person") in office, even if less than a quorum or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or jurisdiction in which the vacancy occurred and until his Company has commenced or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

Section 5.4 **Removal.** Subject to the terms documented plans, as of the Director Nomination Agreement and termination of Executive's employment with the Company, to Section 5.5 hereof, any commence operations during the Employment Period, (i) solicit for employment, employ or all otherwise interfere with the relationship of the directors may be removed from office at Company Group with any time, but only for cause and only by natural person throughout the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Notwithstanding the foregoing, in the event that a stockholder party to the Director Nomination Agreement provides notice to the Corporation to remove a director designated by such stockholder pursuant to the terms of the Director Nomination Agreement, whether such removal is with or without cause, the Corporation may take all steps necessary to cause such removal, to the extent permitted by applicable law, and such director may be removed with or without cause.

Section 5.5 **Preferred Stock - Directors.** Notwithstanding any other provision of this Article V, and except as otherwise required by law, whenever the holders of one or more series of the Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of the Preferred Stock as set forth in this Third Amended and Restated Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this Article V unless expressly provided by such terms.

Section 5.6 **Quorum.** A quorum for the transaction of business by the directors shall be set forth in the Bylaws.

## **ARTICLE VI BYLAWS**

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power and is expressly authorized to adopt, amend, alter or repeal the Bylaws, provided, however, that so long as the Director Nomination Agreement remains in effect, the Board shall not approve any amendment, alteration or repeal of any provision of the Bylaws, or the adoption of any new bylaw of the Corporation, that would be contrary to or inconsistent with the terms of the Director Nomination Agreement. The affirmative vote of a majority of the Board shall be required to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by this Third Amended and Restated Certificate (including any Preferred Stock Designation), the affirmative vote of the holders of at least 66 2/3% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the Bylaws; and provided further, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted. Notwithstanding the foregoing, so long as the Director Nomination Agreement remains in effect, neither the Board nor the stockholders of the Corporation may not approve any amendment, alteration or repeal of any provision of the Bylaws, or the adoption of any new bylaw of the Corporation, that would be contrary to or inconsistent with the terms of the Director Nomination Agreement without the written consent of the parties to the Director Nomination Agreement. Notwithstanding the foregoing,

nothing in the Bylaws shall be deemed to limit the ability of the parties to the Director Nomination Agreement to amend, alter or repeal any provision of the Director Nomination Agreement pursuant to the terms thereof; provided that no amendment to the Director Nomination Agreement (whether or not such amendment modifies any provision of the Director Nomination Agreement to which the Bylaws are subject) shall amend the Bylaws.

## ARTICLE VII MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

**Section 7.1 Annual Meetings.** Except as otherwise expressly provided by law, the annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such date, time and place, if any, as shall be determined exclusively by resolution of the Board in its sole and absolute discretion.

**Section 7.2 Special Meetings.** Subject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, Chief Executive Officer, or the Board pursuant to a resolution adopted by a majority of the Board, and the ability of the stockholders to call a special meeting is hereby specifically denied. Except as provided in the foregoing sentence, special meetings of stockholders may not be called by another person or persons.

**Section 7.3 Advance Notice.** Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

**Section 7.4 No Action by Written Consent.** Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected by a duly called annual or special meeting of such stockholders and may not be effected by written consent of the stockholders of the Corporation.

## ARTICLE VIII LIMITED LIABILITY; INDEMNIFICATION

**Section 8.1 Limitation of Director Liability.** To the full extent permitted by the DGCL and any other applicable law currently or hereafter in effect, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

### Section 8.2 Indemnification and Advancement of Expenses.

(a) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party employed by or is threatened otherwise engaged to be made a party to perform services for the Company Group at any time (a) during the Employment Period, in the case of such prohibited activity occurring during such time, or is otherwise involved (b) during the twelve month period preceding such prohibited activity, in the case of such prohibited activity occurring during the Restriction Period but after the date of Executive's termination of employment with the Company, in each case, other than any threatened, pending such solicitation or completed action, suit employment on behalf of or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation Company Group during the Employment Period; or (ii) induce any employee of the Company Group to engage in any activity which Executive is prohibited from engaging in under any of this Section 8 or to terminate such employee's employment with the Company. Notwithstanding anything to the contrary, this provision shall not be interpreted or construed as prohibiting or restricting Executive from performing professional duties as a director, officer, employee lawyer or agent providing professional services as a lawyer during the Restriction Period for or to any Person which may otherwise engage in the activities described in this Section 8(b). (c) Non-Solicitation of another corporation Business Relationships. During the Restriction Period, Executive shall not, directly or indirectly, for Executive's own account or for the account of any other Person, in any jurisdiction in which the Company Group has commenced or has made plans to commence operations, solicit, interfere with, or otherwise attempt to establish any business relationship of a partnership, joint venture, trust, nature that is competitive with the business or relationship of the Company Group with any Person throughout the world which is or was a customer, client, distributor, supplier or vendor of the Business of the Company Group (x) at any time during the Employment Period (in the case of such prohibited activity occurring during such time) or (y) during the twelve month period preceding such prohibited activity (in the case of such prohibited activity occurring during the Restriction Period but after the date of Executive's termination of employment with the Company), other enterprise than any such activity on behalf of or nonprofit entity, including service at the request of the Company Group during the Employment Period. Notwithstanding anything to the contrary, this provision shall not be interpreted or construed as prohibiting or restricting Executive from performing professional duties as a lawyer or providing professional services as a lawyer during the Restriction Period for or to any Person which may otherwise engage in the activities described in this Section 8(c). (d) Works for Hire. (i) Generally. Executive agrees that the Company shall own all right, title and interest (including, but not limited to, patent rights, copyrights, trade secret rights and other rights throughout the world) in any inventions, works of authorship, ideas or information made or



Slide8



8 conceived or reduced to practice, in whole or in part, by Executive (either alone or with others) during the Employment Period (collectively "Developments"); provided, however, that the Company shall not own Developments for which no equipment, supplies, facility, trade secret information or Confidential Information of the Company was used and which were developed entirely on Executive's time, and (A) which do not relate (I) to the business of the Company Group or (II) to the actual or demonstrably anticipated research or development of the Company Group, and (B) which do not result from any work performed by Executive for the Company. (ii) Disclosure; Assignment. Subject to Section 8(d)(i), Executive will promptly and fully disclose to the Company, or any persons designated by it, any and all Developments made or conceived or reduced to practice or learned by Executive, either alone or jointly with others during the Employment Period. Executive hereby assigns all right, title and interest in and to any and all of these Developments to the Company. Executive shall further assist the Company, at the Company's expense, to further evidence, record, and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights specified to be so owned or assigned. Executive hereby irrevocably designates and appoints the Company and its agents as attorneys-in-fact to act for and on Executive's behalf to execute and file any document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Executive. (iii) Copyright Act; Moral Rights. In addition, and not in contravention of Section 8(d)(i) or Section 8(d)(ii), Executive acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of employment and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 USC §101). To the extent allowed by law, this Section 8(d) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively, "Moral Rights"). To the extent Executive retains any such Moral Rights under applicable law, Executive hereby waives such Moral Rights and consents to any action consistent with the terms of this Agreement with respect to an employee benefit plan (any such person, an "indemnitee"), whether Moral Rights, in each case, to the basis full extent of such applicable law. Executive will confirm any such waivers and consents from time to time as requested by the Company. (iv) Authorized Disclosure. Section 1833(b) of Title 18 of the United States Code states "An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (i) is made (a) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney and (b) solely for the purposes of reporting or investigating a suspected violation of law or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is alleged action made under seal." Accordingly, the Company and Executive have the right to disclose in confidence trade secrets to Federal, State, and local government officials, or to an official capacity attorney, for the sole purpose of reporting or investigating a suspected violation of law. The Company and Executive also have the right to disclose trade secrets in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal and protected from public disclosure. Nothing in this Agreement is intended to conflict with Section 1833(b) of Title 18 of the United States Code or create liability for disclosures of trade secrets that are expressly allowed by Section 1833(b) of Title 18 of the United States Code.



Slide9

9 (e) Non disparagement. Except as

a director, officer, employee provided for in Section 8(g), Executive agrees that Executive shall neither, directly or agent, indirectly, engage in any conduct or make any statement (including through social media) disparaging or criticizing in any way the Company Group, or any of their personnel, nor engage in any other capacity while serving as such a director, officer, employee conduct or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees and expenses, judgments, fines, ERISA excise taxes and penalties and amounts paid make any other statement that could be reasonably expected to impair the goodwill of the Company Group, or the reputation of the Company Group, in settlement) reasonably incurred or suffered by such indemnitee in connection with such proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay any and all expenses (including, without limitation, attorneys' fees and expenses) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, each case, except to the extent required by applicable law, such payment and then only after consultation with the Company to the extent possible, or to enforce the terms of expenses this Agreement. The Company agrees that it shall not, and the Company agrees that is shall instruct its senior executives and officers to not, directly or indirectly, engage in advance any conduct or make any statement (including through social media) disparaging or criticizing in any way Executive, nor engage in any other conduct or make any other statement that could be reasonably expected to impair the goodwill of Executive, or the reputation of Executive, in each case, (i) except to the extent required by law, and then only after consultation with Executive to the extent possible, (ii) to enforce the terms of this Agreement, or (iii) from discussing Executive in connection with normal performance evaluations. (f) Return of Documents. In the event of the final disposition termination of Executive's employment, Executive shall promptly deliver to the Company (i) all property of the proceeding shall be made only upon delivery to the Corporation Company Group then in Executive's possession; and (ii) all documents and data of an undertaking, by or on behalf any nature and in whatever medium of the indemnitee, Company Group, and Executive shall not take with Executive any such property, documents or data or any reproduction thereof, or any documents containing or pertaining to repay, without interest, all amounts so advanced if it shall ultimately be determined by final judicial decision from which there any Confidential Information. (g) Confidentiality of Agreement; Governmental Agency

Exception. The parties to this Agreement agree not to disclose its terms to any Person, other than their attorneys, accountants, financial advisors or, in Executive's case, members of Executive's immediate family or, in the Company's case, for any reasonable purpose that is no further right reasonably related to appeal its business operations; provided, that the indemnitee is not entitled to be indemnified for such expenses under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2: (i) shall be contract rights; (ii) shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; and (iii) 8(g) shall not be conditioned upon construed to prohibit any prior determination that an indemnitee is entitled to indemnification under this Section 8.2 with respect to the related proceeding. Notwithstanding the foregoing provisions of this Section 8.2(a), except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 8.2 shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Third Amended and Restated Certificate, the Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Third Amended and Restated Certificate inconsistent with this Section 8.2, shall, unless otherwise disclosure required by law be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at proceeding to enforce the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent terms and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

## ARTICLE IX CORPORATE OPPORTUNITY

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity pursuant to Section 122(17) of the DGCL. As used herein, an "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries or (ii) any person with the right to designate any such director pursuant to the Director Nomination Agreement (or any of such person's Affiliates or its or their respective successors,

principals, directors, officers, members, managers or employees) (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, such Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation, and such opportunity is one the Corporation is legally and contractually permitted to undertake and would otherwise be reasonable for the Corporation to pursue. Any amendment, repeal or modification of the foregoing provisions conditions of this Article IX shall not adversely affect any right or protection of any Covered Person existing at the time of such amendment, repeal or modification. For purposes of this Article IX, "Affiliate" means, with respect to any person, any other person that controls, is controlled by, or is under common control with such person.

## ARTICLE X AMENDMENT OF THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Third Amended and Restated Certificate (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force that may be added or inserted, in the manner now or hereafter prescribed by this Third Amended and Restated Certificate and the DGCL; and, except as set forth in Article VIII, all rights, preferences and privileges of whatever nature herein conferred upon stockholders, directors or any other persons by and pursuant to this Third Amended and Restated Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article X. Agreement. Notwithstanding anything to the contrary contained in this Third Amended Agreement, this Agreement does not limit Executive's ability to communicate with any government agency or file, testify or participate in or otherwise assist in a proceeding relating to, or report, an alleged violation of any federal, state or municipal law relating to fraud or any rule or regulation of the Securities and Restated Certificate Exchange Commission ("SEC"), the Commodity Futures Trading Commission ("CFTC") or any self-regulatory organization, or make other disclosures that are protected under the whistleblower provisions of federal or state law

or otherwise participate in any investigation or proceeding that may be conducted by any government agency (including the SEC or CFTC), including providing documents or other information, without notice to the Company or its affiliates. This Agreement does not limit Executive's right to receive an award for information provided to any government agencies. 9. Certain Acknowledgments Executive acknowledges and agrees that Executive will have a prominent role in the development of the goodwill of the Company Group, and has and will establish and develop relations and contacts with the principal business relationships of the Company Group in the United States of America and the rest of the world, all of which constitute valuable goodwill of, and could be used by Executive to compete unfairly with, the Company Group and that (i) in the



slide10



10. course of Executive's employment with the Company, Executive will obtain confidential and proprietary information and trade secrets concerning the business and operations of the Company Group in the United States of America and the rest of the world that could be used to compete unfairly with the Company Group, (ii) the covenants and restrictions contained in Section 8 are intended to protect the legitimate interests of the Company Group in their respective goodwill, trade secrets and other confidential and proprietary information; and (iii) Executive desires to be bound by such covenants and restrictions. 10. Entire Agreement This Agreement constitutes the entire agreement between the Company and Executive with respect to the subject matter hereof, and supersedes all undertakings and agreements, whether oral or in writing, previously entered into by the Company and Executive with respect thereto. All prior correspondence and proposals (including, but not limited to, summaries of proposed terms) and all prior offer letters, promises, representations, understandings, arrangements and agreements relating to such subject matter (including, but not limited to, those made to or with Executive by any other person) are merged herein and superseded hereby. 11. General Provisions (a) Binding Effect; Assignment. This Agreement shall be binding on and inure to the benefit of the Company and its respective successors and permitted assigns. This Agreement shall also be binding on and inure to the benefit of Executive and Executive's heirs, executors, administrators, and legal representatives. This Agreement shall not be assignable by any party hereto without the prior written consent of the other parties hereto, except as provided pursuant to this Section 11(a). The Company may affect such an assignment without prior written approval of Executive upon the transfer of all or substantially all of its business and/or assets (by whatever means). (b) Governing Law; Waiver of Jury Trial. (i) Governing Law; Consent to Jurisdiction. This Agreement shall be governed in all respects including as to interpretation, substantive effect and enforceability, by the internal laws of the State of New Jersey, without regard to conflicts of laws provisions thereof that would require application to the laws of another jurisdiction other than those that mandatorily apply. Each party hereby irrevocably submits to the jurisdiction of the courts of the State of New Jersey and the federal courts of the United States of America located in the District of New Jersey solely in respect of the interpretation and enforcement of the provisions of this Agreement and in respect of the transactions contemplated hereby. Each party hereby waives and agrees not to assert, as a defense in any action, suit or proceeding for the interpretation and enforcement hereof, or in respect of any such transaction, that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts. Each party hereby consents to and grants any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that the mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 11(f) or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.



slide11

11. (i) Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this Agreement, **Bylaws**, breach, termination or validity of this Agreement, or the transactions contemplated by this Agreement. Each party certifies **notwithstanding** acknowledges **a lesser percentage** (A) no representative, agent **vote** attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver; (B) each such party understands and has considered the implications of this waiver; and (C) each such party makes this waiver voluntarily. (c) Taxes. All amounts payable and benefits provided hereunder shall be subject to any and all applicable taxes, as required by applicable Federal, state, local and foreign laws and regulations. (d) Amendments; Waiver. No provision of this Agreement **modified, waived or discharged unless such modification, waiver or discharge is approved by a Person authorized by the Company and is agreed to in writing by Executive and, in the case of any such modification, waiver or discharge affecting the rights or obligations of the Company, is approved by a Person authorized thereby. No waiver by any party hereto at any time of any breach by any other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No waiver of any provision of this Agreement shall be implied from any course of dealing between or among the parties hereto or from any failure by any party hereto to assert its rights hereunder on any occasion or series of occasions.** (e) Legal Advice; Severability; Blue Pencil. Executive acknowledges that Executive has been advised to seek independent legal counsel for advice regarding the effect of the provisions of this Agreement, and has either obtained such advice of independent legal counsel, or has voluntarily and without compulsion elected to enter into and be bound by the terms of this Agreement without such advice of independent legal counsel. In the event that any one or more of the provisions of this Agreement shall be or become invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not be affected thereby. Executive and the Company agree that the covenants contained in Section 8 are reasonable covenants under the circumstances, and further agree that if, in the opinion of any court of competent jurisdiction such covenants are not reasonable in any respect, such court shall have the right, power and authority to excise or modify such provision or provisions of these covenants as to the court shall appear not reasonable and to enforce the remainder of these covenants as so amended. (f) Notices. Any notice or other communication required or to be delivered under this Agreement shall be (A) in writing; (B) delivered personally, by facsimile, by courier service or by certified or registered mail, first class postage prepaid and return receipt requested; (C) deemed to have been received on the date of delivery or, if so mailed, on the third business day after the mailing thereof; and (D) if so mailed or delivered by courier service, addressed as follows (or to such other address as the party entitled to notice shall hereafter designate in accordance with the terms hereof).



slide12

12. (i) If to the Company: Eos Energy Enterprises, Inc. 3920 Park Avenue Edison, NJ 08820 Attn: Department of People Email: rdesasi@eos.com and legal@eos.com (ii) If to Executive, at Executive's residential address as currently on file with the Company. (g) Survival. The Company and Executive hereby agree that certain provisions of this Agreement, including, but not limited to, Sections 8, 9, 10 and 11, shall survive the expiration of the Employment Period in accordance with their terms. (h) Further Assurances. Each party hereto agrees with the other party hereto that it will cooperate with such other party and will execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and will take such other actions, as such other party may reasonably request to effectuate the provisions and purpose of this Agreement. (i) Section 409A. (i) The parties intend that any amounts payable hereunder comply with or are exempt from Section 409A ("Section 409A") of the Internal Revenue Code of 1986, as amended (the "Code") (including under Treasury Regulation §§ 1.409A-1(b)(4) ("short-term deferrals") and (b)(9) ("separation pay plans," including the exceptions under subparagraph (iii) and subparagraph (v)(D)) and other applicable provisions of Treasury Regulation §§ 1.409A-1 through A-6). For purposes of Section 409A, each of the payments that may be made under this Agreement shall be deemed to be a separate payment for purposes of Section 409A. This Agreement shall be administered, interpreted, and construed in a manner that does not result in the imposition of additional taxes, penalties, or interest under Section 409A. The Company and Executive agree to negotiate in good faith to make amendments to the Agreement, as the parties mutually agree are necessary or desirable to avoid the imposition of taxes, penalties, or interest under Section 409A. Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A. With respect to the time of payments of any amounts under the Agreement that are "deferred compensation" subject to Section 409A, references in the Agreement to "termination of employment" (and substantially similar phrases) shall mean "separation from service" within the meaning of Section 409A. For the avoidance of doubt, it is intended that any expense reimbursement made to Executive hereunder shall be exempt from Section 409A. Notwithstanding the foregoing, if any expense reimbursement made hereunder shall be determined to be "deferred compensation" within the meaning of Section 409A, then (a) the amount of the indemnification payment or expense reimbursement during one taxable year shall not affect the amount of the expense reimbursement during any other taxable year, (b) the expense reimbursement shall be made on or before the last day of Executive's taxable year following the



slide13



13 year in which the expense was incurred and (c) the right to expense reimbursement hereunder shall not be subject to liquidation or exchange for another benefit. (i) In the event that Executive is a "specified employee" (as described in Section 409A), and any payment or benefit payable pursuant to this Agreement constitutes deferred compensation subject to the six-month delay requirement described in Section 409A(2)(b), then no such payment or benefit shall be made before six months after Executive's "separation from service" (as described in Section 409A) (or, if earlier, the date of the Executive's death). Any payment or benefit delayed by reason of the prior sentence shall be paid out or provided in a single lump sum at the end of such required delay period in order to catch up to the original payment schedule. (ii) The parties hereto intend that the Severance payments up to two times the dollar limit in effect under Section 401(a)(17) of the Code for the year in which Executive's "separation from service" (as described in Section 409A) occurs shall be exempt from Section 409A to the extent permitted under Treasury Regulation Section 1.409A-1(b)(9)(iii) (the "two-times/two-year" exemption). In determining which installments of Severance are taken into account in applying the two-times/two-year exemption, any other exemptions from Section 409A (including the short-term deferral exception, if applicable) shall be taken into account first and the immediately following installments shall then be applied toward the two-times/two-year exception (up to the applicable dollar limit). (i) Section 280G. (i) Notwithstanding anything to the contrary contained in this Agreement or otherwise, to the extent that any payment, distribution or acceleration of vesting to or for the benefit of Executive by the Company (within the meaning of Section 280G of the Code and the regulations thereunder), whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (the "Total Payments"), is or will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), then the Total Payments shall be reduced (but not below zero) to the Safe Harbor Amount (as defined below) if and to the extent that a reduction in the Total Payments would result in Executive retaining a larger amount, on an after-tax basis (taking into account federal, state and local income and employment taxes and the Excise Tax), than if Executive received the entire amount of such Total Payments in accordance with their existing terms (taking into account federal, state, and local income and employment taxes and the Excise Tax). For purposes of this Agreement, the term "Safe Harbor Amount" means the largest portion of the Total Payments that would result in no portion of the Total Payments being subject to the Excise Tax. To effectuate the foregoing, the Company shall reduce or eliminate the Total Payments by first reducing or eliminating the portion of the Total Payments which are payable in cash and then by reducing or eliminating non-cash payments, in each case, starting with the payments to be made farthest in time from the Determination (as defined below). (ii) The determination of whether the Total Payments shall be reduced as provided in Section 11(f)(i) and the amount of such reduction shall be made at the Company's expense by an accounting firm selected by Company from among the 10 largest accounting firms in the United States or by qualified independent tax counsel (the "Determining Party"); provided, that Executive shall be given advance notice of the Determining Party selected by the Company.



slide14

14 and shall have the opportunity to reject the selection, within two business days of being notified of the selection, on the basis of that Determining Party's having a conflict of interest or other reasonable basis, in which case the Company shall select an alternative auditing firm among the 10 largest accounting firms in the United States or alternative independent qualified tax counsel, which shall become the Determining Party. Such Determining Party shall provide its determination (the "Determination"), together with detailed supporting calculations and documentation to the Company and Executive, within ten (10) business days of the termination of Executive's employment or at such other time mutually agreed by the Company and Executive. If the Determining Party determines that no Excise Tax is payable by Executive with respect to the Total Payments, it shall furnish Executive with an opinion reasonably acceptable to Executive that no Excise Tax will be imposed with respect to any such payments and, absent manifest error, such Determination shall be binding, final and conclusive upon the Company and Executive. If the Determining Party determines that an Excise Tax would be payable, the Company shall have the right to accept the Determination as to the extent of the reduction, if any, pursuant to Section 11(f)(i), or to have such Determination reviewed by another accounting firm selected by the Company, at the Company's expense. If the two accounting firms do not agree, a third accounting firm shall be jointly chosen by Executive and the Company, in which case the determination of such third accounting firm shall be binding, final and conclusive upon the Company and Executive. (iii) If, notwithstanding any reduction described in this Section 11(f)(ii), the Internal Revenue Service ("IRS") determines that Executive is liable for the Excise Tax as a result of the receipt of any of the Total Payments or otherwise, then Executive shall be obligated to pay back to the Company, within 30 calendar days after a final IRS determination or in the event that Executive challenges the final IRS determination, a final judicial determination, a portion of the Total Payments equal to the "Repayment Amount". The "Repayment Amount" with respect to the payment of benefits shall be the smallest such amount, if any, as shall be required to be paid to the Company so that Executive's net after-tax proceeds with respect to the Total Payments (after taking into account the payment of the Excise Tax and all other applicable taxes imposed on the Payment) shall be maximized. The Repayment Amount shall be zero if a Repayment Amount of more than zero would not result in Executive's net after-tax proceeds with respect to the Total Payments being maximized. If the Excise Tax is not eliminated pursuant to this Section 11(f)(iii), Executive shall pay the Excise Tax. (iv) Notwithstanding any other provision of this Section 11(f), if (i) there is a reduction in the Total Payments as described in this Section 11(f), (ii) the IRS later determines that Executive is liable for the Excise Tax, the payment of which would result in the maximization of Executive's net after-tax proceeds (calculated as if Executive's benefits had not previously been reduced), and (iii) Executive pays the Excise Tax, then the Company shall pay to Executive those payments or benefits which were reduced pursuant to this Section 11(f) as soon as administratively possible after Executive pays the Excise Tax (but not later than March 15 following the calendar year of the IRS determination) so that Executive's net after-tax proceeds with respect to the Total Payments are maximized. (v) If, following a reduction of the Total Payments pursuant to Section 11(f)(i), the Determining Party or a court of competent jurisdiction determines that the Total Payments were reduced to a greater extent than required under Section 11(f), then the Company shall as soon as administratively possible (but not later than by March 15 following the calendar year of such

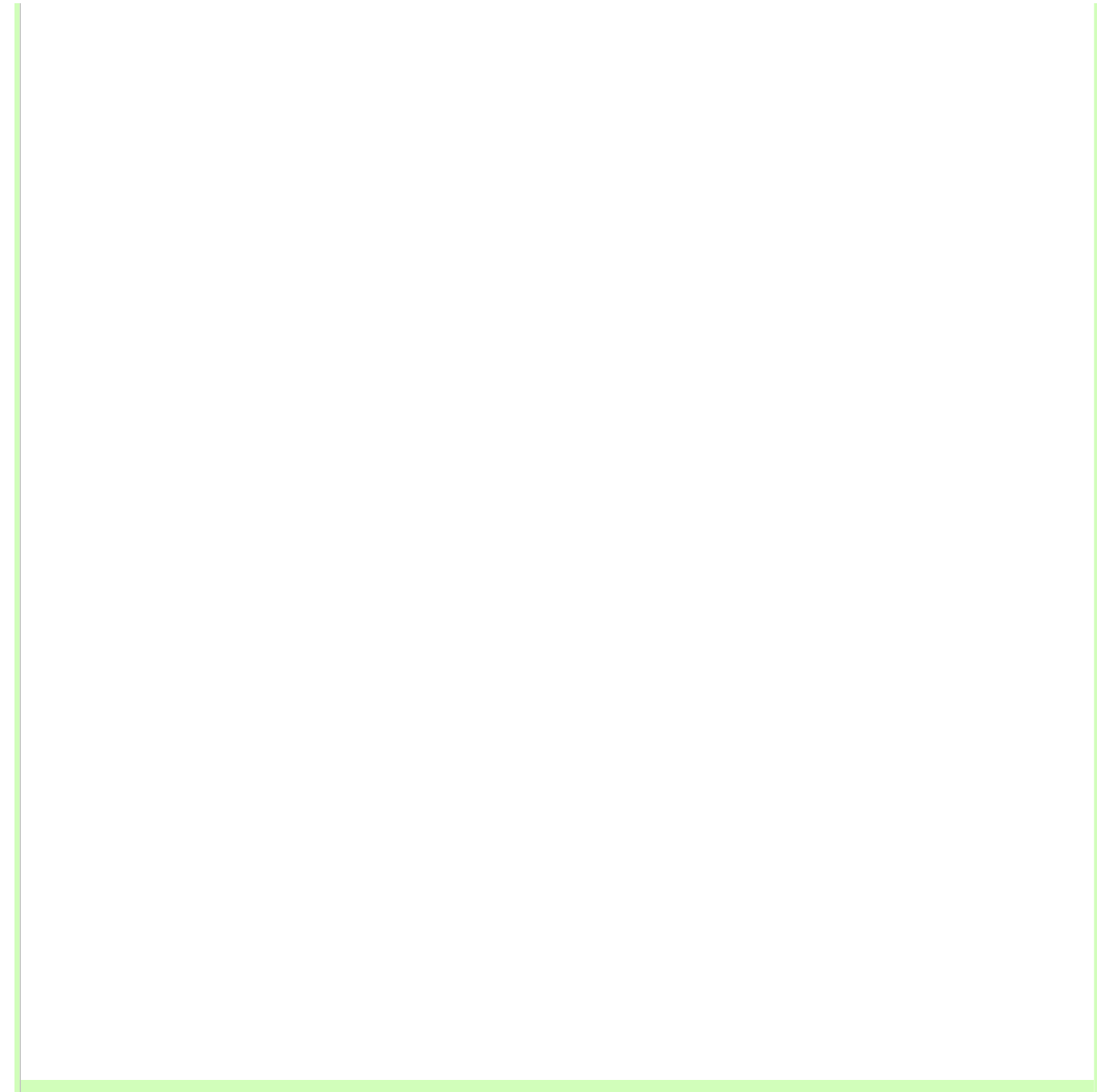


slide15

15 determination) pay the amount of such excess reduction to or for the benefit of Executive, together with interest at the applicable federal rate (as defined in Section 7872(i)(2)(A) of the Code), from the date the amount would have otherwise been paid to Executive until the payment date. (vi) To the extent requested by Executive, the Company shall cooperate with Executive in good faith in valuing, and the Determining Party shall take into account the value of, services provided or to be provided by Executive (including, without limitation, Executive's agreeing to refrain from performing services pursuant to a covenant not to compete or similar covenant, before, on or after the date of a change in ownership or control of the Company (within the meaning of Q&A-2(b) of the final regulations under Section 280G of the Code), such that payments in respect of such services may be considered reasonable compensation within the meaning of Q&A-9 and Q&A-40 to Q&A-44 of the final regulations under Section 280G of the Code and/or exempt from the definition of the term "parachute payment" within the meaning of Q&A-2(a) of the final regulations under Section 280G of the Code in accordance with Q&A-5(a) of the final regulations under Section 280G of the Code. (k) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties hereto agree to accept a signed facsimile copy or "PDF" of this Agreement as a fully binding original. (l) Headings. The section and other headings contained in this Agreement are for the convenience of the parties only and are not intended to be a part hereof or to affect the meaning or interpretation hereof. -- Signature page follows --



slide16



IN WITNESS WHEREOF, the Company has duly executed this Agreement by their authorized representatives, and Executive has hereunto set Executive's hand, in each case effective as of the Commencement Date. EOS ENERGY ENTERPRISES, INC. By: Name: Joe Mastrangelo Title: Chief Executive Officer EXECUTIVE Michael Willis Silberman



slide17



17 EXHIBIT A Form of Release Agreement This Release Agreement (this "Release Agreement") is dated as of [ ], 20[ ], and is entered into by Eos Energy Enterprises, Inc. (the "Company") and [Name of Executive] ("you" or "your") in connection with the termination of your employment with the Company. 1. General Release (a) You, on behalf of yourself and your family, agents, representatives, heirs, executors, trustees, administrators, attorneys, successors and assigns (the "Releasors"), hereby irrevocably and unconditionally release, settle, cancel, acquit, discharge and acknowledge to be fully satisfied, and covenant not to sue the Company and each of its respective past and/or present parents, subsidiaries, affiliates, successors and assigns, and each of their respective predecessors, and past and/or present directors, managers, officers, employees, agents or other representatives, and employee benefit plans of the Company or its affiliates, including, but not limited to, trustees and administrators of these plans, in each case, in their individual and/or representative capacities (collectively, the "Releasees") from any and all claims, contractual or otherwise, demands, costs, rights, causes of action, charges, debts, liens, promises, obligations, complaints, losses, damages and all liability of whatever kind and nature, whether known or unknown, and hereby waive any and all rights that he, she or it may have, from the beginning of time up to and including the time of signing this Release Agreement, or that otherwise may exist or may arise in respect of your employment or separation from employment with the

Company, or is in any way connected with or related to any applicable compensatory or benefit plan, program, policy or arrangement, including, but not limited to, any claims arising under any United States federal, state or local laws or any applicable laws of any other country, including, but not limited to, any and all claims under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974, as amended, and any and all other United States federal, state or local regulations, ordinances or public policies, any common law or equity claims and any applicable laws of any other country, or claims under any policy, agreement, understanding or promise, written or oral, formal or informal, between the Company and any of its affiliates and yourself, now or hereafter recognized, including claims for wrongful discharge, slander and defamation, as well as all claims for counsel fees and costs; provided, that such released claims shall not (i) include any claims to enforce your rights under, or with respect to, this Release Agreement or the severance payments and benefits to be provided under Section 7(f)(i) of your Employment Agreement, dated as of [DATE], by and between you and the Company (the "Employment Agreement"), (ii) include any claims that may arise after the date on which you or the Company signs this Release Agreement, (iii) include any claims that cannot be waived as a matter of law, (iv) include any claims for vested employee benefits, (v) include any right to exercise options or other equity awarded under the Company's 2020 Incentive Plan, as amended from time to time, or (v) be considered a waiver of or otherwise limit your rights in your capacity as an officer of the Company to indemnification, exculpation, or liability or advancement of expenses under the Company's governing documents



slide18

18 or benefits under any directors or officers insurance policy maintained by the Company (the foregoing sub-clauses (i) through (iv) shall collectively be referred to as the "Retained Claims"). (b) The Releasors agree not to bring any action, suit or proceeding whatsoever (including the initiation of governmental proceedings or investigations of any type) against any of the Releasees hereto for any matter or circumstance concerning which the Releasors have released the Releasees under this Release Agreement. Further, the Releasors agree not to encourage any other person or suggest to any other person that he, she or it institute any legal action against the Releasees. Notwithstanding the foregoing or any other provision of this Release Agreement, nothing in this Release Agreement shall be construed to prohibit the Executive from (i) complying with a subpoena with regard to an investigation conducted by the appropriate local, state, or federal agency; (ii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which Executive is entitled; (iii) seeking recourse through a government agency exercising rights that are not allowed to be released by applicable law, no provision including the filing of Article IV, Article V, Article VI, Article VIII, Article IX an administrative charge or complaint with the Equal Employment Opportunity Commission or other administrative agency, provided that, Executive acknowledges and this Article X (except agrees that, by virtue of this Agreement, Executive has waived any available relief (including, but not limited to, monetary damages, equitable relief and reinstatement) under any of the claims and/or causes of action waived in this Agreement; (iv) asserting claims for wages, bonuses, vacation and sick pay that become due after the date of this Agreement; or (v) asserting claims for breach of this Release Agreement. Nothing contained in this Release Agreement, however, waives or releases Executive's right to receive a filing monetary award from the Securities Exchange Commission ("SEC") or the Commodity Futures Trading Commission ("CFTC") for information provided to the SEC or CFTC. 2. Consideration. If you timely execute, deliver and do not revoke this Release Agreement, (a) the Company shall comply with the applicable provisions of a Preferred Stock Designation, but subject Section 7(f)(i) of your Employment Agreement in accordance with the provisions thereof, and (b) you will retain all rights in connection with the Retained Claims. 3. Legal Advice, Reliance. You represent and acknowledge that (a) you have been given adequate time (at least twenty-one (21) days) to any vote required consider this Release Agreement (which, by law or by other signing this Release Agreement prior to the expiration of such period, you have expressly agreed to waive) and have been advised to discuss all aspects of this Release Agreement with your private attorney; (b) you have carefully read and fully understand all the provisions of this Third Amended Release Agreement; (c) you have voluntarily entered into this Release Agreement, without duress or coercion; and Restated Certificate with respect (d) you have not heretofore assigned or transferred or purported to such Preferred Stock Designation) may be altered, amended assign or repealed in transfer, to any respect, nor may person or entity, any provision of this Third Amended and Restated Certificate or of the Bylaws inconsistent therewith be adopted, unless claims described in addition Section 1(a) hereof, any portion thereof or any interest therein. You understand that if you request additional time to any other vote required by this Third Amended and Restated Certificate or otherwise required by law, such alteration, amendment, repeal or adoption is approved at a meeting of the stockholders called for that purpose by the affirmative vote of the holders of at least 66 2/3% of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class; provided, however, that so long as the Director Nomination Agreement remains in effect, no provision of this Third Amended and Restated Certificate may be amended, altered or repealed in any manner that would be contrary to or inconsistent with review the terms of this Release Agreement, a reasonable extension of time will be granted. 4. Miscellaneous. (a) No Violation of Law. You agree and acknowledge that this Release Agreement is not and shall not be construed to be an admission by the Director Nomination Agreement. Company of any violation of any United States federal, state or local statute, ordinance or regulation, or any applicable laws of any other country, or of any duty owed by the Company to you.

## ARTICLE XI

### EXCLUSIVE FORUM FOR CERTAIN LAWSUITS



slide19

Section 11.1 **Forum.** Unless the Corporation consents in writing 19 (b) Third Party Beneficiaries. All Releasees under this Release Agreement who are not signatories to this Release Agreement shall be deemed to be third party beneficiaries of this Release Agreement to the selection of an alternative forum, same extent as if they were signatories hereto. (c) Governing Law; Severability. This Release Agreement will be governed by the Court of Chancery laws of the State of Delaware (the "Court New Jersey, without regard to its conflict of Chancery") shall be laws rules. In the sole and exclusive forum for event that any stockholder (including a beneficial owner) to bring (i) any derivative action one or proceeding brought on behalf more of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL or this Third Amended and Restated Certificate or the Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery, or (iv) any action asserting a claim against the Corporation, its

directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim (A) as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the

Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, (C) for which the Court of Chancery does not have subject matter jurisdiction, or (D) arising under the Securities Act of 1933, as amended, as to which the Court of Chancery and the federal district court for the District of Delaware shall have concurrent jurisdiction. Notwithstanding the foregoing, the provisions of this Section 11.1 will not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 11.1.

Section 11.2 Consent to Jurisdiction. If any action the subject matter of which Release Agreement is within the scope of Section 11.1 immediately above is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 11.1 immediately above (an "FSC Enforcement Action") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

Section 11.3 Severability. If any provision or provisions of this Article XI shall be held to be invalid, illegal or unenforceable, as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XI (including, without limitation, each portion of any sentence of this Article XI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall will not in any way be affected or impaired thereby. (d) Revocation. You may revoke this Release Agreement within seven (7) days after the date on which you sign this Release Agreement. You understand that this Release Agreement is not binding or enforceable until such seven (7) day period has expired. Any person such revocation must be made in a signed letter executed by you and received by the Company at the following address no later than 5:00 p.m., New York time, on the seventh day after you have executed this Release Agreement: 3920 Park Avenue, Edison, NJ 08820, Attn: Chief People Officer. You understand that if you revoke this Release Agreement, you will not be entitled to any severance payments or entity purchasing benefits (to the extent not already paid or otherwise acquiring any interest provided) under Section 7(f)(i) of your Employment Agreement. (e) Counterparts. This Release Agreement may be executed in shares one or more counterparts, each of capital stock of the Corporation which shall be deemed to have notice an original, but all of and consented to the provisions of this Article XI.

## ARTICLE XII

### SECTION 203 OF THE DGCL

The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL as now in effect or hereafter amended, or any successor statute thereto, which together shall constitute one and the restrictions contained in Section 203 of the DGCL shall not apply to the Corporation.

*[Remainder of same instrument. -- Signature page intentionally left blank] follows --*

IN WITNESS WHEREOF, Eos Energy Enterprises, Inc. has caused this Third Amended and Restated Certificate to be duly executed and acknowledged in its name and on its behalf by an authorized officer as of the date first set forth above.

Eos Energy Enterprises, Inc.

/s/ Melissa Berube

By: Melissa Berube  
Name: Melissa Berube  
Title: Authorized Officer

[Signature Page to Third Amended and Restated Certificate of Incorporation]

EOS ENERGY ENTERPRISES, INC.

LIST OF SUBSIDIARIES

(as of December 31, 2022)

Name of Subsidiary	Country (State)	Percent Ownership
Eos Energy Enterprises Intermediate Holdings, LLC	United States (Delaware)	100 %
Eos Energy Storage LLC	United States (Delaware)	100 %
Eos Services LLC	United States (Delaware)	100 %
Eos Energy Storage India Private Limited	India	100 %
Eos Energy Storage S.R.L	Italy	100 %
HI-POWER, LLC	United States (Delaware)	100 %
Eos Ingenuity Lab, LLC	United States (Delaware)	100 %
Eos Enterprise Holdings, LLC	United States (Delaware)	100 %
Eos Energy Technology Holdings, LLC	United States (Delaware)	100 %

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-263298 333-275863 on Form S-3 and Registration Statement Nos. 333-265708, 333-256766, and 333-256766 333-272848 on Form S-8 of our report dated February 28, 2023 March 4, 2024, relating to the financial statements of Eos Energy Enterprises, Inc. appearing in this Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023.

/s/ Deloitte & Touche LLP

New York, NY  
February 28, 2023 March 4, 2024

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joseph Mastrangelo, certify that:

1. I have reviewed this Annual Report on Form 10-K (the "Annual Report") of Eos Energy Enterprises, Inc. (the "Registrant");
2. Based on my knowledge, this Annual 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 Annual Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Annual 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 Annual 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)) for the Registrant 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 Annual 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 Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual Report based on such evaluation; and
  - (d) Disclosed in this Annual Report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's fourth fiscal quarter 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 **February 28, 2023** March 4, 2024

/s/ Joseph Mastrangelo  
Joseph Mastrangelo  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Nathan Kroeker, certify that:

1. I have reviewed this Annual Report on Form 10-K (the "Annual Report") of Eos Energy Enterprises, Inc. (the "Registrant");
2. Based on my knowledge, this Annual 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 Annual Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Annual 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 Annual 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)) for the Registrant 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 Annual 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 Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual Report based on such evaluation; and

(d) Disclosed in this Annual Report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's fourth fiscal quarter 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 February 28, 2023 March 4, 2024

/s/ Nathan Kroeker

Nathan Kroeker  
Chief Financial Officer  
(Principal Financial Officer)

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

In connection with the Annual Report of Eos Energy Enterprises, Inc. (the "Registrant") on Form 10-K for the year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Joseph Mastrangelo, hereby certify, in the capacity and on the date indicated below, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 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) 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 Registrant.

Date February 28, 2023 March 4, 2024

/s/ Joseph Mastrangelo

Joseph Mastrangelo  
Chief Executive Officer  
(Principal Executive Officer)

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



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

In connection with the Annual Report of Eos Energy Enterprises, Inc. (the "Registrant") on Form 10-K for the year ended ~~December 31, 2022~~ December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Nathan Kroeker, hereby certify, in the capacity and on the date indicated below, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 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) 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 Registrant.

Date ~~February 28, 2023~~ March 4, 2024

/s/ Nathan Kroeker

Nathan Kroeker  
Chief Financial Officer  
(Principal Financial Officer)

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



slide1

Eos Energy Enterprises, Inc. CLAWBACK POLICY Introduction The Board of Directors (the "Board") of Eos Energy Enterprises, Inc. (the "Company") believes that it is in the best interests of the Company and its shareholders to create and maintain a culture that emphasizes integrity and accountability and that reinforces the Company's pay-for-performance compensation philosophy. This policy has therefore been adopted by the Board on September 11, 2023 to provide for the recoupment of certain executive compensation in the event of an accounting restatement resulting from material noncompliance with financial reporting requirements under the federal securities laws (the "Policy"). This Policy is designed to comply with Section 10D of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 5608 of the Nasdaq Listing Rules (the "Listing Rule"). Administration This Policy shall be administered by the Compensation Committee of the Board or any successor committee thereof (the "Committee"). If there is no Compensation Committee of the Board, references herein to the Committee shall refer to the Company's committee of independent directors that is responsible for executive compensation decisions, or in the absence of such a compensation committee, the independent members of the Board. Any determinations made by the Committee shall be final and binding on all affected individuals. The Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy and to comply with applicable law (including Section 10D of the Exchange Act) and applicable stock market or exchange rules and regulations (including the Listing Rule). Notwithstanding anything to the contrary contained herein, to the extent permitted by Section 10D of the Exchange Act and the Listing Rule, the Board may, in its sole discretion, at any time and from time to time, administer this Policy in the same manner as the Committee. Covered Executives This Policy applies to the Company's current and former "executive officers", as defined under Section 10D of the Exchange Act and the Listing Rule, as determined by the Committee ("Covered Executives"). Recoupment, Accounting Restatement In the event the Company is required to prepare an accounting restatement of its financial statements due to the Company's material noncompliance with any financial reporting requirement under the U.S. federal securities laws that is required in order to correct (i) an error in previously issued financial statements that is material to the previously issued financial statements or (ii) an error that would result in a material misstate if the error were (A) corrected in the current period or (B) left uncorrected in the current period (a "Financial Restatement"), the Committee will require reimbursement or forfeiture of any excess Incentive Compensation received by any Covered Executive during the three completed fiscal years immediately preceding the date on which the Company is required to prepare a Financial Restatement, provided that: (i) such Incentive Compensation was received by such Covered Executive (A) on or after the Effective Date, (B) after he or she commenced service as an executive officer (as defined under Section 10D of the Exchange Act and the Listing Rule) and (C) while the Company had a class of securities publicly listed on a United States national securities exchange; and (ii) such Covered Executive served as an executive officer at any time during the performance period applicable to such Incentive Compensation. For purposes of this Policy, a Financial Restatement shall not be deemed to occur in the event of a revision of the Company's financial statements due to an out-of-period adjustment (i.e., when the error is immaterial to the previously issued financial statements and the correction of the error is also immaterial to the current period) or a retrospective (1) application of a change in accounting principles; (2) revision to reportable segment information due to a change in the structure of the Company's internal organization; (3) reclassification due to a discontinued operation; (4) application of a change in reporting entity, such as from a reorganization of entities under common control; or (5) revision for stock splits, reverse stock splits, stock dividends or other changes in capital structure. Incentive Compensation For purposes of this Policy, Incentive Compensation means any compensation that is granted, earned, or vested based wholly or in part on the attainment of a financial reporting measure, including each of the following:



slide2

2 • Annual bonuses and other short- and long-term cash incentives. • Stock options. • Stock appreciation rights. • Restricted stock. • Restricted stock units. • Performance shares. • Performance units. For purposes of this Policy, Incentive Compensation shall also be deemed to include any amounts which were determined based on (or were otherwise calculated by reference to) Incentive Compensation (including, without limitation, any amounts under any long-term disability, life insurance or supplemental retirement or severance plan or agreement or any notional account that is based on Incentive Compensation, as well as any earnings accrued thereon). Financial reporting measures are any (i) measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, (ii) stock price measures or (iii) total shareholder return measures (and any measures that are derived, wholly or in part, from any measures referenced in clause (i), (ii) or (iii)). For the avoidance of doubt, any such measure does not need to be presented within the Company's financial statements or included in a filing with the U.S. Securities and Exchange Commission to constitute a financial reporting measure. Financial reporting measures include, without limitation: • Company stock price. • Total shareholder return. • Revenues. • Net income. • Earnings before interest, taxes, depreciation, and amortization (EBITDA). • Funds from operations. • Liquidity measures such as working capital, operating cash flow, and customer payments or deposits. • Return measures such as return on invested capital or return on assets. • Earnings measures such as earnings per share • Cost metrics. For purposes of this Policy, Incentive Compensation is "received" by a Covered Executive during the fiscal period in which the financial reporting measure applicable to such Incentive Compensation (or portion thereof) is attained, even if the payment or grant of such Incentive Compensation is made thereafter. Excess Incentive Compensation Amount Subject to Recovery. The amount to be recovered under this Policy will be the excess (on a pre-tax basis) of the Incentive Compensation received by the Covered Executive over the Incentive Compensation that would have otherwise been received by the Covered Executive if calculated based on the Financial Restatement, as determined by the Committee. For Incentive Compensation based on stock price or total shareholder return, where the

Committee cannot determine the amount of excess Incentive Compensation received by the Covered Executive directly from the information in the Financial Restatement, then it will make its determination based on a reasonable estimate of the effect of the Financial Restatement on the stock price or total shareholder return upon which the Incentive Compensation was received. Method of Recoupment



slide3

3 The Committee will determine, in its sole discretion, the method for recouping Incentive Compensation hereunder in accordance with applicable law, which may include, without limitation: (a) requiring reimbursement of cash Incentive Compensation previously paid; (b) seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards; (c) offsetting the recouped amount from any compensation otherwise owed by the Company to the Covered Executive; (d) cancelling outstanding vested or unvested equity awards; and/or (e) taking any other remedial and recovery action permitted by law, as determined by the Committee. For the avoidance of doubt, except as permitted under Section 10D of the Exchange Act and the Listing Rule, in no event may the Company accept an amount that is less than the amount of excess Incentive Compensation; provided that, to the extent necessary to avoid any adverse tax consequences to the Covered Executive pursuant to Section 409A of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any offsets against amounts under any nonqualified deferred compensation plans (as defined under Section 409A of the Code) shall be made in compliance with Section 409A of the Code. No Indemnification The Company shall not indemnify any Covered Executives against any losses that such Covered Executive may incur in connection with the recovery of excess Incentive Compensation pursuant to this Policy, including through the payment of insurance premiums or gross-up payments.

Interpretation Notwithstanding anything to the contrary herein, this Policy is intended to comply with the requirements of Section 10D of the Exchange Act and the Listing Rule (and any applicable regulations, administrative interpretations or stock market or exchange rules and regulations adopted in connection therewith). The provisions of this Policy shall be interpreted in a manner that satisfies such requirements and this Policy shall be operated accordingly. If any provision of this Policy would otherwise frustrate or conflict with this intent, the provision shall be interpreted and deemed amended so as to avoid such conflict. Effective Date This Policy shall be effective as of the date on which the Listing Rule becomes effective or October 2, 2023 (the "Effective Date"). Amendment; Termination The Committee may amend this Policy from time to time in its discretion and shall amend this Policy as it deems necessary to reflect final regulations adopted by the Securities and Exchange Commission under Section 10D of the Exchange Act and to comply with any rules or standards adopted by a national securities exchange on which the Company's securities are listed. The Board may terminate this Policy at any time, subject to applicable law. To the extent that any applicable law, or stock market or exchange rules or regulations require recovery of compensation in circumstances in addition to those specified herein, nothing in this Policy shall be deemed to limit or restrict the right or obligation of the Company to recover compensation to the fullest extent required by such applicable law, stock market or exchange rules and regulations. Other Recoupment Rights The Board intends that this Policy will be applied to the fullest extent of the law. The Committee may require that any employment agreement, equity award agreement, or similar agreement entered into on or after the Effective Date shall, as a condition to the grant of any benefit thereunder, require a Covered Executive to agree to abide by the terms of this Policy. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company; provided, however, that any amounts recouped or clawed back under any other policy that would



slide4

4 be recoupable under this Policy shall count toward any required clawback or recoupment under this Policy and vice versa. Impracticability The Committee shall recover any excess Incentive Compensation in accordance with this Policy unless such recovery would be impracticable, as determined by the Committee in accordance with Rule 10D-1 of the Exchange Act and the Listing Rule. Notwithstanding anything to the contrary in this Policy, the Company shall not be required to recover any excess Incentive Compensation if both (x) the conditions set forth in either of the following clauses (i) or (ii) are satisfied and (y) the Company's committee of independent directors that is responsible for executive compensation decisions (or in the absence of such a compensation committee, by a majority of the independent directors serving on the Board) has determined that recovery of the excess Incentive Compensation would be impracticable: (i) the direct expense paid to a third party to assist in enforcing the recovery of the excess Incentive Compensation under this Policy would exceed the amount of such Incentive Compensation to be recovered; provided that, before concluding that it would be impracticable to recover any amount of excess Incentive Compensation pursuant to this Policy, the Company shall have first made a reasonable attempt to recover such Incentive Compensation; document such reasonable attempt(s) to make such recovery and provide that documentation to Nasdaq; or (ii) recovery of the excess Incentive Compensation would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of Sections 401(a)(13) or 411(a) of the Code. Successors This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

#### DISCLAIMER

THE INFORMATION CONTAINED IN THE REFINITIV CORPORATE DISCLOSURES DELTA REPORT™ IS A COMPARISON OF TWO FINANCIALS PERIODIC REPORTS. THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORT INCLUDING THE TEXT AND THE COMPARISON DATA AND TABLES. IN NO WAY DOES REFINITIV OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED IN THIS REPORT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S ACTUAL SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.

©2024, Refinitiv. All rights reserved. Patents Pending.