

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2024

OR

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

For the transition period from _____ to _____

Commission file number 001-39982

ENERGY VAULT HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)
4360 Park Terrace Drive, Suite 100
Westlake Village, California
(Address of Principal Executive Offices)

85-3230987
(I.R.S. Employer Identification No.)
91361
(Zip Code)

(805) 852-0000

Registrant's telephone number, including area code

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	NRGV	New York Stock Exchange

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 and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" 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 is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The registrant had 152,119,628, shares of common stock, par value \$0.0001 per share, outstanding as of November 7, 2024.

TABLE OF CONTENTS

	<u>Page</u>
Cautionary Note Regarding Forward-Looking Statements	3
Part I - Financial Information	
Item 1. Financial Statements	5
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	26
Item 3. Quantitative and Qualitative Disclosures About Market Risk	40
Item 4. Controls and Procedures	41
Part II - Other Information	42
Item 1. Legal Proceedings	42
Item 1A. Risk Factors	42
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	42
Item 3. Defaults Upon Senior Securities	42
Item 4. Mine Safety Disclosures	43
Item 5. Other Information	43
Item 6. Exhibits	44
Signatures	45

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations or financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. These statements involve known and unknown risks, uncertainties, and other important factors that are in some cases beyond our control and may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will” or “would” or the negative of these words or other similar terms or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- changes in our strategy, expansion plans, customer opportunities, future operations, future financial position, estimated revenues and losses, projected costs, prospects and plans;
- the implementation, market acceptance and success of our business model and growth strategy;
- our ability to develop and maintain our brand and reputation;
- developments and projections relating to our business, our competitors, and industry;
- the impact of health epidemics on our business and the actions we may take in response thereto;
- our expectations regarding our ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- expectations regarding the time during which we will be an emerging growth company under the JOBS Act;
- our future capital requirements and sources and uses of cash;
- the international nature of our operations and the impact of war or other hostilities on our business and global markets;
- our ability to obtain funding for our operations and future growth; and
- our business, expansion plans and opportunities.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Quarterly Report on Form 10-Q primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in the section titled “Risk Factors” in our 2023 Annual Report on Form 10-K and elsewhere in this Quarterly Report on Form 10-Q. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Quarterly Report on Form 10-Q. The results, events and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements. Additionally, our discussions of environmental, social, and governance (“ESG”) assessments, goals and relevant issues herein or in other locations, including our corporate website, are informed by various ESG standards and frameworks (including standards for the measurement of underlying data), and the interests of various stakeholders. References to “materiality” in the context of such discussions and any related assessment of ESG “materiality” may differ from the definition of “materiality” under the federal securities laws for SEC reporting purposes. Furthermore, much of this information is subject to assumptions, estimates or third-party information that is still evolving and subject to change. For example, we note that standards and expectations regarding greenhouse gas (“GHG”) accounting and the process for measuring and counting GHG emissions and GHG emissions reductions are evolving, and it is possible that our approaches both to measuring our emissions and any reductions may be at some point, either currently or in the future, considered not in keeping with best practices. In addition, our disclosures based on any standards may change due to revisions in framework requirements, availability or quality of information, changes in our business or applicable government policies, or other factors, some of which may be beyond our control.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant

information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements. Any forward-looking statements only speak as of the date of this document, and we undertake no obligation to update any forward-looking information or statements, whether written or oral, to reflect any change, except as required by law. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

Part I-Financial Information
Item 1. Financial Statements

ENERGY VAULT HOLDINGS, INC.
Condensed Consolidated Balance Sheets
(Unaudited)
(In thousands except par value)

	September 30, 2024	December 31, 2023
Assets		
Current Assets		
Cash and cash equivalents	\$ 51,124	\$ 109,923
Restricted cash	26,560	35,632
Accounts receivable, net of allowance for credit losses of \$371 and \$69 as of September 30, 2024 and December 31, 2023, respectively	2,309	27,189
Contract assets, net of allowance for credit losses of \$2,405 and \$1,113 as of September 30, 2024 and December 31, 2023, respectively	26,445	84,873
Inventory	107	415
Customer financing receivable, current portion, net of allowance for credit losses of \$258 and \$375 as of September 30, 2024 and December 31, 2023, respectively	1,242	2,625
Advances to suppliers	19,021	8,294
Prepaid expenses and other current assets	4,860	4,520
Assets held for sale	—	6,111
Total current assets	131,668	279,582
Property and equipment, net	90,289	31,043
Intangible assets, net	3,824	1,786
Operating lease right-of-use assets	1,249	1,700
Customer financing receivable, long-term portion, net of allowance for credit losses of \$1,438 and \$957 as of September 30, 2024 and December 31, 2023, respectively	6,918	6,698
Investments	17,528	17,295
Other assets	1,382	2,649
Total Assets	\$ 252,858	\$ 340,753
Liabilities and Stockholders' Equity		
Current Liabilities		
Accounts payable	\$ 38,789	\$ 21,165
Accrued expenses	20,869	85,042
Contract liabilities, current portion	10,405	4,923
Lease liabilities, current portion	391	724
Total current liabilities	70,454	111,854
Deferred pension obligation	1,937	1,491
Contract liabilities, long-term portion	—	1,500
Other long-term liabilities	1,361	2,115
Total liabilities	73,752	116,960
Commitments and contingencies		
Stockholders' Equity		
Preferred stock, \$0.0001 par value; 5,000 shares authorized, none issued	—	—
Common stock, \$0.0001 par value; 500,000 shares authorized, 151,542 and 146,577 issued and outstanding at September 30, 2024 and December 31, 2023, respectively	15	15
Additional paid-in capital	502,707	473,271
Accumulated deficit	(321,992)	(248,072)
Accumulated other comprehensive loss	(1,590)	(1,421)
Non-controlling interest	(34)	—
Total stockholders' equity	179,106	223,793
Total Liabilities and Stockholders' Equity	\$ 252,858	\$ 340,753

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

ENERGY VAULT HOLDINGS, INC.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(In thousands except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue	\$ 1,199	\$ 172,205	\$ 12,728	\$ 223,307
Cost of revenue	716	165,057	9,128	209,793
Gross profit	483	7,148	3,600	13,514
Operating expenses:				
Sales and marketing	4,347	4,183	13,378	13,609
Research and development	5,704	8,156	19,621	29,552
General and administrative	17,270	15,810	48,812	52,222
Depreciation and amortization	251	235	825	670
Asset impairment and loss on sale of assets	(14)	—	551	—
Total operating expenses	27,558	28,384	83,187	96,053
Loss from operations	(27,075)	(21,236)	(79,587)	(82,539)
Other income (expense):				
Interest expense	(43)	(18)	(89)	(19)
Interest income	1,439	1,919	5,011	6,149
Other income (expense), net	(937)	(8)	711	(259)
Loss before income taxes	(26,616)	(19,343)	(73,954)	(76,668)
Provision for income taxes	—	(401)	—	(397)
Net loss	(26,616)	(18,942)	(73,954)	(76,271)
Net loss attributable to non-controlling interest	(23)	—	(34)	—
Net loss attributable to Energy Vault Holdings, Inc.	\$ (26,593)	\$ (18,942)	\$ (73,920)	\$ (76,271)
Net loss per share attributable to Energy Vault Holdings, Inc. — basic and diluted	\$ (0.18)	\$ (0.13)	\$ (0.50)	\$ (0.54)
Weighted average shares outstanding — basic and diluted	150,812	143,867	148,998	142,052
Other comprehensive income (loss) — net of tax				
Actuarial loss on pension	\$ (187)	\$ (130)	\$ (415)	\$ (184)
Foreign currency translation gain	109	42	246	208
Total other comprehensive (loss) income attributable to Energy Vault Holdings, Inc.	(78)	(88)	(169)	24
Total comprehensive loss attributable to Energy Vault Holdings, Inc.	\$ (26,671)	\$ (19,030)	\$ (74,089)	\$ (76,247)

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

ENERGY VAULT HOLDINGS, INC.
Condensed Consolidated Statements of Stockholders' Equity
(Unaudited)
(In thousands)

Three Months Ended September 30, 2024

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Non-Controlling Interest	Total Stockholders' Equity
	Shares	Amount					
Balance at June 30, 2024	150,136	\$ 15	\$ 492,459	\$ (295,399)	\$ (1,512)	\$ (11)	\$ 195,552
Stock based compensation	—	—	10,248	—	—	—	10,248
Vesting of restricted stock units (“RSUs”), net of shares withheld for payroll taxes	1,406	—	—	—	—	—	—
Net loss	—	—	—	(26,593)	—	(23)	(26,616)
Actuarial loss on pension	—	—	—	—	(187)	—	(187)
Foreign currency translation gain	—	—	—	—	109	—	109
Balance at September 30, 2024	151,542	\$ 15	\$ 502,707	\$ (321,992)	\$ (1,590)	\$ (34)	\$ 179,106

Three Months Ended September 30, 2023

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Non-Controlling Interest	Total Stockholders' Equity
	Shares	Amount					
Balance at June 30, 2023	142,703	\$ 14	\$ 455,283	\$ (206,958)	\$ (776)	\$ —	\$ 247,563
Exercise of stock options	136	—	110	—	—	—	110
Stock based compensation	—	—	10,714	—	—	—	10,714
Vesting of RSUs, net of shares withheld for payroll taxes	602	—	(1,069)	—	—	—	(1,069)
Net loss	—	—	—	(18,942)	—	—	(18,942)
Actuarial loss on pension	—	—	—	—	(130)	—	(130)
Foreign currency translation gain	—	—	—	—	42	—	42
Balance at September 30, 2023	143,441	\$ 14	\$ 465,038	\$ (225,900)	\$ (864)	\$ —	\$ 238,288

ENERGY VAULT HOLDINGS, INC.
Condensed Consolidated Statements of Stockholders' Equity (Continued)
(Unaudited)
(In thousands)

Nine Months Ended September 30, 2024							
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Non-Controlling Interest	Total Stockholders' Equity
	Shares	Amount					
Balance at December 31, 2023	146,577	\$ 15	\$ 473,271	\$ (248,072)	\$ (1,421)	\$ —	\$ 223,793
Stock based compensation	—	—	29,436	—	—	—	29,436
Vesting of RSUs, net of shares withheld for payroll taxes	4,965	—	—	—	—	—	—
Net loss	—	—	—	(73,920)	—	(34)	(73,954)
Actuarial loss on pension	—	—	—	—	(415)	—	(415)
Foreign currency translation gain	—	—	—	—	246	—	246
Balance at September 30, 2024	151,542	\$ 15	\$ 502,707	\$ (321,992)	\$ (1,590)	\$ (34)	\$ 179,106
Nine Months Ended September 30, 2023							
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Non-Controlling Interest	Total Stockholders' Equity
	Shares	Amount					
Balance at December 31, 2022	138,530	\$ 14	\$ 435,852	\$ (147,265)	\$ (888)	\$ —	\$ 287,713
Adoption of ASU 2016-13	—	—	—	(2,364)	—	—	(2,364)
Exercise of stock options	277	—	223	—	—	—	223
Stock based compensation	—	—	34,523	—	—	—	34,523
Vesting of RSUs, net of shares withheld for payroll taxes	4,634	—	(5,560)	—	—	—	(5,560)
Net loss	—	—	—	(76,271)	—	—	(76,271)
Actuarial loss on pension	—	—	—	—	(184)	—	(184)
Foreign currency translation gain	—	—	—	—	208	—	208
Balance at September 30, 2023	143,441	\$ 14	\$ 465,038	\$ (225,900)	\$ (864)	\$ —	\$ 238,288

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

ENERGY VAULT HOLDINGS, INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(In thousands)

	Nine Months Ended September 30,	
	2024	2023
Cash Flows From Operating Activities		
Net loss	\$ (73,954)	\$ (76,271)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	825	670
Non-cash interest income	(1,159)	(1,039)
Stock based compensation	29,436	34,523
Asset impairment and loss on sale of assets	551	—
Change in derivative asset	820	—
Provision for credit losses	2,214	234
Foreign exchange losses	301	308
Change in operating assets	73,013	(2,938)
Change in operating liabilities	(53,087)	(71,537)
Net cash used in operating activities	<u>(21,040)</u>	<u>(116,050)</u>
Cash Flows From Investing Activities		
Proceeds from sale of property and equipment	221	—
Purchase of property and equipment	(48,306)	(27,182)
Purchase of equity securities	—	(6,000)
Net cash used in investing activities	<u>(48,085)</u>	<u>(33,182)</u>
Cash Flows From Financing Activities		
Proceeds from exercise of stock options	—	223
Proceeds from insurance premium financings	2,745	1,250
Repayment of insurance premium financings	(1,567)	(394)
Payment of taxes related to net settlement of equity awards	(408)	(5,703)
Payment of finance lease obligations	(205)	(31)
Net cash provided by (used in) financing activities	<u>565</u>	<u>(4,655)</u>
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	689	(73)
Net decrease in cash, cash equivalents, and restricted cash	<u>(67,871)</u>	<u>(153,960)</u>
Cash, cash equivalents, and restricted cash – beginning of the period	145,555	286,182
Cash, cash equivalents, and restricted cash – end of the period	77,684	132,222
Less: restricted cash at end of period	26,560	57,986
Cash and cash equivalents - end of period	<u>\$ 51,124</u>	<u>\$ 74,236</u>
Supplemental Disclosures of Cash Flow Information:		
Income taxes paid	\$ 51	\$ 46
Cash paid for interest	89	19
Supplemental Disclosures of Non-Cash Investing and Financing Information:		
Actuarial loss on pension	(415)	(184)
Property and equipment financed through accounts payable and accrued expenses	7,946	3,595
Assets acquired on finance lease	120	—

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

ENERGY VAULT HOLDINGS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

NOTE 1. ORGANIZATION AND DESCRIPTION OF BUSINESS

Energy Vault Holdings, Inc., which together with its subsidiaries is referred to herein as “Energy Vault” or the “Company”, develops and deploys utility-scale energy storage solutions designed to aid in the global transition to a clean energy future. The Company’s mission is to provide energy storage solutions to accelerate the global transition to renewable energy.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited interim condensed consolidated financial statements have been prepared on an accrual basis of accounting in accordance with United States Generally Accepted Accounting Principles (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (“SEC”) regarding interim financial reporting. Certain information and disclosures normally included in consolidated financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Accordingly, these unaudited interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes for the year ended December 31, 2023. The condensed consolidated balance sheet as of December 31, 2023, included herein, was derived from the consolidated financial statements of the Company as of that date.

These unaudited interim condensed consolidated financial statements, in the opinion of management, reflect all adjustments necessary to present fairly the Company’s financial position as of September 30, 2024, results of operations, comprehensive loss, and stockholders’ equity activities for the three and nine months ended September 30, 2024 and 2023, and the Company’s cash flows for the nine months ended September 30, 2024 and 2023. The results for the three and nine months ended September 30, 2024 are not necessarily indicative of the results to be expected for the year ending December 31, 2024 or for any interim period or for any other future year.

Principles of Consolidation

These unaudited interim condensed consolidated financial statements include Energy Vault Holdings, Inc., its wholly owned subsidiaries, and a majority owned subsidiary. All intercompany balances and transactions have been eliminated in consolidation.

Non-controlling interest

In May 2024, the Company’s consolidated subsidiary, Cetus Energy, Inc. (“Cetus”), issued a share-based payment award to an employee of Cetus, representing a non-controlling interest. A non-controlling interest in a subsidiary is considered an ownership interest in a majority-owned subsidiary that is not attributable to the parent. The Company includes non-controlling interest as a component of stockholders’ equity on the Company’s condensed consolidated balance sheets.

Emerging Growth Company

Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”) exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period, which means that when a standard is issued or revised, and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

This may make comparison of the Company’s consolidated financial statement with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Use of Estimates

The preparation of the condensed consolidated financial statements, in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the unaudited interim condensed consolidated financial

ENERGY VAULT HOLDINGS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

statements and accompanying notes. The Company evaluates its assumptions on an ongoing basis. The Company's management believes that the estimates, judgment, and assumptions used are reasonable based upon information available at the time they are made. Significant estimates made by management include, among others, revenue recognition, warranty accruals, and stock-based compensation. Due to the inherent uncertainty involved in making assumptions and estimates, changes in circumstances could result in actual results differing from those estimates, and such differences could be material to the Company's consolidated financial condition and results of operations.

Segment Reporting

The Company reports its operating results and financial information in one operating and reportable segment. Our chief operating decision maker, which is our chief executive officer, reviews our operating results on a consolidated basis and uses that consolidated financial information to make operating decisions, assess financial performance, and allocate resources.

Concentration of Credit and Other Risks

Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents, restricted cash, accounts receivable, and customer financings receivable.

Risks associated with cash and cash equivalents and restricted cash are mitigated by banking with creditworthy institutions. Such balances with any one institution may, at times, be in excess of federally insured amounts.

As of September 30, 2024, two customers accounted for 55% and 43% of accounts receivable. As of December 31, 2023, one customer accounted for 92% of accounts receivable.

As of September 30, 2024 and December 31, 2023, one customer accounted for 100% of the customer financing receivable.

Revenue from two customers accounted for 51% and 35% of total revenue for the three months ended September 30, 2024 and revenue from two customers accounted for 67% and 18% of total revenue for the nine months ended September 30, 2024. Revenue from two customers accounted for 59% and 38% of total revenue for the three months ended September 30, 2023 and revenue from three customers accounted for 47%, 33%, and 20% of total revenue for the nine months ended September 30, 2023.

Summary of Significant Accounting Policies

The Company's significant accounting policies are discussed in Note 2 of the notes to the consolidated financial statements included in the Company's 2023 Annual Report on Form 10-K filed with the SEC on March 13, 2024. There have not been any significant changes to these policies during the nine months ended September 30, 2024.

NOTE 3. REVENUE RECOGNITION

The Company recognized revenue for the product and service categories as follows for the three and nine months ended September 30, 2024 and 2023 (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Sale of energy storage products ⁽¹⁾	\$ 811	\$ 172,139	\$ 11,494	\$ 222,943
Operation and maintenance services	273	—	818	—
Software licensing	115	—	301	—
Intellectual property licensing	—	—	115	—
Other	—	66	—	364
Total revenue	<u>\$ 1,199</u>	<u>\$ 172,205</u>	<u>\$ 12,728</u>	<u>\$ 223,307</u>

⁽¹⁾ Includes revenue from the build and transfer of energy storage systems and from the sale of spare parts for energy storage systems. Revenue from the sale of spare parts was included within "Other" in prior periods. \$0.3 million in revenue from the sale of spare parts reported within the "Other" line for the three months ended March 31, 2024 has been included within "Sale of energy storage products" for the nine months ended September 30, 2024.

ENERGY VAULT HOLDINGS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

\$0.2 million in revenue from the sale of spare parts for the three and nine months ended September 30, 2023 has been reclassified from “Other” to “Sale of energy storage projects.”

Remaining Performance Obligations

Remaining performance obligations represent the amount of unearned transaction prices under contracts for which work is wholly or partially unperformed. As of September 30, 2024, the amount of the Company’s remaining performance obligations was \$47.0 million. The Company generally expects to recognize approximately 93% of the remaining performance obligations as revenue over the next 12 months and the remainder more than 12 months from September 30, 2024.

Contract Balances

The following table provides information about contract assets and contract liabilities from contracts with customers (amounts in thousands):

	September 30, 2024	December 31, 2023
Refundable contribution	\$ 25,000	\$ 25,000
Unbilled receivables	3,700	55,241
Retainage	150	5,745
Less allowance for credit losses	(2,405)	(1,113)
Contract assets, net of allowance for credit losses	<u>\$ 26,445</u>	<u>\$ 84,873</u>
Contract liabilities, current portion	\$ 10,405	\$ 4,923
Contract liabilities, long-term portion	—	1,500
Total contract liabilities	<u>\$ 10,405</u>	<u>\$ 6,423</u>

Contract assets consist of a refundable contribution, unbilled receivables, and retainage.

Refundable contribution represents the contribution the Company made to a customer to be used during the construction of its first gravity energy storage system (“GESS”). The refundable contribution was to be refunded to the Company upon the customer’s first GESS obtaining substantial completion, subject to adjustment for potential liquidated damages if certain performance metrics were not met. During the second quarter of 2024, the Company signed a contract amendment with the customer removing the substantial completion condition for repayment. The Company expects to collect the \$25.0 million refundable contribution in the fourth quarter of 2024.

Unbilled receivables represent the estimated value of unbilled work for projects with performance obligations recognized over time.

Retainage represents a portion of the contract amount that has been billed, but for which the contract allows the customer to retain a portion of the billed amount until final contract settlement. Retainage is not considered to be a significant financing component because the intent is to protect the customer.

Contract liabilities consist of deferred revenue. Under certain contracts, the Company may be entitled to invoice the customer and receive payments in advance of performing the related contract work. In those instances, the Company recognizes a liability for advance billings in excess of revenue recognized, which is referred to as deferred revenue. Deferred revenue is not considered to be a significant financing component because it is generally used to meet working capital demands that can be higher in the early stages of a contract. For the three and nine months ended September 30, 2024, the Company recognized revenue of \$40 thousand and \$1.1 million, respectively, related to amounts that were included in deferred revenue as of December 31, 2023. For the three and nine months ended September 30, 2023, the Company recognized revenue of \$28.3 million and \$45.9 million respectively, related to amounts that were included in deferred revenue as of December 31, 2022.

ENERGY VAULT HOLDINGS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

NOTE 4. ALLOWANCE FOR CREDIT LOSSES

Activity in the allowance for credit losses was as follows for the nine months ended September 30, 2024 and 2023 (amounts in thousands):

	Nine Months Ended September 30, 2024			
	Accounts Receivable	Contract Assets	Customer Financing Receivable	Total
Allowance for credit losses, beginning of period	\$ 69	\$ 1,113	\$ 1,332	\$ 2,514
Provision for credit losses	302	1,548	364	2,214
Write-offs	—	(256)	—	(256)
Allowance for credit losses, end of period	<u>\$ 371</u>	<u>\$ 2,405</u>	<u>\$ 1,696</u>	<u>\$ 4,472</u>

	Nine Months Ended September 30, 2023			
	Accounts Receivable	Contract Assets	Customer Financing Receivable	Total
Allowance for credit losses, beginning of period	\$ —	\$ —	\$ —	\$ —
Addition due to adoption of ASU 2016-13	81	1,063	1,220	2,364
Provision (benefit) for credit losses	(22)	174	82	234
Allowance for credit losses, end of period	<u>\$ 59</u>	<u>\$ 1,237</u>	<u>\$ 1,302</u>	<u>\$ 2,598</u>

The Company utilizes a probability-of-default (“PD”) and loss-given-default (“LGD”) methodology to calculate the allowance for expected credit losses for each customer by type of financial asset. Due to the Company’s limited operating history and lack of loss history, the Company derived its PD and LGD rates using average historical rates for corporate bonds as published by Moody’s. The Company uses PD and LGD rates that correspond to the customer’s credit rating and period of time in which the financial asset is expected to remain outstanding.

The Company evaluates its customer financing receivable on a periodic basis by monitoring the credit quality and financial condition of the guarantor for the customer. The amortized cost basis for the Company’s customer financing receivable was \$9.9 million and \$10.7 million as of September 30, 2024 and December 31, 2023, respectively.

NOTE 5. FAIR VALUE MEASUREMENTS

Carrying amounts of certain financial instruments, including cash, accounts payable, and accrued expenses approximate their fair value due to their relatively short maturities and market interest rates, if applicable.

The Company categorizes assets and liabilities recorded or disclosed at fair value on the consolidated balance sheet based upon the level of judgment associated with inputs used to measure their fair value. The categories are as follows:

- *Level 1*—Inputs which included quoted prices in active markets for identical assets and liabilities.
- *Level 2*—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; 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*—Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

ENERGY VAULT HOLDINGS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

The Company's financial assets and liabilities measured at fair value on a recurring basis were as follows as of September 30, 2024 and December 31, 2023 (amounts in thousands):

	September 30, 2024			
	Level 1	Level 2	Level 3	Total
Assets (Liabilities):				
Derivative asset — conversion option ⁽¹⁾	\$ —	\$ —	\$ 205	\$ 205
Warrant liabilities ⁽²⁾	—	—	(2)	(2)
December 31, 2023				
	Level 1	Level 2	Level 3	Total
Assets (Liabilities):				
Derivative asset — conversion option ⁽¹⁾	\$ —	\$ —	\$ 1,025	\$ 1,025
Warrant liabilities ⁽²⁾	—	—	(2)	(2)

⁽¹⁾ Refer to Note 7 - *Investments* for further information. The Company determined the fair value of the derivative instrument as the difference between the expected settlement value upon conversion of the convertible note and the principal amount of the convertible note, adjusted for the probability of the Company choosing to exercise its conversion option.

⁽²⁾ The warrants are not publicly traded and the Company uses a Black-Scholes model to determine the fair value of the warrants.

NOTE 6. RELATED PARTY TRANSACTIONS

In May 2019, the Company received a \$1.5 million deposit for a gravity-based system from a customer that was owned by one of its primary shareholders. The deposit and order were received before the owner of the customer became one of the Company's primary shareholders and the deposit was recognized in the line item, contract liabilities, long-term portion, in the condensed consolidated balance sheet as of December 31, 2023. During the nine months ended September 30, 2024, the Company concluded it was no longer obligated to provide a gravity-based system to the customer and that the deposit was nonrefundable. As a result, the Company derecognized the \$1.5 million liability and recognized it as a gain within the line item, other income (expense), net, in the condensed consolidated statements of operations during the nine months ended September 30, 2024.

During the three and nine months ended September 30, 2024, the Company paid \$0.2 million and \$0.8 million, respectively, in marketing and sales costs to a company owned by an immediate family member of an officer of the Company. During the three and nine months ended September 30, 2023, the Company paid \$0.4 million and \$1.2 million, respectively.

In May 2023, the Company signed a technology license option agreement with a company affiliated with a member of Energy Vault's Board of Directors ("Board"). The agreement permitted the customer to exercise options to enter into licensing agreements in certain territories to use the Company's gravity storage technology in exchange for a fee of \$0.5 million. The customer exercised its option for one territory on June 30, 2023 and paid a licensing fee of \$0.5 million. The customer's options to exercise additional territories expired on June 30, 2024. Immediately prior to the expiration of the option agreement, the Company had \$0.3 million in deferred revenue related to the agreement. The Company agreed to refund the customer \$0.3 million of the option fee upon expiration of the option agreement in exchange for software that supports gravity storage efforts. As of June 30, 2024, the Company did not have any deferred revenue related to the option agreement. The Company terminated the license agreement for the territory that was exercised by the customer effective June 30, 2024, and the Company will not collect any additional licensing fees from this customer.

ENERGY VAULT, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

NOTE 7. INVESTMENTS

The following table provides a reconciliation of investments to the Company's condensed consolidated balance sheets (amounts in thousands):

	September 30, 2024	December 31, 2023
Investment in equity securities	\$ 15,000	\$ 15,000
Convertible note receivable	2,528	2,295
	<u>\$ 17,528</u>	<u>\$ 17,295</u>

Investment in Equity Securities

In November 2022, the Company purchased \$9.0 million of equity securities in KORE Power, Inc. ("KORE"), a U.S. manufacturer of battery cells and modules. In February 2023, the Company purchased an additional \$6.0 million of equity securities, increasing the Company's total investment in KORE to \$15.0 million.

These equity securities do not have a readily determinable fair value and are recorded at cost, less any impairment, plus or minus adjustments related to observable transactions for the same or similar securities, with unrealized gains and losses included in earnings. As of September 30, 2024 and December 31, 2023, the carrying value of these equity securities was equal to its cost basis.

Convertible Note Receivable

In October 2021, the Company entered into a convertible promissory note purchase agreement with DG Fuels, LLC ("DG Fuels") and purchased a promissory note with a principal balance of \$1.0 million ("DG Fuels Tranche 1 Note"). In April 2022, the Company purchased an additional promissory note from DG Fuels with a principal balance of \$2.0 million. ("DG Fuels Tranche 2 Note") (collectively, the "DG Fuels Note").

The maturity date of the DG Fuels Note is the earlier of (i) 30 days after a demand for payment is made by the Company at any time after the two year anniversary of the date of issuance of the note; (ii) the four year anniversary of the date of issuance of the note; (iii) five days following a Financial Close ("Financial Close" means a project finance style closing by DG Fuels or its subsidiary of debt and equity capital to finance the construction of that certain biofuel facility currently under development by DG Fuels), or (iv) upon an event of default determined at the discretion of the Company. The DG Fuels Note has an annual interest rate of 10.0%. Per the conversion terms, the Company could convert the principal balance and unpaid accrued interest into equity securities of DG Fuels at a 20% discount.

The discounted conversion rate in the DG Fuels Note is considered a redemption feature that is an embedded derivative, which requires bifurcation and separate accounting at its estimated fair value under ASC 815 – *Derivative and Hedging*. The embedded derivative upon the purchase of the DG Fuels Tranche 1 Note was an asset of \$0.4 million and the embedded derivative upon the purchase of the DG Fuels Tranche 2 note was an asset of \$0.7 million. The estimated fair value of the derivative instruments was recognized as a derivative asset on the condensed consolidated balance sheets, with an offsetting discount to the DG Fuels Note. The Company amortizes the discount on the Note into interest income using the effective interest method. The Company recognized interest income from the DG Fuels Note of \$0.2 million and \$0.5 million for the three and nine months ended September 30, 2024, respectively, and \$0.1 million and \$0.4 million for the three and nine months ended September 30, 2023, respectively. Interest income related to the amortization of the debt discount was \$0.1 million and \$0.2 million for the three and nine months ended September 30, 2024, respectively, and \$0.1 million and \$0.2 million for the three and nine months ended September 30, 2023, respectively.

The derivative financial instrument is recorded in other assets in the condensed consolidated balance sheets. At each reporting period, the Company remeasures this derivative financial instrument to its estimated fair value. The change in the estimated fair value is recorded in other income (expense), net in the consolidated statement of operations and comprehensive loss. For the three and nine months ended September 30, 2024 and 2023, there was no change in the fair value of the embedded derivative.

A reconciliation of the beginning and ending asset balance for the embedded derivative in the DG Fuels Note is as follows (amounts in thousands):

ENERGY VAULT, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Beginning of period	\$ 1,025	\$ 1,025	\$ 1,025	\$ 1,025
Change in fair value	(820)	—	(820)	—
End of period	<u>\$ 205</u>	<u>\$ 1,025</u>	<u>\$ 205</u>	<u>\$ 1,025</u>

NOTE 8. PROPERTY AND EQUIPMENT, NET

As of September 30, 2024 and December 31, 2023, property and equipment, net consisted of the following (amounts in thousands):

	September 30, 2024	December 31, 2023
Land	\$ 302	\$ 226
Buildings	774	774
Machinery and equipment	11,733	9,330
Finance lease right-of-use assets – vehicles	198	187
Furniture and IT equipment	1,348	1,474
Leasehold improvements	289	702
Construction in progress	78,963	20,095
Total property and equipment	93,607	32,788
Less: accumulated depreciation and amortization	(3,318)	(1,745)
Property and equipment, net	<u>\$ 90,289</u>	<u>\$ 31,043</u>

For the three and nine months ended September 30, 2024, depreciation and amortization related to property and equipment was \$0.2 million and \$0.6 million, respectively, and for the three and nine months ended September 30, 2023, depreciation and amortization related to property and equipment was \$0.2 million and \$0.7 million, respectively.

For the three months ended September 30, 2024, asset impairment and loss on sale of assets was nominal and for the nine months ended September 30, 2024 was a \$0.6 million. For the nine months ended September 30, 2024, asset impairment and loss on sale of assets was comprised of \$0.5 million in asset impairments and \$0.1 million in loss on sale of assets. Asset impairment relates to the write-off of leasehold improvements in the Company's Westlake Village office due to the Company relocating its corporate office. The loss on sale of assets relates to the sale of a cement plant at the Company's R&D site in Switzerland. The Company did not recognize any impairments or loss on sale of assets during the three and nine months ended September 30, 2023.

The increases in machinery and equipment and construction in progress primarily relate to a commercial demonstration unit being constructed in Snyder, Texas ("Snyder CDU"), a battery energy storage system ("BESS") being constructed in Snyder Texas ("Cross Trails BESS"), and a hybrid energy storage system being constructed in Calistoga, California.

In December 2023, the Company paid \$6.3 million to acquire the land that the Snyder CDU will be located on and other related assets. At the time of the purchase, the Company intended to resell the land that would not be used for the Snyder CDU and all of the other related assets. As such, the Company recorded \$6.1 million of the purchase price as assets held for sale in the condensed consolidated balance sheet as of December 31, 2023. In the second quarter of 2024, the Company decided it would keep the assets that were initially classified as held for sale and instead develop the Cross Trails BESS, a 56.9 MW/113.8 MWh BESS. As such, the Company reclassified the property and equipment from assets held for sale to construction in progress in June 2024.

ENERGY VAULT HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

NOTE 9. INTANGIBLE ASSETS, NET

Intangible assets are stated at amortized cost and consist of the following (amounts in thousands):

	September 30, 2024			December 31, 2023		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Capitalized software to be sold	\$ 4,088	\$ (264)	\$ 3,824	\$ 1,786	\$ —	\$ 1,786

Once a software application is available for general release and is placed in service, the Company amortizes the capitalized costs on a product basis by the greater of the straight-line method over the estimated economic life of the product, or the ratio that current gross revenues for a product bear to the total current and anticipated future gross revenues for that product. The useful life for our external-use software development costs is five years. Amortization expense for the three and nine months ended September 30, 2024 was \$0.1 million and \$0.3 million, respectively. There was no amortization expense for the three and nine months ended September 30, 2023.

Future amortization expense for intangible assets is estimated as follows (amounts in thousands):

	Amount
Remainder of 2024	\$ 99
2025	396
2026	396
2027	396
2028	396
Thereafter	34
Subtotal	1,717
Software projects in process	2,107
Total	\$ 3,824

NOTE 10. DEBT

In July 2023, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company was obligated to repay the lender an aggregate sum of \$1.1 million through nine equal monthly payments, at an annual interest rate of 7.0%, commencing on July 15, 2023. This financing was fully repaid during the first quarter of 2024.

In September 2023, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company was obligated to repay the lender an aggregate sum of \$0.2 million through four equal monthly payments, at an annual interest rate of 7.0%, commencing on September 15, 2023. This financing was fully repaid during the first quarter of 2024.

In April 2024, the Company entered into two financing agreements related to premiums under certain insurance policies. For the first financing, the Company is obligated to repay the lender an aggregate sum of \$1.4 million through ten equal monthly payments commencing on April 10, 2024. For the second financing, the Company is obligated to repay the lender an aggregate sum of \$0.4 million through nine equal monthly payments commencing on May 10, 2024. Both financings have an annual interest rate of 7.4%.

In June 2024, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company is obligated to repay the lender an aggregate sum of AUD 0.3 million (or \$0.2 million) through twelve equal

ENERGY VAULT HOLDINGS, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

monthly payments of AUD 22 thousand (or \$15 thousand), at an annual interest rate of 4.4%, commencing on June 25, 2024.

In July 2024, the Company entered into a financing agreement related to premiums under certain insurance policies. The Company is obligated to repay the lender an aggregate sum of \$1.1 million through nine equal monthly payments, at an annual interest rate of 7.5%, commencing on August 15, 2024.

As of September 30, 2024 and December 31, 2023, the carrying value of the Company's insurance premium financings was \$1.7 million and \$0.4 million, respectively, and is included in the line item, accrued expenses, in the condensed consolidated balance sheets.

ENERGY VAULT HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

NOTE 11. SUPPLEMENTAL BALANCE SHEETS DETAIL

(amounts in thousands)

	September 30, 2024	December 31, 2023
Prepaid and other current assets:		
Prepaid expenses	\$ 4,231	\$ 3,131
Tax refund receivable	108	1,359
Other	521	30
Total	<u>\$ 4,860</u>	<u>\$ 4,520</u>
Other assets:		
Interest receivable	\$ 775	\$ 550
Derivative asset — conversion option	205	1,025
Other	402	1,074
Total	<u>\$ 1,382</u>	<u>\$ 2,649</u>
Accrued expenses:		
Accrued purchases	\$ 6,865	\$ 71,932
Professional fees	6,687	4,522
Employee costs	3,270	5,985
Warranty liabilities	2,348	894
Insurance premium financings	1,655	358
Taxes payable	44	733
Accrued project loss	—	591
Other	—	27
Total	<u>\$ 20,869</u>	<u>\$ 85,042</u>
Lease liabilities, current portion:		
Operating leases	\$ 351	\$ 697
Finance leases	40	27
Total	<u>\$ 391</u>	<u>\$ 724</u>
Other long-term liabilities:		
Operating leases	\$ 935	\$ 1,044
Warranty liabilities	221	924
Asset retirement obligation	105	52
Finance leases	98	93
Warrant liabilities	2	2
Total	<u>\$ 1,361</u>	<u>\$ 2,115</u>

ENERGY VAULT HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

NOTE 12. STOCK-BASED COMPENSATION

2017 Stock Incentive Plan

In 2017, the Company adopted its 2017 Stock Incentive Plan (the “2017 Plan”) which provided for the granting of stock options, restricted stock, and RSUs to employees, directors, and consultants of the Company. Options granted under the 2017 Plan were either Incentive Stock Options (“ISOs”) or Nonqualified Stock Options (“NSOs”). Awards under the 2017 Plan were granted for periods of up to ten years. Under the terms of the 2017 Plan, awards were granted at an exercise price not less than the estimated fair value of the shares on the date of grant, as determined by the Company’s Board of Directors. For employees holding more than 10% of the voting rights of all classes of stock, the exercise price of ISOs and NSOs was not less than 110% of the estimated fair value of the shares on the date of grant, as determined by the board of directors. Awards generally vested over one to four years.

2020 Stock Incentive Plan

In 2020, the Company adopted its 2020 Stock Incentive Plan (the “2020 Plan”). The 2020 Plan provided for the granting of stock options, restricted stock, and RSUs to employees, directors, and consultants of the Company. Options granted under the 2020 Plan were either ISOs or NSOs. Awards under the 2020 Plan were granted for periods of up to ten years. Under the terms of the 2020 Plan, awards were granted at an exercise price not less than the estimated fair value of the shares on the date of grant, as determined by the Company’s Board of Directors. For employees holding more than 10% of the voting rights of all classes of stock, the exercise price of ISOs and NSOs was not less than 110% of the estimated fair value of the shares on the date of grant, as determined by the board of directors. Awards generally vested over one to four years.

2022 Equity Incentive Plan

In 2022, the Company adopted its 2022 Equity Incentive Plan (the “2022 Incentive Plan”). The 2022 Incentive Plan provides for the granting of stock options, stock appreciation rights (“SARs”), restricted stock, and RSUs to employees, non-employee directors, and consultants of the Company. Shares of common stock underlying awards that expire or are forfeited or canceled will again be available for issuance under the 2022 Incentive Plan.

The initial number of shares of the Company’s common stock reserved for issuance under the 2022 Incentive Plan was approximately 15.5 million, plus up to approximately 8.3 million shares subject to awards granted under the 2017 and 2020 Plans. Beginning on March 1, 2022 and ending on (and including) March 31, 2031, the number of shares of the Company’s common stock that may be issued under the 2022 Incentive Plan increases by a number of shares equal to the lesser of (i) 4.0% of the outstanding shares on the last day of the immediately preceding month or (ii) such lesser number of shares (including zero) that the Company’s Board determines for the purposes of the annual increase for that fiscal year.

2022 Inducement Plan

In 2022, the Company adopted its 2022 Inducement Plan, which provides for the granting of stock options, SARs, restricted stock, and RSUs to individuals who were not previously employees of Energy Vault, or following a bona fide period of non-employment, as inducement material to such individuals entering into employment with Energy Vault. Shares of common stock underlying awards that expire or are forfeited or canceled will again be available for issuance under the 2022 Inducement Plan. 8.0 million shares of the Company’s common stock are reserved for issuance under the 2022 Inducement Plan.

ENERGY VAULT HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

Stock Option Activity

Stock option activity for the nine months ended September 30, 2024 was as follows (amounts in thousands, except per share data):

	Options Outstanding			
	Number of Options	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Balance as of December 31, 2023	5,807	\$ 1.71	6.37	\$ 3,605
Stock options granted	1,050	1.12	—	—
Stock options exercised	—	—	—	—
Stock options forfeited, canceled, or expired	(34)	0.80	—	—
Balance as of September 30, 2024	6,823	1.62	6.27	215
Options exercisable as of September 30, 2024	2,359	1.52	5.67	211
Options vested and expected to vest as of September 30, 2024	6,823	\$ 1.62	6.27	215

As of September 30, 2024, total unrecognized stock-based compensation expense related to unvested awards that are expected to vest was \$4.7 million. The weighted-average period over which such stock-based compensation expense will be recognized is approximately 1.95 years.

The aggregate intrinsic values of options outstanding, exercisable, vested and expected to vest were calculated as the difference between the exercise price of the options and the closing stock price of the Company's common stock on the NYSE as of September 30, 2024.

The Company uses the Black-Scholes option pricing model to determine the fair value of stock options. The following table summarizes the assumptions used for estimating the fair value of stock options granted during the nine months ended September 30, 2024.

Expected term (in years)	6.25
Expected volatility	95% to 99%
Risk-free interest rate	3.54% to 4.40%
Expected dividend yield	—

The expected term is the period of time that granted options are expected to be outstanding. The Company uses SEC Staff Accounting Bulletin No. 107 simplified method for "plain vanilla" options with the following characteristics: (i) the share options are granted at market price on the grant date; (ii) exercisability is conditional on performing service through the vesting date; (iii) if an employee terminates service prior to vesting, the employee would forfeit the share options, (iv) if an employee terminates service after vesting, the employee would have 90 days to exercise the share options; and (v) the share options are nontransferable and non-hedgeable. The volatility assumption is based on the historical volatility of the Company and peer companies' common stock. The risk-free interest rate is based on U.S. treasury rates with an equivalent remaining expected term.

ENERGY VAULT HOLDINGS, INC.

**Notes to Condensed Consolidated Financial Statements
(Unaudited)**

Restricted Stock Units

RSU activity for the nine months ended September 30, 2024 was as follows (amounts in thousands, except per share data):

	Number of RSUs	Weighted Average Grant Date Fair Value per Share
Nonvested balance as of December 31, 2023	19,029	\$ 4.55
RSUs granted	10,768	1.50
RSUs forfeited	(1,359)	3.68
RSUs vested	(5,130)	4.98
Nonvested balance as of September 30, 2024	<u>23,308</u>	<u>\$ 3.10</u>

As of September 30, 2024, unrecognized stock-based compensation expense related to these RSUs was \$55.4 million which is expected to be recognized over the remaining weighted-average vesting period of approximately 1.72 years.

The Company issues market-based RSUs that vest upon the Company's stock reaching certain price targets. For these RSUs, the Company determines fair value by using a Monte Carlo simulation, which involves random iterations that take different future price paths over the RSU's contractual life based on appropriate probability distributions (which are based on commonly applied Black-Scholes inputs). The fair value of each market-based RSU is determined by taking the average grant date fair value under each Monte Carlo simulation trial. Compensation expense is recognized on a straight-line basis over the derived service period and there is no ongoing adjustment or reversal based on actual achievement during the vesting period. The following table summarizes the assumptions used for estimating the fair value of market-based RSUs granted during the nine months ended September 30, 2024.

Expected term (in years)	4.00
Expected volatility	90% to 95%
Risk-free interest rate	3.40% to 4.49%
Expected dividend yield	—

Stock-Based Compensation Expense

Total stock-based compensation expense for the three and nine months ended September 30, 2024 and 2023 is as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Sales and marketing	\$ 1,794	\$ 1,801	\$ 5,291	\$ 5,477
Research and development	2,241	2,898	6,527	8,832
General and administrative	6,213	6,015	17,618	20,214
Total stock-based compensation expense	<u>\$ 10,248</u>	<u>\$ 10,714</u>	<u>\$ 29,436</u>	<u>\$ 34,523</u>

NOTE 13. REORGANIZATION EXPENSES

In June 2024, the Company implemented a series of cost savings measures and recognized reorganization costs of \$1.7 million for the nine months ended September 30, 2024. Reorganization expenses consist of personnel reduction costs related to these cost saving measures. The Company does not expect to incur additional charges related to these cost reduction measures and recognized a benefit to reorganization expenses of \$23 thousand for the three months ended

ENERGY VAULT HOLDINGS, INC.
**Notes to Condensed Consolidated Financial Statements
(Unaudited)**

September 30, 2024. The Company did not recognize any reorganization expenses for the three and nine months ended September 30, 2023.

Total reorganization expenses for the three and nine months ended September 30, 2024 and 2023 is as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Sales and marketing	\$ —	\$ —	\$ 288	\$ —
Research and development	—	—	503	—
General and administrative	(23)	—	895	—
Total reorganization expenses	\$ (23)	\$ —	\$ 1,686	\$ —

A reconciliation of the beginning and ending liability balances for reorganization expenses included in the line item, accrued expenses, on the condensed consolidated balance sheets is as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Beginning of period	\$ 1,709	\$ —	\$ —	\$ —
Costs charged to expense	(23)	—	1,686	—
Costs paid or settled	(1,190)	—	(1,190)	—
Foreign currency translation adjustments	18	—	18	—
End of period	\$ 514	\$ —	\$ 514	\$ —

NOTE 14. INCOME TAXES

The Company did not recognize any tax provision for the three and nine months ended September 30, 2024 and recognized a tax provision of \$0.4 million for the three and nine months ended September 30, 2023. The Company has recorded a valuation allowance against substantially all of the Company's net deferred tax assets. The Company provides for a valuation allowance when it is more likely than not that some portion of, or all of the Company's deferred tax assets will not be realized. Due to the Company's history of losses, the Company determined that it is not more likely than not to realize its deferred tax assets.

NOTE 15. NET LOSS PER SHARE OF COMMON STOCK

Basic and diluted net loss per share attributable to common stockholders are calculated as follows (amounts in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net loss attributable to Energy Vault Holdings, Inc.	\$ (26,593)	\$ (18,942)	\$ (73,920)	\$ (76,271)
Weighted-average shares outstanding – basic and diluted	150,812	143,867	148,998	142,052
Net loss per share – basic and diluted attributable to Energy Vault Holdings, Inc.	\$ (0.18)	\$ (0.13)	\$ (0.50)	\$ (0.54)

There were no common share equivalents that were dilutive for the three and nine months ended September 30, 2024 and 2023. Due to net losses during those periods, basic and diluted net loss per common share were the same, as the effect of potentially dilutive securities would have been anti-dilutive.

ENERGY VAULT HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

The following outstanding balances of common share equivalent securities have been excluded from the calculation of diluted weighted-average common shares outstanding because the effect is anti-dilutive for the three and nine months ended September 30, 2024 and 2023 (amounts in thousands):

	Three and Nine Months Ended September 30,	
	2024	2023
Private warrants	5,167	5,167
Stock options	6,823	5,983
RSUs	23,308	22,722
Total	35,298	33,872

In connection with the reverse recapitalization in 2022, eligible Energy Vault stockholders immediately prior to the closing of the transaction obtained a contingent right to receive 9.0 million shares of the Company's common stock ("Earn-Out Shares") upon the Company's common stock quoted on the NYSE equaling or exceeding certain specified prices for any 20 trading days within a 30 consecutive day trading period ("Earn-Out Triggering Event"). 9.0 million of common stock equivalents subject to the Earn-Out Shares are excluded from the anti-dilutive table above as of September 30, 2024, as the underlying shares remain contingently issuable as the Earn-Out Triggering Events have not been satisfied.

NOTE 16. COMMITMENTS AND CONTINGENCIES

Our principal commitments as of September 30, 2024 consisted primarily of obligations under operating leases, finance leases, a deferred pension, warranty liabilities, and issued purchase orders. Our non-cancelable purchase obligations as of September 30, 2024 totaled approximately \$2.0 million.

Loss Contingencies:

In the ordinary course of business, the Company is regularly subject to various legal proceedings. The Company has identified certain legal matters where the Company believes an unfavorable outcome is not probable and, therefore, no reserve has been established. Although the Company currently believes that resolving claims against the Company, including claims where an unfavorable outcome is reasonably possible, will not have a material impact on the Company's business, financial position, results of operations, or cash flows, these matters are subject to inherent uncertainties and the Company's view of these matters may change in the future.

Warranty Liabilities:

The Company provides a limited warranty to its BESS customers assuring that the BESSs are free from defects. The Company's limited warranties are generally for a period of two years after the substantial completion date of a project. These warranties are considered assurance-type warranties which provide a guarantee of quality of the products. For assurance-type warranties, the Company records an estimate of future warranty costs over the period of construction. Warranty costs are recorded as a component of cost of revenue in the Company's consolidated statements of operations.

As of September 30, 2024 and 2023, the Company accrued the below estimated warranty liabilities, respectively (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Warranty liabilities, balance at beginning of period	\$ 2,784	\$ —	\$ 1,817	\$ —
Accruals for warranties issued	—	130	—	130
Change in estimates	—	—	1,532	—
Costs paid or settled	(215)	—	(780)	—
Warranty liabilities, balance at end of period	\$ 2,569	\$ 130	\$ 2,569	\$ 130

The key inputs and assumptions used in calculating the estimated warranty liability are reviewed by management each reporting period. The Company may make additional adjustments to the estimated warranty liability based on a comparison

ENERGY VAULT HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

of actual warranty results to expected results for significant differences or based on performance trends or other qualitative factors. If actual failure rates or replacement costs differ from our estimates in future periods, changes to these estimates may be required, resulting in increases or decreases in the estimated warranty liability, which may be material.

Letters of Credit:

In the ordinary course of business and under certain contracts, the Company is required to post letters of credit for its customers, insurance carriers, and surety bond providers for project performance, and for its vendors for payment guarantees. Such letters of credit are generally issued by a bank or a similar financial institution. The letter of credit commits the issuer to pay specified amounts to the holder of the letter of credit under certain conditions. As of September 30, 2024, there was \$31.0 million of letters of credit issued through the Company's credit relationships. The Company is not aware of any material claims relating to its outstanding letters of credit. The Company's restricted cash balance of \$26.6 million as of September 30, 2024 primarily consists of cash held by banks as collateral for the Company's letters of credit.

Performance and Payment Bonds:

In the ordinary course of business, Energy Vault is required by certain customers to provide performance and payment bonds for contractual commitments related to its projects. These bonds provide a guarantee that the Company will perform under the terms of a contract and that the Company will pay its subcontractors and vendors. If the Company fails to perform under a contract or to pay its subcontractors and vendors, the customer may demand that the surety make payments or provide services under the bond. The Company must reimburse the surety for expenses or outlays it incurs. As of September 30, 2024, there were \$43.7 million outstanding performance and payment bonds.

Other Bonds:

In the ordinary course of business, Energy Vault is required to obtain other bonds, such as for insurance and government payments. These bonds provide a guarantee that the Company will post the necessary reserves as required by banks and tax or licensing authorities. Additionally, bonds are issued to banks as support for letters of credit provided by those banks. As of September 30, 2024, there were \$13.8 million of outstanding other bonds.

NOTE 17. SUBSEQUENT EVENTS

On October 9, 2024, the Company loaned AUD 0.5 million (or \$0.3 million) to a potential Australian customer to assist them in purchasing a bond for a potential project with the Company. The loan has a stated interest rate of 8.0%. Principal and accrued interest are due on October 8, 2025, unless the potential project is cancelled, at which time principal and interest would immediately become due.

On September 13, 2024, the Company was notified by the NYSE that it was not in compliance with Section 802.01C of the NYSE Listed Company Manual because the average closing price of the Company's Common Stock was less than \$1.00 over a consecutive 30 trading-day period. The notice did not result in the immediate delisting of the Company's Common Stock from the NYSE. On November 1, 2024, the Company received written notice from the NYSE informing the Company that it had regained compliance with the bid price rule as of October 31, 2024.

On November 12, 2024, the Company entered into an open market sales agreement (the "Sales Agreement") with Jefferies LLC, as sales agent (the "sales agent"), pursuant to which the Company may, from time to time, sell shares of its common stock, having an aggregate offering price of up to \$50.0 million through the sales agent. The Company is not obligated to, and cannot provide any assurances that it will, make any sales of its shares under the Sales Agreement.

Upon delivery of a placement notice and subject to the terms and conditions of the Sales Agreement, the sales agent may sell the shares by methods deemed to be an "at-the-market" offering as defined in Rule 415(a)(4) promulgated under the Securities Act. Subject to the terms and conditions of the Sales Agreement, the sales agent will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares from time to time, based upon the Company's instructions. The Sales Agreement contains customary representations, warranties and agreements, indemnification rights and obligations of the parties. The Company will pay the sales agent a commission for its services as sales agent of up to 3% of the gross sales price of the shares of the Company's common stock sold through the sales agent pursuant to the Sales Agreement.

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

The following discussion and analysis provide information which Energy Vault's management believes is relevant to an assessment and understanding of Energy Vault's condensed consolidated results of operations and financial condition. The discussion should be read together with our unaudited interim condensed consolidated financial statements, the respective notes thereto, and other financial information included elsewhere in this Quarterly Report. The discussion and analysis should also be read together with the audited consolidated financial statements, the respective notes thereto, and other financial information included elsewhere in the Annual Report for the year ended December 31, 2023 filed by us with the SEC on March 13, 2024. This discussion may contain forward-looking statements based upon Energy Vault's current expectations that involve risks, uncertainties, and assumptions. Energy Vault's actual results may differ materially from those anticipated in these forward-looking statements. You should review the section titled "Cautionary Note Regarding Forward-Looking Statements" for a discussion of forward-looking statements and the section titled "Risk Factors," for a discussion of factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis and elsewhere in this Quarterly Report. Energy Vault's historical results are not necessarily indicative of the results that may be expected for any period in the future. Unless the context otherwise requires, all references in this Quarterly Report to "we," "our," "us," "the Company," or "Energy Vault" refer to Energy Vault Holdings, Inc., a Delaware corporation, and its subsidiaries both prior to the consummation of and following the Merger (as defined below).

Our Business

Energy Vault develops and deploys utility-scale energy storage solutions designed to aid in the global transition to a clean energy future.

Our Company's comprehensive offerings include proprietary gravity, battery, and green hydrogen energy storage solutions, supported by our technology-agnostic energy management software solutions. We incorporate a customer-centric, solutions-based approach toward helping utilities, independent power producers, and large industrial energy users reduce their energy costs while maintaining power reliability. As the world transitions to an economy powered by increasingly intermittent renewable energy such as solar and wind, the ability to provide clean and affordable electricity to a growing global population will depend heavily on the ability to store and distribute energy at appropriate times. We are striving to create a world powered by renewable resources so that everyone will have access to clean, sustainable, and affordable energy.

Our solutions are designed to address the intermittency issues inherent in the predominant sources of renewable energy production by storing energy produced when renewable energy production is active. Once energy is stored in our solutions, it can be discharged to the grid in a controlled and reliable manner at any time, regardless of the then current ability of the renewable sources to generate power. Our energy storage solutions are designed to accommodate a wide variety of renewable power sources and to achieve an attractive levelized cost of energy relative to fossil fuels. Collectively, these abilities greatly broaden the use cases and time duration scenarios that can be addressed by certain sources of renewable power.

Key Factors and Trends Affecting our Business

We believe that our performance and future success depend upon several factors that present significant opportunities for us, but also pose risks and challenges including those discussed below and in Part I, Item 1A. "Risk Factors" of our 2023 Annual Report on Form 10-K filed with the SEC on March 13, 2024.

Product Development and Deployment Plan

We leverage our sustainable and differentiated technologies to provide our customers with economical solutions to meet their short, long, and extended-duration renewable energy storage needs. Our energy storage solutions are designed to accommodate a wide variety of renewable power sources and to achieve an attractive levelized cost of energy relative to fossil fuels.

We anticipate that our market will be characterized by high growth and rapidly evolving use cases and requirements. We believe that the majority of our competitors are primarily focused on the development and marketing of vertically siloed solutions based on a singular energy storage technology. Alternatively, we have strategically chosen to design an agile and agnostic software platform that can orchestrate the management of not just one energy storage technology, but rather one or more of our diverse storage mediums and the underlying power generation assets to harmonize asset operation and drive competitive operational performance. We expect that this will broaden the use cases and time duration scenarios that can be

addressed by certain sources of renewable power, and thereby drive a faster transition to more widespread utilization of renewable power.

Our range of energy storage solutions assures our customers have what they need today, as well as what they will need in the future, thereby protecting their investments in our products within this high-growth market and its rapidly evolving use cases and requirements. For these reasons, we believe we are well positioned to compete successfully in the evolving market for energy storage solutions.

We primarily rely on two models for project delivery, which are (i) engineering, procurement, and construction (“EPC”) delivery and (ii) engineered equipment (“EEQ”) delivery. Under the EPC model, we generally rely on third-party EPC firms to construct our storage systems, under our supervision with dedicated teams tasked with project management. Under the EEQ model, we are responsible for the delivery and installation of the equipment we provide, as well as resolving issues within our scope of supply.

Our cost projections are heavily dependent upon raw materials (such as steel), equipment (such as motors, batteries, inverters, and power electronic devices) and technical and construction service providers (such as engineering, procurement, construction firms). The global supply chain, on which Energy Vault relies, has been significantly impacted by (i) economic uncertainties, including the war in Ukraine and the conflict in the Middle East, and (ii) high inflation pressure on project budgeting resulting in potential significant delays and cost fluctuations, particularly with respect to lithium, transformers, inverters, motors, microchips and many other raw materials that are within the motor and power electronic supply chains. These future timing and financial developments may impact Energy Vault’s performance from both a deployment and cost perspective.

Energy Storage Industry

We believe climate change poses a monumental risk to humanity and decreasing human generated GHG emissions is currently among the world’s most pressing challenges. Carbon dioxide is the primary GHG emitted through human activities and, according to the International Energy Agency, the energy sector is estimated to account for more than 75% of global human generated GHG emissions. Burning fossil fuels contributes to climate change by releasing carbon dioxide and nitrous oxide into the atmosphere.

Renewable energy sources present environmental advantages over fossil fuels in terms of finite natural resource usage and GHG emission profile. A major obstacle to transitioning to renewable sources of energy such as wind and solar is the intermittent availability of these types of energy sources. Energy storage solutions are needed to balance the production intermittency of variable renewable energy to support a clean-energy future and a balanced electrical grid infrastructure.

The growth of the energy storage market that we address is primarily driven by the decreasing cost of energy storage technologies and renewable power generation sources, government mandates, financial incentives to reduce GHG emissions, and increasing geopolitical pressures driving energy independence goals. These dynamics are driving demand for additional renewable power generation and increased capacity and storage duration in energy storage solutions.

According to the 2H 2023 Energy Storage Market Outlook published by BloombergNEF in October 2023, the energy storage market is expected to grow at a “27% compound annual growth rate through 2030, with annual additions reaching 110 GW/372 GWh, or 2.6 times expected 2023 gigawatt installations.” Both government mandates and companies focused on reducing energy use, cost, and emissions are expected to propel the shift to renewable sources of power.

Our business depends on the acceptance of our energy storage products in the marketplace. Even if renewable energy and energy storage become more widely adopted than they have been to date, potential customers may choose energy storage products from our competitors.

Increasing Deployment of Renewable Energy

Deployment of renewable energy resources has accelerated over the last decade, and solar and wind have become low cost energy sources. Energy storage is critical to reducing the intermittency and volatility of renewable energy generation. However, there is no guarantee that the deployment of renewable energy will occur at the rate that is expected. Inflationary pressures, supply chain disruptions, geopolitical stresses, and other factors could result in fluctuations in demand for and deployment of renewable energy resources, adversely affecting our revenue and ability to generate profits in the future.

Competition

The market for our products is competitive, and we may face increased competition as new and existing competitors introduce energy storage solutions and components. Furthermore, as we expand our services and digital applications in the future, we may face other competitors including software providers and hardware manufacturers that offer software solutions. If our market share declines due to increased competition or if we are not able to compete as we expect, our revenue and ability to generate profits in the future may be adversely affected.

Inflation

In the markets in which we operate, there have been higher rates of inflation in recent years. If inflation continues to increase in our markets, it may increase our expenses that we may not be able to pass through to customers. It may also increase the costs of our products that could negatively impact their competitiveness.

Government Regulation and Compliance

Governments in countries throughout the world have announced and implemented various policies, regulations, and legislation to support the transition from fossil fuels to low-carbon form of energy, including through the use of energy storage solutions. For example, in August 2022, the United States Congress passed the Inflation Reduction Act (“IRA”). The IRA provides incentives for the domestic manufacturing of key components of energy storage solutions as well as the construction of standalone energy storage projects. The resulting improved economics are expected to reduce the cost to implement storage within the domestic market and may amplify and accelerate the adoption of energy storage systems for short, long, and extended duration use cases, like those offered by Energy Vault. Such government policies and programs are becoming increasingly instrumental in stimulating adoption of energy storage solutions across different markets through a variety of methods, including by providing financial support, facilitating grid integration, and supporting research and development.

Although we are not regulated as a utility, federal, state, and local government statutes and regulations concerning electricity heavily influence the market for our products and services. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation, competition with utilities and the interconnection of customer-owned electricity generation. In the United States, governments continuously modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different rates for commercial customers on a regular basis. These changes could affect our ability to deliver cost savings to our current and future customers for the purchase of electricity. We believe we are well positioned to capture incentives contained in the IRA and that its enactment is favorable to our business and future operations. However, as this legislation was recently adopted and applicable U.S. Department of Treasury and Internal Revenue Service guidelines were published in the third quarter of 2023, we have not yet seen the impact these IRA incentives may have on our business, operations, and financial performance in the future and cannot guarantee that we will realize the anticipated benefits from the incentives in the IRA.

Recent Developments

In June 2024, the Company executed an engineer, procure, and construct contract with a customer to build a 200 MW/400 MWh BESS in Australia. Additionally, the Company signed a maintenance agreement with this customer to provide maintenance services on the BESS after construction is completed.

In June 2024, the Company implemented a series of cost savings measures, expected to result in realized cost savings of \$6.0 million to \$8.0 million annually. During the nine months ended September 30, 2024, the Company recognized reorganization costs of \$1.7 million, consisting of personnel reduction costs, related to these cost saving measures.

On September 13, 2024, the Company was notified by the NYSE that it was not in compliance with Section 802.01C of the NYSE Listed Company Manual because the average closing price of the Company’s Common Stock was less than \$1.00 over a consecutive 30 trading-day period. The notice did not result in the immediate delisting of the Company’s Common Stock from the NYSE. On November 1, 2024, the Company received written notice from the NYSE informing the Company that it had regained compliance with the bid price rule as of October 31, 2024.

In October 2024 the Company executed an equipment supply contract with a customer and in November 2024 the Company executed an offtake agreement for the Cross Trails BESS with another customer. The equipment supply contract is for a fixed price and the offtake agreement includes both fixed and variable price components. The aggregate expected future revenue from these contracts, including variable fees that the Company believes is probable, is \$90.7 million. The variable revenues are forecasted by an independent third-party firm using simulation software that factors in current and projected energy market dynamics, historical and forecasted volatility, and location specific data. The Company considers the low-end simulation results to be probable.

On November 12, 2024, the Company entered into an open market sales agreement (the “Sales Agreement”) with Jefferies LLC, as sales agent (the “sales agent”), pursuant to which the Company may, from time to time, sell shares of its common stock, having an aggregate offering price of up to \$50.0 million through the sales agent. The Company is not obligated to, and cannot provide any assurances that it will, make any sales of its shares under the Sales Agreement.

Upon delivery of a placement notice and subject to the terms and conditions of the Sales Agreement, the sales agent may sell the shares by methods deemed to be an “at-the-market” offering as defined in Rule 415(a)(4) promulgated under the Securities Act. Subject to the terms and conditions of the Sales Agreement, the sales agent will use commercially

reasonable efforts consistent with its normal trading and sales practices to sell the shares from time to time, based upon the Company's instructions. The Sales Agreement contains customary representations, warranties and agreements, indemnification rights and obligations of the parties. The Company will pay the sales agent a commission for its services as sales agent of up to 3% of the gross sales price of the shares of the Company's common stock sold through the sales agent pursuant to the Sales Agreement.

Key Operating Metrics

The following tables present our key operating metrics for the periods presented (amounts in thousands unless otherwise noted):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
New bookings ⁽¹⁾	\$ —	\$ 137,385	\$ 182,830	\$ 170,478
Cancellations	—	—	(182,238)	—
Net bookings	\$ —	\$ 137,385	\$ 592	\$ 170,478
New bookings (in MWh)	—	400	400	400
Cancellations (in MWh)	—	—	(400)	—
Net bookings (in MWh)	—	400	—	400
		September 30, 2024	December 31, 2023	September 30, 2023
Developed Pipeline ⁽²⁾		\$ 2,728,700		
Developed Pipeline (in GWh) ⁽²⁾		10.7		
Backlog ⁽¹⁾⁽³⁾	\$	264,390	\$ 275,376	\$ 314,876
Backlog (in MWh) ⁽³⁾		693	713	713

⁽¹⁾ In October 2024 the Company executed an equipment supply contract and in November 2024 the Company executed an offtake contract with two different customers with aggregate expected future revenue of \$90.7 million/314 MWh. Prior to executing the equipment supply agreement, the Company and the customer were operating under a limited notice to proceed with a price of \$3.0 million, which has already been included in bookings for the nine months ended September 30, 2024 and in backlog as of September 30, 2024.

⁽²⁾ Developed pipeline is a new key operating metric that the Company began tracking during the second quarter of 2024, therefore prior period comparable figures have not been included.

⁽³⁾ The Company changed its definition of backlog during the second quarter of 2024, therefore the Company has presented the comparable amounts as of December 31, 2023 and September 30, 2023 per the new definition.

Bookings

Bookings represent the total aggregate contract value and total MWhs to be delivered from customer contracts signed during the period, net of the total aggregate value and total MWhs of contracts that were cancelled during the period. The aggregate contract value includes any potential future variable payments from tolling and offtake arrangements that the Company believes is probable of being realized. Probable future variable payments are forecasted by an independent third-party firm using simulation software that factors in current and projected energy market dynamics, historical and forecasted volatility, and location specific data. The Company considers the low-end simulation results to be probable. Potential future intellectual property ("IP") royalties are not included in bookings. Due to the long-term nature of our contracts, bookings are a key metric that allows us to understand and evaluate the growth of our Company and our estimated future revenue related to our customer contracts.

Developed Pipeline

Developed pipeline represents uncontracted, potential revenue, from projects in which potential prospective customers have either awarded a project to the Company, or have put the Company on a shortlist to be awarded a project. Developed pipeline is an internal management metric that we construct using information from our global sales team and is monitored by management to understand the potential anticipated growth of our Company and to estimate potential future revenue. Developed pipeline is influenced by the prevailing foreign exchange rates and equipment prices and may vary from period to period if these inputs change.

Developed pipeline may not generate margins equal to our historical operating results. We have only recently begun to track our developed pipeline on a consistent basis as a performance measure, and as a result, we do not have significant

experience in determining the level of realization that we may achieve on these potential contracts. Our customers may experience project delays or cancel orders as a result of external market factors and economic or other factors beyond our control.

Backlog

Backlog represents contracted but unrecognized revenue from projects and services yet to be completed, unrecognized revenue or other income from IP licensing agreements, and unrecognized revenue from tolling arrangements. Backlog includes any potential future variable payments from tolling and offtake arrangements that the Company believes is probable of being realized. Probable future variable payments are forecasted by an independent third-party firm using simulation software that factors in current and projected energy market dynamics, historical and forecasted volatility, and location specific data. The Company considers the low-end simulation results to be probable. Potential future intellectual property (“IP”) royalties are not included in backlog. Backlog is a common measurement used in our industry. Our methodology for determining backlog may not, however, be comparable to the methodologies used by others. Effective in the second quarter of 2024, we updated our methodology for computing backlog. Under our previous methodology, our backlog was equivalent to our remaining performance obligations under GAAP. We believe our new methodology for computing backlog allows us to better evaluate the growth of our Company and estimate future revenue.

We cannot guarantee that our backlog will result in actual revenue in the originally anticipated period, or at all. Our customers may experience project delays or cancel orders as a result of external market factors and economic or other factors beyond our control. If our backlog fails to result in revenue as anticipated or in a timely manner, we could experience a reduction in revenue, profitability, and liquidity.

Key Components of Results of Operations

Revenue

The Company generates revenue from the sale of our energy storage solutions, the licensing of the Company’s software solutions and intellectual property, and from long-term service agreements to maintain customer owned energy systems. To date, the Company has primarily generated revenue from the sale of our BESSs and from licensing our EVx technology. In addition to these sources of revenue, in the future we expect to generate revenue from the sale of our GESSs and through tolling arrangements in connection with energy storage systems that we intend to own and operate.

When the Company sells a BESS, the Company recognizes revenue over time as we transfer control of our product to the customer. When the Company licenses its intellectual property, revenue is recognized at the point in time at which the customer obtains control of the licensed technology. When the Company licenses its software solutions or provides maintenance services, the transaction price for each contract is recognized as revenue on a straight-line basis over the term of the contract.

Our revenue is affected by changes in the price, volume, and mix of products and services purchased by our customers, which is driven by the demand of our products, geographic mix of our customers, strength of competitor’s product offerings, and the availability of government incentives to the end-users of our products.

Our revenue growth is dependent on continued growth in the number of energy storage systems constructed each year and our ability to increase our share of demand in the geographic regions where we currently compete and plan to compete in the future. Additionally, our revenue growth is dependent on our ability to continue to develop and commercialize new and innovative products to meet our customers’ energy storage needs.

Cost of Revenue

Cost of revenue primarily consists of product costs, including purchased materials and supplies, as well as costs related to subcontractors, direct labor, and product warranties.

Our cost of revenue is affected by underlying costs of materials such as batteries, inverters, enclosures, transformers, and cables, as well as the cost of subcontractors to provide construction services. We do not currently hedge against changes in the price of raw materials as we do not purchase raw materials. We purchase energy storage system components from our suppliers.

Gross Profit and Gross Profit Margin

Gross profit and gross profit margin may vary from period to period due to the timing of transferring control of significant uninstalled materials to customers under contracts to sell energy storage systems. When control of significant uninstalled materials is transferred to customers, the Company recognizes revenue in an amount equal to the cost of those materials. The profit margin inherent in these materials is deferred until the Company fulfills its obligation to install the materials

during construction of the energy storage systems. As a result, gross profit and gross profit margin will vary from period to period depending on the timing of revenue recognition related to uninstalled materials.

Additionally, gross profit and gross profit margin may vary from period to period due to our sales volume, product prices, product costs, product mix, geographical mix, along with the timing of when we perform installation and construction services.

Sales and Marketing (“S&M”) Expenses

S&M expenses consist primarily of internal personnel-related costs for marketing, sales, and related support teams, as well as external costs such as professional service fees, trade shows, marketing and sales-related promotional materials, public relations expenses, website operating and maintenance costs. Personnel-related expenses include salaries, benefits, and stock-based compensation expenses.

Research and Development (“R&D”) Expenses

R&D expenses consist primarily of internal and external expenses incurred in connection with our research activities and development programs that include materials costs directly related to product development, testing and evaluation costs, construction costs including labor and transportation of material, overhead related costs and other direct expenses consisting of personnel-related expenses and consulting expenses relating to study of product safety, reliability and development. Personnel-related expenses consist of salaries, benefits, and stock-based compensation expense.

General and Administrative (“G&A”) Expenses

G&A expenses consist of information technology expenses, legal and professional fees, travel costs, and personnel-related expenses for our corporate, executive, finance, and other administrative functions, including expenses for professional and contract services. Personnel-related expenses consist of salaries, benefits, and stock-based compensation expense. To a lesser extent, general and administrative expenses include investor relations costs, insurance costs, rent, office expenses, maintenance costs, and the provision for credit losses.

Depreciation and Amortization Expense

Depreciation and amortization expense consists of costs associated with property and equipment, and amortization of intangibles. We expect to invest in additional property, equipment, and other assets as we construct and own energy storage systems, which will result in additional depreciation expense in the future.

Asset Impairment and Loss on Sale of Assets

Asset impairment and loss on sale of assets consists of losses associated with the write-down or sale of property and equipment.

Interest Income

Interest income consists of interest income from our money market funds, interest-bearing savings accounts, customer financing receivable, and convertible note receivable.

Results of operations
Consolidated Comparison of Three and Nine Months Ended September 30, 2024 to September 30, 2023

The following table sets forth our results of operations for the periods indicated (amounts in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	\$ Change	2024	2023	\$ Change
Revenue	\$ 1,199	\$ 172,205	\$ (171,006)	\$ 12,728	\$ 223,307	\$ (210,579)
Cost of revenue	716	165,057	(164,341)	9,128	209,793	(200,665)
Gross profit	483	7,148	(6,665)	3,600	13,514	(9,914)
Operating Expenses:						
Sales and marketing	4,347	4,183	164	13,378	13,609	(231)
Research and development	5,704	8,156	(2,452)	19,621	29,552	(9,931)
General and administrative	17,270	15,810	1,460	48,812	52,222	(3,410)
Depreciation and amortization	251	235	16	825	670	155
Asset impairment and loss on sale of assets	(14)	—	(14)	551	—	551
Total operating expenses	27,558	28,384	(826)	83,187	96,053	(12,866)
Loss from operations	(27,075)	(21,236)	(5,839)	(79,587)	(82,539)	2,952
Other income (expense):						
Interest expense	(43)	(18)	(25)	(89)	(19)	(70)
Interest income	1,439	1,919	(480)	5,011	6,149	(1,138)
Other income (expense), net	(937)	(8)	(929)	711	(259)	970
Loss before income taxes	\$ (26,616)	\$ (19,343)	\$ (7,273)	\$ (73,954)	\$ (76,668)	\$ 2,714

Revenue

The Company recognized revenue for the product and service categories as follows for the three and nine months ended September 30, 2024 and 2023 (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Sale of energy storage products ⁽¹⁾	\$ 811	\$ 172,139	\$ 11,494	\$ 222,943
Operation and maintenance services	273	—	818	—
Software licensing	115	—	301	—
Intellectual property licensing	—	—	115	—
Other	—	66	—	364
Total revenue	\$ 1,199	\$ 172,205	\$ 12,728	\$ 223,307

⁽¹⁾ Includes revenue from the build and transfer of energy storage systems and from the sale of spare parts for energy storage systems. Revenue from the sale of spare parts was included within "Other" in prior periods. \$0.3 million in revenue from the sale of spare parts reported within the "Other" line for the three months ended March 31, 2024 has been included within "Sale of energy storage products" for the nine months ended September 30, 2024.

Revenue for the three months ended September 30, 2024 decreased by \$171.0 million to \$1.2 million compared to \$172.2 million for the three months ended September 30, 2023 and revenue for the nine months ended September 30, 2024 decreased by \$210.6 million to \$12.7 million compared to \$223.3 million for the nine months ended September 30, 2023.

The decrease in revenue for the three and nine months ended September 30, 2024 was primarily attributable to a decrease in revenue from the sale of energy storage products due to a reduction in revenue from the build and transfer of BESS projects. Partially offsetting the decrease in revenue from the sale of energy storage products was revenue from operation and maintenance services, software licensing, and intellectual property licensing. The revenue from providing operation and maintenance services and software licensing are new revenue streams for the Company in 2024, and are from customers that previously purchased BESSs. The Company began providing these services to the customers upon substantial completion of their BESSs.

Revenue from two customers accounted for 51% and 35% of total revenue for the three months ended September 30, 2024 and revenue from two customers accounted for 67% and 18% of total revenue for the nine months ended September 30,

2024. Revenue from two customers accounted for 59% and 38% of total revenue for the three months ended September 30, 2023 and revenue from three customers accounted for 47%, 33%, and 20% of total revenue for the nine months ended September 30, 2023.

Cost of Revenue

Cost of revenue for the three months ended September 30, 2024 decreased by \$164.3 million to \$0.7 million compared to \$165.1 million for the three months ended September 30, 2023 and cost of revenue for the nine months ended September 30, 2024 decreased by \$200.7 million to \$9.1 million compared to \$209.8 million for the nine months ended September 30, 2023.

Cost of revenue decreased due to the Company's BESS projects in progress during the three and nine months ended September 30, 2024 being in their later stages, compared to the projects being in earlier stages during the three and nine months ended September 30, 2023.

Gross Profit and Gross Profit Margin

For the three and nine months ended September 30, 2024, gross profit was \$0.5 million and \$3.6 million, respectively and gross profit margin was 40.3% and 28.3%, respectively. For the three and nine months ended September 30, 2023, gross profit was \$7.1 million and \$13.5 million, respectively, and gross profit margin was 4.2% and 6.1%, respectively.

The decrease in gross profit for the three and nine months ended September 30, 2024 compared to the three and nine months ended September 30, 2023 was primarily due to a decrease in revenue from the sale of energy storage projects due to the Company's BESS projects being in their later stages in 2024. Additionally, gross profit for the nine months ended September 30, 2024 was negatively impacted by a \$1.4 million increase in warranty expenses compared to the nine months ended September 30, 2023.

The increase in gross profit margin for the three and nine months ended September 30, 2024 compared to the three and nine months ended September 30, 2023 was primarily due to higher margins from the sale of energy storage products, and the introduction of higher margin operation and maintenance services and software licensing in 2024. The higher margins from the sale of energy storage products in 2024 was due to the Company's BESS projects being in their later stages when higher margin construction activities occur, compared to 2023 when the BESS projects were in their earlier stages when lower margin equipment deliveries occur.

Sales and Marketing Expenses

Sales and marketing expenses increased by \$0.2 million to \$4.3 million for the three months ended September 30, 2024, compared to \$4.2 million for the three months ended September 30, 2023. The increase was primarily attributable to a \$0.1 million increase in personnel-related expenses and a \$0.2 million increase in consulting costs. These increases were partially offset by a \$0.1 million decrease in marketing and public relations costs.

Sales and marketing expenses decreased by \$0.2 million to \$13.4 million for the nine months ended September 30, 2024, compared to \$13.6 million for the nine months ended September 30, 2023. The decrease was primarily attributable to a \$0.3 million decrease in personnel-related expenses and a \$0.2 million decrease in marketing and public relations costs. These decreases were partially offset by a \$0.2 million increase in consulting costs.

Research and Development Expenses

Research and development expenses decreased by \$2.5 million to \$5.7 million for the three months ended September 30, 2024, compared to \$8.2 million for the three months ended September 30, 2023. The decrease was primarily attributable to a \$1.4 million decrease in personnel-related expenses, a \$0.8 million decrease in software expenses, and a \$0.5 million decrease in engineering costs. These cost decreases were primarily attributable to a focus on cost controls and a reduction in headcount. These cost decreases were partially offset by a \$0.1 million increase in consulting costs.

Research and development expenses decreased by \$9.9 million to \$19.6 million for the nine months ended September 30, 2024, compared to \$29.6 million for the nine months ended September 30, 2023. The decrease was primarily attributable to a \$5.1 million decrease in personnel-related expenses, a \$3.1 million decrease in engineering costs, and a \$1.8 million decrease in software expenses. The cost decreases were primarily attributable to a focus on cost controls and a reduction in headcount.

General and Administrative Expenses

General and administrative expenses increased by \$1.5 million to \$17.3 million for the three months ended September 30, 2024 compared to \$15.8 million for the three months ended September 30, 2023. The increase was primarily attributable to a \$1.9 million increase in the provision for credit losses and a \$0.4 million increase in legal and professional fees. These

increases were partially offset by a \$0.3 million decrease in personnel-related expenses, a \$0.3 million decrease in consulting costs, and a \$0.3 million decrease in software expenses.

General and administrative expenses decreased by \$3.4 million to \$48.8 million for the nine months ended September 30, 2024 compared to \$52.2 million for the nine months ended September 30, 2023. The decrease was primarily attributable to a \$4.5 million decrease in personnel-related expenses, a \$0.9 million decrease in software expenses, and a \$0.4 million decrease in consulting costs. The cost decreases were primarily attributable to a focus on cost controls and a reduction in headcount. These cost decreases were partially offset by a \$2.0 million increase in the provision for credit losses and a \$0.3 million increase in legal and professional fees.

Depreciation and Amortization Expense

Depreciation and amortization expense increased by \$16 thousand to \$0.3 million for the three months ended September 30, 2024, compared to \$0.2 million for the three months ended September 30, 2023. The increase is primarily due to \$0.1 million in amortization costs related to the Company's capitalized software. Certain capitalized software products were placed into service effective January 1, 2024, resulting in \$0.1 million in amortization expense during the three months ended September 30, 2024. There was no comparable expense for the three months ended September 30, 2023.

Depreciation and amortization expense increased by \$0.2 million to \$0.8 million for the nine months ended September 30, 2024, compared to \$0.7 million for the nine months ended September 30, 2023. The increase is primarily due to \$0.3 million in amortization costs related to the Company's capitalized software. Certain capitalized software products were placed into service effective January 1, 2024, resulting in \$0.3 million in amortization expense during the nine months ended September 30, 2024. There was no comparable expense for the nine months ended September 30, 2023.

Asset Impairment and Loss on Sale of Assets

For the three months ended September 30, 2024, asset impairments and loss on sale of assets was nominal. For the nine months ended September 30, 2024, asset impairment and loss on sale of assets totaled \$0.6 million, comprised of \$0.5 million in asset impairments and \$0.1 million in loss on sale of assets. Asset impairment relates to the write-off of leasehold improvements in the Company's Westlake Village office due to the Company relocating its corporate office. The loss on sale of assets relates to the sale of a cement plant at the Company's R&D site in Switzerland. The Company did not recognize any impairments or loss on sale of assets during the three and nine months ended September 30, 2023.

Interest Income

Interest income decreased by \$0.5 million to \$1.4 million for the three months ended September 30, 2024 compared to \$1.9 million for the three months ended September 30, 2023 and interest income decreased by \$1.1 million to \$5.0 million compared to \$6.1 million for the nine months ended September 30, 2024. The decrease in interest income is primarily due to a decrease in interest income from our money market funds.

Other Income (Expense), Net

Other expense, net increased by \$0.9 million to \$0.9 million for the three months ended September 30, 2024 compared to \$8 thousand for the three months ended September 30, 2023. The increase in other expense, net is primarily due to a \$0.8 million loss due to the change in the fair value of the Company's derivative asset - conversion option due to a decrease in the probability of the Company exercising its conversion option in DG Fuels, LLC ("DG Fuels").

Other income (expense), net improved by \$1.0 million to other income, net of \$0.7 million for the nine months ended September 30, 2024 compared to other expense, net of \$0.3 million for the nine months ended September 30, 2023. The improvement in other income (expense), net is primarily due to a \$1.5 million gain resulting from the derecognition of a contract liability with a related party during the nine months ended September 30, 2024. In 2019, the Company received a \$1.5 million deposit for a gravity-based system from a customer that was owned by one of its primary shareholders. During the nine months ended September 30, 2024, the Company concluded it was no longer obligated to provide a gravity-based system to the customer and that the deposit was nonrefundable. As a result, the Company derecognized the \$1.5 million liability and recognized it as a gain during the nine months ended September 30, 2024. There was no such comparable gain during the nine months ended September 30, 2023. Partially offsetting this gain was a \$0.8 million loss due to the change in the fair value of the Company's derivative asset - conversion option due to a decrease in the probability of the Company exercising its conversion option in DG Fuels.

Liquidity and Capital Resources

Sources of Liquidity

Since inception, we have financed our net cash used in operating and investing activities primarily through the issuance and sale of equity, and with the proceeds from the reverse recapitalization and private investment in public equity that occurred in 2022.

Energy Vault has incurred negative operating cash flows and operating losses in the past and we may incur operating losses in the future. We may seek additional capital through equity and/or debt financings depending on market conditions. If we are required to raise additional funds by issuing equity securities, dilution to stockholders would result. Any equity securities issued may also provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, these debt securities would have rights, preferences and privileges senior to those of holders of common stock. The terms of debt securities or borrowings could impose significant restrictions on our operations. The credit market and financial services industry have in the past, and may in the future, experience periods of uncertainty that could impact the availability and cost of equity and debt financing.

Management believes that its cash, cash equivalents, and restricted cash on hand as of the filing date of this Quarterly Report will be sufficient to fund our operating activities for at least the next twelve months without regard to any cash proceeds we may receive in the future upon the exercise of our private warrants.

The exercise price for our private warrants is \$11.50 per warrant, subject to certain specified adjustments. To the extent that the price of our common stock exceeds \$11.50 per share, it is more likely that our private warrant holders will exercise their warrants. To the extent that the price of our common stock declines, including a decline below \$11.50 per share, it is less likely that our private warrant holders will exercise their warrants.

On November 12, we entered into an open market sales agreement with Jefferies LLC, as sales agent (the “sales agent”), pursuant to which we may, from time to time, sell shares of our common stock, having an aggregate offering price of up to \$50.0 million through the sales agent under an “at-the-market” equity offering program. Any offer and sale of shares of our common stock under the Sales Agreement will be made pursuant to our shelf registration statement on Form S-3 (No. 333-273089), which was declared effective by the SEC on July 20, 2023, and the related prospectus supplement dated November 12, 2024 and accompanying prospectus that form a part of the registration statement.

The following table summarizes our cash, cash equivalents, and restricted cash balances as of September 30, 2024 and December 31, 2023 (amounts in thousands):

	September 30, 2024	December 31, 2023
Cash and cash equivalents	\$ 51,124	\$ 109,923
Restricted cash	26,560	35,632
Total cash, cash equivalents, and restricted cash	<u>\$ 77,684</u>	<u>\$ 145,555</u>

Our cash equivalents are highly liquid investments purchased with an original or remaining maturities of three months or less. Substantially all of our restricted cash balance is held by banks as collateral for the Company’s letters of credit.

Licensing Agreements with Extended Payment Terms

The Company has licensed its gravity storage technology and certain of these agreements contain extended payment terms. There is uncertainty as to the collectability of the license payments in certain licensing agreements, and the Company has not yet recognized any revenue related to those license agreements where collectability is uncertain.

Anticipated cash inflows from licensing agreements with extended payment terms as of September 30, 2024 were as follows (amounts in thousands):

	Amount
Remainder of 2024	\$ 4,000
2025	6,750
2026	5,750
2027	5,750
2028	6,250
Thereafter	19,000
Total	<u>\$ 47,500</u>

Contractual Obligations

Our principal commitments as of September 30, 2024 consisted primarily of obligations under operating leases, finance leases, a deferred pension, warranty liabilities, and issued purchase orders. Our non-cancellable purchase obligations as of September 30, 2024 totaled approximately \$2.0 million.

Cash Flows

The following table summarizes cash flows from operating, investing, and financing activities for the periods indicated (amounts in thousands):

	Nine Months Ended September 30,	
	2024	2023
Net cash used in operating activities	\$ (21,040)	\$ (116,050)
Net cash used in investing activities	(48,085)	(33,182)
Net cash provided by (used in) financing activities	565	(4,655)
Effects of exchange rate changes on cash	689	(73)
Net decrease in cash	<u>\$ (67,871)</u>	<u>\$ (153,960)</u>

Operating Activities

During the nine months ended September 30, 2024 and 2023, cash used in operating activities totaled \$21.0 million and \$116.1 million, respectively.

During the nine months ended September 30, 2024, operating cash flows were negatively impacted by a net loss of \$74.0 million and a decrease in operating liabilities of \$53.1 million. The decrease in operating liabilities was primarily attributable to a \$55.5 million decrease in accounts payable and accrued expenses and a \$1.0 million decrease in other long-term liabilities, partially offset by a \$3.5 million increase in deferred revenue. Operating cash flows were positively impacted by a \$73.0 million decrease in operating assets and non-cash charges of \$33.0 million. The decrease in operating assets was primarily attributable to a \$56.9 million decrease in contract assets, a \$24.6 million decrease in accounts receivable, and a \$1.5 million decrease in customer financing receivable. The decrease in contract assets and accounts receivable was due to the Company's BESS projects being in their final stages and the Company having collected most of the remaining balances due. The non-cash charges were primarily composed of \$29.4 million in stock-based compensation expense, a \$2.2 million provision for credit losses, \$0.8 million in depreciation and amortization expense, \$0.8 million in change in fair value of derivative asset - conversion option, \$0.6 million in asset impairments and loss on sale of assets, and \$0.3 million in foreign exchange losses, partially offset by \$1.2 million in non-cash interest income.

During the nine months ended September 30, 2023, cash used in operating activities of \$116.1 million was negatively impacted by a net loss of \$76.3 million, an increase in operating assets of \$2.9 million, and a decrease in operating liabilities of \$71.5 million. The increase in operating assets was primarily due to a \$36.8 million increase in contract assets, partially offset by a \$21.7 million decrease in advances to suppliers and a \$10.6 million decrease in accounts receivable. The increase in contract assets was primarily due to an increase in unbilled receivables on the Company's BESS projects. Advances to suppliers decreased during the period as the Company received the BESS equipment that related to the deposits, and accounts receivable decreased due to the timing of billings and cash collections. The decrease in operating liabilities was primarily due to a \$44.8 million decrease in deferred revenue and a \$25.8 million decrease in accounts payable and accrued expenses. The decrease in deferred revenue primarily resulted from the recognition of revenue associated with the beginning deferred revenue balance on the Company's BESS projects. Operating cash flows were

positively impacted by non-cash charges of \$34.7 million, which was primarily due to \$34.5 million in stock-based compensation expense.

Investing Activities

During the nine months ended September 30, 2024 and 2023, cash used in investing activities totaled \$48.1 million and \$33.2 million, respectively.

Cash used in investing activities for the nine months ended September 30, 2024 consisted of \$48.3 million for the purchase of property and equipment, primarily related to the construction of the Snyder CDU, Cross Trails BESS, and the hybrid energy storage system being constructed in Calistoga, California, partially offset by \$0.2 million in proceeds from the sale of a cement plant at the Company's R&D site in Switzerland.

Cash used in investing activities for the nine months ended September 30, 2023 consisted of \$27.2 million for the purchase of property and equipment, primarily related to the construction of the Snyder CDU and the hybrid energy storage system being constructed in Calistoga, California. Additionally, the Company purchased \$6.0 million of equity securities in KORE.

Financing Activities

During the nine months ended September 30, 2024, cash provided by financing activities totaled \$0.6 million, compared to cash used in financing activities of \$4.7 million for the nine months ended September 30, 2023.

For the nine months ended September 30, 2024, cash provided by financing activities was attributable to \$2.7 million in proceeds from insurance premium financings, partially offset by \$1.6 million in insurance premium financing repayments, \$0.4 million in tax payments related to the net settlement of equity awards, and \$0.2 million in payments for finance lease obligations.

During the nine months ended September 30, 2023, cash used in financing activities was primarily attributable to \$5.7 million in tax payments related to the net settlement of equity awards and \$0.4 million in insurance premium financing repayments. Partially offsetting these uses of cash was \$1.3 million in proceeds from insurance premium financings and \$0.2 million in cash proceeds from the exercise of stock options.

Non-GAAP Financial Measures

To complement our condensed consolidated statements of operations, we use non-GAAP financial measures of adjusted S&M expenses, adjusted R&D expenses, adjusted G&A expenses, adjusted operating expenses, and adjusted EBITDA. Management believes that these non-GAAP financial measures complement our GAAP amounts and such measures are useful to securities analysts and investors to evaluate our ongoing results of operations when considered alongside our GAAP measures. The presentation of these non-GAAP measures is not meant to be considered in isolation or as an alternative to other measures of financial performance calculated in accordance with GAAP. These non-GAAP measures and their reconciliation to GAAP financial measures are shown below.

Effective September 30, 2024, the Company has included provision (benefit) for credit losses as a non-GAAP adjustment because management does not consider this item in assessing our ongoing performance. Prior periods have been adjusted to include provision (benefit) for credit losses as a non-GAAP adjustment.

The following table provides a reconciliation from GAAP S&M expenses to non-GAAP adjusted S&M expenses (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
S&M expenses (GAAP)	\$ 4,347	\$ 4,183	\$ 13,378	\$ 13,609
Non-GAAP adjustments:				
Stock-based compensation expense	1,794	1,801	5,291	5,477
Reorganization expenses	—	—	288	—
Adjusted S&M expenses (non-GAAP)	\$ 2,553	\$ 2,382	\$ 7,799	\$ 8,132

The following table provides a reconciliation from GAAP R&D expenses to non-GAAP adjusted R&D expenses (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
R&D expenses (GAAP)	\$ 5,704	\$ 8,156	\$ 19,621	\$ 29,552
Non-GAAP adjustments:				
Stock-based compensation expense	2,241	2,898	6,527	8,832
Reorganization expenses	—	—	503	—
Adjusted R&D expenses (non-GAAP)	\$ 3,463	\$ 5,258	\$ 12,591	\$ 20,720

The following table provides a reconciliation from GAAP G&A expenses to non-GAAP adjusted G&A expenses (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
G&A expenses (GAAP)	\$ 17,270	\$ 15,810	\$ 48,812	\$ 52,222
Non-GAAP adjustments:				
Stock-based compensation expense	6,213	6,015	17,618	20,214
Reorganization expenses	(23)	—	895	—
Provision (benefit) for credit losses	1,861	(5)	2,214	236
Adjusted G&A expenses (non-GAAP)	\$ 9,219	\$ 9,800	\$ 28,085	\$ 31,772

The following table provides a reconciliation from GAAP operating expenses to non-GAAP operating expenses (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Operating expenses (GAAP)	\$ 27,558	\$ 28,384	\$ 83,187	\$ 96,053
Non-GAAP adjustments:				
Stock-based compensation expense	10,248	10,714	29,436	34,523
Depreciation and amortization	251	235	825	670
Asset impairment and loss on sale of assets	(14)	—	551	—
Reorganization expenses	(23)	—	1,686	—
Provision (benefit) for credit losses	1,861	(5)	2,214	236
Adjusted operating expenses (non-GAAP)	\$ 15,235	\$ 17,440	\$ 48,475	\$ 60,624

The following table provides a reconciliation from net loss to non-GAAP adjusted EBITDA, with net loss being the most directly comparable GAAP measure (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net loss attributable to Energy Vault Holdings, Inc. (GAAP)	\$ (26,593)	\$ (18,942)	\$ (73,920)	\$ (76,271)
Non-GAAP adjustments:				
Interest income, net	(1,395)	(1,902)	(4,921)	(6,131)
Provision for income taxes	—	(401)	—	(397)
Depreciation and amortization	251	235	825	670
Stock-based compensation expense	10,248	10,714	29,436	34,523
Reorganization expenses	(23)	—	1,686	—
Gain on derecognition of contract liability	—	—	(1,500)	—
Asset impairment and loss on sale of assets	(14)	—	551	—
Change in fair value of derivative asset — conversion option	820	—	820	—
Provision (benefit) for credit losses	1,861	(5)	2,214	236
Foreign exchange losses	194	50	301	308
Adjusted EBITDA (non-GAAP)	<u>\$ (14,651)</u>	<u>\$ (10,251)</u>	<u>\$ (44,508)</u>	<u>\$ (47,062)</u>

We present adjusted EBITDA, which is net loss attributable to Energy Vault Holdings, Inc. excluding adjustments that are outlined in the quantitative reconciliation provided above, as a supplemental measure of our performance and because we believe this measure is frequently used by securities analysts, investors, and other interested parties in the evaluation of companies in our industry. The adjusted EBITDA measure excludes the financial impact of items management does not consider in assessing our ongoing operating performance, and thereby facilitates review of our operating performance on a period-to-period basis.

In evaluating adjusted EBITDA, one should be aware that in the future we may incur expenses similar to the adjustments noted above. Our presentation of adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these types of adjustments. Adjusted EBITDA is not a measurement of our financial performance under GAAP and should not be considered as an alternative to net loss, operating loss, or any other performance measures derived in accordance with GAAP or as an alternative to cash flow from operating activities as a measure of our liquidity.

Our adjusted EBITDA measure has limitations as an analytical tool, and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- it does not reflect our cash expenditures, future requirements for capital expenditures, or contractual commitments;
- it does not reflect changes in, or cash requirements for, our working capital needs;
- it does not reflect stock-based compensation, which is an ongoing expense;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and our adjusted EBITDA measure does not reflect any cash requirements for such replacements;
- it is not adjusted for all non-cash income or expense items that are reflected in our condensed consolidated statements of cash flows;
- it does not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our ongoing operations;
- it does not reflect limitations on or costs related to transferring earnings from our subsidiaries to us; and
- other companies in our industry may calculate this measure differently than we do, limiting its usefulness as a comparative measure.

Because of these limitations, adjusted EBITDA should not be considered as a measure of discretionary cash available to us to invest in the growth of our business or as a measure of cash that will be available to use to meet our obligations. You

should compensate for these limitations by relying primarily on our GAAP results and using adjusted EBITDA only supplementally.

Critical Accounting Estimates

The preparation of these 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 amounts of expenses during the reporting period. Actual results could differ from those estimates.

There have not been any changes to our critical accounting policies and estimates as compared to those disclosed under the caption *Critical Accounting Policies and Use of Estimates* in Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations included in the 2023 Annual Report on Form 10-K filed with the SEC on March 13, 2024.

Emerging Growth Company Accounting Election

We are an "emerging growth company" as defined in Section 2(a) of the Securities Act of 1933, as amended, and have irrevocably elected to take advantage of the benefits of this extended transition period for new or revised financial accounting standards. We are expected to remain an emerging growth company through the end of 2026 and expect to continue to take advantage of the benefits of the extended transition period. This may make it difficult or impossible to compare our financial results with the financial results of another public company that is either not an emerging growth company or is an emerging growth company that has chosen not to take advantage of the extended transition period exemptions for emerging growth companies because of the potential differences in accounting standards used.

Recently Adopted and Issued Accounting Pronouncements

Recently issued and adopted/unadopted accounting pronouncements are described in Note 2 of the unaudited condensed consolidated financial statements included elsewhere in this Quarterly Report.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of loss that may impact our financial position because of adverse changes in financial market prices and rates.

Foreign Currency Risk

The majority of our contracts with customers are denominated in U.S. dollars, and certain of our definitive agreements could be denominated in currencies other than the U.S. dollar, including the Euro, the Swiss franc, the Australian dollar, the South African rand, the Brazilian real, and the Saudi riyal. A strengthening of the U.S. dollar could increase the cost of our solutions to our international customers, which could adversely affect our business and results of operations.

In addition, a portion of our revenue is earned and a portion of our operating expenses are incurred outside the United States and are denominated in foreign currencies, such as the Euro, the Swiss franc, and the Australian dollar, and are subject to fluctuations due to changes in foreign currency exchange rates. If we increase our exposure to foreign currencies and are not able to successfully hedge against the risks associated with currency fluctuations, our results of operations could be adversely affected.

Inflation Risk

Our operations could be adversely impacted by inflation, primarily from higher material, labor, and construction costs. While it is difficult to measure the impact of inflation for such estimates accurately, we believe, if our costs are affected due to significant inflationary pressures, we may not be able to fully offset higher costs through price increases or other corrective measures, which may adversely affect our business, financial condition, and results of operations.

Credit Risk

Credit risk refers to the risk that a counterparty may default on its contractual obligations resulting in a loss to us. Our customers include the counterparties for the sale of our energy storage products and solutions and the licensees of our intellectual property. The loss of one or more of our significant customers, their inability to perform under their contracts, or their default in payment could harm our business and negatively impact revenue, results of operations, and cash flows. Credit policies have been approved and implemented to assess our existing and potential customers with the objective of mitigating credit losses. These policies establish guidelines, controls, and credit limits to manage credit risk within approved tolerances by mandating an appropriate evaluation of the financial condition of existing and potential customers, monitoring agency credit ratings, and by implementing credit practices that limit exposure according to the risk profiles of

the counterparties. In addition, customers are required to make milestone payments based on their project's progress. We may also, at times, require letters of credit, parent guarantees, or cash collateral when deemed necessary.

Our overall exposure may be affected positively or negatively by macroeconomic or regulatory changes that may impact our counterparties. Currently, management does not anticipate a material adverse effect in our financial position or results of operations from the non-performance of a customer. We continuously monitor the creditworthiness of all our customers.

Commodity Price Risk

We are subject to risk from fluctuating market prices of certain commodity raw materials, including cement, steel, aluminum, and lithium, which are used in the components that we purchase from our suppliers and then as inputs to our products. Prices of these raw materials may be affected by supply restrictions or other logistic costs market factors from time to time. As we are not the direct buyer of these raw materials, we do not enter into hedging arrangements to mitigate commodity risk. Significant price changes for these raw materials could reduce our operating margins if suppliers increase component prices and we are unable to recover such increases from our customers and could harm our business, financial condition, and results of operations.

Item 4. Controls and Procedures

Limitations on the Effectiveness of Controls

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, evaluated, as of the end of the period covered by this Quarterly Report on Form 10-Q, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation of our disclosure controls and procedures as of September 30, 2024, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures as of such date are effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the quarter ended September 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II-Other Information

Item 1. Legal Proceedings

Energy Vault has been and continues to be involved in legal proceedings that arise in the ordinary course of business, the outcome of which, if determined adversely to Energy Vault, would not individually or in the aggregate have a material adverse effect on Energy Vault's business, financial condition, and results of operations. From time to time, Energy Vault may become involved in additional legal proceedings arising in the ordinary course of its business.

Item 1A. Risk Factors

Except as set forth below, as of the date of this report, there are no material changes to our risk factors as previously disclosed in Part I, Item 1A of our 2023 Annual Report on Form 10-K filed with the SEC on March 13, 2024. You should carefully consider the risks set forth in Part 1, Item 1A, Risk Factors, of the Company's 2023 Annual Report, and all other information included in this Quarterly Report before making an investment decision. Our business, financial condition, and results of operations could be materially and adversely affected by any of these risks or uncertainties.

Government control of currency conversion and expatriation of funds may affect our liquidity.

We have customers and subsidiaries located in jurisdictions that impose or may impose controls on the convertibility of the local currency into foreign currencies and, in certain cases, the remittance of currency out of the jurisdiction. Therefore, we may experience delays, restrictions or limitations in completing the administrative procedures necessary to obtain and remit foreign currency to the Company, which could have a material effect on our liquidity and our business. Shortages in the availability of foreign currency in countries in which we transact, or the impossibility or difficulties in complying with the requirements and approvals of local authorities may delay, restrict or limit the ability of our customer to convert the amount owed to us to U.S. dollars and remit such amount to us, thus materially affecting our liquidity and business.

Our total backlog, bookings and developed pipeline may not be indicative of our future revenue, which could have a material adverse impact on our business, financial condition, and results of operations.

Our backlog represents contracted but unrecognized revenue from projects and services yet to be completed, unrecognized revenue or other income from IP licensing agreements, and unrecognized revenue from tolling arrangements. Backlog excludes any potential future variable payments or IP royalties. As of September 30, 2024, backlog totaled \$264.4 million. Our bookings represent the total aggregate contract value (excluding any potential future variable payments or intellectual property royalties) and total MWhs to be delivered from customer contracts signed during the period, net of the total aggregate value and total MWhs of contracts that were cancelled during the period. For the three months ended September 30, 2024 bookings totaled \$— million. Our developed pipeline represents uncontracted, potential revenue, from projects in which potential prospective customers have either awarded a project to the Company, or have put the Company on a shortlist to be awarded a project. As of September 30, 2024, developed pipeline totaled \$2.7 billion.

There can be no assurance that our backlog, bookings and developed pipeline will result in actual revenue in the future in any particular period, or at all. This is because the actual receipt, timing, and amount of revenue under contracts included under backlog, bookings and developed contracts are subject to various contingencies, many of which are beyond our control. Our failure to realize revenue from contracts included in the total amounts estimated under backlog, bookings and developed pipeline could have a material adverse impact on our business, financial condition and results of operations.

In addition, our contracts with customers are subject to delays and cancellations. Generally, a customer can cancel an order prior to installation, and, notwithstanding the fact that a customer's termination for convenience may obligate the customer to pay us certain fees, we may be unable to recover some of our costs in connection with design, permitting, installation, and site preparations incurred prior to cancellation. Cancellation rates in our industry could increase in any given period, due to factors outside of our control including an inability to install an energy storage system at the customer's chosen location because of permitting or other regulatory issues, unanticipated changes in the cost or availability of alternative sources of electricity available to the customer, or other reasons unique to each customer. Our operating expenses are based on anticipated sales levels, and certain of our expenses are fixed. If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations, our business could be materially and adversely affected.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

(a) Disclosure in lieu of reporting on a Current Report on Form 8-K.

On November 12, 2024, the Company entered into an open market sales agreement (the “Sales Agreement”) with Jefferies LLC., as sales agent (the “sales agent”), pursuant to which the Company may, from time to time, sell shares of our common stock, having an aggregate offering price of up to \$50.0 million through the sales agent. The Company is not obligated to, and cannot provide any assurances that it will, make any sales of our shares under the Sales Agreement.

Upon delivery of a placement notice and subject to the terms and conditions of the Sales Agreement, the sales agent may sell the shares by methods deemed to be an “at-the-market” offering as defined in Rule 415(a)(4) promulgated under the Securities Act. Subject to the terms and conditions of the Sales Agreement, the sales agent will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares from time to time, based upon our instructions. The Sales Agreement contains customary representations, warranties and agreements, indemnification rights and obligations of the parties. The Company will pay the sales agent a commission for its services as sales agent of up to 3% of the gross sales price of the shares of our common stock sold through the sales agent pursuant to the Sales Agreement.

Any offer and sale of shares of the Company’s common stock under the Sales Agreement will be made pursuant to our shelf registration statement on Form S-3 (No. 333-273089), which was declared effective by the SEC on July 20, 2023, and the related prospectus supplement dated November 12, 2024 and accompanying prospectus that form a part of the registration statement.

A copy of the Sales Agreement is filed as Exhibit 1.1 to this Quarterly Report on Form 10-Q. A copy of the opinion of the Company’s counsel relating to the validity of the shares to be issued pursuant to the Sales Agreement is filed as Exhibit 5.1 to this Quarterly Report on Form 10-Q.

(b) Material changes to the procedures by which security holders may recommend nominees to the board of directors.

None.

(c) Insider trading arrangements and policies.

During the three months ended September 30, 2024, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

Item 6. Exhibits

Exhibit Number	Description of Document	Incorporated by Reference			
		Schedule/Form	File Number	Exhibit Number	Filing Date
1.1**	Open Market Sales Agreement, dated November 12, 2024, among Jeffries LLC, as sales agent and/or principal, and Energy Vault Holdings, Inc.				
3.1	Amended and Restated Bylaws of Energy Vault Holdings, Inc.	8-K	001-39982	3.1	February 14, 2022
3.2	Amended and Restated Certificate of Incorporation of Energy Vault Holdings, Inc.	8-K	001-39982	3.2	February 14, 2022
5.1**	Opinion of Latham & Watkins, LLP				
23.1**	Consent of Latham & Watkins, LLP (included in Exhibit 5.1 hereto)				
31.1**	Certification of Principal Executive Officer required under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended				
31.2**	Certification of Chief Financial Officer required under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended				
32.1**	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				
32.2**	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				
101.INS**	XBRL Instance Document				
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document				
101.SCH**	XBRL Taxonomy Extension Schema Document				
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB**	XBRL Taxonomy Extension Labels Linkbase Document				
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document				
104**	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)				

** Filed herewith

^ The certifications attached as Exhibit 32.1 and 32.2 that accompany this Quarterly Report on Form 10-Q are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filings of Energy Vault Holdings, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Energy Vault Holdings, Inc.

Date: November 12, 2024

By: /s/ Robert Piconi
Name: Robert Piconi
Title: Chief Executive Officer
(Principal Executive Officer)

Date: November 12, 2024

By: /s/ Michael Beer
Name: Michael Beer
Title: Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 1.1

OPEN MARKET SALE AGREEMENTSM

November 12, 2024

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

Ladies and Gentlemen:

Energy Vault Holdings, Inc., a Delaware corporation (the “**Company**”), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through Jefferies LLC, as sales agent and/or principal (the “**Agent**”), shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Shares**”), having an aggregate offering price of up to \$50,000,000 on the terms set forth in this agreement (this “**Agreement**”).

Section 1. DEFINITIONS

(a) Certain Definitions. For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:

“**Affiliate**” of a Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first-mentioned Person. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agency Period**” means the period commencing on the date of this Agreement and expiring on the earliest to occur of (x) the date on which the Agent shall have placed the Maximum Program Amount pursuant to this Agreement and (y) the date this Agreement is terminated pursuant to Section 7.

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

“**Floor Price**” means the minimum price set by the Company in the Issuance Notice below which the Agent shall not sell Shares during the applicable period set forth in the applicable Issuance Notice, which may be adjusted by the Company at any time during the period set forth in the applicable Issuance Notice by delivering written notice of such change to the Agent and which

SM “Open Market Sale Agreement” is a service mark of Jefferies LLC

in no event shall be less than \$1.00 without the prior written consent of the Agent, which may be withheld in the Agent's sole discretion.

"Issuance Amount" means the aggregate Sales Price of the Shares to be sold by the Agent pursuant to any Issuance Notice.

"Issuance Notice" means a written notice delivered to the Agent by the Company in accordance with this Agreement in the form attached hereto as Exhibit A that is executed by its Chief Executive Officer, President or Chief Financial Officer.

"Issuance Notice Date" means any Trading Day during the Agency Period that an Issuance Notice is delivered pursuant to Section 3(b)(i).

"Issuance Price" means the Sales Price less the Selling Commission.

"Maximum Program Amount" means Common Shares with an aggregate Sales Price of the lesser of (a) the number or dollar amount of Common Shares registered under the effective Registration Statement (defined below) pursuant to which the offering is being made, (b) the number of authorized but unissued Common Shares (less Common Shares issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company's authorized capital stock), (c) the number or aggregate dollar amount of Common Shares permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable), or (d) \$50,000,000.

"Person" means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

"Principal Market" means the New York Stock Exchange or such other national securities exchange on which the Common Shares, including any Shares, are then listed.

"Rule 462(b) Registration Statement" means any registration statement filed by the Company pursuant to Rule 462(b) under the Securities Act in connection with the offer and sale of Shares.

"Sales Price" means the actual sale execution price of each Share placed by the Agent pursuant to this Agreement.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

"Selling Commission" means three percent (3%) of the gross proceeds of Shares sold pursuant to this Agreement, or as otherwise agreed between the Company and the Agent with respect to any Shares sold pursuant to this Agreement.

"Settlement Date" means the first business day following each Trading Day during the period set forth in the applicable Issuance Notice on which Shares are sold pursuant to this

Agreement, when the Company shall deliver to the Agent the amount of Shares sold on such Trading Day and the Agent shall deliver to the Company the Issuance Price received on such sales.

“**Shares**” means the Company’s Common Shares issued or issuable pursuant to this Agreement.

“**Trading Day**” means any day on which the Principal Market is open for trading.

Section 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to, and agrees with, the Agent that, unless such representation, warranty or agreement specifies otherwise, as of (1) the date of this Agreement, (2) each Issuance Notice Date, (3) each Settlement Date, (4) each Triggering Event Date (as defined below) and (5) as of each Time of Sale (as defined below) (each of the times referenced above is referred to herein as a “**Representation Date**”), except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto) on or before a Representation Date:

(a) Registration Statement. The Company has prepared and filed with the Commission a shelf registration statement on Form S-3 (File No. 333-273089) that contains a base prospectus. Such registration statement registers the issuance and sale by the Company of the Shares under the Securities Act. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable, with respect to the Shares. Except where the context otherwise requires, such registration statement(s), including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, including all financial statements, exhibits and schedules thereto and all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act as from time to time amended or supplemented, is herein referred to as the “**Registration Statement**,” and the base prospectus constituting a part of such registration statement(s), together with any prospectus supplement filed with the Commission pursuant to Rule 424(b) under the Securities Act relating to a particular issuance of the Shares, including all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act, in each case, as from time to time amended or supplemented, is referred to herein as the “**Prospectus**,” except that if any revised prospectus is provided to the Agent by the Company for use in connection with the offering of the Shares that is not required to be filed by the Company pursuant to Rule 424(b) under the Securities Act, the term “**Prospectus**” shall refer to such revised prospectus from and after the time it is first provided to the Agent for such use. The Registration Statement at the time it originally became effective is herein called the “**Original Registration Statement**.” As used in this Agreement, the terms “amendment” or “supplement” when applied to the Registration Statement or the Prospectus shall be deemed to include the filing by the Company with the Commission of any document under the Exchange Act after the date hereof that is or is deemed to be incorporated therein by reference.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in or

otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include, without limitation, the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date.

At the time the Registration Statement was or will be originally declared effective and at the time the Company's most recent annual report on Form 10-K was filed with the Commission, if later, the Company met the then-applicable requirements for use of Form S-3 under the Securities Act. During the Agency Period, each time the Company files an annual report on Form 10-K the Company will meet the then-applicable requirements for use of Form S-3 under the Securities Act.

(b) Compliance with Registration Requirements. The Original Registration Statement has been declared effective by the Commission under the Securities Act and any Rule 462(b) Registration Statement will be declared effective by the Commission under the Securities Act prior to the first Issuance Notice. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated or threatened by the Commission.

The Prospectus when filed complied and will comply in all material respects with the Securities Act and, if filed with the Commission through its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**") (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Agent for use in connection with the issuance and sale of the Shares. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became effective and at each Representation Date, complied and will comply in all material respects with the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the date of this Agreement, the Prospectus and any Free Writing Prospectus (as defined below) considered together (collectively, the "**Time of Sale Information**") did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Prospectus, as amended or supplemented, as of its date, did not, and, at each Representation Date, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the three immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to the Agent furnished to the Company in writing by the Agent expressly for use therein, it being understood and agreed that the only such information furnished by the Agent to the Company consists of the Agent Information (defined below). There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration

Statement which have not been described or filed as required. The Registration Statement and the offer and sale of the Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said rule.

(c) Ineligible Issuer Status. The Company shall cease to be an “ineligible issuer” on February 11, 2025, pursuant to Rules 164, 405 and 433 under the Securities Act. Any Free Writing Prospectus that the Company is then eligible to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act. Each Free Writing Prospectus that the Company has filed, or is then eligible to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of Rule 433 under the Securities Act including timely filing with the Commission or retention where required and legending, and each such Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the issuance and sale of the Shares did not, does not and will not include any information that conflicted, conflicts with or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein. The Company will not, without your prior consent, prepare, use or refer to, any Free Writing Prospectus.

(d) Emerging Growth Company Status. The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act (an “**Emerging Growth Company**”).

(e) Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, at the time they were filed with the Commission, complied in all material respects with the requirements of the Exchange Act, as applicable, and, when read together with the other information in the Prospectus, do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(f) Exchange Act Compliance. The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, and any Free Writing Prospectus or amendment or supplement thereto complied and will comply in all material respects with the requirements of the Exchange Act and none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statement therein, in the light of the circumstances under which they were made, not misleading.

(g) Statistical and Market-Related Data. Nothing has come to the attention of the Company that has caused the Company to believe that the statistical, demographic and market-related data included in the Registration Statement or the Prospectus is not based on or derived from sources that are reliable and accurate in all material respects.

(h) Disclosure Controls and Procedures; Deficiencies in or Changes to Internal Control Over Financial Reporting. The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company, including its consolidated

subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared; (ii) have been evaluated by management of the Company for effectiveness as of the end of the Company's most recent fiscal quarter; and (iii) are effective in all material respects to perform the functions for which they were established. Since the end of the Company's most recent audited fiscal year, there have been no significant deficiencies or material weaknesses in the Company's internal control over financial reporting (whether or not remediated) and no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is not aware of any change in its internal control over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(i) This Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(j) Authorization of the Shares. The Shares have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company against payment therefor pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and the issuance and sale of the Shares is not subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase any Shares.

(k) No Applicable Registration or Other Similar Rights. There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

(l) No Material Adverse Change. Except as otherwise disclosed in the Registration Statement and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus: (i) there has been no material adverse change, or any development that would reasonably be expected to result in a material adverse change, in (A) the condition, financial or otherwise, or in the earnings, business, properties, operations, operating results, assets, liabilities or prospects whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity or (B) the ability of the Company to consummate the transactions contemplated by this Agreement or perform its obligations hereunder (any such change being referred to herein as a "**Material Adverse Change**"); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, including without limitation any losses or interference with their business from pandemics, fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that are material, individually or in the aggregate, to the Company and its subsidiaries, considered as one entity, and have not entered into any transactions not in the ordinary course of business; and (iii) there has not been any material decrease in the capital stock or any material increase in any short-term or long-term indebtedness of the Company or its subsidiaries and there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other

subsidiaries, by any of the Company's subsidiaries on any class of capital stock, or any repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(m) Independent Accountants. BDO USA, P.C., which has (y) expressed its opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) or (z) reviewed the financial statements, each as filed with the Commission as a part of the Registration Statement and the Prospectus, is (i) an independent registered public accounting firm as required by the Securities Act, the Exchange Act, and the rules of the Public Company Accounting Oversight Board ("**PCAOB**"), (ii) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Securities Act; and (iii) a registered public accounting firm as defined by the PCAOB whose registration has not been suspended or revoked and who has not requested such registration to be withdrawn, and is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002, as amended (the "**Sarbanes-Oxley Act**").

(n) Financial Statements. The financial statements filed with the Commission as a part of the Registration Statement and the Prospectus present fairly, in all material respects, the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations, changes in stockholders' equity and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States ("GAAP") applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto. No other financial statements or supporting schedules are required to be included in the Registration Statement or the Prospectus. The financial data set forth in each of the Registration Statement and the Prospectus fairly present, in all material respects, the information set forth therein on a basis consistent with that of the audited financial statements contained in the Registration Statement and the Prospectus. All disclosures contained in the Registration Statement and the Prospectus that constitute non-GAAP financial measures (as defined by the rules and regulations under the Securities Act and the Exchange Act) comply with Regulation G under the Exchange Act and Item 10 of Regulation S-K under the Securities Act, as applicable.

(o) Company's Accounting System. The Company and each of its subsidiaries make and keep accurate books and records and maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto.

(p) Incorporation and Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, (A) prohibit any sales pursuant to this Agreement or (B) reasonably be expected to have a material adverse effect on the earnings, business, properties, operations, operating results, assets, liabilities, or prospects whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity (a "**Material Adverse Effect**"). The Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of California and each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect.

(q) Subsidiaries. Each of the Company's "subsidiaries" (for purposes of this Agreement, as defined in Rule 405 under the Securities Act) has been duly incorporated or organized, as the case may be, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and has the power and authority (corporate or other) to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not reasonably be expected to have a Material Adverse Effect. Each of the Company's subsidiaries is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business. All of the issued and outstanding capital stock or other equity or ownership interests of each of the Company's subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or adverse claim. None of the outstanding capital stock or equity interest in any subsidiary was issued in violation of preemptive or similar rights of any security holder of such subsidiary, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. The constitutive or organizational documents of each of the subsidiaries comply in all material respects with the requirements of applicable laws of its jurisdiction of incorporation or organization and are in full force and effect. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21 to the Company's Annual Report on Form 10-K for the most recently completed fiscal year ended December 31, 2023.

(r) Capitalization and Other Capital Stock Matters. The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement and the Prospectus (other than for subsequent issuances, if any, pursuant to employee benefit plans described in the Prospectus or upon the exercise of outstanding options or warrants, in each case described in the Registration Statement and the Prospectus). The Common Shares (including the Shares) conform in all material respects to the description thereof contained in the Prospectus. All

of the issued and outstanding Common Shares have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with all federal and state securities laws. None of the outstanding Common Shares was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in the Registration Statement and the Prospectus. The descriptions of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement and the Prospectus accurately and fairly presents, in all material respects, the information required to be shown with respect to such plans, arrangements, options and rights.

(s) Stock Exchange Listing. The Common Shares are registered pursuant to Section 12(b) or 12(g) of the Exchange Act and are listed on the Principal Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act or delisting the Common Shares from the Principal Market, nor, except as otherwise disclosed in the Registration Statement and the Prospectus, has the Company received any notification that the Commission or the Principal Market is contemplating terminating such registration or listing. Except as otherwise disclosed in the Registration Statement and the Prospectus, to the Company's knowledge, it is in compliance with all applicable listing requirements of the Principal Market.

(t) Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, or is in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, loan, credit agreement, note, lease, license agreement, contract, franchise or other instrument (including, without limitation, any pledge agreement, security agreement, mortgage or other instrument or agreement evidencing, guaranteeing, securing or relating to indebtedness) to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of their respective properties or assets are subject (each, an "**Existing Instrument**"), except for such Defaults as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company's execution, delivery and performance of this Agreement, consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus and the issuance and sale of the Shares (including the use of proceeds from the sale of the Shares as described in the Registration Statement and the Prospectus under the caption "Use of Proceeds") (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, of the Company or any subsidiary (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any of its subsidiaries, except for such conflicts, breaches or violations specified in subsection (ii) and (iii) above that would not,

individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement and the Prospectus, no consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act and such as may be required under applicable state securities or blue sky laws or FINRA (as defined below). As used herein, a "**Debt Repayment Triggering Event**" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(u) No Material Actions or Proceedings. Except as otherwise disclosed in the Prospectus, there is no action, suit, proceeding (including arbitration and mediation), inquiry, audit or investigation, whether civil, criminal or administrative, brought by or before any legal or governmental entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No labor dispute with the employees of the Company or any of its subsidiaries, or with the employees of any principal supplier, manufacturer, customer or contractor of the Company or any of its subsidiaries, exists or, to the knowledge of the Company, is threatened or imminent, except as would not reasonably be expected to have a Material Adverse Effect.

(v) Intellectual Property Rights. Except as otherwise disclosed in the Registration Statement or the Prospectus or would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries own, or have obtained valid and enforceable licenses for, the inventions, patent applications, patents, trademarks, trade names, service names, copyrights, trade secrets and other intellectual property described in the Registration Statement and the Prospectus as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as currently proposed to be conducted (collectively, "**Intellectual Property**"). Except as otherwise disclosed in the Registration Statement or the Prospectus, to the Company's knowledge, the conduct of the Company's and its subsidiaries' respective businesses does not and will not infringe, misappropriate or otherwise conflict in any material respect with any Intellectual Property rights of others. To the knowledge of the Company, the Intellectual Property of the Company has not been adjudged by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, and the Company is unaware of any facts which would form a reasonable basis for any such adjudication. To the Company's knowledge: (i) there are no third parties who have rights to any Intellectual Property, except for non-exclusive licenses granted in the ordinary course or customary reversionary rights of third-party licensors with respect to Intellectual Property; and (ii) there is no infringement by third parties of any Intellectual Property, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no pending threatened action, suit, proceeding or claim by others: (A) challenging the Company's rights in or to any Intellectual Property, and the Company is unaware of any facts

which would form a reasonable basis for any such action, suit, proceeding or claim; (B) challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; or (C) asserting that the Company or any of its subsidiaries infringes or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement or the Prospectus as under development, infringe or violate, any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or as disclosed in the Registration Statement or the Prospectus, the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any subsidiary, and all such agreements are in full force and effect. To the Company's knowledge, there are no material defects in any of the patents or patent applications included in the Intellectual Property. The Company and its subsidiaries have taken commercially reasonable steps to protect, maintain and safeguard their Intellectual Property, including the execution of appropriate nondisclosure, confidentiality agreements and invention assignment agreements and invention assignments with their employees, and, to the Company's knowledge, no employee of the Company is in or has been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement, or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The duty of candor and good faith as required by the United States Patent and Trademark Office during the prosecution of the United States patents and patent applications included in the Intellectual Property have been complied with; and in all foreign offices having similar requirements, all such requirements have been complied with. To the Company's knowledge, none of the Company owned Intellectual Property or technology (including information technology and outsourced arrangements) employed by the Company or its subsidiaries has been obtained or is being used by the Company or its subsidiary in violation of any contractual obligation binding on the Company or its subsidiaries or any of their respective officers, directors or employees or otherwise in violation of the rights of any persons.

(w) All Necessary Permits, etc. Except as otherwise disclosed in the Prospectus, the Company and each subsidiary possess such valid and current certificates, authorizations, licenses, registrations or permits required by state, federal or foreign regulatory agencies or bodies to conduct their respective businesses as currently conducted and as described in the Registration Statement or the Prospectus ("**Permits**"), except where the failures to possess such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries is in violation of, or in default under, any of the Permits or has received any written notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit, except, in each case, where such revocation, modifications or non-compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(x) Title to Properties. Except as otherwise disclosed in the Prospectus, the Company and its subsidiaries have good and marketable title to all of the real and personal property and other assets reflected as owned in the financial statements referred to in Section 2(n) above (or elsewhere

in the Registration Statement or the Prospectus), in each case free and clear of any material security interests, mortgages, liens, encumbrances, equities, adverse claims and other defects. The real property, improvements, equipment and personal property held under lease by the Company or any of its subsidiaries are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary.

(y) Tax Law Compliance. Except as otherwise disclosed in the Registration Statement or the Prospectus, or as otherwise would not reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries have filed all federal, state and foreign income and franchise tax returns that are required to be filed or have properly requested extensions thereof and have paid all taxes required to be paid by any of them and any related assessment, fine or penalty levied against any of them, to the extent that any of the foregoing is due and payable, except as may be being contested in good faith and by appropriate proceedings. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 2(n) above in respect of all material federal, state and foreign income and franchise taxes for all periods covered by such financial statements as to which the tax liability of the Company or any of its subsidiaries has not been finally determined.

(z) Company Not an “Investment Company.” The Company is not, and will not be, either after receipt of payment for the Shares or after the application of the proceeds therefrom as described under “Use of Proceeds” in the Registration Statement or the Prospectus, required to register as an “investment company” under the Investment Company Act of 1940, as amended (the **“Investment Company Act”**).

(aa) Insurance. Except as otherwise disclosed in the Prospectus, each of the Company and its subsidiaries are insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes and policies covering the Company and its subsidiaries for product liability claims. The Company has no reason to believe that it will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not reasonably be expected to have a Material Adverse Effect. During the past twelve (12) months, neither the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(bb) No Price Stabilization or Manipulation; Compliance with Regulation M. Neither the Company nor any of its subsidiaries has taken, directly or indirectly, any action designed to or that might cause or result in stabilization or manipulation of the price of the Common Shares or of any “reference security” (as defined in Rule 100 of Regulation M under the Exchange Act (**“Regulation M”**)) with respect to the Common Shares, whether to facilitate the sale or resale of the Shares or otherwise, and has taken no action which would directly or indirectly violate Regulation M.



(cc) Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any other person required to be described in the Registration Statement or the Prospectus which have not been described as required.

(dd) FINRA Matters. All of the information provided to the Agent or to counsel for the Agent by the Company, its counsel, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Shares is true, complete, correct and compliant with Financial Industry Regulatory Authority, Inc.'s ("**FINRA**") rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules or NASD Conduct Rules is true, complete and correct.

(ee) No Unlawful Contributions or Other Payments. Except as otherwise disclosed in the Prospectus, neither the Company nor any of its subsidiaries nor, to the Company's knowledge, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Registration Statement and the Prospectus.

(ff) Compliance with Environmental Laws. Except as described in the Prospectus and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health (to the extent relating to exposure to Hazardous Materials, as defined herein), the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of hazardous or toxic substances or wastes, pollutants, contaminants, petroleum or petroleum products (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"), (ii) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (iii) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (iv) to the knowledge of the Company, there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(gg) ERISA Compliance. Except as otherwise disclosed in the Prospectus and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "**ERISA**")) established or maintained by the Company, its subsidiaries or, to the knowledge of the Company, their "ERISA Affiliates" (as defined below)



are in compliance with ERISA. “**ERISA Affiliate**” means, with respect to the Company or any of its subsidiaries, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the “**Code**”) of which the Company or such subsidiary is a member. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) no “reportable event” (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, (ii) no “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such “employee benefit plan” were terminated, would have any “amount of unfunded benefit liabilities” (as defined under ERISA), (iii) neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (A) Title IV of ERISA with respect to termination of, or withdrawal from, any “employee benefit plan” or (B) Sections 412, 4971, 4975 or 4980B of the Code and (iv) each “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(hh) Brokers. Except as otherwise disclosed in the Prospectus, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder’s fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(ii) No Outstanding Loans or Other Extensions of Credit. The Company does not have any outstanding extension of credit, in the form of a personal loan, to or for any director or executive officer (or equivalent thereof) of the Company except for such extensions of credit as are expressly permitted by Section 13(k) of the Exchange Act.

(jj) Compliance with Laws. The Company and its subsidiaries have been and are in compliance with all applicable laws, rules and regulations, except where failure to be so in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(kk) [Reserved.]

(ll) Anti-Corruption and Anti-Bribery Laws. Neither the Company nor any of its subsidiaries nor any director, officer, or employee of the Company or any of its subsidiaries, nor to the knowledge of the Company, any agent, affiliate or other person acting on behalf of the Company or any of its subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made or taken any act in furtherance of an offer, promise, or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or public international organization, or any political party, party official, or candidate for political office; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the “**FCPA**”), the UK Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, authorized, requested, or taken an act in furtherance of any unlawful bribe, rebate, payoff, influence payment, kickback or

other unlawful payment or benefit. The Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(mm) Money Laundering Laws. The operations of the Company and its subsidiaries are, and have been conducted at all times, in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(nn) Sanctions. Neither the Company nor any of its subsidiaries, directors, officers, or employees, nor, to the knowledge of the Company, after due inquiry, any agent, affiliate or other person acting on behalf of the Company or any of its subsidiaries is currently the subject or the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority (collectively, "**Sanctions**"); nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea region and the non-government controlled areas of the Zaporizhzhia and Kherson Regions of Ukraine (or any other Covered Region of Ukraine identified pursuant to Executive Order 14065), Cuba, Iran, North Korea, and Syria; and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that at the time of such financing, is the subject or the target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of applicable Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(oo) Sarbanes-Oxley. The Company is in compliance, in all material respects, with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder.

(pp) Cybersecurity. The information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases owned by the Company and its subsidiaries (collectively, "**IT Systems**") operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, and to the Company's knowledge, are free and clear of all

material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, except as would not be expected to have a Material Adverse Effect on the Company. Notwithstanding the foregoing, this Section (pp) does not constitute a representation or warranty regarding the non-infringement by the Company, any of its subsidiaries, the business of the Company or any of its subsidiaries, or any Company products of any Intellectual Property rights of any Person. The Company and its subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative safeguards designed to maintain and protect their material confidential information and Personal Data (as defined below) and the integrity, continuous operation, redundancy and security of all IT Systems. “**Personal Data**” means any information that allows the identification of a natural person or otherwise meets the definition of “personal data,” “personal information” or “personally identifiable information” under any applicable Privacy Laws (as defined below). To the Company’s knowledge, during the past three (3) years, there have been no breaches, violations, outages or unauthorized uses of or accesses to the IT Systems, except for those that have been remedied in all material respects.

(qq) Compliance with Data Privacy Laws. The Company and its subsidiaries are presently in material compliance with all applicable state and federal data privacy and security laws and regulations (collectively, the “**Privacy Laws**”). Except as would not be expected to have a Material Adverse Effect on the Company, the Company and its subsidiaries have during the past three (3) years made all disclosures to users or customers required by applicable Privacy Laws, and none of such disclosures have, to the knowledge of the Company, been inaccurate or in violation of any applicable Privacy Laws. Neither the Company nor any subsidiary, during the past three (3) years: (i) has received written notice alleging an actual or potential violation of any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; or (ii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(rr) Other Underwriting Agreements. The Company is not a party to any agreement with an agent or underwriter for any other “at the market” or continuous equity transaction.

(ss) Forward-Looking Statements. Each forward-looking statement as defined by Section 27A of the Securities Act or Section 21E of the Exchange Act contained in the Registration Statement or the Prospectus was so included by the Company in good faith and with reasonable basis after due consideration by the Company of the underlying assumptions, estimates and other applicable facts and circumstances.

Any certificate signed by any officer or representative of the Company or any of its subsidiaries and delivered to the Agent or counsel for the Agent in connection with an issuance of Shares shall be deemed a representation and warranty by the Company to the Agent as to the matters covered thereby on the date of such certificate.

The Company acknowledges that the Agent and, for purposes of the opinions to be delivered pursuant to Section 4(o) hereof, counsel to the Company and counsel to the Agent, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

Section 3. ISSUANCE AND SALE OF COMMON SHARES

(a) Sale of Securities. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company and the Agent agree that the Company may from time to time seek to sell Shares through the Agent, acting as sales agent, or directly to the Agent, acting as principal, as follows, with an aggregate Sales Price of up to the Maximum Program Amount, based on and in accordance with Issuance Notices as the Company may deliver, during the Agency Period.

(b) Mechanics of Issuances.

(i) Issuance Notice. Upon the terms and subject to the conditions set forth herein, on any Trading Day during the Agency Period on which the conditions set forth in Section 5(a) and Section 5(b) shall have been satisfied, the Company may exercise its right to request an issuance of Shares by delivering to the Agent an Issuance Notice; provided, however, that (A) in no event may the Company deliver an Issuance Notice to the extent that the sum of (x) the aggregate Sales Price of the requested Issuance Amount, plus (y) the aggregate Sales Price of all Shares issued under all previous Issuance Notices effected pursuant to this Agreement, would exceed the Maximum Program Amount; and (B) prior to delivery of any Issuance Notice, the period set forth for any previous Issuance Notice shall have expired or been terminated. An Issuance Notice shall be considered delivered on the Trading Day that it is received by e-mail to the persons set forth in Schedule A hereto and confirmed by the Company by telephone (including a voicemail message to the persons so identified), with the understanding that, with adequate prior written notice, the Agent may modify the list of such persons from time to time.

(ii) Agent Efforts. Upon the terms and subject to the conditions set forth in this Agreement, upon the receipt of an Issuance Notice, the Agent will use its commercially reasonable efforts consistent with its normal sales and trading practices to place the Shares with respect to which the Agent has agreed to act as sales agent, subject to, and in accordance with the information specified in, the Issuance Notice, unless the sale of the Shares described therein has been suspended, cancelled or otherwise terminated in accordance with the terms of this Agreement. For the avoidance of doubt, the parties to this Agreement may modify an Issuance Notice at any time provided they both agree in writing to any such modification.

(iii) Method of Offer and Sale. The Shares may be offered and sold (A) in privately negotiated transactions with the consent of the Company; (B) as block transactions; or (C) by any other method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act, including sales made directly on the Principal Market or sales made into any other existing trading market of the Common Shares. Nothing in this Agreement shall be deemed to require either party to agree to the method of offer and sale specified in the preceding sentence, and (except as specified in clauses (A) and (B) above) the method of placement of any Shares by the Agent shall be at the Agent’s discretion.

(iv) Confirmation to the Company. If acting as sales agent hereunder, the Agent will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which it has placed Shares hereunder setting forth the number of shares sold on such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof.

(v) Settlement. Each issuance of Shares will be settled on the applicable Settlement Date for such issuance of Shares and, subject to the provisions of Section 5, on or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Shares being sold by crediting the Agent or its designee's account at The Depository Trust Company through its Deposit/Withdrawal At Custodian (DWAC) System, or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Shares, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, the Agent will deliver, by wire transfer of immediately available funds, the related Issuance Price in same day funds delivered to an account designated by the Company prior to the Settlement Date. The Company may sell Shares to the Agent as principal at a price agreed upon by the parties at each relevant time Shares are sold pursuant to this Agreement (each, a "Time of Sale").

(vi) Suspension or Termination of Sales. Consistent with standard market settlement practices, the Company or the Agent may, upon notice to the other party hereto in writing (including by email) or by telephone (confirmed promptly by verifiable email), suspend any sale of Shares, and the period set forth in an Issuance Notice shall immediately terminate; provided, however, that (A) such suspension and termination shall not affect or impair either party's obligations with respect to any Shares placed or sold hereunder prior to the receipt of such notice; (B) if the Company suspends or terminates any sale of Shares after the Agent confirms such sale to the Company, the Company shall still be obligated to comply with Section 3(b)(v) with respect to such Shares; and (C) if the Company defaults in its obligation to deliver Shares on a Settlement Date, the Company agrees that it will hold the Agent harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable and documented legal fees and expenses), as incurred, arising out of or in connection with such default by the Company. The parties hereto acknowledge and agree that, in performing its obligations under this Agreement, the Agent may borrow Common Shares from stock lenders in the event that the Company has not delivered Shares to settle sales as required by subsection (v) above, and may use the Shares to settle or close out such borrowings. The Company agrees that no such notice shall be effective against the Agent unless it is made to the persons identified in writing by the Agent pursuant to Section 3(b)(i).

(vii) No Guarantee of Placement, Etc. The Company acknowledges and agrees that (A) there can be no assurance that the Agent will be successful in placing Shares; (B) the Agent will incur no liability or obligation to the Company or any other Person if it does not sell Shares; and (C) the Agent shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement, except as otherwise specifically agreed by the Agent and the Company.



(viii) Material Non-Public Information. Notwithstanding any other provision of this Agreement, the Company and the Agent agree that the Company shall not deliver any Issuance Notice to the Agent, and the Agent shall not be obligated to place any Shares, during any period in which the Company is in possession of material non-public information.

(c) Fees. As compensation for services rendered, the Company shall pay to the Agent, on the applicable Settlement Date, the Selling Commission for the applicable Issuance Amount (including with respect to any suspended or terminated sale pursuant to Section 3(b)(vi)) by the Agent deducting the Selling Commission from the applicable Issuance Amount.

(d) Expenses. The Company agrees to pay all reasonable and documented costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Shares (including all printing and engraving costs); (ii) all fees and expenses of the registrar and transfer agent of the Shares; (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Shares; (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors; (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), the Prospectus, any Free Writing Prospectus (as defined below) prepared by or on behalf of, used by, or referred to by the Company, and all amendments and supplements thereto, and this Agreement; (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Agent in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Shares for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Agent, preparing and printing a "Blue Sky Survey" or memorandum and a "Canadian wrapper," and any supplements thereto, advising the Agent of such qualifications, registrations, determinations and exemptions; (vii) the reasonable fees and disbursements of the Agent's counsel, including the reasonable fees and expenses of counsel for the Agent in connection with, FINRA review, if any, and approval of the Agent's participation in the offering and distribution of the Shares; (viii) the filing fees incident to FINRA review, if any; (ix) [reserved]; and (x) the fees and expenses associated with listing the Shares on the Principal Market. The fees and disbursements of Agent's counsel pursuant to subsections (vi) and (vii) above shall not exceed (A) \$75,000 in connection with execution of this Agreement and (B) \$15,000 in connection with each Triggering Event Date (as defined below) on which the Company is required to provide a certificate pursuant to Section 4(o).

Section 4. ADDITIONAL COVENANTS

The Company covenants and agrees with the Agent as follows, in addition to any other covenants and agreements made elsewhere in this Agreement:

(a) Exchange Act Compliance. During the Agency Period, the Company shall (i) file, on a timely basis, with the Commission all reports and documents required to be filed under Section 13, 14 or 15 of the Exchange Act in the manner and within the time periods required by the Exchange Act; and (ii) either (A) include in its quarterly reports on Form 10-Q and its annual



reports on Form 10-K, a summary detailing, for the relevant reporting period, (1) the number of Shares sold through the Agent pursuant to this Agreement and (2) the net proceeds received by the Company from such sales or, in the Company's sole discretion, (B) prepare a prospectus supplement containing, or include in such other filing permitted by the Securities Act or Exchange Act (each an "**Interim Prospectus Supplement**"), such summary information and, at least once a quarter and subject to this Section 4, file such Interim Prospectus Supplement pursuant to Rule 424(b) under the Securities Act (and within the time periods required by Rule 424(b) and Rule 430B under the Securities Act).

(b) Securities Act Compliance. After the date of this Agreement, the Company shall promptly advise the Agent in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission; (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus or any Free Writing Prospectus; (iii) of the time and date that any post-effective amendment to the Registration Statement or any Rule 462(b) Registration Statement becomes effective; and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus or of any order preventing or suspending the use of any Free Writing Prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Shares from any securities exchange upon which they are listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its commercially reasonable efforts to obtain the lifting of such order as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rule 424(b) and Rule 433, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) or Rule 433 were received in a timely manner by the Commission.

(c) Amendments and Supplements to the Prospectus and Other Securities Act Matters. If any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus so that the Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if in the opinion of the Agent or counsel for the Agent it is otherwise necessary to amend or supplement the Prospectus to comply with applicable law, including the Securities Act, the Company agrees (subject to Section 4(d) and Section 4(f)) to promptly prepare, file with the Commission and furnish at its own expense to the Agent, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances when the Prospectus is delivered to a purchaser, not misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law including the Securities Act. Neither the Agent's consent to, or delivery of, any such amendment or supplement shall constitute a waiver of any of the Company's obligations under Section 4(d) and Section 4(f). Notwithstanding the foregoing, the Company shall not be required to file such amendment or supplement if there is no pending Issuance Notice and the Company believes that it is in its best interests not to file such amendment or supplement.

(d) Agent's Review of Proposed Amendments and Supplements. Prior to amending or supplementing the Registration Statement (including any registration statement filed under Rule 462(b) under the Securities Act) or the Prospectus (excluding any amendment or supplement through incorporation of any report filed under the Exchange Act), the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each such proposed amendment or supplement, and the Company shall not file or use any such proposed amendment or supplement without the Agent's prior consent, which shall not be unreasonably withheld, conditioned, or delayed, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule; provided, however, that the Company shall have no obligation to provide the Agent any advance copy of such filing if the filing does not relate to the Shares.

(e) Use of Free Writing Prospectus. Neither the Company nor the Agent has prepared, used, referred to or distributed, or will prepare, use, refer to or distribute, without the other party's prior written consent, any "written communication" that constitutes a "free writing prospectus" as such terms are defined in Rule 405 under the Securities Act with respect to the offering contemplated by this Agreement (any such free writing prospectus being referred to herein as a "**Free Writing Prospectus**").

(f) Free Writing Prospectuses. During any period in which an Issuance Notice is pending and in which the Company is eligible to use a free writing prospectus, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed Free Writing Prospectus or any amendment or supplement thereto to be prepared by or on behalf of, used by, or referred to by the Company insofar as such proposed amendment or supplement relates to the Shares or the transactions contemplated hereby, and the Company shall not file, use or refer to any proposed Free Writing Prospectus or any amendment or supplement thereto without the Agent's consent. The Company shall furnish to the Agent, without charge, as many copies of any Free Writing Prospectus prepared by or on behalf of, or used by the Company insofar as such proposed amendment or supplement related to the Shares or the transactions contemplated hereby, as the Agent may reasonably request. If at any time when a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares (but in any event if at any time through and including the date of this Agreement) there occurred or occurs an event or development as a result of which any Free Writing Prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in light of the circumstances prevailing at that subsequent time, not misleading, the Company shall promptly amend or supplement such Free Writing Prospectus to eliminate or correct such conflict or so that the statements in such Free Writing Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances prevailing at such subsequent time, not misleading, as the case may be; *provided, however*, that prior to amending or supplementing any such Free Writing Prospectus, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented Free Writing Prospectus and the Company shall not file, use or refer to any such amended or supplemented Free Writing Prospectus without the Agent's consent.

(g) Filing of Agent Free Writing Prospectuses. The Company shall not take any action that would result in the Agent or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a Free Writing Prospectus prepared by or on behalf of the Agent that the Agent otherwise would not have been required to file thereunder.

(h) Copies of Registration Statement and Prospectus. After the date of this Agreement through the last time that a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares, the Company agrees to furnish the Agent with copies (which may be electronic copies) of the Registration Statement and each amendment thereto, and with copies (which may be electronic copies) of the Prospectus and each amendment or supplement thereto in the form in which it is filed with the Commission pursuant to the Securities Act or Rule 424(b) under the Securities Act, both in such quantities as the Agent may reasonably request from time to time; and, if the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction at any time on or prior to the applicable Settlement Date for any period set forth in an Issuance Notice in connection with the offering or sale of the Shares and if at such time any event has occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it is necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Agent and to request that the Agent suspend offers to sell Shares (and, if so notified, the Agent shall cease such offers as soon as practicable); and if the Company decides to amend or supplement the Registration Statement or the Prospectus as then amended or supplemented, to advise the Agent promptly by telephone (with confirmation in writing) and to prepare and cause to be filed promptly with the Commission an amendment or supplement to the Registration Statement or the Prospectus as then amended or supplemented that will correct such statement or omission or effect such compliance; provided, however, that if during such same period the Agent is required to deliver a prospectus in respect of transactions in the Shares, the Company shall promptly prepare and file with the Commission such an amendment or supplement.

(i) Blue Sky Compliance. The Company shall cooperate with the Agent and counsel for the Agent to qualify or register the Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws or Canadian provincial securities laws (or other foreign laws) of those jurisdictions designated by the Agent, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Shares. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Agent promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its commercially reasonable efforts to obtain the withdrawal thereof as soon as practicable.

(j) Earnings Statement. As soon as practicable, the Company will make generally available to its security holders and to the Agent an earnings statement (which need not be audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act; provided that the Company shall be deemed to have furnished such statements to its security holders and the Agent to the extent they are filed on the Commission's EDGAR system.

(k) Listing; Reservation of Shares. (a) The Company will maintain the listing of the Shares on the Principal Market; and (b) the Company will reserve and keep available at all times, free of preemptive rights, Shares for the purpose of enabling the Company to satisfy its obligations under this Agreement.

(l) Transfer Agent. The Company shall maintain, at its expense, a registrar and transfer agent for the Shares.

(m) Due Diligence. During the term of this Agreement, the Company will reasonably cooperate with any reasonable due diligence review conducted by the Agent in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during normal business hours and at the Company's principal offices or virtually, as the Agent may reasonably request from time to time.

(n) Representations and Warranties. The Company acknowledges that each delivery of an Issuance Notice and each delivery of Shares on a Settlement Date shall be deemed to be (i) an affirmation to the Agent that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such Issuance Notice or of such Settlement Date, as the case may be, as though made at and as of each such date, except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto); and (ii) an undertaking that the Company will advise the Agent if any of such representations and warranties will not be true and correct as of the Settlement Date for the Shares relating to such Issuance Notice, as though made at and as of each such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares).

(o) Deliverables at Triggering Event Dates; Certificates. The Company agrees that on or prior to the date of the first Issuance Notice and, during the term of this Agreement after the date of the first Issuance Notice, upon:

(i) the filing of the Prospectus or the amendment or supplement of any Registration Statement or Prospectus (other than a prospectus supplement relating solely to an offering of securities other than the Shares or a prospectus filed pursuant to Section 4(a)(ii)(B)), by means of a post-effective amendment, sticker or supplement, but not by means of incorporation of documents by reference into the Registration Statement or Prospectus;

(ii) the filing with the Commission of an annual report on Form 10-K or a quarterly report on Form 10-Q (including any Form 10-K/A or Form 10-Q/A containing amended financial information or a material amendment to the previously filed annual report on Form 10-K or quarterly report on Form 10-Q), in each case, of the Company; or

(iii) the filing with the Commission of a current report on Form 8-K of the Company containing amended financial information (other than information “furnished” pursuant to Item 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) that the Agent reasonably determines is material to the offering of securities of the Company;

(any such event, a “**Triggering Event Date**”), the Company shall furnish the Agent (but in the case of clause (iii) above only if the Agent reasonably determines that the information contained in such current report on Form 8-K of the Company is material) with a certificate as of the Triggering Event Date, in the form and substance satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented, (A) confirming that the representations and warranties of the Company contained in this Agreement are true and correct and (B) confirming that the Company has performed all of its obligations hereunder to be performed on or prior to the date of such certificate and as to the matters set forth in Section 5(a)(iii) hereof. The requirement to provide a certificate under this Section 4(o) shall be waived for any Triggering Event Date occurring at a time when no Issuance Notice is pending or a suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Shares hereunder (which for such calendar quarter shall be considered a Triggering Event Date) and the next occurring Triggering Event Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Triggering Event Date when a suspension was in effect and did not provide the Agent with a certificate under this Section 4(o), then before the Company delivers the instructions for the sale of Shares or the Agent sells any Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 4(o) dated as of the date that the instructions for the sale of Shares are issued.

(p) Legal Opinions. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable and excluding the date of this Agreement, a negative assurances letter and the written legal opinion of Latham & Watkins LLP, counsel to the Company, Paul Hastings LLP, counsel to the Agent, each dated the date of delivery, in form and substance reasonably satisfactory to Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented. In lieu of such opinions for subsequent periodic filings, in the discretion of the Agent, the Company may furnish a reliance letter from such counsel to the Agent, permitting the Agent to rely on a previously delivered opinion letter, modified as appropriate for any passage of time or Triggering Event Date (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of such Triggering Event Date). Without limiting the foregoing sentence, the Company shall be required to furnish no more than one opinion

letter and negative assurance letter per counsel hereunder per each filing of an annual report on Form 10-K or quarterly report on Form 10-Q.

(q) Comfort Letter. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause BDO USA, P.C. the independent registered public accounting firm who has audited or reviewed the financial statements included or incorporated by reference in the Registration Statement, to furnish the Agent a comfort letter, dated the date of delivery, in form and substance reasonably satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel; provided, however, that any such comfort letter will only be required on the Triggering Event Date specified to the extent that it contains financial statements filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into a Prospectus. If requested by the Agent, the Company shall also cause a comfort letter to be furnished to the Agent on the date of occurrence of any material transaction or event requiring the filing of a current report on Form 8-K containing material amended financial information of the Company, including the restatement of the Company's financial statements. The Company shall be required to furnish no more than one comfort letter hereunder per each filing of an annual report on Form 10-K or quarterly report on Form 10-Q.

(r) Secretary's Certificate. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date, the Company shall furnish the Agent a certificate executed by the Secretary of the Company, signing in such capacity, dated the date of delivery (i) certifying that attached thereto are true and complete copies of the resolutions duly adopted by the Board of Directors of the Company authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (including, without limitation, the issuance of the Shares pursuant to this Agreement), which authorization shall be in full force and effect on and as of the date of such certificate, (ii) certifying and attesting to the office, incumbency, due authority and specimen signatures of each Person who executed this Agreement for or on behalf of the Company, and (iii) containing any other certification that the Agent shall reasonably request.

(s) Agent's Own Account; Clients' Account. The Company consents to the Agent trading, in compliance with applicable law, in the Common Shares for the Agent's own account and for the account of its clients at the same time as sales of the Shares occur pursuant to this Agreement.

(t) Investment Limitation. The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Shares in such a manner as would require the Company or any of its subsidiaries to register as an investment company under the Investment Company Act.

(u) Market Activities. The Company has not taken, nor will it take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Shares or any other reference security, whether to facilitate the sale or resale of the Shares or otherwise, and the Company will, and shall cause each of its Affiliates to, comply with all applicable provisions of Regulation M. If the limitations of

Rule 102 of Regulation M (“**Rule 102**”) do not apply with respect to the Shares or any other reference security pursuant to any exception set forth in Section (d) of Rule 102, then promptly upon notice from the Agent (or, if later, at the time stated in the notice), the Company will, and shall cause each of its Affiliates to, comply with Rule 102 as though such exception were not available but the other provisions of Rule 102 (as interpreted by the Commission) did apply. The Company shall promptly notify the Agent if it no longer meets the requirements set forth in Section (d) of Rule 102.

(v) Notice of Other Sale. Without the written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares or securities convertible into or exchangeable for Common Shares (other than Shares hereunder), warrants or any rights to purchase or acquire Common Shares, or effect a reverse stock split, recapitalization, share consolidation, reclassification or similar transaction affecting the outstanding Common Shares, during the period beginning on the third Trading Day immediately prior to the date on which any Issuance Notice is delivered to the Agent hereunder and ending on the third Trading Day immediately following the Settlement Date with respect to Shares sold pursuant to such Issuance Notice; and will not directly or indirectly enter into any other “at the market” or continuous equity transaction to offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares (other than the Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Shares, warrants or any rights to purchase or acquire, Common Shares prior to the termination of this Agreement; provided, however, that such restrictions will not be required in connection with the Company’s (i) offer, issuance or sale of Common Shares, options to purchase Common Shares or Common Shares issuable upon the exercise of options or other equity awards pursuant to any employee or director share option, incentive or benefit plan, share purchase or ownership plan, long-term incentive plan, dividend reinvestment plan, inducement award under the rules of the Principal Market or other compensation plan of the Company or its subsidiaries, as in effect on the date of this Agreement, (ii) offer, issuance or sale of Common Shares issuable upon exchange, conversion or redemption of securities or the exercise or vesting of warrants, options or other equity awards outstanding at the date the applicable Issuance Notice is delivered, (iii) issuance or sale of Common Shares or securities convertible into or exchangeable for Common Shares as consideration for mergers, acquisitions or other business combinations, joint ventures, collaborations, licensing arrangements, strategic alliances, or manufacturing, distribution, marketing, supply, sponsored research, technology transfer or development, or third-party service arrangements occurring after the date of this Agreement which are not used solely for capital raising purposes; provided, however, that the aggregate number of Common Shares issued, or issuable pursuant to the conversion or exchange of securities convertible into or exchangeable for Common Shares, under this subsection (iii) does not exceed 5% of the aggregate number of Common Shares outstanding immediately prior to giving effect to such issuance or sale, and (iv) modification of any outstanding options, warrants or any rights to purchase or acquire Common Shares.

(w) The Company will promptly notify the Agent if the Company ceases to be an Emerging Growth Company.



Section 5. CONDITIONS TO DELIVERY OF ISSUANCE NOTICES AND TO SETTLEMENT

(a) Conditions Precedent to the Right of the Company to Deliver an Issuance Notice and the Obligation of the Agent to Sell Shares. The right of the Company to deliver an Issuance Notice hereunder is subject to the satisfaction, on the date of delivery of such Issuance Notice, and the obligation of the Agent to use its commercially reasonable efforts to place Shares during the applicable period set forth in the Issuance Notice is subject to the satisfaction, on each Trading Day during the applicable period set forth in the Issuance Notice, of each of the following conditions:

(i) Accuracy of the Company's Representations and Warranties; Performance by the Company. The Company shall have delivered the certificate required to be delivered pursuant to Section 4(o) on or before the date on which delivery of such certificate is required pursuant to Section 4(o). The Company shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to such date, including, but not limited to, the covenants contained in Section 4(m), Section 4(q) and Section 4(r).

(ii) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement.

(iii) Material Adverse Changes. Except as disclosed in the Prospectus and the Time of Sale Information, (a) in the judgment of the Agent there shall not have occurred any Material Adverse Change; and (b) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" as such term is defined for purposes of Section 3(a)(62) of the Exchange Act.

(iv) No Suspension of Trading in or Delisting of Common Shares; Other Events. The trading of the Common Shares (including without limitation the Shares) shall not have been suspended by the Commission, the Principal Market or FINRA and the Common Shares (including without limitation the Shares) shall have been approved for listing or quotation on and shall not have been delisted from the Nasdaq Stock Market, the New York Stock Exchange or any of their constituent markets. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) the suspension or limitation of trading or quotation in any of the Company's securities by the Commission or by the Principal Market or trading in securities generally on the Principal Market either shall have been suspended or limited, or minimum

or maximum prices shall have been generally established on any of such stock exchanges by the Commission or FINRA; (ii) a general banking moratorium shall have been declared by any of federal or New York, authorities; or (iii) the occurrence of any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Agent is material and adverse and makes it impracticable to market the Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of securities.

(b) Documents Required to be Delivered on each Issuance Notice Date. The Agent's obligation to use its commercially reasonable efforts to place Shares hereunder shall additionally be conditioned upon the delivery to the Agent on or before the Issuance Notice Date of a certificate in form and substance reasonably satisfactory to the Agent, executed by the Chief Executive Officer, President or Chief Financial Officer of the Company, to the effect that all conditions to the delivery of such Issuance Notice shall have been satisfied as at the date of such certificate (which certificate shall not be required if the foregoing representations shall be set forth in the Issuance Notice).

(c) No Misstatement or Material Omission. The Agent shall not have advised the Company that the Registration Statement, the Prospectus or the Time of Sale Information, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

Section 6. INDEMNIFICATION AND CONTRIBUTION

(a) Indemnification of the Agent. The Company agrees to indemnify and hold harmless the Agent, its officers and employees, and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which the Agent or such officer, employee or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; and to reimburse the Agent and each such officer, employee and controlling person for any and all reasonable and documented expenses (including the reasonable



and documented fees and disbursements of counsel chosen by the Agent) as such expenses are reasonably incurred by the Agent or such officer, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Agent expressly for use in the Registration Statement, any such Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by the Agent to the Company consists of the information set forth in the first sentence of the ninth paragraph under the caption “Plan of Distribution” in the Prospectus (the “**Agent Information**”). The indemnity agreement set forth in this Section 6(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) Indemnification of the Company, its Directors and Officers. The Agent agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which the Company or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; and to reimburse the Company and each such director, officer and controlling person for any and all reasonable and documented expenses (including the reasonable and documented fees and disbursements of counsel chosen by the Company) as such expenses are reasonably incurred by the Company or such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall only apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with the Agent Information expressly for use in the Registration Statement, any such Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto). The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that the Agent may otherwise have.

(c) Notifications and Other Indemnification Procedures. Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action, such

indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 6 or to the extent it is not materially prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any reasonable and documented legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the fees and expenses of more than one separate counsel (together with one local counsel in each applicable jurisdiction), representing the indemnified parties who are parties to such action), which counsel (together with any local counsel) for the indemnified parties shall be selected by the Agent (in the case of counsel for the indemnified parties referred to in Section 6(a) above) or the Company (in the case of counsel for the indemnified parties referred to in Section 6(b) above), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party and shall be paid as they are incurred.

(d) Settlements. The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. . No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such

indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

(e) Contribution. If the indemnification provided for in this Section 6 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Agent, on the other hand, from the offering of the Shares pursuant to this Agreement; or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Agent, on the other hand, in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total gross proceeds from the offering of the Shares (before deducting expenses) received by the Company bear to the total Selling Commissions received by the Agent. The relative fault of the Company, on the one hand, and the Agent, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Agent, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 6(c), any reasonable and documented legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 6(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 6(e); *provided, however*, that no additional notice shall be required with respect to any action for which notice has been given under Section 6(c) for purposes of indemnification.

The Company and the Agent agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 6(e).

Notwithstanding the provisions of this Section 6(e), the Agent shall not be required to contribute any amount in excess of the Selling Commissions received by the Agent in connection with the offering contemplated hereby. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6(e), each officer and employee of the Agent and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the

Agent, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

Section 7. TERMINATION & SURVIVAL

(a) Term. Subject to the provisions of this Section 7, the term of this Agreement shall continue from the date of this Agreement until the end of the Agency Period, unless earlier terminated by the parties to this Agreement pursuant to this Section 7.

(b) Termination; Survival Following Termination.

(i) Either party may terminate this Agreement prior to the end of the Agency Period, by giving written notice as required by this Agreement, upon ten (10) Trading Days' notice to the other party; provided that, (A) if the Company terminates this Agreement after the Agent confirms to the Company any sale of Shares, the Company shall remain obligated to comply with Section 3(b)(v) with respect to such Shares and (B) Section 2, Section 6, Section 7 and Section 8 shall survive termination of this Agreement. If termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall nevertheless settle in accordance with the terms of this Agreement.

(ii) In addition to the survival provision of Section 7(b)(i), the respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Agent or the Company or any of its or their partners, officers or directors or any controlling person, as the case may be, and, anything herein to the contrary notwithstanding, will survive delivery of and payment for the Shares sold hereunder and any termination of this Agreement.

Section 8. MISCELLANEOUS

(a) Press Releases and Disclosure. The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the date of this Agreement, and may file with the Commission a Current Report on Form 8-K, with this Agreement attached as an exhibit thereto, describing the material terms of the transactions contemplated hereby, and the Company shall consult with the Agent prior to making such disclosures, and the parties hereto shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties hereto. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated hereby without the prior written approval of the other party hereto, except as may be necessary or appropriate in the reasonable opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such

disclosure, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties hereto.

(b) No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (i) the transactions contemplated by this Agreement, including the determination of any fees, are arm's-length commercial transactions between the Company and the Agent, (ii) when acting as a principal under this Agreement, the Agent is and has been acting solely as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (iii) the Agent has not assumed nor will assume an advisory or fiduciary responsibility in favor of the Company with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Agent has advised or is currently advising the Company on other matters) and the Agent does not have any obligation to the Company with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (v) the Agent has not provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(c) Research Analyst Independence. The Company acknowledges that the Agent's research analysts and research departments are required to and should be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and as such the Agent's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company or the offering contemplated by this Agreement that differ from the views of their respective investment banking divisions. The Company understands that the Agent is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

(d) Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered, sent via electronic mail (if applicable) or telecopied and confirmed to the parties hereto as follows:

If to the Agent:

Jefferies LLC
520 Madison Avenue
New York, NY 10022
Facsimile: (646) 786-5719
Attention: General Counsel

and an additional copy (which shall not constitute notice) to:

Paul Hastings LLP
200 Park Avenue

New York, NY 10166
Attention: Siavosh Salimi and Chris Centrich

If to the Company:

Energy Vault Holdings, Inc.
4360 Park Terrace Dr. Ste 100
Westlake Village, CA 91361
Attention: Michael Beer

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

Latham & Watkins LLP
300 Colorado St. Suite 2400
Austin, TX 78701
Attention: Samuel Rettew

Any party hereto may change the address for receipt of communications by giving written notice to the others in accordance with this Section 8(d).

(e) Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 6, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term “successors” shall not include any purchaser of the Shares as such from the Agent merely by reason of such purchase.

(f) Partial Unenforceability. The invalidity or unenforceability of any Article, Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Article, Section, paragraph or provision hereof. If any Article, Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

(g) Recognition of U.S. Special Resolutions Regimes. In the event that the Agent is a Covered Entity and becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from the Agent of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States. In the event that the Agent is a Covered Entity and the Agent or a BHC Act Affiliate of the Agent becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against the Agent are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. For purposes of this Agreement, (A) “**BHC Act Affiliate**” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k); (B) “**Covered Entity**” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12

C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b); (C) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and (D) “**U.S. Special Resolution Regime**” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

(h) Governing Law Provisions. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby (“**Related Proceedings**”) may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a “**Related Judgment**”), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

(i) General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and may be delivered by facsimile transmission or by electronic delivery of a portable document format (PDF) file. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Article and Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[Signature Page Immediately Follows]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

ENERGY VAULT HOLDINGS, INC.

By: /s/ Michael Beer

Name: Michael Beer

Title: Chief Financial Officer

The foregoing Agreement is hereby confirmed and accepted by the Agent in New York, New York as of the date first above written.

JEFFERIES LLC

By: /s/ Michael Magarro

Name: Michael Magarro

Title: Managing Director

EXHIBIT A
ISSUANCE NOTICE

[Date]

Jefferies LLC
520 Madison Avenue
New York, New York 10022

Attn: [_____]

Reference is made to the Open Market Sale Agreement between Energy Vault Holdings, Inc. (the “**Company**”) and Jefferies LLC (the “**Agent**”) dated as of November __, 2024. The Company confirms that all conditions to the delivery of this Issuance Notice are satisfied as of the date hereof.

Date of Delivery of Issuance Notice (determined pursuant to Section 3(b)(i)):

Issuance Amount (equal to the total Sales Price for such Shares):

\$ _____

Number of days in selling period: _____

First date of selling period: _____

Last date of selling period: _____

Settlement Date(s) if other than standard T+1 settlement:

Floor Price Limitation (in no event less than \$1.00 without the prior written consent of the Agent, which consent may be withheld in the Agent’s sole discretion): \$ ____ per share

Comments: _____

By: _____
Name:
Title:

Schedule A
Notice Parties

The Company

Michael Beer (michael.beer@energyvault.com)

The Agent

Mike Magarro (mmagarro@jefferies.com)



Exhibit 5.1

300 Colorado Street, Suite 2400
Austin, TX 78701
Tel: +1.737.910.7300 Fax: +1.737.910.7301
www.lw.com

LATHAM & WATKINS LLP

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Hamburg	Silicon Valley
Hong Kong	Singapore
Houston	Tel Aviv
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

November 12, 2024

Energy Vault Holdings, Inc.
4360 Park Terrace Drive
Suite 100
Westlake Village, CA 91361

Re: Registration No. 333-273089

To the addressees set forth above:

We have acted as special counsel to Energy Vault Holdings, Inc., a Delaware corporation (the “*Company*”), in connection with that certain Open Market Sales Agreement, dated as of November 12, 2024 (the “*Sales Agreement*”), by and between the Company and Jefferies LLC, as sales agent and/or principal, with regard to the sale from time to time of shares of common stock, \$0.0001 par value per share (“*Common Stock*”), having an aggregate sales price of up to \$50,000,000 (the “*Shares*”), pursuant to (i) a registration statement on Form S-3 under the Securities Act of 1933, as amended (the “*Act*”), filed with the Securities and Exchange Commission (the “*Commission*”) on June 30, 2023 (Registration No. 333-273089) (as so filed and as amended, the “*Registration Statement*”), (ii) a base prospectus, dated June 30, 2023, included in the Registration Statement (the “*Base Prospectus*”), and (iii) a prospectus supplement, dated November 12, 2024, filed with the Commission pursuant to Rule 424(b) under the Act (together with the Base Prospectus, the “*Prospectus*”).

This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the Prospectus, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “*DGCL*”), and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, upon the completion of all Corporate Proceedings (as defined below) relating to any Shares, when such Shares shall have been duly registered on the books of the transfer agent and registrar

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therefor in the name or on behalf of the purchasers and have been issued by the Company against payment therefor (not less than par value) in accordance with the Corporate Proceedings and in the circumstances contemplated by the Sales Agreement, the issuance and sale of such Shares by the Company will have been duly authorized by all necessary corporate action of the Company, and such Shares will be validly issued, fully paid and nonassessable.

In rendering the foregoing opinion, we have assumed that (i) the Company complied or will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL, (ii) upon the issuance of any of the Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under its certificate of incorporation and (iii) certain terms of the Shares to be issued by the Company from time to time will be authorized and approved by the board of directors of the Company (the “**Board**”) and/or one or more committees thereof established by the Board with the authority to issue and sell Shares pursuant to the Sales Agreement in accordance with the DGCL, the Company’s certificate of incorporation, the Company’s bylaws and certain resolutions of the Board and/or one or more committees thereof (with such approvals referred to herein as the “**Corporate Proceedings**”) prior to issuance thereof.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Company’s Form 10-Q dated November 12, 2024 and to the reference to our firm contained in the Prospectus under the heading “Legal Matters.” In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Sincerely,

/s/ Latham & Watkins LLP



