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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2023

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 001-40730

DRAGONFLY ENERGY HOLDINGS CORP.
(Exact name of registrant as specified in its charter)

Nevada (State or other jurisdiction of incorporation or organization)	**85-1873463** (I.R.S. Employer Identification No.)
1190 Trademark Drive, #108 **Reno, Nevada** (Address of Principal Executive Offices)	**89521** (Zip Code)

(775) 622-3448
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	DFLI	The Nasdaq Global Market
Redeemable Warrants, exercisable for common stock at an exercise price of $11.50 per share, subject to adjustment	DFLIW	The Nasdaq Capital Market

Securities registered pursuant to Section 12(g) of the Act: **None**.

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒

Emerging growth company ☒

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

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

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

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

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

The aggregate market value of voting stock held by non-affiliates of the Registrant on June 30, 2023, based on the closing price of $1.48 for shares of the registrant's common stock as reported by the Nasdaq Global Market, was approximately $45.2 million.

As of April 12, 2024, there were 60,260,282 shares of the registrant's common stock, par value $0.0001 per share, issued and outstanding.

Documents incorporated by reference:

Portions of the registrant's Proxy Statement relating to the 2024 Annual Meeting of Stockholders, scheduled to be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year ended December 31, 2023, are incorporated by reference into Part III of this Annual Report on Form 10-K.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 under Section 27A of the Securities Act of 1933, as amended (the "**Securities Act**"), and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include statements with respect to our beliefs, plans, objectives, goals, expectations, anticipations, assumptions, estimates, intentions and future performance, and involve known and unknown risks, uncertainties and other factors, which may be beyond our control, and which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. All statements other than statements of historical fact are statements that could be forward-looking statements. You can identify these forward-looking statements through our use of words such as "may," "can," "anticipate," "assume," "should," "indicate," "would," "believe," "contemplate," "expect," "seek," "estimate," "continue," "plan," "point to," "project," "predict," "could," "intend," "target," "potential" and other similar words and expressions of the future.

There are a number of important factors that could cause the actual results to differ materially from those expressed in any forward-looking statement made by us. These factors include, but are not limited to:

- our ability to successfully increase market penetration into target markets;
- the addressable markets that we intend to target do not grow as expected;
- the potential for events or circumstances that result in our failure to timely achieve the anticipated benefits of our customer arrangements with THOR Industries and its affiliate brands (including Keystone RV Company ("**Keystone**")), including Keystone's decision in July 2023, that, due to weaker demand for its products and its subsequent focus on reducing costs, it would no longer install our storage solutions as standard equipment, but rather return to offering those solutions as an option to dealers and consumers;
- our ability to generate revenue from future product sales and our ability to achieve and maintain profitability;
- the loss of any members of our senior management team or other key personnel;
- the loss of any relationships with key suppliers, including suppliers in China;
- the loss of any relationships with key customers;
- our ability to protect our patents and other intellectual property;
- the failure to successfully optimize solid-state cells or to produce commercially viable solid-state cells in a timely manner or at all, or to scale to mass production;
- changes in applicable laws or regulations, including changes in the rates of tariffs or any adjustments to the amounts payable by us to customs as a result of improperly identifying the applicable tariff rate payable on our products;
- our ability to maintain the listing of our common stock on the Nasdaq Global Market and Public Warrants (as defined herein) on the Nasdaq Capital Market;
- the possibility that we may be adversely affected by other economic, business and/or competitive factors (including an economic slowdown or inflationary pressures);
- our ability to sell the desired amounts of shares of common stock at desired prices under our equity facility;
- our ability to raise additional capital to fund our operations;
- the accuracy of our projections and estimates regarding our expenses, capital requirements, cash utilization, and need for additional financing;
- developments relating to our competitors and our industry;
- our ability to engage target customers and successfully retain these customers for future orders;
- the reliance on two suppliers for our lithium iron phosphate cells and a single supplier for the manufacture of our battery management system;
- the potential impact of geopolitical events, including the Russia-Ukraine conflict and Hamas' attack on Israel, and their effects on our operations; and
- our current dependence on a single manufacturing facility.

The foregoing does not represent an exhaustive list of matters that may be covered by the forward-looking statements contained herein or risk factors that we are faced with that may cause our actual results to differ from those anticipated in such forward-looking statements. Please see "*Part I—Item 1A—Risk Factors*" for additional risks which could adversely impact our business and financial performance.

All forward-looking statements are expressly qualified in their entirety by this cautionary notice. You are cautioned not to place undue reliance on any forward-looking statements, which speak only as of the date of this report or the date of the document incorporated by reference into this report. We have no obligation, and expressly disclaims any obligation, to update, revise or correct any of the forward-looking statements, whether as a result of new information, future events or otherwise. We have expressed our expectations, beliefs and projections in good faith and believe they have a reasonable basis. However, we cannot assure you that our expectations, beliefs or projections will result or be achieved or accomplished.

Part I

Item 1. Business

All references in this report to “Dragonfly,” the “Company,” “we,” “us,” or “our” mean Dragonfly Energy Holdings Corp. and its subsidiaries unless stated otherwise or the context otherwise indicates.

Overview

We are a manufacturer of non-toxic deep cycle lithium-ion batteries that caters to customers in the consumer industry (including the recreational vehicle (“**RV**”), marine vessel, solar and off-grid residence industries), and industrial and energy storage markets, with proprietary, patented and disruptive battery cell manufacturing and non-flammable solid-state cell technology currently under development. Our goal is to develop technology to deliver environmentally impactful solutions for energy storage to everyone globally. We believe that the innovative design of our lithium-ion batteries is ideally suited for the demands of modern customers who rely on consumer electronics, connected devices and smart appliances that require continuous, reliable electricity, regardless of location.

Our deep cycle lithium iron phosphate (“**LFP**”) batteries provide numerous advantages compared to incumbent products, such as lead-acid batteries. LFP batteries are non-toxic and environmentally friendly, do not rely on scarce or controversial metals and are a highly cost-effective storage solution. LFP batteries use lithium iron phosphate (“**LiFePO4**”) as the cathode material for lithium-ion cells rather than nickel or cobalt. Although the energy density of LFP batteries is lower, they have a longer cycle life and experience a slower rate of capacity loss. LFP is also intrinsically safer than sulfide gases due to its thermal and chemical stability, meaning our LFP batteries are less flammable than alternative products. As we develop our proprietary solid-state cell technology, we believe our use of LFP will continue to provide significant advantages over the lithium-ion technology in development by most other companies that still incorporate less stable components in their chemistries (such as sulfide gases, which are chemically unstable and form hydrogen sulfide when exposed to air).

We have a dual-brand strategy for battery products, Dragonfly Energy (“**Dragonfly Energy**”) and Battle Born Batteries (“**Battle Born**”). Battle Born branded products are primarily sold direct-to-consumers (“**DTC**”), while the Dragonfly Energy brand is primarily sold to original equipment manufacturers (“**OEMs**”). However, with the growing popularity and brand recognition of Battle Born, these batteries have become increasingly popular with our OEM customers. Based on the extensive research and optimization undertaken by our team, we have developed a line of products with features including a proprietary battery management system and an internal battery heating feature for cold temperatures, and we have recently launched our unique battery communication system. We currently source the LFP cells incorporated into our batteries from a limited number of carefully selected suppliers that can meet our demanding quality standards and with whom we have developed long-term relationships.

We began as an aftermarket-focused business initially targeting DTC sales in the RV market. Since 2020, we have sold over 290,000 batteries. For the years ended December 31, 2023 and 2022, we sold 64,906 and 96,034 batteries, respectively, and had $64.5 million and $86.3 million in sales, respectively. Historically, we have increased total sales through a combination of: increasing DTC sales of batteries for RV applications; expanding into the marine vessels and off-grid storage markets with related DTC sales; selling batteries to RV OEMs; increasing sales to distributors; and reselling accessories for battery systems. Our RV OEM customers currently include Keystone RV Company (“**Keystone**”), who fulfills certain of its LFP battery requirements exclusively through our Supply Agreement (as defined herein), THOR Industries (“**THOR**”), who has made a strategic investment in our business and with whom we intend to enter into a future, mutually agreed exclusive North American distribution agreement with an initial term of two years (with potential annual renewals), Airstream, and REV, and we are in ongoing discussions with a number of additional RV OEMS to further increase adoption of our products. For the year ended December 31, 2023, we faced a number of demand headwinds associated with increased inflation and rising interest rates, which caused a significant year-over-year decline in units produced for North American RV OEMs. The impact of these unit declines combined with the associated lower demand in the direct-to-consumer business caused total revenue to decline for the year ended December 31, 2023 compared to the same period last year. Based on our discussions with customers and current unit forecast projections, we expect our revenue in the RV market to increase in 2024.

We currently offer several lines of batteries across our two brands, each differentiated by size, power and capacity, consisting of seven different models, four of which come with a heated option. To supplement our battery offerings, we are also a reseller of accessories for battery systems. These include chargers, inverters, monitors, controllers and other system accessories from brands such as Victron Energy, Progressive Dynamics, Magnum Energy and Sterling Power. Pursuant to the Asset Purchase Agreement dated April 22, 2022 by and among us and Thomason Jones Company, LLC (“**Thomason Jones**”) and the other parties thereto, we also acquired the assets, including the Wakespeed Offshore brand (“**Wakespeed**”) of Thomason Jones, allowing us to include our own alternator regulator in systems that we sell.

Our battery packs are designed and assembled in-house in the United States. In April 2021, we opened our current 99,000 square foot facility in Reno, Nevada, which has allowed us to increase our production capacity and gave us the ability to increase sales to existing customers and penetrate new markets. Our 99,000 square foot facility provides a streamlined, partially autonomous production process for our current batteries, which comprises module assembly and battery assembly, with the availability to expand the number of lines to handle increased volumes and the additional battery modules we intend to introduce in the near future. We also entered into a lease for use of an approximately 64,000 square foot facility to further increase our capacity to produce our patented dry electrode process (the "**Fernley Lease Agreement**"). We plan to continue to expand our production capacity as needed and have entered into a lease for a 390,240 square foot facility in Reno, Nevada that is currently under construction which is expected to be completed in the second half of 2024. The commencement date for the lease for this facility was March 25, 2024, based on the construction project being identified as "substantially complete". This facility will enable us to consolidate various operations in Reno, NV and will allow for expected expansion for new markets.

Through our Battle Born Batteries and Wakespeed brands, we operate in three primary consumer end markets: RVs, marine vessels, and off-grid storage systems. We are strategically expanding into additional markets, with a focus on heavy-duty trucks, work trucks, and industrial solar integration. Within our core markets, we focus on displacing lead-acid batteries with our technologically advanced and greener lithium-ion solutions. Our Battle Born Batteries portfolio is designed to provide customers with a reliable, long-lasting, and highly efficient off-grid power source for powering appliances, air conditioning, lighting, and other devices commonly found in these applications.

We continue to leverage our proven sales and marketing strategy to efficiently penetrate our target end markets. We prioritize customer education through various channels, highlighting the distinct advantages of lithium-ion batteries over traditional lead-acid alternatives. Tradeshows, rallies, and industry events serve as key platforms for direct customer engagement, featuring product demonstrations, educational seminars, and opportunities for interaction with knowledgeable sales and technical experts. We further amplify our reach through a robust social media program, strategically partnering with content creators and industry influencers to disseminate product benefits to targeted audiences. Additionally, we cultivate relationships with industry publications to secure editorial coverage that informs and educates potential customers. We also employ a targeted pay-per-click ("**PPC**") advertising campaigns across various platforms, including search engines, social media, and connected TV to efficiently convert high-intent customers at the bottom of the purchase funnel.

Drawing upon our success in collaborating with RV and marine OEMs, we have begun expanding into the heavy-duty trucking market. We are leveraging our expertise in designing and supporting lithium-ion storage systems to tailor solutions meeting specific OEM requirements. These solutions have been adopted as factory-installed features, demonstrating their value proposition for truck fleets seeking to:

- Reduce diesel fuel costs: our technology delivers significant fuel savings, offering a rapid return on investment.
- Comply with anti-idling regulations: Lithium-ion batteries enable efficient power management eliminating the need for long haul truck drivers to idle, thus aligning with increasingly stringent regulations.
- Enhance sustainability efforts: Transitioning to long lasting and greener lithium-ion solutions contributes to improved environmental impact.

This strategic approach has resulted in successful pilot programs with fleets representing over 15% of the North American heavy-duty trucking market.

To augment our core lithium-ion battery pack business, we rely on our research and development department. The team has successfully developed innovative manufacturing processes for dry-electrode manufacturing of lithium-ion cells, and continues development efforts relating to next-generation solid-state technology. Since our inception, we have built a comprehensive patent portfolio around our proprietary dry-electrode battery manufacturing process, which eliminates the use of harmful solvents and energy-intensive drying ovens compared to traditional methods. This translates to significant environmental and cost benefits, including reduced energy consumption, smaller space requirements, and a lower carbon footprint.

Moreover, our solid-state technology in development removes the need for a liquid electrolyte, thereby addressing safety concerns related to flammability. Our unique competitive edge lies in the combination of solid-state technology with its scalable dry-electrode manufacturing process. This enables the rapid production of cells having an intercalation anode (like graphite or silicon), unlike many competitors reliant on less stable lithium metal anodes. We believe this design offers superior cyclability and safety, serving as a key differentiator in the energy storage market. Furthermore, internal production of both conventional and solid-state cells streamlines our supply chain and enables vertical integration, ultimately driving down production costs.

Industry Background

For decades, lead-acid batteries have been the dominant player in power and energy markets worldwide. Since the introduction of the absorbed glass mat ("**AGM**") lead-acid battery in the mid-1970s, the technological advancements in lead-acid battery technology have been limited. LFP batteries have numerous advantages over the incumbent lead-acid batteries used in today's markets:

- ***Environmentally Friendly, Socially Responsible and Safer.*** Lead-acid batteries that are not recycled or disposed of properly are extremely toxic and can cause areas of poisonous groundwater and lead buildups, impacting both humans and the environment. Research by EcoMENA shows that a single lead-acid battery disposed of incorrectly into a municipal solid waste collection system could contaminate 25 tonnes of municipal solid waste and prevent recovery of organic resources due to high lead levels. Lithium-ion batteries, specifically LFP batteries, have no toxic elements, offering a much safer environmental alternative to lead-acid batteries. LFP batteries also do not rely on controversial elements such as cobalt as part of their chemistry. Compared to lead-acid batteries, there is no concern of "off-gassing," or the emission of noxious gases, for lithium-ion batteries, and therefore no need to take into consideration required ventilation or off-gas related fire risk when installing or recharging our LFP batteries.

- ***Longer Lifespan.*** Lithium-ion batteries have longer lifecycles compared to lead-acid batteries. LFP batteries are able to cycle (i.e., discharge and charge) 3,000 to 5,000 times before hitting the 80% capacity mark. Comparatively, lead-acid batteries degrade quickly, only cycling 300-500 times before hitting 50% of their original capacity. Our third-party validated internal research suggests that if a typical AGM lead-acid battery and our LFP battery were cycled once every day, the AGM battery and our LFP battery would have a respective lifespan of 1.98 years and 19.18 years before reaching 80% depth of discharge (i.e., 80% of our battery would have been discharged relative to the overall capacity of the battery in that lifespan). In many storage applications, lithium-ion batteries have a lifespan exceeding the lifetime of the project with very limited maintenance requirements, compared to lead-acid batteries, which have a one- to two-year useful life in most applications.

- ***Power and Performance.*** As new technologies evolve and people consume more electricity, the importance of battery power and performance increases. Compared to lead-acid batteries, lithium-ion batteries can discharge power at a higher voltage and more consistently through the discharge cycle (i.e., until they are 100% discharged) while utilizing a smaller physical space and weighing less. In addition, unlike lead-acid batteries, lithium-ion batteries can be discharged below 50% capacity without causing irreparable harm to the battery. Lithium-ion batteries also provide the same energy capacity with one-fifth the weight of a standard lead-acid battery. Lithium-ion batteries are also significantly more reliable and efficient, especially in cold temperatures, allowing for year-round all-climate usage.

- ***Charging.*** Lead-acid batteries were the first rechargeable batteries on the market. However, due to new advancements in energy density (i.e., the amount of energy stored by mass volume) and charge/discharge rates, lithium-ion batteries now significantly outperform traditional lead-acid batteries. LFP batteries currently charge five times faster than their lead-acid counterparts, with even faster charging rates expected for the next generation of lithium-ion cells. With the appropriate battery management system, lithium-ion batteries can be charged in cold temperatures, something lead-acid batteries are unable to do, resulting in two to three times more power delivered.

- ***Maintenance-Free.*** LFP batteries provide the benefit of being a maintenance-free option compared to lead-acid batteries. Unlike lead-acid batteries which have no battery management system to regulate current flow and charging rates, all our LFP battery packs include a proprietary battery management system that regulates current and provides temperature, short circuit and cold charging protection. Our LFP batteries also do not require cleaning or water, eliminating the need for periodic maintenance found in today's lead-acid batteries. While our LFP batteries are generally designed to replace and physically fit into racks made for existing lead-acid batteries, our batteries can be installed in any position and without the need for venting.

End Markets

Current Markets

According to a Frost and Sullivan report commissioned by us in 2021 ("**Frost & Sullivan**"), the total addressable market ("**TAM**") of our three current end markets is estimated to be approximately $12 billion by 2025.

- ***Recreational Vehicles.*** The growth of the RV market is expected to continue to drive demand for LFP storage batteries. According to the 2022 RV Industry Association ("**RVIA**") Annual Report, 22% of RV buyers are between the ages of 18 and 34. In addition, nearly a third of the respondents in the study (31%) are first-time owners, underscoring the growth of the industry in the past decade. RV interiors are becoming more modern as customers adopt the full-time RV lifestyle, with additional appliances and electronics being installed, increasing the need for reliable power. According to the RVIA and THOR Industries, North American RV shipments have had an estimated 10-year compound annual growth rate ("**CAGR**") of 5.6% from 2012 to 2022. The need for greater power and power storage capabilities to power interiors is driving a shift towards the use of LFP batteries. Incumbent lead-acid batteries are heavy, take up a lot of space, have inefficient power discharge and require ventilation. Our product addresses all of these problems by allowing for shorter charge times, weighing one-fifth of a standard lead-acid battery, providing a reliable and consistent source of power and being maintenance-free. Our market focus has traditionally been on motorized RVs (i.e., drivable RVs), however, OEMs have begun to introduce batteries into towable units (i.e., RVs that require another vehicle to drive them), which has created a growing subsector in the RV market for LFP batteries. According to the RVIA's 2021 RV Market Report, approximately 91% of wholesale RV units shipped in 2021 were towable units, representing a significant growth opportunity for LFP batteries.

- ***Marine Vessels.*** As boating becomes more popular in North America, the need for a reliable, non-flammable energy storage system is becoming increasingly apparent. According to the 2020 Recreational Boating Statistics and the 2020 National Recreational Boating Safety Survey, in 2018 over 84 million Americans participated in some form of boating activity, with a total of over 11.8 million boats on the water as of 2020, of which 93% are power boats. We believe that the marine vessel market will grow to approximately $8 billion by 2025. Similar to the RV market, customers are becoming more technologically advanced and are adding more electronics to their vessels, in turn driving demand for larger and more reliable energy storage, such as LFP batteries. Tightening marina regulations are also driving the need for electric docking motors on more vessels and increasing the focus on safety, which LFP batteries are well-suited to address.

- ***Off-Grid Residences.*** Many people are turning to off-grid housing and, as individuals and governments become more conscious of their carbon footprint, a shift towards renewable energy sources for off-grid housing will be increasingly popular. Solar installations continue to see an increase globally, with global PV installations projected to rise from 144 GW (DC) in 2020 to 334 GW (DC) in 2030 according to Bloomberg. According to the Solar Energy Industries Association ("**SEIA**"), approximately 11% of solar installations in 2021 were supplemented with a battery system for efficient storing of excess energy generated during daylight hours. However, the number of new behind-the-meter solar systems with supporting battery systems is projected to rise to over 29% by 2025. LFP batteries are able to solve the weakest part of renewable energy adoption, which is the lack of consistent, reliable and efficient energy storage that is safer than alternative energy storage options currently on the market. As this shift towards clean energy becomes more prominent and cost-effective, the LFP battery market will be able to penetrate the largely untapped off-grid markets.

Addressable Adjacent Markets

Our addressable markets are areas with significant growth potential that we will be positioned to penetrate as customers turn towards LFP and other lithium-ion batteries as replacements for traditional lead-acid batteries. As these medium- and long-term markets mature, we intend to deploy our solid-state technology, once developed, while concurrently continuing to further displace the incumbent lead-acid technology. According to Frost & Sullivan, our TAM is estimated to be $85 billion by 2025.

- ***Heavy Duty Truck.*** The heavy-duty truck market encompasses a broad range of vehicles designed for extensive commercial and industrial use, such as long-haul transport, construction, and logistics. With more than 300,000 Class 8 units sold in 2022, the market demonstrates a robust demand for vehicles that are integral to the backbone of global commerce and infrastructure projects. As the demand for more efficient, sustainable, and reliable transportation solutions grows, the use of Auxiliary Power Units ("**APUs**") in heavy duty trucks is becoming increasingly significant. APUs provide an alternative energy source for powering onboard systems and maintaining cabin comfort during rest periods, without the need for the main engine to run—thereby reducing fuel consumption and emissions. Additionally, the market opportunity extends to the electrification of Transport Refrigeration Units ("**TRUs**") on trailers and smaller class refrigerated vehicles, which are crucial for the cold chain logistics sector. This shift towards electrification is driven by the need for more sustainable and efficient cooling solutions, reducing the carbon footprint of refrigerated transport. The expansion of global trade and the continuous push for lower emissions standards are driving the demand for heavy duty trucks equipped with APUs, as well as for the electrification of TRUs, highlighting a considerable market opportunity. This trend emphasizes the potential for advanced battery technologies not only as an environmental solution but also as a competitive advantage in the heavy-duty truck and refrigerated transport markets, offering a substantial retrofitting and market penetration opportunity for battery manufacturers and suppliers with the requisite expertise and product offerings.

- ***Industrial / Material Handlings / Work Truck.*** The industrial vehicle market includes work trucks, material handling and warehousing equipment and compact construction equipment. As industrial vehicles increase in terms of automation and incorporate more onboard tools, the need for a long-lasting, reliable and environmentally friendly energy source grows. The continuous growth of e-commerce is increasing the demand for warehousing and automated equipment. According to material handling equipment manufacturer Hyster-Yale Materials Handling, in 2021 the global market volume in units for lift trucks was approximately 2.3 million, most of which were powered by traditional lead-acid batteries, presenting a large retrofitting opportunity for LFP batteries.

- ***Specialty Vehicles.*** According to Mordor Intelligence, as of 2019, approximately 40% of the specialty vehicle market in the United States consists of medical and healthcare vehicles and approximately 30% consists of law enforcement and public safety vehicles. The market for emergency vehicles has grown as the baby boomer generation continues to age, and there has been increased demand for electrified devices and equipment on board these emergency vehicles. Our LFP batteries are well-suited to capture this market as they offer a more reliable power source with longer lifecycles compared to lead-acid batteries. In addition, LFP batteries are safer, lighter and modular, allowing for more tools to be stored on-board emergency vehicles without sacrificing the performance of the battery system.

- ***Emergency and Standby Power.*** Demand for reliable emergency and standby power sources is expected to continue to drive demand for effective power storage for residential, commercial and industrial uses. Power outages in the United States cost an estimated $150 billion per year, according to the Department of Energy, increasing the demand for uninterrupted power sources. The need for reliable emergency and standby power exists in both hazardous and non-hazardous environments and is particularly acute in areas where the existing grid service is subject to intermittencies or is otherwise inefficient (including as a result high peak electricity usage, grid and related equipment age or severe weather and other environmental factors). LFP batteries are able to offset grid-related intermittencies and inefficiencies and assist in providing grid stabilization. Importantly, LFP batteries achieve these benefits in a clean, reliable and safe manner by supplanting or reducing the use of fossil fuel backup generators.

- ***Telecom.*** Demand for mobile data continues to increase and network providers are investing heavily in 5G networks, particularly in unserved and underserved regions, to support this demand. According to the CTIA's 2021 annual survey, there were 417,215 cell sites in the United States in 2020. Batteries provide backup power to these sites when external power is interrupted. While lead-acid batteries are commonly used as backup batteries today, the compact nature of lithium-ion batteries, together with the fact that they are safer and more environmentally friendly, make them ideal alternatives as new wireless sites are built and the older wireless sites require upgrades. LFP batteries are maintenance free and have a longer lifespan, allowing for a more efficient and reliable power source for large wireless sites. The ability to monitor the battery systems remotely enables telecom operators to reduce onsite maintenance checks, thereby reducing overall operational costs while ensuring network uptime.

- ***Rail.*** Rail transportation is a large potential market, with an estimated U.S. market size of $110.1 billion in 2023, according to IBISWorld. Many railroad operators have invested in infrastructure and equipment upgrades in recent years, in an attempt to boost capacity and productivity. As noted in a study conducted by the International Energy Analysis Department and the Lawrence Berkeley National Laboratory, a shift from fossil fuel-based rail cars to emission-free power sources will greatly affect the economic and environmental impact from the rail industry. Two suggested pathways from this study were (1) electrifying railway tracks and using emission-free electricity which requires significant storage combined with renewable electricity on the grid, and (2) adding battery storage cars to diesel-electric trains. A battery-electric rail sector would provide more than 200GWh of modular and mobile storage, which could in turn provide grid services and improve the resilience of the power system.

- ***Data Centers.*** Data centers have seen strong growth in recent years, with over 5,000 data centers in the United States as of September 2023 according to Statista. Constant technological advancements and larger amounts of data generated and stored by companies for increasingly longer periods of time are driving growth in the importance, and the amount, of physical space dedicated to data centers. As software companies, such as Google and Oracle, continue to develop new technologies, such as artificial intelligence, data centers where the computer and storage functions are co-located also continue to grow. As the industry seeks to cut operating costs, become more efficient and minimize dedicated physical space, we expect there to be a shift towards light, compact lithium-ion batteries that can reduce overall costs and provide a reliable power supply without sacrificing performance. Lithium-ion batteries are designed to operate in environments with higher ambient temperatures than incumbent energy storage methods (such as lead-acid batteries). This ability for lithium-ion batteries to withstand and operate at higher temperatures can also reduce cooling costs.

- ***On-grid Storage.*** On-grid energy storage is used on a large-scale platform within an electrical power grid in conjunction with variable renewable energy sources such as solar and wind projects. These storage units (including large-scale stationary batteries) store energy when electricity is plentiful, and discharge energy at peak times when electricity is scarce. Because of the low cost of fossil fuels, the adoption of large-scale batteries has been slow. However, according to the U.S. Energy Information Administration 2021 report on battery storage in the United States, lithium-ion battery installations in large-scale storage grew from less than 50 MWh of energy capacity annual additions in 2010 to approximately 400 MWh in 2019. As lithium-ion battery production scales, the related cost of storage for all lithium-ion batteries will decline and the cost of renewable energy (including associated storage costs) is expected to approach $0.05 per kWh, which is the amount required to be cost competitive with the price of power from the electrical grid. We believe our ability to cost-effectively develop and manufacture LFP solid-state batteries will position renewable energy projects deploying these batteries to reach "grid parity" sooner.

Our Competitive Strengths

We believe that we possess the largest share in the markets we operate in due to our following business strengths, which distinguish us in this competitive landscape and position us to capitalize on the anticipated continued growth in the energy storage market:

- ***Premier Lithium-Ion Battery Technology.*** Each of our innovative batteries features custom designed components to enhance power and performance in any application or setting. Our batteries feature LFP chemistry that is environmentally friendly, does not heat up or swell when charging or discharging, and generates more power in less physical space than competing lead-acid batteries. Unlike our competitors, our internal heating technology keeps our batteries within optimal internal conditions without drawing unnecessary energy and sustaining minimal energy drain. To protect our products, our batteries possess a proprietary battery management system that shuts off the ability to charge at 24 degrees Fahrenheit. This technology increases performance in cold weather conditions while possessing a unique heating solution that does not require an external energy source.

- ***Extensive, Growing Patent Portfolio.*** We have developed and filed patent applications on commercially relevant aspects of our business including chemical compositions systems and production processes. To date, we have owned 44 issued patents, with an additional 48 patent applications pending, in the United States, Canada, Australia, Korea, Japan, India, China, and Europe (with individual patents in Germany, France and the United Kingdom).

- ***Proven Go-To-Market Strategy.*** We have successfully established a DTC platform and have developed strong working relationships with major OEMs and fleets in the RV, marine and heavy trucking markets. We custom design and engineer storage systems for new and existing applications. We see opportunities to continue to leverage our success in the aftermarket to expand our relationships to other leading OEMs, fleets, and distributors while further enhancing our DTC offerings. Extensive informational videos and exceptional customer service provide sales, technical and hands-on service support to facilitate consumer transition from traditional lead-acid or incumbent lithium-ion batteries to our products.

- ***Established Customer Base with Brand Recognition.*** We have a growing customer base of more than 23,000 customers featuring OEMs, distributors, upfitters and end consumers across diverse end markets and applications including RV, marine vessels and off-grid residences. Customer demand and brand recognition of Battle Born batteries from an aftermarket sales perspective have helped drive significant adoption from OEMs and fleets with visibility for future growth through further expansion of our existing relationships.

- ***High Quality Manufacturing Process.*** Unlike competitors that outsource their manufacturing processes, our batteries are designed, assembled and tested in the United States, ensuring that our manufacturing process is thoroughly tested and our batteries are of the highest quality as a result of governmental regulations for performance and safety.

- ***Drop-in Replacement.*** Our battery modules are largely designed to be "drop-in replacements" for traditional lead-acid batteries, which means that they are designed to fit standard RV or marine vessel configurations without any adjustments. Our target applications are powering devices and appliances in larger vehicles and low speed industrial vehicles. We offer a full line of compatible components and accessories to simplify the replacement process and provide consumers with customer service to ensure a seamless transition to our significantly safer and environmentally friendly battery. Over their lifetime, our batteries are significantly cheaper from both an absolute cost and a cost per energy perspective. These lifetime costs, at current costs and capacity, will naturally drop as we continue to take advantage of economies of scale.

Our Growth Strategy

We intend to leverage our competitive strengths, technology leadership and market share position to pursue our growth strategy through the following:

- ***Expand Product Offerings.*** In the short-term, our aim is to further diversify our product offerings to give consumers, as well as OEMs and distributors, more options for additional applications. We intend to launch and scale production of additional 12 voltage and 24 voltage batteries and we have recently introduced 48 voltage battery systems, which we believe will extend our market reach in each of our targeted end markets. Additionally, in January 2023, we launched Dragonfly IntelLigence, a proprietary monitoring and communication system that allows us to monitor, optimize, and in some cases compile data on battery banks. We believe the natural evolution of our product offering is to become a system integrator for solar and other energy storage solutions.

- ***Expand End Markets.*** We have identified additional end markets that we believe in the medium- to longer-term will increasingly look to alternative energy solutions, such as LFP batteries. Markets, such as long-haul trucking, standby power, industrial vehicles, specialty vehicles and utility-grade storage, are in the early stages of adoption of lithium-ion batteries (including LFP batteries), and we aim to be at the forefront of this movement by continuing to develop and produce products with these end users in mind.

- ***Commercialize our Dry Electrode Cell Manufacturing Technology.*** In July 2023, we completed the construction of our proprietary and patented cell manufacturing pilot line. Our patented dry deposition process is chemistry agnostic – meaning it can produce battery cells across a variety of chemistries – and is less capital intensive, uses less energy, and can produce cells in a smaller manufacturing footprint, leading to a lower total cost of manufacturing. In August 2023, we successfully demonstrated the ability to produce anode material at scale using this manufacturing process and did the same with cathode material in October 2023. We are currently producing sample cells for prospective customers across a variety of chemistries and end-markets and expect to begin scaling production in the second half of 2024.

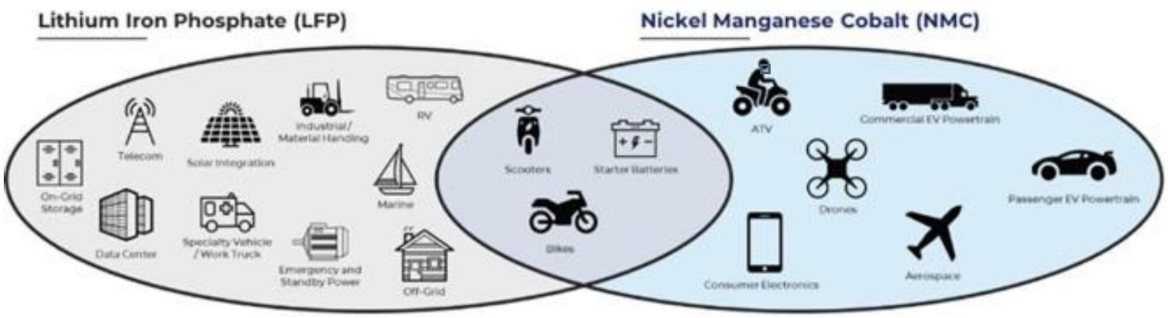
- ***Develop and Commercialize Solid-State Technology.*** We believe solid-state technology presents a significant advantage to all products currently on the market, with the potential to be lighter, smaller, safer and cheaper. Once we have optimized the chemistry of our LFP solid-state batteries to enhance conductivity and power, we intend to scale up for mass production of separate solid-state batteries for various applications and use cases.

Our Products and Technology

Chemistry Comparison

Lead-acid batteries were the first form of rechargeable battery to be developed and modified across different platforms for a variety of uses, from powering small electronics to use for energy storage in back-up power supplies in cell phone towers. Since the development in the 1970s of AGM lead-acid batteries, a form of sealed lead-acid battery that enables operation in any position, there has been limited innovation in lead-acid battery technology. The push to develop longer-lasting, lower-cost, more environmentally-friendly and faster-charging batteries has led to the development of lithium-ion batteries and, within the lithium-ion battery market, different chemistries.

There are several dominant battery chemistries in the lithium-ion market that can be used for different purposes. Two widely adopted chemistries found in the market today are nickel manganese cobalt ("**NMC**"), and nickel cobalt aluminum ("**NCA**"). The higher energy density and shorter cycle life found in NMC and NCA batteries are suitable for markets where fast charging and high energy density are required, such as electric vehicle ("**EV**") powertrains and consumer electronics. LFP batteries are best suited for energy storage markets where long life and affordability are paramount, such as RV, marine vessel, off-grid storage, onboard tools, material handling, utility-grade storage, telecom, rail and data center markets.



NMC batteries are highly dependent on two metals that present significant constraints — nickel, which is facing an industry-wide shortage, and cobalt, a large percentage of which comes from conflict-ridden countries. According to an article by McKinsey & Company titled "*Lithium and Cobalt: A tale of two commodities*", global forecasts for cobalt show supply shortages arising as early as 2022, slowing down NMC battery growth. Both of these elements are also subject to commodity price fluctuations, making NMC and NCA batteries less cost-effective than LFP batteries. LFP batteries do not contain these elements and materials can be sourced domestically, and are therefore not subject to these shortages, geopolitical concerns or commodity price fluctuations. In fact, LFP batteries have no toxic elements, offering a much safer environmental alternative. The temperature threshold for thermal runaway (i.e., lithium-ion battery overheating that can result in an internal chemical reaction) is higher for LFP batteries as compared to NMC and NCA batteries, making LFP batteries less flammable and safer.

LFP batteries have a useful life of approximately 10 to 15 years compared to one to two years for lead-acid batteries, and typically charge up to five times faster. LFP batteries are also not constrained by weight (having the same energy capacity at one-fifth of the weight) or temperature (having the ability to generate power even in low temperatures and to not swell or heat up when charging or discharging) and are generally maintenance free.

In the electric vehicle market, the race to provide the highest energy density facilitating frequent, rapid acceleration, greatest range and fastest charging battery — all while competing on cost — is where many new battery companies are prioritizing their efforts. Success in the electric vehicle market requires use of chemistries capable of optimization to these requirements. In our targeted stationary storage markets, the ideal solution requires a safe, long-lasting battery in terms of discharge/charge cycles with a focus on providing a steady power stream. LFP batteries are better suited for the stationary storage market compared to NMC and NCA batteries, as LFP batteries are safer and have a significantly longer life cycle making them more cost-effective. The market for utility grade storage, particularly for clean energy projects, and the related adoption of lithium-ion batteries (including LFP batteries) is expected to increase as the fully-loaded cost of energy (production and storage) approaches cost parity with inexpensive fossil fuel energy provided through the electric grid. Compared to NMC and NCA batteries, LFP batteries are at or much closer to grid parity.

Dry Electrode Cell Manufacturing Technology

Since our inception, we have been developing proprietary dry-electrode manufacturing processes for which we have issued patents and pending patent applications, where appropriate. Dry-electrode manufacturing eliminates the use of toxic and expensive solvents and energy-intensive drying ovens in the cell manufacturing process. This in turn reduces the energy usage, space requirements, carbon footprint, and overall cost as compared to conventional slurry-based methods. Furthermore, the manufacturing technology is chemistry agnostic – meaning it can produce battery cells across a variety of different chemistries and application use cases. In July 2023, we completed the construction of our dry-electrode manufacturing pilot line. In August 2023, we successfully demonstrated the ability to produce Anode material at scale using this manufacturing process and did the same with Cathode material in October 2023. We are currently producing sample cells for prospective customers across a variety of chemistries and end-markets and expect to begin scaling production in the second half of 2024.

Solid-State Cells

LFP batteries are not without their disadvantages. While less flammable than other chemistries, the existence of a flammable liquid electrolyte still poses safety risks. Like all liquid-based lithium-ion batteries, LFP batteries have a potential to produce solid lithium dendrites, icicle-like formations which can pierce the physical separators in LFP batteries, which are necessary in LFP batteries to separate the positively charged liquid electrolyte from the negatively charged liquid electrolyte, and which, over time, will degrade the performance of LFP batteries and potentially result in fire-related risks. The next phase in the development of lithium-ion batteries is solid-state cell development, which contains a solid, rather than a liquid, electrolyte, eliminating many of the current disadvantages to LFP batteries while increasing the safety of the battery cells. We believe that the development of our solid-state technology will provide us with a unique competitive advantage.

Compared to current lithium-ion technology, where lithium-ions cross a liquid electrolyte barrier between a battery's anode (negative electrode) and cathode (positive electrode), solid-state batteries aim to use a solid electrolyte to regulate the lithium-ions. As a battery charges and discharges, an electrochemical reaction occurs creating a flow of electrical energy between the cathode, electrolyte and anode as the electrodes lose and reacquire electrons. In addition to the use of non-toxic electrode components, the removal of a liquid electrolyte will eliminate the risk of fire, making solid-state cells inherently safe. The move to a non-liquid electrolyte also means that solid-state batteries will be, on average, smaller and lighter than existing lithium-ion batteries. The process for manufacturing our solid-state cells is described below under "— *Research and Development*".

Our Products

We provide various industries with clean, reliable, and efficient power solutions through our comprehensive product portfolio. These products and solutions are sold to both OEMs and retail customers.

Our lead product line is Battle Born Batteries product line, respected for its exceptional performance and durability. When compared to traditional lead-acid options, Battle Born Batteries deliver two to three times the power in the same physical space, one-fifth the weight for equal usable power, and up to five times faster charging. Additionally, these batteries have extended lifespans of 3,000-5,000 cycles, translating to ten to fifteen years of reliable use under typical conditions. This longevity is backed by our 10-year warranty, showcasing our commitment to quality. The Battle Born Batteries product line currently features various sizes and configurations including models with proprietary built-in heating for cold weather charging and Dragonfly IntelLigence™, a communication technology that unlocks real-time monitoring, instant notifications, various protocol integration and superior battery protection. A focus on safety is central to our products, and all Battle Born Battery products utilize $LiFePO_4$ chemistry, the safest lithium-ion chemistry available on the market. Additionally, our battery products undergo rigorous testing under stringent industry standards like UL Standard 2054, IEC 62133, UN 38.3 and IP65 to ensure safety and reliability.

Looking beyond batteries, we also offer a diverse range of power products.

- Our Wakespeed Advanced Alternator Regulator, WS500, utilizes current, voltage, and temperature to deliver precise and effective charging of battery banks via an alternator. Its intelligent control leverages advanced multi-PID engine technology to ensure the most accurate charging available, simplifying installation, configuration, and operation. The WS500 offers superior protection for both lead-acid and lithium battery chemistries, making it a valuable investment for optimizing power management and extending battery life.

- The Battle Born Batteries Lithium Power Pack Series features all-in-one power solutions for RVs, vans, and other mobile, off-grid, and industrial applications. These pre-wired, ready-to-go systems make the upgrade to lithium simple with easy installation into RVs or other applications. Designed with the dimensions and mounting points of traditional generators in mind, Lithium Power Packs are made to be quiet, sustainable, and simple drop-in replacements, allowing customers to eliminate generator fuel and noise. Custom configurations of Lithium Power Pack products are available for dealers and OEMs to size these all-in-one solutions to their specific needs.

- Designed for the demanding world of heavy-duty trucking, our Battle Born All-Electric APU leverages a lithium battery system to empower drivers with long lasting power for their hotel loads. This upgrade eliminates the need for idling and its associated fuel costs and emissions—this APU provides power to run a truck's HVAC, appliances, and electronics during mandatory rest periods. The Battle Born All Electric APU is pre-assembled and pre-wired, seamlessly integrating into a truck's frame rails.

Additionally, as a distributor of leading brands like Victron, Schneider, and REDARC, we act as a one-stop shop for full system integration, catering to both OEMs and retail customers. Our complete offering allows customers to benefit from clean and sustainable power, extended lifespans, reduced costs, increased efficiency, and seamless integration - all backed by expert service and support.

Battery Management System

Our proprietary battery management system is developed and tested in-house. It offers a complete solution for monitoring and controlling our complex battery systems and is designed to protect battery cells from damage in various scenarios. We believe our battery management system is industry-leading for a number of reasons:

- it enables batteries to draw power under 135 degrees Fahrenheit, and is designed to cut off charging at 24 degrees Fahrenheit to protect cells;
- it actively monitors the rate of change of currents to detect and prevent short circuiting, and also protects against potential ground faults;
- it allows for up to an average of 300 amps continuously, 500 amp surges for 30 seconds, and momentary, half second maximum capacity surges;
- it enables batteries to recharge even if completely drained;
- it utilizes larger resistors to ensure balanced loads to improve performance and extend useful life; and
- it facilitates scalability by enabling batteries to be combined in parallel and in series.

Battery Communication System

We have developed a complete communication system branded Dragonfly IntelLigence, for which a U.S. non-provisional patent application and an international PCT patent application have been filed, to be used with Dragonfly Energy OEM systems and Battle Born batteries and bundles. This communication system will enable end customers to monitor each battery in real time, providing information on energy input and output and current or voltage imbalances. The communication system will be able to communicate with up to 24 batteries in a bank at one time and aggregate the data received from these batteries into a central system such as a phone or tablet. We expect to begin offering the Dragonfly IntelLigence product line to OEMs in the second quarter of 2024 as an adjacent component and in our product bundles.

Alternator Regulation

Charging batteries in a vehicle, such as a boat or RV, often requires pulling electrical current off of the vehicle's alternator. Alternator regulation is important to ensure that the alternator does not get unduly stressed during the current delivery to the batteries, and that the current delivery remains within the operating limits of the onboard battery bank. The acquisition of the assets of Wakespeed has allowed us to deliver our own proprietary solution to alternator regulation while also leveraging an established brand name. Wakespeed is especially popular in the marine industry, and our ability to offer this complete solution sets the stage for further penetration into marine markets.

Product Pipeline

Beyond our current battery modules, we have several LFP products in development that will enable us to access additional end markets.

- ***New Products.*** Our current offerings feature battery products that serve the RV, marine vessel and off-grid markets. Although manufacturing operations were previously capacity constrained the expansion into our new manufacturing facility will allow us to add production capacity and increase product offerings and scale based on demand.

- The majority of our current batteries are 12 volt batteries, which provide 100 amp hours of energy and are an affordable solution to customers utilizing smaller or lower power applications. The smaller stature and drop-in replacement nature of these batteries have made these popular within the RV and marine vessel markets. Through the expansion of our 12 voltage battery product offerings, we will be able to penetrate further into additional applications including towable RVs, truck campers and trolling motors for small boats.

- We also offer 24 voltage batteries, which currently deliver 50 amp hours, and plan to further expand our 24 voltage battery offerings to provide additional drop-in replacements for AGM batteries. A single 24 voltage battery is more efficient than two 12 voltage batteries due to the ability to power directly from the source without sacrificing power through cables and connectors. This attractive power source is ideal for off-grid housing, telecommunication, solar, marine and motorized home markets, providing enhanced power to larger scale applications. A vast majority of telecommunication cell sites utilize 24 voltage batteries, greatly expanding our addressable market.

- We intend to offer 48 voltage batteries at 100 amp hours that utilize the Dragonfly IntelLigence system to maintain balance and full visibility into the status of all cells. The 48 voltage batteries provide further efficiency gains with higher voltage. These higher voltage batteries are currently more suitable for luxury mobile homes, larger off-grid uses, and high-end marine applications. We aim to further expand our 48 voltage batteries' end market exposure into other highly attractive industries including standby power for data center and utility grade energy storage.

- ***System Integrator.*** A natural evolution of our business is to offer customers a system integration solution providing more efficient power solutions at a cost-effective price point. We currently offer components and accessories necessary to build out complete lithium power systems, including solar panels, chargers and inverters, system monitoring, Wakespeed's alternator regulators, accessories, and more. We have an in-house expert customer service team that assists customers in fully integrating their applications to our technologies for a seamless transition to lithium-based energy storage systems. Through our evolving technology and the customized architecture and application of our products, we are able to offer customers a seamless transition to creating a centralized coordinated system.

Research and Development

Our research and development team has built up its efforts to support two main initiatives – (1) scale up of our patented dry electrode process for cell manufacturing and (2) the advanced manufacturing of solid-state lithium-ion batteries. We believe the dry electrode process can be leveraged to help us vertically integrate from a pack supplier to a cell supplier – positioning ourselves for long-term competitiveness in the given geopolitical, economic, and technological landscapes. Our innovations in dry electrode processing result in reduced manufacturing costs, CO_2 equivalents, and factory footprint while eliminating the need for solvents like N-Methyl-2-pyrrolidone ("**NMP**"). A third-party assessment conducted by Sphere Energy confirming these benefits has been completed in the first quarter of 2024 relating to cost effectiveness and sustainability of our dry electrode battery manufacturing process (the "**Sphere Energy Assessment**").

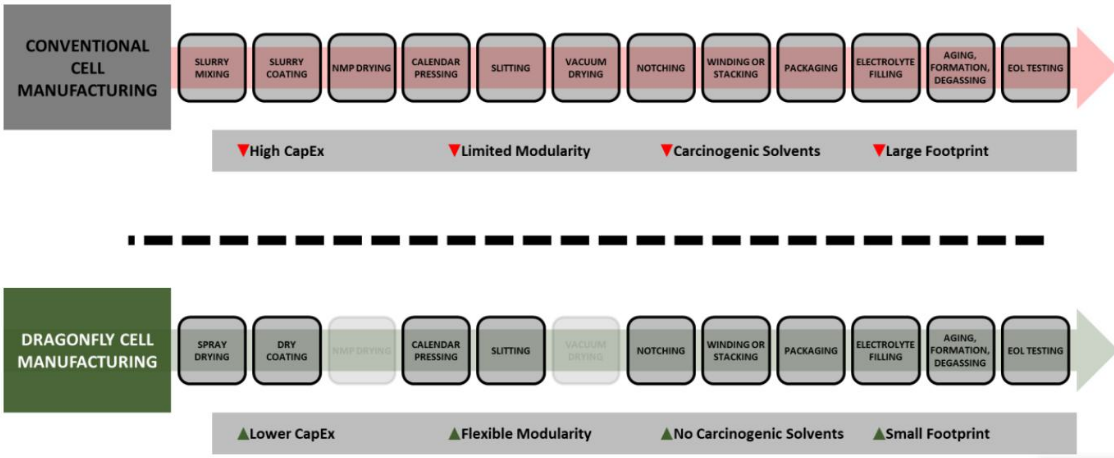
The Sphere Energy Assessment concluded that our dry electrode battery manufacturing process resulted in a 9% reduced carbon footprint of cell manufacturing with no toxic NMP solvent required, resulting in a significantly more sustainable process. This sustainability advantage is further augmented by a 71% reduction in energy usage during electrode manufacturing using our process (spray drying, coating, calendaring) compared to standard cell manufacturing operations (slurry casting, drying, calendaring). By removing the need for large and expensive drying ovens, our manufacturing process requires 22% less square footage. The culmination of these advantages results in a 25% reduction in emissions from energy use, making our manufacturing process more sustainable and much more environmentally friendly as compared to conventional manufacturing methods.

In addition to the energy savings, the cost assessment found our process to be highly cost-effective with an estimated 5% savings (depending on cell chemistry) on process-related costs compared to conventional methods. Importantly, these savings were calculated without the additional cost benefits provided by domestically manufacturing battery cells such as Inflation Reduction Act tax credits (issued by the IRS), tariffs, and shipping.

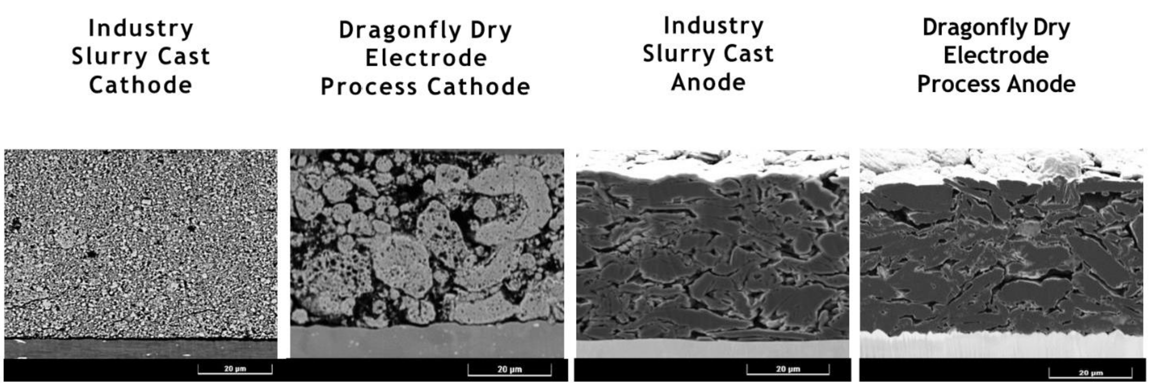
The dry electrode battery manufacturing process we employ uses a patented spray coating technology to adhere the anode and cathode electrodes, eliminating the need for large, energy-intensive equipment such as slurry coaters, conveyor dryers, and NMP processing equipment. This process is chemistry agnostic, allowing for the various applications, such as electric vehicles, consumer electronics, and energy storage, which is expected to enable us to expand into new markets and to achieve our goal of domestically producing nonflammable all-solid-state battery cells.

We have successfully produced anode and cathode electrode reels at scale using the dry electrode process and are now qualifying prototype cells for the core business and potential partners. When compared to slurry cast electrode tapes, which is the conventional manufacturing method, electrode tapes produced using the dry electrode process match or surpass mechanical integrity and electrochemical performance. We are considering joint development agreements, licensing agreements, and offtake agreements as instruments of partnership with interested parties.

In comparison with traditional manufacturing methods, our patented process leverages two off-the-shelf technologies to deliver the stated cell manufacturing benefits – spray drying and electrostatic powder coating. Technical risk is reduced by using off-the-shelf equipment and both unit operations are being optimized in 2024. A new set of spray dryers will arrive at our facility in the second quarter of 2024, enabling us to produce larger volumes of material for the electrode coating lines.



We have developed our patented to be chemistry agnostic and capable of producing current cell chemistries (graphite, LCO, LFP, LTO, NCA, NMC, LTO, silicon, etc.) and next generation cell chemistries (sodium-ion, solid-state, ionic liquid electrolytes, etc.). We believe this flexibility and our robust intellectual property protection internationally positions us well for potential partnerships with cell manufacturers, EV companies, and other pack suppliers in need of cell capacity. The next stage in technical development is to produce larger volumes of sample cells for qualification. These production runs will be completed with partners in the United States and at our own facilities once the new headquarters facility is completed, which is expected to occur in the second half of 2024. We have invested significant resources into developing an in-house comprehensive understanding of cell manufacturing – raw material qualification, quality control such as, cell failure diagnostics, aging, and formation processes. Our research and development Lab is equipped with over $20 million in research infrastructure to support the development of new cell chemistries, process quality control, failure diagnostics, and more. This equipment includes quality control instruments (ex. moisture analysis, particle size analysis, peel testing and titrations) and cutting-edge research instrumentation such as en operando nuclear magnetic resonance ("**NMR**"), electron microscopes with lithium-tracking capabilities, and en operando x-ray diffraction. This infrastructure has allowed us to optimize the dry-electrode process, allowing our team to match or surpass traditional electrode tape performance and mechanical integrity. Because our process is dry and the active material is coated directly onto the current collector, interfacial and composite resistivity of the electrode tapes often surpass the quality of slurry cast equivalents.



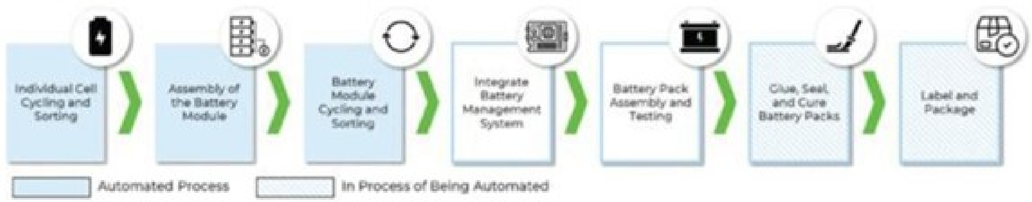
Our solid-state technology continues to progress as we qualify new chemistries and refine the dry electrode process for solid-state applications. Currently, we are cycling solid-state coin cells with the aim of producing prototype pouch cells by the end of 2024. These cell chemistries are nonflammable, solid-state, and an LFP/graphite cell chemistry. We believe these cells will be a pivotal technology in grid storage applications once fully deployed. We intend to integrate our conventional and solid-state cells produced using our dry-electrode process into the existing Dragonfly Energy and Battle Born Batteries product portfolios.

Headquarters, Manufacturing, and Production

Our headquarters is located in our 99,000 square foot manufacturing facility in Reno, Nevada. The lease for this building was entered into on March 1, 2021, and expires on April 30, 2026. We do not own any real estate property. This facility leverages a semi-automated production process for battery module and pack assembly. We currently have two production lines with another line currently in construction. We continue to have the capability to expand our production volumes and line quantities to support increased volumes of new products we intend to introduce soon. On February 8, 2022, we entered into a 124-month lease for an additional 390,240 square foot warehouse, which is scheduled to complete construction in the second half of 2024 in Reno, Nevada. We intend to utilize this facility for the existing pack assembly business and new cell manufacturing business.

On April 12, 2024, we entered into the Fernley Lease Agreement pursuant to which we agreed to lease an approximately 64,000 square foot facility (the "**Premises**") in Fernley, Nevada, to be used for general, warehousing, assembly/light manufacturing, painting of products, storage fulfillment, distribution of our products, and other uses as permitted under in the Fernley Lease Agreement.

Our manufacturing process is divided into two aspects – (1) module assembly and (2) battery assembly. We use a combination of trained employees and automated processes to increase production capacity and lower costs while maintaining the same level of quality our customers expect from our products. Module assembly is a significantly automated process, implementing custom-designed equipment and systems to suit our production needs. This includes cycling of individual cells to detect faulty components and to enable sorting by capacity. Our custom-designed automated welders spot weld individual cells that are assembled into specified module jigs based on the desired amp hour. Completed modules are then fully discharged, recharged fully, and sorted by capacity. Battery assembly is performed largely by hand by our trained employees, although we continue to look for innovative ways to integrate automation into this process. Our proprietary battery management system is thoroughly tested for quality cutoffs, then mounted onto individual modules, before the modules are bolted into its casing. We aim to automate the battery management system testing and installation process, which we expect could increase production capacity fourfold. We are currently implementing an automated process for the gluing and sealing process, which would incorporate a two-robot system for gluing and epoxying, as well as a glue pallet system to move finished batteries. After the assembled batteries are tested and sealed, they are processed for outbound distribution.



Supplier Relationships

We have a well-established, global supply chain that underlies the sourcing of the components for our products, although we source domestically wherever possible. We aim to maintain approximately six months' worth of all components, other than cells, which we pre-order in advance for the year to ensure adequate supply. For nearly all of our components, other than our battery management system, we ensure that we have alternative suppliers available. Our battery management system is sourced from a single supplier based in China who we have a nearly 10-year relationship with and who manufactures this component exclusively for us based on our proprietary design. Our cells are sourced from two different, carefully selected cell manufacturers in China who are able to meet our demanding quality standards. As a result of our long-standing relationships with these suppliers, we are able to source LFP cells on favorable terms and within reasonable lead-times.

As we look toward the production of our traditional and solid-state cells, we have signed a Commercial Offtake Agreement with a lithium mining company and a lithium recycling company, both located in Nevada for the supply of lithium.

Customers; RV OEM Strategic Arrangements

We currently serve more than 23,000 customers in North America. Our existing customers consist of leading OEMs (such as Keystone, THOR, REV Group and Airstream); distributors (who purchase large quantities of batteries from us and sell to consumers); upfitters (who augment or customize vehicles for specific needs); and retail customers (who purchase from us directly). For the years ended December 31, 2023 and 2022, OEM sales represented 42.7% and 39.2% of our total revenues, respectively.

We have deep, long-standing relationships with many of our customers. We also have a diverse customer base, with our top 10 customers accounting for 39.6% of our revenue for the year ended December 31, 2023, in which only one customer accounted for more than 10% of our revenue. Our customers primarily utilize our products for RVs, marine vessels and off-grid residences. We work directly with OEMs to ensure compatibility with existing designs and also collaborate on custom designs for new applications.

The RV market is characterized by low barriers to entry. In North America, there are two large publicly traded RV companies, THOR Industries and REV Group, in addition to a number of independent RV OEMs. THOR and REV each own a number well-known RV OEM brands and their related companies. These brands compete on a number of factors such as format (e.g., motorized or towable), price, design, value, quality and service. On November 19, 2021, we entered into a long-term Manufacturing Supply Agreement with Keystone, a member of the THOR group and the largest towable RV OEM in North America (the "**Supply Agreement**"). Under the Supply Agreement, we will be the exclusive supplier to Keystone for certain of its future LFP battery requirements, solidifying our long standing relationship with Keystone.

In July 2022, we strengthened our ties with the THOR group of RV OEMs when (i) THOR Industries made a $15,000,000 strategic investment in us and (ii) we agreed to enter into a future, mutually agreed distribution arrangement and joint IP development arrangement. This arrangement helps facilitate our ongoing efforts to drive adoption of our products (leveraging the trend of LFP batteries increasingly replacing lead-acid batteries) by, among other things, increasing the number of RV OEMs that "design in" our batteries as original equipment and entering into arrangements with members of the various OEM dealer networks to stock our batteries for service and for aftermarket replacement sales. Once the distribution agreement has been negotiated and signed, during a to-be-agreed transition period, we will use commercially reasonable efforts to cease marketing and selling our products to other RV OEMs and suppliers to RV OEMs in North America. Although the full distribution agreement with THOR has not been executed and is subject to negotiation in the future, its terms are expected to include: (i) an initial term of 24 months, which THOR may renew for successive one-year periods; (ii) a requirement that we be the sole provider of lithium-ion batteries to the US-based THOR family of companies for THOR sales in the United States, subject to agreed exceptions; (iii) favored pricing for products and negotiated rebates or other incentives; (iv) a requirement that THOR and its North American OEMs be our exclusive RV OEM customers for our products in North America, subject to agreed exceptions; and (v) agreeable terms with respect to registered and unregistered intellectual property rights and technology rights (which do not include our existing intellectual property, including our solid-state battery technologies and related IP rights), including necessary licenses between the parties, third party licenses, and allocation of ownership of any intellectual property rights and/or technology rights developed as a result of development efforts jointly undertaken between THOR and us, subject to certain limitations.

We continue to seek to grow our customer base within our existing segments; however, we also believe that our products are well suited to address the needs in additional segments, including residential, commercial and/or industrial standby power, long-haul trucking, industrial vehicles (such as forklifts, material handling equipment and compact construction equipment) and specialty vehicles (such as emergency vehicles, utility vehicles and municipal vehicles) and we will seek to expand our market share in these segments in the future.

Sales and Marketing

Our proven sales and marketing strategy has allowed us to penetrate our current end markets efficiently. We have established a highly efficient sales and marketing strategy, to penetrate targeted end markets and ensuring prominent visibility for our Battle Born Batteries and Wakespeed brands. We prioritize educating our customer base about the benefits of LFP batteries as a superior investment compared to traditional lead-acid options. Informational videos published on our website and social media platforms highlight these advantages, complemented by written guides that assist customers in configuring, installing, and utilizing battery systems and accessories. This messaging is further reinforced through our active presence at tradeshows, live webinars, and other in-person training events with dealers and customers, fostering direct engagement and ensuring comprehensive product understanding. Participation in these events fosters strong relationships with both OEMs and retail customers, keeping us attuned to evolving preferences. By leveraging this customer feedback, we collaborate with major OEMs to design solutions tailored to new and existing applications.

In addition to traditional print and digital advertising, we harness the significant influence of social media platforms like YouTube, Instagram, and Facebook, through affiliate marketing. We partner with established content creators and influencers to cultivate lasting relationships that showcase product performance organically, beyond mere one-off promotions. Organic integration of our products in television shows, podcasts and other similar sponsorships further amplifies brand awareness. Additionally, we foster relationships with key industry publications, securing valuable editorial coverage that showcases our innovative power solutions and how they are used. We believe these strategic collaborations position our brands as industry leaders within our markets and to the general public as a whole, further strengthening brand awareness and consumer confidence.

We also leverage targeted pay-per-click advertising campaigns across various platforms, including search engines, social media, and connected TV. This data-driven approach ensures efficient conversion of high-intent customers at the bottom of the purchase funnel, maximizing return on investment and driving targeted brand awareness among potential buyers.

Direct relationships with retail customers remain a core value. Our user-friendly website facilitates direct purchases of Battle Born Batteries and Wakespeed products, along with well-known third-party components, allowing customers to explore and acquire complete system solutions in one convenient location. Furthermore, a dedicated team of in-house experts provides comprehensive sales, technical, and service support to ensure our valued customers receive exceptional care and expertise.

Competition

Our key competitors are principally traditional lead-acid battery and lithium-ion battery manufacturers, such as Samsung, CATL and Enovix, in North America. We also compete against smaller LFP companies, who primarily either import their products or manufacture products under a private label. Of these companies, there is no other company that has penetrated our core end markets to the same extent as we have, and we believe that this is in large part due to the technological advantages that our products offer compared to other products in the market. Our batteries are purpose-built to enhance the power and performance in any application or setting. We have specifically designed our battery cases to fit into existing AGM battery racks and cabinets and offer a suite of compatible components and accessories in order to make the replacement process simple enough for customers to do it themselves. We have optimized our technology to produce a lighter, yet higher performing battery with a longer lifespan than incumbent lead-acid batteries. Our propriety battery management system and internal heat technology enables our batteries to outperform not only traditional lead-acid batteries, but other lithium-ion products.

With regard to solid-state technology, we have two main competitors, QuantumScape and Solid Power. While both of these competitors are focused on the development of solid-state technology for use in the propulsion of electric vehicles, we are focused on power storage applications, which has different requirements. We believe that our proprietary processes, systems and materials provide us with a significant competitive advantage in developing a fully solid-state, non-toxic and highly cost-effective energy solution.

As our solid-state technology comes to fruition and we begin to commercialize this product, we intend to become a vertically integrated battery company, internalizing all aspects of the manufacturing and assembly process. This is comparable to companies such as Tesla, BYD Limited and Li-Cycle. Our solid-state technology will also enable us to further penetrate the energy storage market, and we expect to compete with technology-focused energy storage companies such as EOS Energy, ESS and STEM.

Intellectual Property

The success of our business and our technology leadership is supported by our proprietary battery technology. We have received patents and filed patent applications in the United States and other jurisdictions to provide protection for our technology. We rely upon a combination of patent, trademark and trade secret laws in the United States and other jurisdictions, as well as license agreements and other contractual protections, to establish, maintain and enforce rights in our proprietary technologies. In addition, we seek to protect our intellectual property rights through non-disclosure and invention assignment agreements with our employees and consultants and through non-disclosure agreements with business partners and other third parties.

As of December 31, 2023, we owned 44 issued patents and 48 pending patent applications. The patents and patent applications cover the United States, Canada, Australia, Korea, Japan, India, China, and Europe (with individual patents in Germany, France and the United Kingdom). We periodically review and update our patent portfolio to protect our products and newly developed technologies. Currently, we have a combination of issued patents and pending patent applications covering the ornamental design of our GC2 and GC3 batteries, a device and method for monitoring battery systems, pre-coated solid-state electrolyte and electroactive powders and their methods of manufacture, methods and systems for the dry spray deposition of materials in an electrochemical cell; a thermal fuse; battery systems implementing a mesh network communication protocol; a power charging system for use during towing of a vehicle; and a power charging system with temperature based charging control. These patents are expected to have expired or expire between May 2033 and 2043, absent any patent term adjustments or extensions.

We periodically review our development efforts to assess the existence and patentability of new intellectual property. We pursue the registration of our domain names and trademarks and service marks in the United States and other jurisdictions. In an effort to protect our brand, as of December 31, 2023, we own 21 trademark registrations to cover our house marks in the United States and we have 7 pending trademark applications relating to our design logos and slogans in the United States and we have 4 pending trademark applications internationally.

Government Regulation and Compliance

We currently operate from a dedicated leased manufacturing facility, a leased warehouse and a podcast studio, each located in Reno, Nevada as well as a leased R&D facility in Sparks, Nevada. We have never owned any facility at which we operated. Operations at our facilities are subject to a variety of environmental, health and safety regulations, including those governing the generation, handling, storage, use, transportation, and disposal of hazardous materials. To conduct our operations, we have to obtain environmental, health, and safety permits and registrations and prepare plans. We are subject to inspections and possible citations by federal, state, and local environmental, health, and safety regulators. In transit, lithium-ion batteries are subject to rules governing the transportation of “dangerous goods.” We have policies and programs in place to assure compliance with our obligations, such as policies relating to workplace safety, fire prevention, hazardous material management and other emergency action plans. We train our employees and conduct audits of our operations to assess our fulfillment of these policies.

We are also subject to laws imposing liability for the cleanup of releases of hazardous substances. Under the law, we can be liable even if we did not cause a release on real property that we lease. We believe we have taken commercially reasonable steps to avoid such liability with respect to our current leased facilities.

Employees and Human Capital Resources

As of December 31, 2023, we had 156 employees; 150 full-time, 1 part-time and 5 interns. We have adopted our Code of Ethics to support and protect our culture, and we strive to create a workplace culture in line with our values: "Tell the Truth," "Be Fair," "Keep Your Promises," "Respect Individuals," and "Encourage Intellectual Curiosity." As part of our initiative to retain and develop our talent, we focus on these key areas:

- *Safety* — Employees are regularly educated in safety around their workspaces, and employees participate in volunteer roles on a safety committee, and in emergency readiness roles. We have a dedicated safety coordinator who tracks and measures our performance, and helps us benchmark our safety programs against our peers.

- *Diversity, Equity & Inclusion* — Our culture has benefitted from the diversity of our workforce from the very beginning. Inclusion and equity are "baked into the bricks" of our values, which our employees demonstrate every day. Our human resources department and all our corporate officers and directors have an open door policy, and are able to constructively communicate with employees to resolve issues when they arise.

- *Collaboration* — As we grow, opportunities for cross-functional collaboration are not as organic as they used to be. We have responded to that change by staying mindful and acting intentionally to gather cross-functional input on new initiatives and continuous improvement efforts.

- *Continuous Improvement* — We apply continuous improvement measures to processes as well as people. We encourage professional development of our employees, through ongoing learning, credentialing, and collaboration with their industry peers.

Attracting and retaining high quality talent at every level of our business is crucial to our continuing success. We have developed relationships with the University of Nevada Reno and the Nevada System of Higher Education to further our recruitment reach. We provide competitive compensation and benefits packages, including performance-based compensation that rewards individual and organizational achievements.

The Business Combination

On October 7, 2022 (the "**Closing Date**"), Chardan NexTech 2 Acquisition Corp., a Delaware company ("**Chardan**"), and Dragonfly Energy Corp, a Nevada corporation (together with its consolidated subsidiaries, "**Legacy Dragonfly**"), consummated the merger (the "**Closing**") pursuant to the Agreement and Plan of Merger, dated as of May 15, 2022 (as amended, the "**Business Combination Agreement**"), by and among Chardan, Bronco Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Chardan ("**Merger Sub**"), and Legacy Dragonfly. Pursuant to the Business Combination Agreement, Merger Sub merged with and into Legacy Dragonfly (the "**Merger**" and, together with the other transactions contemplated by the Business Combination Agreement, the "**Business Combination**"), with Legacy Dragonfly continuing as the surviving corporation in the Merger and as our wholly owned subsidiary. In connection with the Business Combination, Chardan changed its name to Dragonfly Energy Holdings Corp.

Prior to the completion of the Business Combination, Chardan was a shell company. Chardan was incorporated in the state of Delaware on June 23, 2020. Chardan consummated its initial public offering at a price of $10 per unit on August 13, 2021 (the "**Chardan IPO**"). Legacy Dragonfly was incorporated as a limited liability company in the State of Nevada on October 15, 2012 and reorganized as a corporation under the laws of the State of Nevada on April 11, 2016. Following the Business Combination, our business is the business of Legacy Dragonfly.

Merger Consideration

At the Closing, by virtue of the Merger and without any action on the part of Chardan, Merger Sub, Legacy Dragonfly or the holders of any of the following securities:

(a) Each outstanding share of Legacy Dragonfly's common stock, par value $0.001 per share ("**Legacy Dragonfly Common Stock**"), converted into (i) a certain number of shares of our common stock, totaling 41,500,000 shares (including the conversion and assumption of the options to purchase shares of Legacy Dragonfly Common Stock described below), which is equal to (x) $415,000,000 divided by (y) $10.00 (the "**Merger Consideration**") and (ii) the contingent right to receive Earnout Shares (as defined below) (which may be zero) following the Closing.

(b) Each option to purchase shares of Legacy Dragonfly Common Stock, was assumed and converted into options to acquire shares of our common stock. The portion of the Merger Consideration reflecting the conversion of the Legacy Dragonfly options was calculated assuming that all of our options are net-settled. With respect to Company options received in respect of Legacy Dragonfly options that are outstanding immediately prior to the Closing and cash exercised after the Closing, up to 627,498 additional shares of our common stock may be issued. At the Closing, approximately 38,576,648 shares of the Merger Consideration was allocated to holders of outstanding shares of Legacy Dragonfly Common Stock and 3,664,975 shares of the Merger Consideration was allocated to holders of the assumed Legacy Dragonfly options.

Earnout Merger Consideration

In addition to the Merger Consideration set forth above, additional contingent shares ("**Earnout Shares**") may be payable to each holder of shares of Legacy Dragonfly Common Stock in the Merger, subject to achieving specified milestones, up to an aggregate of 40,000,000 additional shares of our common stock in three tranches.

The first tranche of 15,000,000 shares was issuable if our 2023 total audited revenue was equal to or greater than $250 million and our 2023 audited operating income was equal to or greater than $35 million. The second tranche of 12,500,000 shares is issuable upon achieving a volume-weighted average trading price threshold of our common stock over any 20 trading days (which may or may not be consecutive) within any 30 consecutive trading day period of at least $22.50 on or prior to December 31, 2026, and the third tranche of 12,500,000 shares is issuable upon achieving a volume-weighted average trading price threshold of common stock over any 20 trading days (which may or may not be consecutive) within any 30 consecutive trading day period of at least $32.50 on or prior to December 31, 2028. To the extent not previously earned, the second tranche is issuable if the $32.50 price target is achieved by December 31, 2028.

Upon the consummation of a change of control transaction during either the second milestone earnout period or the third milestone earnout period, any earnout milestone with respect to such earnout period that has not yet been achieved shall automatically be deemed to have been achieved if a change of control transaction is announced with an imputed share price of common stock of at least $22.50 on or prior to the end of second earnout period or $32.50 on prior to the third earnout period.

The first tranche milestone was not achieved for the year ended December 31, 2023.

PIPE Investment

Pursuant to the subscription agreement, dated as of May 15, 2022 (the "**Subscription Agreement**"), by and between Chardan and Chardan NexTech Investments 2 LLC (or an affiliate thereof if assigned pursuant to the Subscription Agreement, the "**Sponsor**"), the Sponsor agreed to purchase, and Chardan agreed to sell to the Sponsor, an aggregate of 500,000 shares of Chardan common stock ("**Chardan Common Stock**") for gross proceeds to Chardan of $5 million in a private placement. On September 28, 2022, the Sponsor and Chardan Capital Markets LLC, a New York limited liability company ("**CCM LLC**"), entered into an assignment, assumption and joinder agreement, pursuant to which the Sponsor assigned all of the Sponsor's rights, benefits and obligations under the Subscription Agreement to CCM LLC.

Under the Subscription Agreement, the number of shares of Chardan Common Stock that CCM LLC was obligated to purchase was to be reduced by the number of shares of Chardan Common Stock that CCM LLC purchased in the open market, provided that such purchased shares were not redeemed, and the aggregate price to be paid under the Subscription Agreement was to be reduced by the amount of proceeds received by us because such shares are not redeemed (the "**Offset**"). During the week of September 26, 2022 CCM LLC acquired in the open market in total 485,000 shares of our common stock at purchase prices per share ranging from $10.33 to $10.38 (such shares, the "**Purchased Shares**"). The Purchased Shares were not redeemed, resulting in (i) our receipt of $5,016,547 from the trust account that held the proceeds from the Chardan IPO (based on a per share redemption price of $10.34) and (ii) a reduction in CCM LLC's purchase commitment under the Subscription Agreement to zero in accordance with the Offset.

Debt Financing

Consistent with the commitment letter (the "**Debt Commitment Letter**") dated May 15, 2022 by and between Chardan and Legacy Dragonfly, CCM Investments 5 LLC, an affiliate of CCM LLC ("**CCM 5**", and in connection with the Term Loan, the "**Chardan Lender**"), and EICF Agent LLC ("**EIP**" and, collectively with the Chardan Lender, the "Initial Term Loan Lenders"), in connection with the Closing, Chardan, Legacy Dragonfly and the Initial Term Loan Lenders entered into the Term Loan, Guarantee and Security Agreement (the "**Term Loan Agreement**") setting forth the terms of a senior secured term loan facility in an aggregate principal amount of $75 million (the "**Term Loan**"). The Chardan Lender backstopped its commitment under the Debt Commitment Letter by entering into a backstop commitment letter, dated as of May 20, 2022 (the "**Backstop Commitment Letter**"), with a certain third-party financing source (the "**Backstop Lender**" and collectively with EIP, the "**Term Loan Lenders**"), pursuant to which the Backstop Lender committed to purchase from the Chardan Lender the aggregate amount of the Term Loan held by the Chardan Lender (the "**Backstopped Loans**") immediately following the issuance of the Term Loan on the Closing Date. Pursuant to an assignment agreement, the Backstopped Loans were assigned by CCM 5 to the Backstop Lender on the Closing Date.

Pursuant to the terms of the Term Loan Agreement, the Term Loan was advanced in one tranche on the Closing Date. The proceeds of the Term Loan were used (i) to refinance on the Closing Date prior indebtedness, (ii) to support the Business Combination under the Business Combination Agreement, (iii) for working capital purposes and other corporate purposes, and (iv) to pay any fees associated with transactions contemplated under the Term Loan Agreement and the other loan documents entered into in connection therewith, including the transactions described in the foregoing clauses (i) and (ii) and fees and expenses related to the business combination. The Term Loan amortizes in the amount of 5% per annum beginning 24 months after the Closing Date and matures on the fourth anniversary of the Closing Date ("**Maturity Date**"). The Term Loan accrues interest (i) until April 1, 2023, at a per annum rate equal to the adjusted Secured Overnight Financing Rate ("**SOFR**") plus a margin equal to 13.5%, of which 7% will be payable in cash and 6.5% will be paid in-kind, (ii) thereafter until October 1, 2024, at a per annum rate equal to adjusted SOFR plus 7% payable in cash plus an amount ranging from 4.5% to 6.5%, depending on the senior leverage ratio of the consolidated company, which will be paid-in-kind and (iii) at all times thereafter, at a per annum rate equal to adjusted SOFR plus a margin ranging from 11.5% to 13.5% payable in cash, depending on the senior leverage ratio of the consolidated company. In each of the foregoing cases, adjusted SOFR will be no less than 1%.

We may elect to prepay all or any portion of the amounts owed prior to the Maturity Date; provided that we provide notice to Alter Domus (US) LLC, as administrative agent for the lenders (the "**Administrative Agent**"), and the amount is accompanied by the applicable prepayment premium, if any. Prepayments of the Term Loan are required to be accompanied by a premium of 5% of the principal amount so prepaid if made prior to the first anniversary of the Closing Date, 3% if made on and after the first anniversary but prior to the second anniversary of the Closing Date, 1% if made after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date, and 0% if made on or after the third anniversary of the Closing Date. If the Term Loan is accelerated following the occurrence of an event of default, Legacy Dragonfly is required to immediately pay to lenders the sum of all obligations for principal, accrued interest, and the applicable prepayment premium.

In addition to the foregoing, Legacy Dragonfly is required to prepay the Term Loan with the net cash proceeds of certain asset sales and casualty events (subject to certain customary exceptions), with the net cash proceeds of the issuance of indebtedness that is not otherwise permitted to be incurred under the Term Loan Agreement, upon the receipt of net cash proceeds from an equity issuance in an amount equal to 25% of such net cash proceeds, and commencing with the fiscal year ending December 31, 2023, with the excess cash flow for each such fiscal year in an amount equal to either 25% or 50% of such excess cash flow depending on the senior leverage ratio of the consolidated company less the amount of any voluntary prepayments made during such fiscal year.

Pursuant to the Term Loan Agreement, the obligations of Legacy Dragonfly are guaranteed by us and will be guaranteed by any of Legacy Dragonfly's subsidiaries that are party thereto as guarantors. Pursuant to the Term Loan Agreement, the Administrative Agent was granted a security interest in substantially all of the personal property, rights and assets of us and Legacy Dragonfly to secure the payment of all amounts owed to lenders under the Term Loan Agreement. In addition, we entered into a Pledge Agreement (the "**Pledge Agreement**") pursuant to which we pledged to the Administrative Agent our equity interests in Legacy Dragonfly as further collateral security for the obligations under the Term Loan Agreement.

The Term Loan Agreement contains affirmative and restrictive covenants and representations and warranties. We and our subsidiaries are bound by certain affirmative covenants setting forth actions that are required during the term of the Term Loan Agreement, including, without limitation, certain information delivery requirements, obligations to maintain certain insurance, and certain notice requirements. Additionally, we, Legacy Dragonfly and each of our subsidiaries that are guarantors will be bound by certain restrictive covenants setting forth actions that are not permitted to be taken during the term of the Term Loan Agreement without prior written consent, including, without limitation, incurring certain additional indebtedness, consummating certain mergers, acquisitions or other business combination transactions, and incurring any non-permitted lien or other encumbrance on assets. The Term Loan Agreement also contains other customary provisions, such as confidentiality obligations and indemnification rights for the benefit of the administrative agent and lenders. The Term Loan Agreement contains financial covenants requiring the credit parties to (a) maintain minimum liquidity (generally, the balance of unrestricted cash and cash equivalents in our account that is subject to a control agreement in favor of the Administrative Agent) of at least $10,000,000 as of the last day of each fiscal month commencing with the fiscal month ending December 31, 2022, (b) if the daily average liquidity for any fiscal quarter ending on December 31, 2022, March 31, 2023, June 30, 2023, or September 30, 2023 is less than $17,500,000 and for each fiscal quarter thereafter (commencing with the fiscal quarter ending December 31, 2023), maintain a senior leverage ratio (generally, aggregate debt minus up to $500,000 of unrestricted cash of Chardan and its subsidiaries divided by consolidated EBITDA for the trailing twelve month period just ended) of not more than 6.75 to 1.00 for fiscal quarters ending December 31, 2022 to March 31, 2023, 6.00 to 1.00 for fiscal quarters ending June 30, 2023 to September 30, 2023, 5.00 to 1.00 for fiscal quarters ending December 1, 2023 to March 31, 2024, 4.00 to 1.00 for fiscal quarters ending June 30, 2024 to September 30, 2024, 3.25 to 1.00 for fiscal quarters ending December 31, 2024 to March 31, 2025, and 3.00 to 1.00 for fiscal quarters ending June 30, 2025 and thereafter, (c) if liquidity is less than $15,000,000 as of the last day of any fiscal quarter (commencing with the fiscal quarter ending December 31, 2022), maintain a fixed charge coverage ratio for the trailing four fiscal quarter period of no less than 1.15:1.00 as of the last day of such fiscal quarter, and (d) if consolidated EBITDA is less than $15,000,000 for any trailing twelve month period ending on the last day of the most recently completed fiscal quarter, cause capital expenditures to not exceed $500,000 for the immediately succeeding fiscal quarter (subject to certain exceptions set forth in the Term Loan Agreement).

On March 29, 2023 and September 29, 2023, we obtained a waiver from our Administrative Agent and Term Loan Lenders of our failures to satisfy the Senior Leverage Ratio and Fixed Charge Coverage Ratio tests (the "**Tests**") with respect to the minimum cash requirements under the Term Loan during the quarter ended March 31, 2023 and September 30, 2023, respectively. On December 29, 2023, we received an additional waiver from our Administrative Agent and Term Loan Lenders (the "**December 2023 Waiver**") in regards to our compliance with the Tests as of the last day of the quarter ended December 31, 2023. On March 31, 2024, we received an additional waiver from the Administrative Agent and the Term Loan Lenders in regard to our compliance with our liquidity requirement under the Term Loan as of the last day of the fiscal quarter ended March 31, 2024.

Warrant Agreements

In connection with the entry into the Term Loan Agreement, and as a required term and condition thereof, we issued (i) penny warrants to the Term Loan Lenders under the Term Loan exercisable to purchase 2,593,056 shares at an exercise price of $0.01 per share, which was equal to approximately 5.6% of common stock calculated on an agreed fully diluted outstanding basis on the issuance date (the "**Penny Warrants**") and (ii) warrants to the Term Loan Lenders under the Term Loan exercisable to purchase 1,600,000 shares of our common stock at an exercise price of $10.00 per share (the **"$10 Warrants**" and, together with the Penny Warrants, the "**Warrants**").

The Penny Warrants have an exercise period of 10 years from the date of issuance. As of April 4, 2024, 1,996,323 shares of common stock have been issued upon the exercise of Penny Warrants.

The $10 Warrants had an exercise period of five years from the date of issuance and had customary cashless exercise provisions. As of December 31, 2022, the $10 Warrants have been exercised in full and are no longer outstanding.

The Penny Warrants have, and the $10 Warrants had, specified anti-dilution protection against subsequent equity sales or distributions, subject to exclusions including for issuances upon conversion exercise or exchange of securities outstanding as of the Closing Date, issuances pursuant to agreements in effect as of the Closing Date, issuances pursuant to employee benefit plans and similar arrangements, issuances in joint ventures, strategic arrangements or other non-financing type transactions and issuances pursuant to any public equity offerings. In addition, no anti-dilution adjustment will be made with respect to issuances of common stock pursuant to the ChEF Equity Facility (as defined below) (or replacement thereof) sold at a per share price above $5.00.

The shares issued or issuable upon exercise of the Warrants have customary registration rights, which are contained in the respective forms of the Warrants, requiring us to file and keep effective a resale registration statement registering the resale of the shares of common stock underlying the Warrants.

ChEF Equity Facility

Consistent with the equity facility letter agreement dated May 15, 2022 between Legacy Dragonfly and CCM 5, we entered into a purchase agreement (the "**Purchase Agreement**") and a Registration Rights Agreement (the "**ChEF RRA**") with CCM LLC in connection with the Closing. Pursuant to and on the terms of the Purchase Agreement, we have the right to sell and direct CCM to purchase an amount of shares of our common stock, up to a maximum aggregate purchase price of $150 million, from time to time, over the term of the equity facility (the "**ChEF Equity Facility**"). In addition, we appointed LifeSci Capital, LLC as a "qualified independent underwriter" with respect to the transactions contemplated by the Purchase Agreement.

Under the terms of the Purchase Agreement, CCM LLC will not be obligated to (but may, at its option, choose to) purchase shares of common stock to the extent the number of shares to be purchased would exceed the lowest of the number of shares of common stock (i) which would result in beneficial ownership (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder) by CCM LLC, together with its affiliates, of more than 9.9%, (ii) which would cause the aggregate purchase price on the applicable VWAP Purchase Date (as defined in the Purchase Agreement) for such purchases to exceed $3 million and (iii) equal to 20% of the total number of shares of common stock that would count towards VWAP on the applicable Purchase Date of such purchase. As of December 31, 2023, 588,500 shares have been issued pursuant to the Purchase Agreement with CCM LLC for aggregate net proceeds to us of $1,278,566.

The net proceeds from any sales under the Purchase Agreement will depend on the frequency with, and prices at, which shares of common stock are sold to CCM LLC. To the extent we sell shares of our common stock under the Purchase Agreement, we currently plan to use any proceeds therefrom for working capital and other general corporate purposes.

CCM LLC is an affiliate of the Sponsor. In light of the beneficial ownership limitation set forth above, the Sponsor has agreed that the private placement warrants held by Chardan NexTech 2 Warrant Holdings LLC ("**Warrant Holdings**"), also an affiliate of the Sponsor, may not be exercised to the extent an affiliate of the Sponsor (including CCM LLC) is deemed to beneficially own, or it would cause such affiliate to be deemed to beneficially own, more than 7.5% of our common stock.

In addition, pursuant to the ChEF RRA, we have agreed to provide CCM LLC with certain registration rights with respect to the shares of common stock issued subject to the Purchase Agreement.

The Purchase Agreement will automatically terminate on the earliest to occur of (i) the 36-month anniversary of the later of (x) the closing of the Business Combination and (y) effective date of the Initial Registration Statement (as defined in the Purchase Agreement), (ii) the date on which CCM LLC shall have purchased $150 million of shares of our common stock pursuant to the Purchase Agreement, (iii) the date on which our common stock shall have failed to be listed or quoted on Nasdaq or any successor principal market and (iv) the commencement of certain bankruptcy proceedings or similar transactions with respect to us or all or substantially all of our property.

Related Agreements

Concurrently with the execution of the Business Combination Agreement, Chardan, Legacy Dragonfly and the Sponsor (as defined below) entered into a sponsor support agreement.

Indemnification of Directors and Officers

On the Closing Date, in connection with the consummation of the Business Combination, we entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us to indemnify our directors and executive officers for certain expenses, including attorneys' fees, judgments and fines incurred by a director or executive officer in any action or proceeding arising out of their services as one of our directors or executive officers or any other company or enterprise to which the person provides services at our request.

Registration Rights Agreement

On the Closing Date, in connection with the consummation of the Business Combination Agreement, we entered into the Amended and Restated Registration Rights Agreement (the "**Insider Registration Rights Agreement**") with the Sponsor, Chardan's officers, directors, initial stockholders, CCM LLC and Warrant Holdings, an affiliate of the Sponsor (collectively, the "**Insiders**") and certain Legacy Dragonfly stockholders for the registration of certain securities held by the Insiders.

Other Agreements

On April 4, 2022, we entered into an asset purchase agreement ("**APA**") with Thomason Jones Company, LLC, a Washington limited liability company ("**TJC**"), pursuant to which we acquired intellectual property rights relating to Wakespeed, including all trademarks and certain patents, and inventory for a purchase price of approximately $444,000 which was the approximated fair market value. William Thomason and Richard Jones, our engineer and sales representatives, each of whom was hired in connection with the entry into the TJC APA, are the managing members of TJC.

Separation Agreements

On November 4, 2022, we announced that Sean Nichols, our former Chief Operating Officer, would be leaving the Company to pursue other interests. His last day of employment was November 7, 2022 (the "**Separation Date**"). On October 25, 2022, we entered into a separation and release agreement with Mr. Nichols that became effective and fully irrevocable on November 2, 2022, which was subsequently amended on November 14, 2022 (as amended, the "**Separation Agreement**"). Pursuant to the Separation Agreement, Mr. Nichols received a cash payment of $100,000 in one installment in December 2022 and is entitled to receive a cash payment of $1,000,000 in 24 monthly installments commencing in December 2022. Mr. Nichols' outstanding equity awards granted by us will fully vest and, in the case of options, will be exercisable for 12 months following the Separation Date. The Separation Agreement also provides that we will pay a portion of Mr. Nichols' premiums to continue participation in our health insurance plans for up to 18 months following the Separation Date. The Separation Agreement includes a general release of claims by Mr. Nichols and certain restrictive covenants in favor of us, including non-competition and non-solicitation covenants for 12 months following the Separation Date.

On April 26, 2023, we entered into a separation and release of claims agreement with our former Chief Legal Officer (the "**CLO**"). As consideration for the CLO's execution of the agreement, we agreed to pay the employee payments equivalent to $720,000 for wages and benefits divided into 24 monthly payments commencing on June 1, 2023, and all outstanding equity-based compensation awards to become fully vested. The CLO had three (3) months from the termination date to exercise the outstanding options. The three (3) month period ended on July 26, 2023 in which the options were not exercised and the options were forfeited as a result.

June 2023 Offering

On June 20, 2023, we entered into an underwriting agreement (the "**Underwriting Agreement**") with Roth Capital Partners, LLC, as representative of the several underwriters (the "**Underwriters**"), pursuant to which we sold to the Underwriters, in a firm commitment underwritten public offering (the "**June 2023 Offering**"), an aggregate of (i) 10,000,000 shares of our common stock, par value $0.0001, and (ii) accompanying warrants to purchase up to 10,000,000 shares of common stock (the "**Investor Warrants**"), at the combined public offering price of $2.00 per share and accompanying Investor Warrant, less underwriting discounts and commissions, and (iii) warrants to purchase up to an aggregate of 570,250 shares of common stock (the "**Underwriters' Warrants**"). In addition, we granted the Underwriters a 45-day over-allotment option to purchase up to an additional 1,500,000 shares of common stock and/or Investor Warrants to purchase up to an aggregate of 1,500,000 shares of common stock at the public offering price per security, less underwriting discounts and commissions.

The Investor Warrants are exercisable for five years from the closing date of the June 2023 Offering, have an exercise price of $2.00 per share and are immediately exercisable. In the event of certain fundamental transactions, holders of the Investor Warrants will have the right to receive the Black Scholes Value (as defined in the Investor Warrants) of their Investor Warrants calculated pursuant to the formula set forth in the Investor Warrants, payable either in cash or in the same type or form of consideration that is being offered and being paid to the holders of common stock. The Underwriters' Warrants are exercisable upon issuance and will expire on June 20, 2028. The initial exercise price of the Underwriters' Warrants is $2.50 per share, which equals 125% of the per share public offering price in the June 2023 Offering. As part of the June 2023 Offering, the Underwriters partially exercised their over-allotment option in the amount of 1,405,000 shares of common stock and Investor Warrants to purchase 1,405,000 shares of common stock. The June 2023 Offering closed on June 22, 2023. The aggregate net proceeds from this offering, including the partial overallotment option, was approximately $21.1 million.

December 2023 Private Placement

On December 29, 2023, we obtained the December 2023 Waiver from the Term Loan Lenders in regards to our compliance with the Tests as of the last day of the quarter ended December 31, 2023. The December 2023 Waiver provided for a one-time issuance of penny warrants (the "**Waiver Penny Warrants**") to purchase up to 1,286,671 shares of our common stock, par value $0.0001 per share (the "**Waiver Penny Warrant Shares**"), at an exercise price of $0.01 per share, in connection with the Term Loan Lenders' agreement to waive the Tests under the Term Loan for the quarter ended December 31, 2023. The Waiver Penny Warrants were immediately exercisable upon issuance and will expire ten years from the date of issuance.

Nevada Reincorporation

On March 31, 2023 (the "**Effective Date**"), we changed our state of incorporation from the State of Delaware to the State of Nevada (the "**Reincorporation**") pursuant to a plan of conversion dated March 30, 2023 (the "**Plan of Conversion**"). The Reincorporation was accomplished by filing: (i) a certificate of conversion with the Secretary of State of the State of Delaware; (ii) articles of conversion with the Secretary of State of the State of Nevada; and (iii) articles of incorporation (the "**Articles of Incorporation**") with the Secretary of State of the State of Nevada. In connection with the Reincorporation, our board of directors adopted new bylaws in the form attached to the Plan of Conversion (the "**Bylaws**").

The Reincorporation was previously submitted to a vote of, and approved by, our stockholders at a special meeting of stockholders held on February 28, 2023 (the "**Special Meeting**"). The Reincorporation did not affect any of our material contracts with any third parties, and our rights and obligations under those material contractual arrangements continue to be rights and obligations of us after the Reincorporation. The Reincorporation did not result in any change in our business, jobs, management, number of employees, assets, liabilities or net worth (other than as a result of the costs incident to the Reincorporation). Pursuant to the Plan of Conversion, our issued and outstanding shares of common stock were automatically converted and certificates representing shares of common stock automatically represented shares of common stock of the reincorporated company as of the Effective Date.

Term Loan Waiver and Partial Repayment

In July 2023, upon a request from our Term Loan Lenders under the term loan agreement, we repaid $5,274,575 of principal to satisfy a portion of its outstanding principal under the Term Loan Agreement.

On December 29, 2023, we obtained the December 2023 Waiver from our Administrative Agent and Term Loan in regards to our compliance with the Tests as of the last day of the quarter ended December 31, 2023. The December 2023 Waiver provided for a one-time issuance of penny warrants to purchase up to 1,286,671 shares of our common stock, par value $0.0001 per share, at an exercise price of $0.01 per share, in connection with the lenders' agreement to waive the Tests under the Loan Agreement for the quarter ending December 31, 2023. The Penny Warrants are immediately exercisable upon issuance and will expire ten years from the date of issuance.

On March 31, 2024, we received an additional waiver from the Administrative Agent and the Term Loan Lenders in regard to our compliance with the liquidity requirement under the Term Loan as of the last day of the fiscal quarter ended March 31, 2024.

Recent Developments

On January 30, 2024, we issued an unsecured convertible promissory note (the "**January Note**") in the principal amount of $1.0 million (the "**January Principal Amount**") to Brian Nelson, one of our directors, in a private placement in exchange for cash in an equal amount. The January Note became due and payable in full on February 2, 2024. We were also obligated to pay $50,000 (the "**January Loan Fee**") to Mr. Nelson on February 2, 2024. We paid the January Principal Amount and the January Loan Fee in full on February 2, 2024.

On February 27, 2024 we issued a convertible promissory (the "**February Note**") in the amount of $1.7 million (the "**February Principal Amount**") to Mr. Nelson, in a private placement in exchange for cash in an equal amount. The February Note became due and payable in full on March 1, 2024. We were also obligated to pay a $85,000 loan fee (the "**February Loan Fee**") to Mr. Nelson on March 1, 2024. We paid the February Principal Amount and the February Loan Fee on March 1, 2024.

On March 31, 2024, we received an additional waiver from the Administrative Agent and the Term Loan Lenders in regard to our compliance with the liquidity requirement under the Term Loan as of the last day of the fiscal quarter ended March 31, 2024.

Effective April 12, 2024, we entered into amendments to the employment agreements with our Chief Executive Officer, our Chief Revenue Officer and our Chief Marketing Officer to amend the terms of their annual equity compensation (the "**Amended Employee Agreements**"). The Amended Employee Agreements allow us to issue a combination of cash and equity awards on an annual basis up to a specified amount ($1,532,000 for our Chief Executive Officer, $490,000 for our Chief Revenue Officer and $236,000 for our Chief Marketing Officer), subject to approval and such other terms and conditions imposed by the compensation committee of the board of directors.

On April 12, 2024, we issued a total of 836,295 restricted stock units ("**RSUs**") under Dragonfly Energy Holdings 2022 Equity Incentive Plan (the "**2022 Plan**") to the following employees pursuant to their Amended Employee Agreements: (i) 567,407 RSUs to our Chief Executive Officer; (ii) 181,481 RSUs to our Chief Revenue Officer; and (iii) 87,407 RSUs to our Chief Marketing Officer. In addition to the RSU awards, our Board also approved the following cash awards to the above referenced employees: (i) $510,666.67 to our Chief Executive Officer; (ii) $163,333.33 to our Chief Revenue Officer; and (iii) $78,667.67 to our Chief Marketing Officer. Each of the approved cash awards will not be paid out to the employees until we have achieved a minimum cash balance of $30,000,000, and are subject to each employee's continued employment on the date of payment.

On April 12, 2024, our Board issued each of our non-employee directors 222,222 RSUs in connection with their service as directors for the year ended December 31, 2023. The RSUs will vest in three equal annual installments, with the first vesting date on the one (1) year anniversary date of their issuance, subject to the directors continued service on our Board on each vesting date.

On April 15, 2024, our Board approved an amendment to our Director Compensation Policy offering directors long-term incentive awards that are issuable subject to the sole discretion of our compensation committee. Each such long-term incentive award is payable in the form of cash and or equity awards. Each such award shall be determined each fiscal year and are subject to the director's continued service with us and other conditions as our compensation committee deems appropriate. Where equity awards are issued, such awards are subject to the terms and conditions of t he 2022 Plan.

On April 12, 2024, we entered into the Fernley Lease Agreement for the approximately 64,000 square foot Premises to be used for warehousing, assembly and light manufacturing, painting, storage fulfillment, and distribution of our products.

Corporate Information

The mailing address of our principal executive office is 1190 Trademark Dr. #108, Reno, Nevada 89521, and our telephone number is (775) 622-3448. On March 31, 2023, we effected the Reincorporation from the State of Delaware into the State of Nevada.

We file periodic reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information may be obtained, free of charge, by visiting the SEC's website at www.sec.gov that contains all of the reports, proxy and information statements, and other information that we electronically file or furnish to the SEC. We also maintain a website at www.dragonflyenergy.com where we make available the proxy statements, press releases, registration statements and reports on Forms 3, 4, 8-K, 10-K and 10-Q that we (and in the case of Section 16 reports, our insiders) file with the SEC. These forms are made available as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC. Press releases are also issued via electronic transmission to provide access to our financial and product news, and we provide notification of and access to voice and internet broadcasts of our quarterly and annual results. Our website also includes investor presentations and corporate governance materials.

Item 1A. Risk Factors

An investment in our common stock is speculative and illiquid and involves a high degree of risk including the risk of a loss of your entire investment. You should carefully consider the risks and uncertainties described below and the other information contained in this report and our other reports filed with the Securities and Exchange Commission (the "SEC"). The risks set forth below are not the only ones facing us. Additional risks and uncertainties may exist that could also adversely affect our business, operations and financial condition. If any of the following risks actually materialize, our business, financial condition and/or operations could suffer. In such event, the value of our common stock could decline, and you could lose all or a substantial portion of the money that you pay for our common stock.

Summary of Risk Factors

Risks Related to Our Existing Lithium-Ion Battery Operations

- Our business and future growth depends on the needs and success of our customers.
- We operate in a competitive industry. We expect that the level of competition will increase and the nature of our competitors will change as we develop new LFP battery products for, and enter into, new markets, and as the competitive landscape evolves.
- We may not succeed in our medium- and long-term strategy of entering into new end markets for LFP batteries and our success depends, in part, on our ability to successfully develop and manufacture new products for, and acquire customers in, these new markets and successfully grow our operations and production capabilities (including, in time, our ability to manufacture solid-state cells in-house).
- We currently rely on two suppliers to provide our LFP cells and a single supplier for the manufacture of our battery management system. Any disruption in the operations of these key suppliers could adversely affect our business and results of operations.
- We are currently, and likely will continue to be, dependent on a single manufacturing facility until the construction of our new facility is completed, if at all. If our facility becomes inoperable for any reason, or our automation and expansion plans do not yield the desired effects, our ability to produce our products could be negatively impacted.

Risks Related to Our Solid-State Technology Development

- We face significant engineering challenges in our attempts to develop and manufacture solid-state battery cells and these efforts may be delayed or fail which could negatively impact our business.
- We expect to make significant investments in our continued research and development of solid-state battery technology development, and we may be unable to adequately control the costs associated with manufacturing our solid-state battery cells.
- If our solid-state batteries fail to perform as expected, our ability to further develop, market and sell our solid-state batteries could be harmed.

Risks Related to Intellectual Property

- We rely heavily upon our intellectual property portfolio. If we are unable to protect our intellectual property rights, our business and competitive position would be harmed.
- We may need to defend ourselves against intellectual property infringement claims, which may be time-consuming and could cause us to incur substantial costs.

General Risk Factors

- The uncertainty in global economic conditions, including the Russia-Ukraine conflict and Hamas' attack on Israel, could reduce consumer spending and disrupt our supply chain which could negatively affect our results of operations.
- The loss of one or more members of our senior management team, other key personnel or our failure to attract additional qualified personnel may adversely affect our business and our ability to achieve our anticipated level of growth.
- If we fail to manage our growth effectively, we may be unable to execute our business plan, maintain high levels of customer service, or adequately address competitive challenges.
- Changes in applicable laws or regulations could impact our operations, including changes in the rates of tariffs or any adjustments to the amounts payable by us to customs as a result of improperly identifying the applicable tariff rate payable on our products.

Risks Related to Our Financial Position and Capital Requirements

- Our business is capital intensive, and we may not be able to raise additional capital on attractive terms, if at all. Any further indebtedness we incur may limit our operational flexibility in the future.
- Failure to comply with the financial covenants in our loan agreement could allow our lenders to accelerate payment under our loan agreement, which would have a material adverse effect on our results of obligations and financial position and raise substantial doubt about our ability to continue as a going concern.
- Restrictions imposed by our outstanding indebtedness and any future indebtedness may limit our ability to operate our business and to finance our future operations or capital needs or to engage in acquisitions or other business activities necessary to achieve growth.

Risks Related to Ownership of Our Common Stock

- Future issuances of debt securities and equity securities may adversely affect us and may be dilutive to existing stockholders.
- We may issue additional shares of our common stock or other equity securities without your approval, which would dilute your ownership interests and may depress the market price of your shares.

Risks Related to Our Existing Lithium-Ion Battery Operations

Our business and future growth depends on the needs and success of our OEM's and similar customers.

The demand for our products, including sales to OEMs, ultimately depends on consumers in our current end markets (primarily owners of RVs, marine vessels and off-grid residences). The performance and growth of these markets is impacted by numerous factors, including macro-economic conditions, consumer spending, travel restrictions, fuel costs and energy demands (including an increasing trend towards the use of green energy). Increases or decreases in these variables may significantly impact the demand for our products. If we fail to accurately predict demand, we may be unable to meet our customers' needs, resulting in the loss of potential sales, or we may produce excess products, resulting in increased inventory and overcapacity in our production facilities, increasing our unit production cost and decreasing our operating margins.

An increasing proportion of our revenue has been and is expected to continue to be derived from sales to RV OEMs. Our RV OEM sales have been on a purchase order basis, without firm revenue commitments, and we expect that this will likely continue to be the case. For example, under our Supply Agreement with Keystone RV Company, or Keystone, the largest manufacturer of towable RVs in North America, Keystone has agreed to fulfill certain of its LFP battery requirements exclusively through us for at least one year, with automatic annual renewals. However, although in time we expect Keystone to be significant contributor to our projected growth in RV OEM battery sales, this arrangement may not deliver the anticipated benefits, as there are no firm purchase commitments, sales will continue to be made on a purchase order basis, Keystone is permitted to purchase other LFP batteries from third parties and this arrangement may not be renewed. In addition, in July 2022, we agreed to a strategic investment by THOR Industries, or THOR, which, among other things, contemplates a future, mutually agreed exclusive distribution agreement with THOR in North America. Although we expect that THOR will be a be significant contributor to our projected growth in RV OEM battery sales, this arrangement may not deliver the anticipated benefits and this distribution agreement may, in the future, preclude us from dealing with other large RV OEMs and their associated brands in North America or otherwise could negatively impact our relationships with those RV OEMs to whom we may be permitted to supply our batteries. In July 2023, we were notified by Keystone that, due to weaker demand for its products and their subsequent focus on reducing costs, it would no longer install our storage solutions as standard equipment, but rather return to offering those solutions as an option to dealers and consumers. While Keystone has not moved to a different solution or competitor, as a result in this change in strategy there was a material limiting effect on our revenue in 2023. Increased overall RV OEM sales in the future may not materialize as expected or at all and we may fail to achieve our targeted sales levels. Future RV OEM sales are subject to a number of risks and uncertainties, including the number of RVs that these OEMs manufacture and sell (which can be impacted by a variety of events including those disrupting our OEM customers' operations due to supply chain disruptions or labor constraints); the degree to which our OEM customers incorporate/design-in our batteries into their RV product lines and renew our supply agreements; the extent to which RV owners, if applicable, opt to purchase our batteries upon initial purchase of their RV or in the aftermarket; and our continued ability to successfully develop and introduce reliable and cost-effective batteries meeting evolving industry standards and customer specifications and preferences. Our failure to adequately address any of these risks may result in lost sales which could have a material adverse effect on our business, financial condition and results of operations.

In addition, our near-term growth depends, in part, on the continued growth of the end markets in which we currently operate. Although the total addressable market for RVs, marine vessels and off-grid residences is estimated to reach $12 billion by 2025, these markets may not grow as expected or at all, and we may be unable to maintain existing customers and/or attract new customers in these markets. Our failure to maintain or expand our share of these growing markets could have a material adverse effect on our business, financial condition and results of operations.

We may not be able to engage target customers successfully and convert these customers into meaningful orders in the future.

Our success, and our ability to increase sales and operate profitably, depends on our ability to identify target customers and convert these customers into meaningful orders, as well as our continued development of existing customer relationships. Although we have developed a multi-pronged sales and marketing strategy to penetrate our end markets and reach a range of customers, this strategy may not continue to be effective in reaching or converting target customers into orders, or as we expand into additional markets. Recently, we have also dedicated more resources to developing relationships with certain key RV OEMs, such as Keystone, which we aim to convert into collaborations on custom designs and/or long-term contractual arrangements. We may be unable to convert these relationships into meaningful orders or renew these arrangements going forward, which may require us to expend additional cost and management resources to engage other target customers. However, in July 2023, we were notified by Keystone that, due to weaker demand for its products and their subsequent focus on reducing costs, it would no longer install our storage solutions as standard equipment, but rather return to offering those solutions as an option to dealers and consumers. While Keystone has not moved to a different solution or competitor, as a result in this change in strategy there was a material limiting effect on our revenue in 2023.

Our sales to any future or current customers may decrease for reasons outside our control, including loss of market share by customers to whom we supply products, reduced or delayed customer requirements, supply and/or manufacturing issues affecting production, reputational harm or continued price reductions. Furthermore, in order to attract and convert customers we must continue to develop batteries that address our current and future customers' needs. Our failure to achieve any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

We operate in a competitive industry. We expect that the level of competition will increase and the nature of our competitors will change as we develop new LFP battery products for, and enter into, new markets, and as the competitive landscape evolves. These competitive and other factors could result in lost potential sales and lower average selling prices and profitability for our products.

We compete with traditional lead-acid battery manufacturers and lithium-ion battery manufacturers, who primarily either import their products or components or manufacture products under a private label. As we continue to expand into new markets, develop new products and move towards production of our solid-state cells, we will experience competition with a wider range of companies. These include companies focused on solid-state cell production, vertically integrated energy companies and other technology-focused energy storage companies. We believe our main competitive advantage in displacing incumbent lead-acid batteries is that we produce a lighter, safer, higher performing, cost-effective battery with a longer lifespan. We believe our go-to-market strategy, established brands, proven reliability and relationships with OEMs and end consumers both (i) enable us to compete effectively against other battery manufacturers and (ii) position us favorably to expand into new addressable markets. However, OEM sales typically result in lower average selling prices and related margins, which could result in overall margin erosion, affect our growth or require us to raise our prices. As a result, we may be unable to maintain this competitive advantage given the rapidly developing nature of the industry in which we operate.

Our current competitors have, and future competitors may have, greater resources than we do. Our competitors may be able to devote greater resources to the development of their current and future technologies. These competitors may also be able to devote greater resources to sales and marketing efforts, affording them greater access to customers, and may be able to establish cooperative or strategic relationships amongst themselves or with third parties that may further enhance their competitive positioning. In addition, foreign producers may be able to employ labor at significantly lower costs than producers in the United States, expand their export capacity and increase their marketing presence in our major end markets. We expect actual and potential competitors to continue their efforts to develop alternative battery technologies and introduce new products with more desirable, attractive features. These new technologies and products may be introduced sooner than our offerings and could gain greater market acceptance. Although we believe we are a leader in developing solid-state battery technology (particularly for energy storage applications) new competitors may emerge, alternative approaches to solid-state battery technology may be developed and competitors may seek to market solid-state battery technologies better suited for other applications such as EV's to our target markets.

Additional competitive and other factors may result in lost sales opportunities and declines in average sales prices and overall product profitability. These include rapidly evolving technologies, industry standards, economic conditions and end-customer preferences. Our failure to adapt to or address these factors as they arise could have a material adverse effect on our business, financial condition and results of operations.

We may not succeed in our medium- and long-term strategy of entering into new end markets for LFP batteries and our success depends, in part, on our ability to successfully develop and manufacture new products for, and acquire customers in, these new markets and successfully grow our operations and production capabilities (including, in time, our ability to manufacture solid-state cells in-house).

Our future success depends, in part, upon our ability to expand into additional end markets identified by us as opportunities for our LFP batteries. These markets include heavy-duty trucking, industrial solar integration, specialty and work vehicles, material handling, rail, and emergency and standby power in the medium term, and data centers, telecom and distributed on-grid storage in the longer term. Our ability to expand into these markets depends on a number of factors, including the continued growth of these markets, having sufficient capital to expand our product offerings (including in the longer term batteries incorporating, once developed, our solid-state cells) and manufacturing capacity, developing products adapted to customer needs and preferences in these markets, our successful expansion of our manufacturing capabilities in order to meet customer demand, our ability to identify and convert potential customers within these markets and our ability to attract and retain qualified personnel to assist in these efforts. Although we intend to devote resources and management time to understanding these new markets, we may face difficulties in understanding and accurately predicting the demographics, preferences and purchasing habits of customers and consumers in these markets. If we fail to execute on our growth strategies in accordance with our expectations, our sales growth would be limited to the growth of existing products and existing end markets, and this could have a material adverse effect on our business, financial condition and results of operations.

Further, if we are unable to manage the growth of our operations effectively to match the growth in sales, we may incur unexpected expenses and be unable to meet our customers' requirements, which could materially adversely affect our business, financial condition and results of operations. A key component of our growth strategy is the expansion and automation of our manufacturing sales capacity to address expected growing product demand and to accommodate our production of solid-state cells at scale. We have experienced supply delays in obtaining the necessary components to implement our automated adhesive application systems, as well as our pilot production line for our solid-state cells, and we may continue to experience component shortages in the future, which may negatively impact our ability to achieve these aspects of our growth strategy on time or at all. The costs of our expansion and automation efforts may be greater than expected, and we may fail to achieve anticipated cost efficiencies, which could have a material adverse effect on our business, financial condition and results of operations. We must also attract, train and retain a significant number of skilled employees, including engineers, sales and marketing personnel, customer support personnel and management, and the availability of such personnel may be constrained. Failure to effectively manage our growth could also lead us to over-invest or under-invest in development and operations; result in weaknesses in our infrastructure, systems or controls; give rise to operational mistakes, financial losses, loss of productivity or business opportunities; and result in loss of employees and reduced productivity of remaining employees, any of which could have a material adverse effect on our business, financial condition and results of operations.

We currently rely on two suppliers to provide our LFP cells and a single supplier for the manufacture of our battery management system. Any disruption in the operations of these key suppliers could adversely affect our business and results of operations.

We currently rely on two carefully selected cell manufacturers located in China, and a single supplier, also located in China, to manufacture our proprietary battery management system, and we intend to continue to rely on these suppliers going forward.

Our dependence on a limited number of key third-party suppliers exposes us to challenges and risks in ensuring that we maintain adequate supplies required to produce our LFP batteries. Although we carefully manage our inventory and lead-times, we may experience a delay or disruption in our supply chain and/or our current suppliers may not continue to provide us with LFP cells or our battery management systems in our required quantities or to our required specifications and quality levels or at attractive prices. Our close working relationships with our China-based LFP cell suppliers to-date, reflected in our ability to increase our purchase order volumes (qualifying us for related volume-based discounts) and to order and receive delivery of cells in advance of required demand, has helped us moderate or offset increased supply-related costs associated with inflation, currency fluctuations and tariffs imposed on our battery cell imports by the U.S. government and avoid potential shipment delays. If we are unable to enter into or maintain commercial agreements with these suppliers on favorable terms, or if any of these suppliers experience unanticipated delays, disruptions or shutdowns or other difficulties ramping up their supply of products or materials to meet our requirements, our manufacturing operations and customer deliveries would be seriously impacted, potentially resulting in liquidated damages and harm to our customer relationships. Although we believe we could locate alternative suppliers to fulfill our needs, we may be unable to find a sufficient alternative supply in a reasonable time or on commercially reasonable terms.

Further, our dependence on these third-party suppliers entails additional risks, including:

- inability, failure or unwillingness of third-party suppliers to comply with regulatory requirements;
- breach of supply agreements by the third-party suppliers;
- misappropriation or disclosure of our proprietary information, including our trade secrets and know-how;
- relationships that third-party suppliers may have with others, which may include our competitors, and failure of third-party suppliers to adequately fulfill contractual duties, resulting in the need to enter into alternative arrangements, which may not be available, desirable or cost-effective; and
- termination or nonrenewal of agreements by third-party suppliers at times that are costly or inconvenient for us.

We may not be able to accurately estimate future demand for our LFP batteries, and our failure to accurately predict our production requirements could result in additional costs or delays.

We seek to maintain approximately a six-month supply of LFP cells and other critical components by pre-ordering in advance of expected demand. However, our business and customer product demand is impacted by trends and factors that may be outside our control. Therefore, our ability to predict our manufacturing requirements is subject to inherent uncertainty. Lead times for materials and components that our suppliers order may vary significantly and depend on factors such as the specific supplier, contract terms and demand for each component at a given time. If we fail to order sufficient quantities of product components in a timely manner, the delivery of our batteries to our customers could be delayed, would harm our business, financial condition and results of operations.

To meet our delivery deadlines, we generally make significant decisions on our production level and timing, procurement, facility requirements, personnel needs and other resources requirements based on our estimate of demand, our past dealings with such customers, economic conditions and other relevant factors. Although we monitor our slow-moving inventory, if customer demand declines significantly, we may have excess inventory which could result in unprofitable sales or write-offs. Expediting additional material to make up for any shortages within a short time frame could result in increased costs and a delay in meeting orders, which would result in lower profits and negatively impact our reputation. In either case, our results of operations would fluctuate from period to period.

In addition, certain of our competitors may have long-standing relationships with suppliers, which may provide them with a competitive pricing advantage for components and reduce their exposure to volatile raw material costs, including due to inflation. As a result, we may face market-driven downward pricing pressures in the future, which may run counter to the cost of the components required to produce our products. During 2022 in particular, we experienced rising materials costs due to inflation, which we partially mitigated through increases in our product prices, where we thought it to be prudent. Our customers may not view this favorably and expect us to cut our costs further and/or to lower the price of our products. We may be unable to increase our sales volumes to offset lower prices (if we choose to implement lower prices), develop new or enhanced products with higher selling prices or margins, or reduce our costs to levels enabling us to remain competitive. Our failure to accomplish any of the foregoing could have a negative impact on our profitability and our business, financial condition and results of operations may ultimately be materially adversely affected.

We are currently, and will likely continue to be, dependent on two manufacturing facilities until the construction of our new facility is completed, if at all. If our facility becomes inoperable for any reason, or our automation and expansion plans do not yield the desired effects, our ability to produce our products could be negatively impacted.

All of our battery assembly currently takes place at our 99,000 square foot headquarters and manufacturing facility located in Reno, Nevada. We also entered into the Fernley Lease Agreement in April 2024 for use of an approximately 64,000 square foot facility to further increase our capacity to produce our patented dry electrode process. We currently operate three LFP battery production lines, which has been sufficient to meet customer demand. If one or several production lines were to become inoperable for any period of time, we would face delays in meeting orders, which could prevent us from meeting demand or require us to incur unplanned costs, including capital expenditures.

Our facilities may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, flooding, fire and power outages, utility and transportation infrastructure disruptions, acts of war or terrorism, or by public health crises, which may render it difficult or impossible for us to manufacture our products for an extended period of time. The inability to produce our products or the backlog that could develop if our manufacturing facility is inoperable for even a short period of time may result in increased costs, harm to our reputation, a loss of customers or a material adverse effect on our business, financial condition or results of operations. Although we maintain property damage and business interruption insurance, this insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, if at all.

Over the next several years we plan to automate additional aspects of existing LFP battery production lines, add additional LFP battery production lines (as required) and construct and operate a pilot production line for our solid-state cells, all designed to maximize the capacity of our manufacturing facility. We have entered a lease for a 390,240 square foot facility that is currently under construction, but is expected to be completed in the second half of 2024; however, there is no guarantee this will be completed or that we will be able to effectively utilize the new space. Our plans for automation and expansion may experience delays, incur additional costs or cause disruption to our existing production lines. For example, we have experienced supply delays in obtaining the necessary components to implement our automated adhesive application systems, as well as our pilot production line for our solid-state cells, and we may continue to experience component shortages in the future. The costs to successfully achieve our expansion and automation goals may be greater than we expect, and we may fail to achieve our anticipated cost efficiencies, which could have a material adverse effect on our business, financial condition and results of operations. Furthermore, while we are generally responsible for delivering products to the customer, we do not maintain our own fleet of delivery vehicles and outsource this function to third parties. Any shortages in trucking capacity, any increase in the cost thereof or any other disruption to the highway systems could limit our ability to deliver our products in a timely manner or at all.

Lithium-ion battery cells have been observed to catch fire or release smoke and flame, which may have a negative impact on our reputation and business.

Our LFP batteries use lithium iron phosphate (LiFePO4) as the cathode material for lithium-ion cells. LFP is intrinsically safer than other battery technologies due to its thermal and chemical stability and LFP batteries are less flammable than lead-acid batteries or lithium-ion batteries using different chemistries. On rare occasions, however, lithium-ion cells can rapidly release the energy they contain by releasing smoke and flames in a manner that can ignite nearby materials and other lithium-ion cells. This faulty result could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. Further, negative public perceptions regarding the suitability or safety of lithium-ion cells or any future incident involving lithium-ion cells, such as a vehicle or other fire, even if such incident does not involve our products, could seriously harm our business and reputation.

To facilitate an uninterrupted supply of battery cells, we store a significant number of lithium-ion cells at our facility. While we have implemented enhanced safety procedures related to the handling of the cells, any mishandling, other safety issue or fire related to the cells could disrupt our operations. In addition, any accident, whether occurring at our manufacturing facility or from the use of our batteries, may result in significant production interruption, delays or claims for substantial damages caused by personal injuries or property damage. Such damage or injury could lead to adverse publicity and potentially a product recall, which could have a material adverse effect on our brand, business, financial condition and results of operations.

We may be subject to product liability claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims.

Product liability claims, even those without merit or that do not involve our products, could result in adverse publicity or damage to our brand, decreased partner and end-customer demand, and could have a material adverse effect on our business, financial condition and results of operations. The occurrence of any defects in our products could make us liable for damages and legal claims. In addition, we could incur significant costs to correct such issues, potentially including product recalls. We face an inherent risk of exposure to claims in the event that our products do not perform or are claimed not to have performed as expected. We also face risk of exposure to claims because our products may be installed on vehicles (including RVs and marine vessels) that may be involved in crashes or may not perform as expected resulting in death, personal injury or property damage. Liability claims may result in litigation, the occurrence of which could be costly, lengthy and distracting and could have a material adverse effect on our business, financial condition and results of operations.

In the future, we may voluntarily or involuntarily initiate a recall if any products prove to be defective or non-compliant with then-applicable safety standards. Such recalls may involve significant expense and diversion of management attention and other resources, which could damage our brand image in our target end markets, as well as have a material adverse effect on our business, financial condition and results of operations.

A successful product liability claim against us could require us to pay a substantial monetary award. While we maintain product liability insurance, the insurance that we carry may not be sufficient or it may not apply to all situations. Moreover, a product liability claim against us or our competitors could generate substantial negative publicity about our products and business and could have a material adverse effect on our brand, business, financial condition and results of operations.

We currently rely on software and hardware that is complex and technical, and we expect that our reliance will increase in the future with the introduction of future products. If we are unable to manage the risks inherent in these complex technologies, or if we are unable to address or mitigate technical limitations in our systems, our business could be adversely affected.

Each of our batteries include our proprietary battery management system, which relies on software and hardware manufactured by third parties that is complex and technical. In addition, Dragonfly IntelLigence, our battery communications system which we recently launched in the first quarter 2023, utilizes third-party software and hardware to store, retrieve, process and manage data. The software and hardware utilized in these systems may contain errors, bugs, vulnerabilities or defects, which may be difficult to detect and/or manage. Although we attempt to remedy any issues that we observe in our products as effectively and rapidly as possible, such efforts may not be timely, may hamper production, or may not be to the satisfaction of our customers. If we are unable to prevent or effectively remedy errors, bugs, vulnerabilities or defects in the software and hardware that we use, we may suffer damage to our brand, loss of customers, loss of revenue or liability for damages, any of which could adversely affect our business, financial condition and results of operations.

Risks Related to Our Solid-State Technology Development

We face significant engineering challenges in our attempts to develop and manufacture solid-state battery cells and these efforts may be delayed or fail which could reduce consumer spending which could negatively impact our business.

Our solid-state battery development efforts are still ongoing, and we may fail to meet our goal of commercially selling LFP batteries incorporating our manufactured solid-state cells, or at all. We may encounter delays in the design, manufacture and launch of our solid-state battery cells, and in increasing production to scale.

Development and engineering challenges could delay or prevent our production of solid-state battery cells. These difficulties may arise in connection with current and future efforts to optimize the chemistry or physical structure of our solid-state batteries with the goal of enhancing conductivity and power; maximizing cycling capabilities and power results; reducing costs; and developing related mass production manufacturing processes. If we are unable to overcome developmental and engineering challenges, our solid-state battery efforts could fail.

We currently purchase the battery cells incorporated into our LFP batteries and have limited experience in manufacturing battery cells at a commercial scale. To cost-effectively and rapidly manufacture our solid-state cells at scale for incorporation into our LFP batteries, we plan to utilize currently available spray powder deposition equipment and other commercially available equipment modified to utilize our proprietary dry spray deposition and other technologies and processes. We may experience delays or additional costs in adapting our facility, existing production equipment and LFP battery manufacturing processes (for example, designing a dry room to accommodate our dry spraying processes) to manufacture solid-state cells. Even if we achieve the development and volume production of our solid-state battery that we anticipate, if the cost, cycling and power results or other technology or performance characteristics of the solid-state battery fall short of our targets, our business and results of operations would likely be materially adversely affected.

We expect to make significant investments in our continued research and development of solid-state battery technology development, and we may be unable to adequately control the costs associated with manufacturing our solid-state battery cells.

We will require significant capital to fund our solid-state cell research and development activities, pilot line construction and expansion of our manufacturing capabilities to accommodate large-scale production of solid-state cells. We have not yet produced any solid-state battery cells at volume and our forecasted cost advantage for the production of these cells at scale, compared to conventional lithium-ion cells, will require us to achieve rates of throughput, use of electricity and consumables, yield, and rate of automation demonstrated for mature battery, battery material, and ceramic manufacturing processes, that we have not yet achieved. We may not be able to achieve our desired cost benefits and, in turn, we may not be able to provide our solid-state cells at a cost that is attractive to customers. If we are unable to cost-efficiently design, manufacture, market, sell and distribute our solid-state batteries and services, our margins, profitability and prospects would be materially and adversely affected.

If our solid-state batteries fail to perform as expected, our ability to further develop, market and sell our solid-state batteries could be harmed.

Our solid-state battery cells may contain defects in design and manufacture that may cause them to not perform as expected or that may require repairs, recalls and design changes. Our solid-state batteries will incorporate components that have not been used individually or in combination in the same manner as the design of our solid-state cells, and that may result in defects and errors, particularly when produced at scale. We may be unable to detect and fix any defects in our solid-state battery cells prior to their incorporation into our solid-state LFP batteries and sale to potential consumers. If our solid-state batteries fail to perform as expected, we could lose customers, or be forced to delay deliveries, terminate orders or initiate product recalls, each of which could adversely affect our sales and brand and would have a material adverse effect on our business, financial condition and results of operations.

We expect to rely on machinery used in other large-scale commercial applications, modified to incorporate our proprietary technologies and processes, in order to mass produce solid-state battery cells, which exposes us to a significant degree of risk and uncertainty in terms of scaling production, operational performance and costs.

We expect to rely on machinery used in other large-scale commercial applications to mass produce our solid-state battery cells. Doing so will require us to work closely with the equipment provider to modify this machinery to effectively integrate our proprietary solid-state technology and processes in order to create the equipment we need for the production of solid-state cells. This integration work will involve a significant degree of uncertainty and risk and may result in delays in scaling up production of our solid-state cells or result in additional cost to us.

Such machinery is likely to suffer unexpected malfunctions from time to time and will require repairs and spare parts to resume operations, which may not be available when needed. Unexpected malfunctions may significantly affect the intended operational efficiency of, and therefore expected cost-efficiency associated with, our production equipment. In addition, because this machinery has not been used to manufacture and assemble solid-state battery cells, the operational performance and costs associated with repairing and maintaining this equipment can be difficult to predict and may be influenced by factors outside of our control, including failures by suppliers to deliver necessary components of our products in a timely manner and at prices acceptable to us, the risk of environmental hazards and the cost of any required remediation and damages or defects already present in the machinery.

Operational problems with our manufacturing equipment could result in personal injury to or death of workers, the loss of production equipment or damage to our manufacturing facility, which could result in monetary losses, delays and unanticipated fluctuations in production. In addition, we may be subject to administrative fines, increased insurance costs or potential legal liabilities. Any of these operational problems could have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Supply Chain and Third-Party Vendors

We face risks associated with vendors from whom our products are sourced.

The products we sell rely on components and other inputs that are sourced from a variety of domestic and international vendors. We rely on long-term relationships with our suppliers but have no significant long-term contracts with such suppliers. Our future success will depend in large measure upon our ability to maintain our existing supplier relationships and/or to develop new ones. This reliance exposes us to the risk of inadequate and untimely supplies of various products due to political, economic, social, health, or environmental conditions, transportation delays, or changes in laws and regulations affecting distribution. Our vendors may be forced to reduce their production, shut down their operations or file for bankruptcy protection, which could make it difficult for us to serve the market needs and could have a material adverse effect on our business.

While we select these third-party vendors carefully, we do not control their actions or the manufacture of their products. Any problems caused by these third-parties, or issues associated with their products or workforce, including customer or governmental complaints, breakdowns or other disruptions in communication services provided by a vendor, failure of a vendor to handle current or higher volumes, and cyber-attacks or security breaches at a vendor could subject us to litigation and adversely affect our ability to deliver products and services to its customers and have a material adverse effect on our results of operations and financial condition.

We rely on foreign manufacturers for various products that are incorporated into the products we sell. In addition, many of our domestic suppliers purchase a portion of their products from foreign sources. As an importer, our business is subject to the risks generally associated with doing business internationally, such as domestic and foreign governmental regulations, economic disruptions, global or regional health epidemics, delays in shipments, transportation capacity and costs, currency exchange rates, and changes in political or economic conditions in countries from which we purchase products. If any such factors were to render the conduct of business in particular countries undesirable or impractical or if additional U.S. quotas, duties, tariffs, taxes, or other charges or restrictions were imposed upon the importation of our products in the future, our financial condition and results of operations could be materially adversely affected.

The political landscape in the U.S. contains uncertainty with respect to tax and trade policies, tariffs and regulations affecting trade between the U.S. and other countries. We source a portion of our merchandise from manufacturers located outside the U.S., primarily in Asia. Major developments in tax policy or trade relations, such as the disallowance of tax deductions for imported merchandise or the imposition of tariffs on imported products, could have a material adverse effect on our business, results of operations, and financial condition.

We rely on manufacturers located in foreign countries, including China, for merchandise. Additionally, a portion of our domestically purchased merchandise is manufactured abroad. Our business may be materially adversely affected by risks associated with international trade, including the impact of current or potential tariffs by the U.S. with respect to certain consumer goods imported from China.

We source a portion of our merchandise from manufacturers located outside the U.S., primarily in Asia, and many of our domestic vendors have a global supply chain. The U.S. has imposed tariffs on certain products imported into the U.S. from China and could propose additional tariffs. The imposition of tariffs on imported products could result in reduced sales and profits. It remains unclear how tax or trade policies, tariffs or trade relations may change under the current U.S. administration, which could adversely affect our business, results of operations, effective income tax rate, liquidity, and net income.

In addition, the imposition of tariffs by the U.S. has resulted in the adoption of tariffs by China on U.S. exports and could result in the adoption of tariffs by other countries as well. A resulting trade war could have a significant adverse effect on world trade and the global economy.

We continue to evaluate the impact of the effective and potential tariffs on our supply chain, costs, sales, and profitability as well as our strategies to mitigate any negative impact, including negotiating with our vendors, and seeking alternative sourcing options. Given the uncertainty regarding the scope and duration of the current and potential tariffs, as well as the potential for additional trade actions by the U.S. or other countries, the impact on our business, results of operations, and financial condition is uncertain but could be significant. Thus, we can provide no assurance that any strategies we implement to mitigate the impact of such tariffs or other trade actions will be successful in whole or in part. To the extent that our supply chain, costs, sales, or profitability are negatively affected by the tariffs or other trade actions, our business, financial condition, and results of operations may be materially adversely affected. In 2024, we identified an underpayment of tariffs to U.S. Customs and Border Protection ("**CBP**") in the amount of approximately $1.58 million in the aggregate, related to the improper classification and valuation of certain of the products used in our batteries. We have reported the underpayment to CBP. In the event CBP determines that we owe additional amounts or any penalties or determines in the future that we have not paid the correct duties, our results of operations could be materially impacted.

Changes in geopolitical conditions, U.S.-China trade relations and other factors beyond our control may adversely impact our business and operating results.

Our operations and performance depend, in part, on global and regional economic and geopolitical conditions, given that we have suppliers located in China. Changes in U.S.-China trade policies, and a number of other economic and geopolitical factors both in China and abroad could have a material adverse effect on our business, financial condition, results of operations or prospects. Such factors may include:

- instability in political or economic conditions, such as inflation, recession, foreign currency exchange restrictions and devaluations, restrictive governmental controls on the movement and repatriation of earnings and capital, and actual or anticipated military or political conflicts, particularly in emerging markets;
- expanded jurisdiction of the Committee for Foreign Investment in the U.S.; and
- intergovernmental conflicts or actions, such as armed conflict, trade wars, retaliatory tariffs, and acts of terrorism or war.

As a result of these events, our ability to obtain supplies from our China-based suppliers may be limited or adversely affected, and we may incur operational constraints.

A significant disruption to the timely receipt of inventory could adversely impact sales or increase our transportation costs, which would decrease our profits.

We rely on our distribution and transportation network, including third-party logistics providers, to provide goods in a timely and cost-effective manner through deliveries to our distribution facilities from vendors and then from the distribution facilities or direct ship vendors to our stores or customers by various means of transportation, including shipments by sea, air, rail, and truck. Any disruption, unanticipated expense, or operational failure related to this process could negatively affect our operations. For example, unexpected delivery delays (including delays due to weather, fuel shortages, work stoppages, global or regional health epidemics, product shortages from vendors, or other reasons) or increases in transportation costs (including increased fuel costs or a decrease in transportation capacity for overseas shipments) could significantly decrease our ability to provide adequate products to meet increased customer demand. In addition, labor shortages or work stoppages in the transportation industry or long-term disruptions to the national and international transportation infrastructure that lead to delays or interruptions of deliveries could negatively affect our business. Also, a fire, tornado, or other disaster at one of our distribution facilities could disrupt our timely receiving, processing, and shipment of merchandise to our stores which could adversely affect our business. While we believe there are adequate reserve quantities and alternative suppliers available, shortages or interruptions in the receipt or supply of products caused by unanticipated demand, problems in production or distribution, financial or other difficulties of supplies, inclement weather or other economic conditions, including the availability of qualified drivers and distribution center team members, could adversely affect the availability, quality and cost of products, and our operating results.

Risks Related to Our Intellectual Property

We rely heavily upon our intellectual property portfolio. If we are unable to protect our intellectual property rights, our business and competitive position would be harmed.

We may not be able to prevent unauthorized use of our intellectual property, which could harm our business and competitive position. We rely upon a combination of the intellectual property protections afforded by patent, copyright, trademark and trade secret laws in the United States and other jurisdictions to establish, maintain and enforce rights in our proprietary technologies. In addition, we seek to protect our intellectual property rights through non-disclosure and invention assignment agreements with our employees and consultants, and through non-disclosure and joint development agreements with business partners and other third parties. Despite our efforts to protect our proprietary rights, third parties may attempt to copy or otherwise obtain and use our intellectual property. Monitoring unauthorized use of our intellectual property is difficult and costly, and the steps we have taken or will take to prevent unauthorized use may not be sufficient. Any enforcement efforts we undertake, including litigation, could be time-consuming and expensive and could divert management’s attention, which could harm our business, results of operations and financial condition.

In addition, available intellectual property laws and contractual remedies in some jurisdictions may afford less protection than needed to safeguard our intellectual property portfolio. Intellectual property laws vary significantly throughout the world. The laws of a number of foreign countries do not protect intellectual property rights to the same extent as do the laws of the United States. Therefore, our intellectual property rights may not be as strong, or as easily enforced, outside of the United States, and efforts to protect against the unauthorized use of our intellectual property rights, technology and other proprietary rights may be more expensive and difficult to undertake outside of the United States. In addition, while we have filed for and obtained certain intellectual property rights in commercially relevant jurisdictions, we have not sought protection for our intellectual property rights in every possible jurisdiction. Failure to adequately protect our intellectual property rights could result in competitors using our intellectual property to make, have made, use, import, develop, have developed, sell or have sold their own products, potentially resulting in the loss of some of our competitive advantage and a decrease in our revenue, which would adversely affect our business, prospects, financial condition and operating results.

We may need to defend ourselves against intellectual property infringement claims, which may be time-consuming and could cause us to incur substantial costs.

Companies, organizations or individuals, including our current and future competitors, may hold or obtain intellectual property rights that would prevent, limit or interfere with our ability to make, have made, use, import, develop, have developed, sell or have sold our products, which could make it more difficult for us to operate our business. From time to time, we may receive inquiries from holders of intellectual property rights inquiring whether we are infringing their rights and/or seek court declarations that they do not infringe upon our intellectual property rights. Entities holding intellectual property rights relating to our technology, including, but not limited to, batteries, battery materials, encapsulated powders, spray deposition of battery materials, and alternator regulators, may bring suits alleging infringement of such rights or otherwise asserting their rights and seeking licenses. For example, patents and patent applications owned by third parties may present freedom to operate ("**FTO**") questions with regards to the precoated feedstock materials for the spray deposition process depending on the final material selections that are used, although we own a patent application that pre-dates their patents and patent applications of interest such that our patent application may act as a basis for an invalidity position. However, it is possible that a court may not agree that our patent application invalidates the patents and patent applications of interest. Any such litigation or claims, whether or not valid or successful, could result in substantial costs and diversion of resources and our management's attention. In addition, if we are determined to have infringed upon a third party's intellectual property rights, we may be required to do one or more of the following:

- cease using, making, having made, selling, having sold, developing, having developed or importing products that incorporate the infringed intellectual property rights;
- pay substantial damages;
- obtain a license from the holder of the infringed intellectual property rights, which license may not be available on reasonable terms or at all; or
- redesign our processes or products, which may result in inferior products or processes.

In the event of a successful claim of infringement against us and our failure or inability to obtain a license to or design around the infringed intellectual property rights, our business, prospects, operating results and financial condition could be materially adversely affected.

Our current and future patent applications may not result in issued patents or our patent rights may be contested, circumvented, invalidated or limited in scope, any of which could have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours.

Our current and future patent applications may not result in issued patents, which may have a material adverse effect on our ability to prevent others from commercially exploiting products or technology similar to ours. The outcome of patent applications involves complex legal and factual questions and the breadth of claims that will be allowed is uncertain. As a result, we cannot be certain that the patent applications that we file will result in patents being issued, or that our current issued patents, and any patents that may be issued to us in the future, will afford protection that covers our commercial processes, systems and products or that will afford protection against competitors with similar products or technology. Numerous prior art patents and pending patent applications owned by others, as well as prior art non-patent literature, exist in the fields in which we have developed and are developing our technology, which may preclude our ability to obtain a desired scope of protection in the desired fields. In addition to potential prior art concerns, any of our existing patents, pending patent applications, or future issued patents or patent applications may also be challenged on the basis that they are invalid or unenforceable. Furthermore, patent applications filed in foreign countries are subject to laws, rules, and procedures that differ from those of the United States, and thus we cannot be certain that foreign patent applications related to issued U.S. patents will be issued.

Even if our current or future patent applications succeed and patents are issued, it is still uncertain whether our current or future patents will be contested, circumvented, invalidated or limited in scope in the future. The rights granted under any issued patents may not provide us with meaningful protection or competitive advantages, and some foreign countries provide significantly less effective patent enforcement than the United States. In addition, the claims under our current or future patents may not be broad enough to prevent others from developing technologies that are similar or that achieve results similar to ours. The intellectual property rights of others could also bar us from licensing and exploiting our current or future patents. In addition, our current or future patents may be infringed upon or designed around by others and others may obtain patents that we need to license or design around, either of which would increase costs and may adversely affect our business, prospects, financial condition and operating results.

General Risk Factors

The uncertainty in global economic conditions, including the Russia-Ukraine conflict and Hamas' attack on Israel, could reduce consumer spending and disrupt our supply chain which could negatively affect our results of operations.

Our results of operations are directly affected by the general global economic conditions that impact our main end markets. The uncertainty in global economic conditions can result in substantial volatility, which can affect our business by reducing customer spending and the prices that our customers may be able or willing to pay for our products, which in turn could negatively impact our sales and result in a material adverse effect on our business financial condition and results of operations.

The global macroeconomic environment could be negatively affected by, among other things, the resurgence of COVID-19 or other pandemics or epidemics, instability in global economic markets, increased U.S. trade tariffs and trade disputes with other countries, instability in the global credit markets, supply chain weaknesses, instability in the geopolitical environment as a result of the withdrawal of the United Kingdom from the European Union, the Russian invasion of Ukraine, Hamas' attack on Israel, and other political tensions, and foreign governmental debt concerns. Such challenges have caused, and may continue to cause, uncertainty and instability in local economies and in global financial markets.

As a result of sanctions imposed in relation to the Russia-Ukraine conflict, gas prices in the United States have become much more volatile and, in some cases, risen to historic levels. This rise in price may cause a decrease in RV travel, which could ultimately negatively impact sales of our batteries for RVs. Further escalation of the Russia-Ukraine conflict and the subsequent response, including further sanctions or other restrictive actions, by the United States and/or other countries could also adversely impact our supply chain, partners or customers. The extent and duration of the situation in Ukraine, resulting sanctions and resulting future market disruptions are impossible to predict but could be significant. Any such disruptions caused by Russian military action or other actions (including cyberattacks and espionage) or resulting actual and threatened responses to such activity, boycotts or changes in consumer or purchaser preferences, sanctions, tariffs or cyberattacks, may impact the global economy and adversely affect commodity prices.

Furthermore, the cost of our components is a key element in the cost of our products. Increases in the prices of our components, including if our suppliers choose to pass through their increased costs to us, would result in increased production costs, which may result in a decrease in our margins and may have a material adverse effect on our business financial condition and results of operations. We have historically offset cost increases through careful management of our inventory of supplies, ordering six months to a year in advance, and increasing our purchase order volumes to qualify for volume-based discounts, rather than increase prices to customers. However, we may increase prices from time to time, which may not be sufficient to offset material price inflation and which may result in loss of customers if they believe our products are no longer competitively priced. In addition, if we are required to spend a prolonged period of time negotiating price increases with our suppliers, we may be further delayed in receiving the components necessary to manufacture our products and/or implement aspects of our growth strategy.

Adverse global conditions, including economic uncertainty, may negatively impact our financial results.

Global conditions, dislocations in the financial markets, any negative financial impacts affecting U.S. as a result of tax reform or changes to existing trade agreements or tax conventions, may adversely impact our business.

In addition, the global macroeconomic environment could be negatively affected by, among other things, pandemics or epidemics, instability in global economic markets, increased U.S. trade tariffs and trade disputes with other countries, instability in the global credit markets, supply chain weaknesses, instability in the geopolitical environment as a result of the withdrawal of the United Kingdom from the European Union, the Russian invasion of Ukraine and other political tensions, and foreign governmental debt concerns. Such challenges have caused, and may continue to cause, uncertainty and instability in local economies and in global financial markets.

The loss of one or more members of our senior management team, other key personnel or our failure to attract additional qualified personnel may adversely affect our business and our ability to achieve our anticipated level of growth.

We are highly dependent on the talent and services of Denis Phares, our Chief Executive Officer and Interim Chief Financial Officer, and other senior technical and management personnel, including our executive officers, who would be difficult to replace. The loss of Dr. Phares or other key personnel could disrupt our business and harm our results of operations, and we may not be able to successfully attract and retain senior leadership necessary to grow our business.

Our future success also depends on our ability to attract and retain other key employees and qualified personnel, and our operations may be severely disrupted if we lost their services. As we become more well known, there is increased risk that competitors or other companies will seek to hire our personnel. The failure to attract, integrate, train, motivate, and retain these personnel could impact our ability to successfully grow our operations and execute our strategy.

Our website, systems, and the data we maintain may be subject to intentional disruption, security incidents, or alleged violations of laws, regulations, or other obligations relating to data handling that could result in liability and adversely impact our reputation and future sales.

We expect to face significant challenges with respect to information security and maintaining the security and integrity of our systems, as well as with respect to the data stored on or processed by these systems. Advances in technology, and an increase in the level of sophistication, expertise and resources of hackers, could result in a compromise or breach of our systems or of security measures used in our business to protect confidential information, personal information, and other data.

The availability and effectiveness of our batteries, and our ability to conduct our business and operations, depend on the continued operation of information technology and communications systems, some of which we have yet to develop or otherwise obtain the ability to use. Systems used in our business (including third-party data centers and other information technology systems provided by third parties) are and will be vulnerable to damage or interruption. Such systems could also be subject to break-ins, sabotage and intentional acts of vandalism, as well as disruptions and security incidents as a result of non-technical issues, including intentional or inadvertent acts or omissions by employees, service providers, or others. Some of the systems used in our business will not be fully redundant, and our disaster recovery planning cannot account for all eventualities. Any data security incidents or other disruptions to any data centers or other systems used in our business could result in lengthy interruptions in our service.

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

We have experienced significant growth in our business, and our future success depends, in part, on our ability to manage our business as it continues to expand. We have dedicated resources to expanding our manufacturing capabilities, exploring adjacent addressable markets and our solid-state cell research and development. If not managed effectively, this growth could result in the over-extension of our operating infrastructure, management systems and information technology systems. Internal controls and procedures may not be adequate to support this growth. Failure to adequately manage growth in our business may cause damage to our brand or otherwise have a material adverse effect on our business, financial condition and results of operations.

We may expand our business through acquisitions in the future, and any future acquisition may not be accretive and may negatively affect our business.

As part of our growth strategy, we may make future investments in businesses, new technologies, services and other assets that complement our business. We could fail to realize the anticipated benefits from these activities or experience delays or inefficiencies in realizing such benefits. Moreover, an acquisition, investment or business relationship may result in unforeseen operating difficulties and expenditures, including disruption to our ongoing operations, management distraction, exposure to additional liabilities and increased expenses, any of which could adversely impact our business, financial condition and results of operations. Our ability to make these acquisitions and investments could be restricted by the terms of our current and future indebtedness and to pay for these investments we may use cash on hand, incur additional debt or issue equity securities, each of which may affect our financial condition or the value of our stock and could result in dilution to our stockholders. Additional debt would result in increased fixed obligations and could also subject us to covenants or other restrictions that would impede our ability to manage our operations.

Our operations are subject to a variety of environmental, health and safety rules that can bring scrutiny from regulatory agencies and increase our costs.

Our operations are subject to environmental, health and safety rules, laws and regulations and we may be subject to additional regulations as our operations develop and expand. There are significant capital, operating and other costs associated with compliance with these environmental laws and regulations. While we believe that the policies and programs we have in place are reasonably designed and implemented to assure compliance with these requirements and to avoid hazardous substance release liability with respect to our manufacturing facility, we may be faced with new or more stringent compliance obligations that could impose substantial costs.

We are subject to anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws, and non-compliance with such laws can subject us to administrative, civil and criminal fines and penalties, collateral consequences, remedial measures and legal expenses, all of which could adversely affect our business, results of operations, financial condition and reputation.

We are subject to anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws and regulations in various jurisdictions in which we conduct or in the future may conduct activities, including the U.S. Foreign Corrupt Practices Act ("**FCPA**"). The FCPA prohibits us and our officers, directors, employees and business partners acting on our behalf, including agents, from corruptly offering, promising, authorizing or providing anything of value to a "foreign official" for the purposes of influencing official decisions or obtaining or retaining business or otherwise obtaining favorable treatment. The FCPA also requires companies to make and keep books, records, and accounts that accurately reflect transactions and dispositions of assets and to maintain a system of adequate internal accounting controls. A violation of these laws or regulations could adversely affect our business, results of operations, financial condition and reputation. Our policies and procedures designed to ensure compliance with these regulations may not be sufficient and our directors, officers, employees, representatives, consultants, agents and business partners could engage in improper conduct for which we may be held responsible.

Non-compliance with anti-corruption, anti-bribery, anti-money laundering or financial and economic sanctions laws could subject us to whistleblower complaints, adverse media coverage, investigations, and severe administrative, civil and criminal sanctions, collateral consequences, remedial measures and legal expenses, all of which could materially and adversely affect our reputation, business, financial condition and results of operations.

From time to time, we may be involved in legal proceedings and commercial or contractual disputes, which could have an adverse impact on our profitability and consolidated financial position.

We may be involved in legal proceedings and commercial or contractual disputes that, from time to time, are significant and which may harm our reputation. These are typically claims that arise in the normal course of business including, without limitation, commercial or contractual disputes, including warranty claims and other disputes with customers and suppliers; intellectual property matters; personal injury claims; environmental issues; tax matters; and employment matters. It is difficult to predict the outcome or ultimate financial exposure, if any, represented by these matters, and any such exposure may be material. Regardless of outcome, legal proceedings can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

Environmental, social and governance matters may cause us to incur additional costs.

Some legislatures, government agencies and listing exchanges have mandated or proposed, and others may in the future further mandate, certain environmental, social and governance ("**ESG**") disclosure or performance. For example, the Securities and Exchange Commission has enacted rules that will mandate certain companies to provide certain climate-related disclosures. In addition, we may face reputational damage in the event our corporate responsibility initiatives or objectives do not meet the standards or expectations of shareholders, prospective investors, lawmakers, listing exchanges or other stakeholders. Failure to comply with ESG-related laws, exchange policies or stakeholder expectations could materially and adversely impact the value of our stock and related cost of capital, and limit our ability to fund future growth, or result in increased investigations and litigation.

Risks Related to Being a Public Company

We will continue to incur significant increased expenses and administrative burdens as a public company, which could have an adverse effect on our business, financial condition and operating results.

We will continue to face increased legal, accounting, administrative and other costs and expenses as a public company that we did not incur as a private company and these expenses may increase even more after we are no longer an "emerging growth company." The Sarbanes-Oxley Act, including the requirements of Section 404, as well as rules and regulations subsequently implemented by the SEC, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations promulgated and to be promulgated thereunder, the PCAOB and the securities exchanges and the listing standards of Nasdaq, impose additional reporting and other obligations on public companies. Compliance with public company requirements will increase costs and make certain activities more time-consuming. A number of those requirements will require us to carry out activities we have not done previously. For example, we will create new board committees, enter into new insurance policies and adopt new internal controls and disclosure controls and procedures. In addition, expenses associated with SEC reporting requirements will be incurred. Furthermore, if any issues in complying with those requirements are identified (for example, if management or our independent registered public accounting firm identifies additional material weaknesses in the internal control over financial reporting), we could incur additional costs rectifying those issues, the existence of those issues could adversely affect our reputation or investor perceptions of it and it may be more expensive to obtain director and officer liability insurance. Risks associated with our status as a public company may make it more difficult to attract and retain qualified persons to serve on our board of directors or as executive officers. In addition, as a public company, we may be subject to stockholder activism, which can lead to substantial costs, distract management and impact the manner in which we operate our business in ways we cannot currently anticipate. As a result of disclosure of information in this Annual Report and in filings required of a public company, our business and financial condition will become more visible, which may result in threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and results of operations could be materially adversely affected and even if the claims do not result in litigation or are resolved in our favor, these claims and the time and resources necessary to resolve them could divert the resources of our management and adversely affect our business and results of operations. The additional reporting and other obligations imposed by these rules and regulations will increase legal and financial compliance costs and the costs of related legal, accounting and administrative activities. These increased costs will require us to divert a significant amount of money that could otherwise be used to expand the business and achieve strategic objectives. Advocacy efforts by stockholders and third parties may also prompt additional changes in governance and reporting requirements, which could further increase costs.

Our management team has limited experience managing a public company.

Most of the members of our management team have limited experience managing a publicly traded company, interacting with public company investors and complying with the increasingly complex laws pertaining to public companies. Our management team has limited experience operating a public company. Our management team may not successfully or efficiently manage their new roles and responsibilities.

Our transition to a public company subjects us to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors. These new obligations and constituents will require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, financial condition, and operating results.

Risks Related to Our Financial Position and Capital Requirements

Our business is capital intensive, and we may not be able to raise additional capital on attractive terms, if at all. Any further indebtedness we incur may limit our operational flexibility in the future.

As of December 31, 2023, we had cash totaling $12.7 million. Our net loss for the year ended December 31, 2023 was $13.8 million and our net loss for the year ended December 31, 2022 was $40.0 million. We will need to raise additional funds, including through the issuance of equity, equity-related or debt securities or by obtaining credit from financial institutions to fund, together with our principal sources of liquidity, ongoing costs, such as research and development relating to our solid-state batteries, expansion of our facilities, and new strategic investments. We cannot be certain that additional capital will be available on attractive terms, if at all, when needed, which could be dilutive to stockholders. If we raise additional funds through the issuance of equity or convertible debt or other equity-linked securities, our existing stockholders could experience significant dilution. Any equity securities issued may provide for rights, preferences, or privileges senior to those of common stockholders. If we raise funds by issuing debt securities, these debt securities would have rights, preferences, and privileges senior to those of common stockholders. We intend to use the ChEF Equity Facility and Term Loan to provide additional capital to us. However, market conditions and certain restrictions contained in the agreements governing the ChEF Equity Facility and the Term Loan may limit our ability to access capital under such agreements.

The incurrence of additional debt could adversely impact our business, including limiting our operational flexibility by:

- making it difficult for us to pay other obligations;
- increasing our cost of borrowing from other sources;
- making it difficult to obtain favorable terms for any necessary future financing for working capital, capital expenditures, investments, acquisitions, debt service requirements, or other purposes;
- restricting us from making acquisitions or causing us to make divestitures or similar transactions;
- requiring us to dedicate a substantial portion of our cash flow from operations to service and repay our indebtedness, reducing the amount of cash flow available for other purposes;
- placing us at a competitive disadvantage compared to our less leveraged competitors; and
- limiting our flexibility in planning for and reacting to changes in our business.

Failure to comply with the financial covenants in our loan agreement could allow our lenders to accelerate payment under our loan agreement, which would have a material adverse effect on our results of obligations and financial position and raise substantial doubt about our ability to continue as a going concern.

For the year ended December 31, 2023, we incurred losses and had a negative cash flow from operations. As of December 31, 2023, we had approximately $12.7 million in cash and cash equivalents and working capital of $15.5 million. As of December 31, 2023, we had $76 million outstanding under our Term Loan Agreement. Our ability to achieve profitability and positive cash flow depends on our ability to increase revenue, contain our expenses and maintain compliance with the financial covenants in our outstanding indebtedness agreements.

Under the Term Loan Agreement, we are obligated to comply with certain financial covenants, which include maintaining a maximum senior leverage ratio, minimum liquidity, a springing fixed charge coverage ratio, and maximum capital expenditures. On March 29, 2023 and September 29, 2023, we obtained a waiver from our Administrative Agent and Term Loan Lenders of our failures to satisfy the fixed charge coverage ratio and maximum senior leverage ratio with respect to the minimum cash requirements under the Term Loan during the quarter ended March 31, 2023 and September 30, 2023, respectively. On December 29, 2023, we received an additional waiver from our Administrative Agent and Term Loan Lenders in regards to our compliance with the Tests as of the last day of the quarter ended December 31, 2023. On March 31, 2024, we received an additional waiver from the Administrative Agent and the Term Loan Lenders in regard to our compliance with the liquidity requirement under the Term Loan as of the last day of the fiscal quarter ended March 31, 2024. It is probable that we will fail to meet these covenants again within the next twelve months. If we are unable to comply with the financial covenants in our loan agreement, the Term Loan Lenders have the right to accelerate the maturity of the Term Loan. These conditions raise substantial doubt about our ability to continue as a going concern. As a result, our independent registered public accounting firm included an explanatory paragraph in its report on our 2023 consolidated financial statements, with respect to this uncertainty.

In addition, we may need to raise additional debt and/or equity financing to fund our operations and strategic plans and meet our financial covenants. We have historically been able to raise additional capital through issuance of equity and/or debt financing and we intend to use the ChEF Equity Facility and raise additional capital as needed. However, we cannot guarantee that we will be able to raise additional equity, contain expenses, or increase revenue, and comply with the financial covenants under the Term Loan. If such financings are not available, or if the terms of such financings are less desirable than we expect, we may be forced to take actions to reduce our capital or operating expenditures, including by not seeking potential acquisition opportunities, eliminating redundancies, or reducing or delaying our production facility expansions, which may adversely affect our business, operating results, financial condition and prospects. Further, any future debt or equity financings may adversely affect us, including the market price of our common stock and may be dilutive to our current stockholders. Additionally, any convertible or exchangeable securities as well as preferred stock that we issue in the future may have rights, preferences and privileges more favorable than those of our common stock. Absent additional financing, if we are unable to meet these covenants, we plan to work with the Term Loan Lenders to cure any future breaches. However, there can be no guarantee that we will be able to do so.

Substantial doubt about our ability to continue as a going concern may materially and adversely affect the price per share of our common stock and warrants and we may have a more difficult time obtaining financing. Further, the perception that we may be unable to continue as a going concern may impede our ability to raise additional funds or operate our business due to concerns regarding our ability to discharge our contractual obligations. If we are unable to continue as a going concern, we may be forced to liquidate our assets and the values we receive for our assets in liquidation or dissolution could be significantly lower than the values reflected in our financial statements.

Restrictions imposed by our outstanding indebtedness and any future indebtedness may limit our ability to operate our business and to finance our future operations or capital needs or to engage in acquisitions or other business activities necessary to achieve growth.

The agreements governing our indebtedness restrict us from engaging in specified types of transactions. These restrictive covenants restrict our ability to, among other things:

- incur additional indebtedness;
- create or incur encumbrances or liens;
- engage in consolidations, amalgamations, mergers, acquisitions, liquidations, dissolutions or dispositions;
- sell, transfer or otherwise dispose of assets; and
- pay dividends and distributions on, or purchase, redeem, defease, or otherwise acquire or retire for value, our stock.

Under the agreements governing our indebtedness, we are also subject to certain financial covenants, including maintaining minimum levels of Adjusted EBITDA, minimum liquidity, maximum capital expenditure levels and a minimum fixed charge coverage ratio. We cannot guarantee that we will be able to maintain compliance with these covenants or, if we fail to do so, that we will be able to obtain waivers from the applicable lender(s) and/or amend the covenants. Even if we comply with all of the applicable covenants, the restrictions on the conduct of our business could adversely affect our business by, among other things, limiting our ability to take advantage of financing opportunities, mergers, acquisitions, investments, and other corporate opportunities that may be beneficial to our business.

A breach of any of the covenants in the agreements governing our existing or future indebtedness could result in an event of default, which, if not cured or waived, could trigger acceleration of our indebtedness, and may result in the acceleration of or default under any other debt we may incur in the future to which a cross- acceleration or cross-default provision applies, which could have a material adverse effect on our business, financial condition and results of operations. In the event of any default under our existing or future credit facilities, the applicable lenders could elect to terminate borrowing commitments and declare all borrowings and loans outstanding, together with accrued and unpaid interest and any fees and other obligations, to be immediately due and payable. In addition, our obligations under our indebtedness are secured by, among other things, a security interest in our intellectual property. During the existence of an event of default under our credit agreements, the applicable lender could exercise its rights and remedies thereunder, including by way of initiating foreclosure proceedings against any assets constituting collateral for our obligations under such credit facility.

We have identified material weaknesses in our internal control over financial reporting. These material weaknesses could continue to adversely affect our ability to report our results of operations and financial condition accurately and in a timely manner.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the generally accepted accounting principles generally accepted in the United States of America (“**U.S. GAAP**”). As a public company, we are required, on a quarterly basis, to evaluate the effectiveness of our internal controls and to disclose any changes and material weaknesses identified through such evaluation in those internal controls. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

As described elsewhere in this Annual Report, our management identified material weaknesses in our internal control over financial reporting as a result of our failure to capture, and record, and pay tariffs correctly related to the imported merchandise on previously filed 2022 and 2021 financial statements. We are in the process of developing a plan to remediate these material weaknesses.

Our efforts to remediate these material weaknesses in internal controls over financial reporting may not be successful, and may not prevent additional material weaknesses from being identified in the future. Failure to implement and maintain effective internal control over financial reporting could result in errors in our consolidated financial statements that could result in a restatement of our consolidated financial statements, and could cause it to fail to meet our reporting obligations, any of which could diminish investor confidence in us and cause a decline in our equity value. Additionally, ineffective internal controls could expose us to an increased risk of financial reporting fraud and the misappropriation of assets, and may further subject us to potential delisting from Nasdaq, or to other regulatory investigations and civil or criminal sanctions.

As a public company, we are required pursuant to Section 404(a) of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for each annual report on Form 10-K to be filed with the SEC. This assessment will need to include disclosure of any material weaknesses identified by our management in internal control over financial reporting. If in the future we are no longer classified under the definition of an "emerging growth company," and/or a "non-accelerated filer", our independent registered public accounting firm will also be required, pursuant to Section 404(b) of the Sarbanes-Oxley Act, to attest to the effectiveness of our internal control over financial reporting in each annual report on Form 10-K to be filed with the SEC. We will be required to disclose material changes made in our internal control over financial reporting on a quarterly basis. Failure to comply with the Sarbanes-Oxley Act could potentially subject us to sanctions or investigations by the SEC, Nasdaq, or other regulatory authorities, which would require additional financial and management resources.

We are not currently in compliance with the continued listing requirements for The Nasdaq Global Market. If we do not regain compliance and continue to meet the continued listing requirements, our common stock may be delisted, which could affect the market price and liquidity for our common stock and reduce our ability to raise additional capital.

Our common stock and Public Warrants are currently listed on the Nasdaq Global Market and the Nasdaq Capital Market, respectively. On December 12, 2023, we received a letter (the "**Notice**") from the Listing Qualifications Staff of the Nasdaq Stock Market, LLC ("**Nasdaq**") indicating that, based upon the closing bid price of its common stock for the 30 consecutive business days preceding the date of the Notice, we are not in compliance with the requirement to maintain a minimum bid price of $1.00 per share for continued listing on the Nasdaq Global Market, as set forth in Nasdaq Listing Rule 5450(a)(1). We were provided a compliance period of 180 calendar days from the date of the Notice, or until June 10, 2024, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A).

We will continue to monitor the closing bid price of our common stock and seek to regain compliance with all applicable Nasdaq requirements within the allotted compliance periods and may, if appropriate, consider available options, including implementation of a reverse stock split, to regain compliance with the minimum closing bid requirement. If we seek to implement a reverse stock split in order to remain listed on The Nasdaq Global Market, the announcement or implementation of such a reverse stock split could negatively affect the price of its common stock. If we do not regain compliance within the allotted compliance periods, including any extensions that may be granted by Nasdaq, Nasdaq will provide notice that our common stock will be subject to delisting. We would then be entitled to appeal that determination to a Nasdaq hearings panel. There can be no assurance that we will regain compliance with the minimum bid price requirement during the 180-day compliance period or maintain compliance with the other Nasdaq listing requirements. A delisting could substantially decrease trading in our common stock, adversely affect the market liquidity of our common stock as a result of the loss of market efficiencies associated with Nasdaq and the loss of federal preemption of state securities laws, adversely affect its ability to obtain financing on acceptable terms, if at all, and may result in the potential loss of confidence by investors, suppliers, customers and employees and fewer business development opportunities. Additionally, the market price of our common stock may decline further and stockholders may lose some or all of their investment.

There can be no assurance that we will be able to regain compliance with the minimum bid price requirement or comply with the other continued listing standards of Nasdaq.

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

We have filed registration statements registering the resale of up to 47,428,544 shares and 12,266,971 warrants to purchase common stock that may be sold and/or issued into the public markets by certain securityholders. The shares being registered for resale into the public markets represent a substantial majority of our outstanding common stock as of December 31, 2023. The securityholders selling pursuant to the registration statements will determine the timing, pricing and rate at which they sell such shares into the public market and such sales could have a significant negative impact on the trading price of our common stock. Certain of the investors/lenders who have resale rights under such registration statements may have an incentive to sell because they purchased shares and/or warrants at prices below the Chardan IPO offering price. As such, while sales by the securityholders selling pursuant to such registration statements may experience a positive rate of return based on the trading price at the time they sell their shares, public securityholders may not experience a similar rate of return on the securities they purchased due to differences in the prices at which such public securityholders purchased their shares and the trading price. Given the substantial number of shares of common stock being registered for potential resale by the securityholders selling pursuant to such registration statements, the sale of shares by such securityholders, or the perception in the market that the securityholders of a large number of shares intend to sell shares, may increase the volatility of the market price of our common stock, may prevent the trading price of our securities from exceeding the Chardan IPO offering price and may cause the trading prices of our securities to experience a further decline.

Further, we have registered 21,512,027 shares of common stock to be issued and sold to CCM LLC in connection with the ChEF Equity Facility. The 21,512,027 shares that may be resold and/or issued into the public markets pursuant to the ChEF Equity Facility represent approximately 36% of the shares of our common stock outstanding as of December 31, 2023. Any sales of such shares into the public market could have a significant negative impact on the trading price of our common stock. This impact may be heightened by the fact that sales to CCM LLC will generally be at prices below the then current trading price of our common stock. If the trading price of our common stock does not recover or experiences a further decline, sales of shares of common stock to CCM LLC pursuant to the Purchase Agreement may be a less attractive source of capital and/or may not allow us to raise capital at rates that would be possible if the trading price of our common stock were higher.

Risks Related to Ownership of Our Common Stock

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

The trading market for our common stock will depend, in part, on the research and reports that securities or industry analysts publish about us. We will not have any control over these analysts. If our financial performance fails to meet analyst estimates or one or more of the analysts who cover us downgrade our common stock or change their opinion, our stock price would likely decline. If one or more of these analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline.

If we do not meet the expectations of investors, stockholders or securities analysts, the market price of our securities may decline. In addition, fluctuations in the price of our securities could contribute to the loss of all or part of your investment.

The trading price of our common stock may fluctuate substantially and may be lower than its current price. This may be especially true for companies like ours with a small public float. If an active market for our securities develops and continues, the trading price of our securities could be volatile and subject to wide fluctuations. The trading price of our common stock depends on many factors, including those described in this "*Risk Factors*" section, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to lose all or part of your investment in our common stock. Any of the factors listed below could have a material adverse effect on your investment in our securities and our securities may trade at prices significantly below the price you paid for them. In such circumstances, the trading price of our securities may not recover and may experience a further decline.

Factors affecting the trading price of our securities may include:

- actual or anticipated fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to ours;
- changes in the market's expectations about our operating results;
- the public's reaction to our press releases, other public announcements and filings with the SEC;
- speculation in the press or investment community;
- actual or anticipated developments in our business, competitors' businesses or the competitive landscape generally;
- innovations or new products developed by us or our competitors;
- manufacturing, supply or distribution delays or shortages;
- any changes to our relationship with any manufacturers, suppliers, licensors, future collaborators, or other strategic partners;
- the operating results failing to meet the expectation of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning us or the market in general;
- operating and stock price performance of other companies that investors deem comparable to ours;
- changes in laws and regulations affecting our business;
- commencement of, or involvement in, litigation involving us;
- changes in our capital structure, such as future issuances of securities or the incurrence of additional debt;
- the volume of our common stock available for public sale;
- any major change in our board of directors or management;
- sales of substantial amounts of our common stock by our directors, officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions, interest rates, "trade wars," pandemics (such as COVID-19) and acts of war or terrorism (including the Russia-Ukraine conflict and Hamas' attack on Israel).

Broad market and industry factors may materially harm the market price of our securities irrespective of our operating performance. The stock market in general and Nasdaq have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the particular companies affected. The trading prices and valuations of these stocks, and of our securities, may not be predictable. A loss of investor confidence in the market for the stocks of other companies which investors perceive to be similar to us could depress our stock price regardless of our business, prospects, financial conditions or results of operations. Broad market and industry factors, including the impact of global pandemics, as well as general economic, political and market conditions such as recessions or interest rate changes, may seriously affect the market price of our common stock, regardless of our actual operating performance. A decline in the market price of our securities also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future.

In addition, in the past, following periods of volatility in the overall market and the market prices of particular companies' securities, securities class action litigations have often been instituted against these companies. Litigation of this type, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources. Any adverse determination in any such litigation or any amounts paid to settle any such actual or threatened litigation could require that we make significant payments.

An active trading market for our securities may not be available on a consistent basis to provide stockholders with adequate liquidity.

We cannot assure you that an active trading market for our common stock will be sustained. Accordingly, we cannot assure you of the liquidity of any trading market, your ability to sell your shares of our common stock when desired or the prices that you may obtain for your shares.

The exercise of outstanding warrants to acquire our common stock would increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders.

The exercise of outstanding warrants to acquire our common stock will increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders. As of April 12, 2024, there are currently (i) 9,422,529 shares of common stock issuable upon the exercise of outstanding public warrants at an exercise price of $11.50 per share (the "Public Warrants"); (ii) 1,501,386 shares of common stock issuable upon the exercise of outstanding private warrants at an exercise price of $11.50 per share (the "Private Warrants"); and (iii) 1,884,510 shares of common stock issuable upon exercise of outstanding Penny Warrants at an exercise price of $0.01 per share. The $10 Warrants were exercised in full in 2022 and are no longer outstanding.

In addition, the Penny Warrants have price-based anti-dilution protection against subsequent equity sales or distributions at below $10.00 per share of common stock, subject to exclusions including for issuances upon conversion exercise or exchange of securities outstanding as of October 7, 2022, the closing date of the Business Combination, issuances pursuant to agreements in effect as of the closing date of the Business Combination, issuances pursuant to employee benefit plans and similar arrangements, issuances in joint ventures, strategic arrangements or other non-financing type transactions and issuances pursuant to any public equity offerings. Depending on the nature and price of any equity issuances by us, the number of shares issuable upon the exercise of such Penny Warrants could be increased and the exercise price of the Penny Warrants could be adjusted down. Under the terms of the Penny Warrants, no adjustment will be made in connection with any sale of shares of up to $150.0 million in gross proceeds under the Purchase Agreement (or any replacement thereof) if the sales price is higher than $5.00 (appropriately adjusted for stock splits, combinations and the like). The Sponsor has agreed that the Private Warrants may not be exercised to the extent the Sponsor and any affiliate of the Sponsor is deemed to beneficially own, or it would cause the Sponsor and such affiliates to be deemed to beneficially own, more than 7.5% of our common stock.

Our operating results may fluctuate significantly, which makes our future operating results difficult to predict and could cause our operating results to fall below expectations or any guidance we may provide.

Our quarterly and annual operating results may fluctuate significantly, which makes it difficult for us to predict our future operating results. These fluctuations may occur due to a variety of factors, many of which are outside of our control, including, but not limited to:

- our ability to engage target customers and successfully convert these customers into meaningful orders in the future;
- our reliance on two suppliers for LFP cells and a single supplier for the manufacture of our battery management system;
- the size and growth of the potential markets for our batteries and its ability to serve those markets;

- challenges in our attempts to develop and produce solid state battery cells;
- the level of demand for any products, which may vary significantly;
- future accounting pronouncements or changes in our accounting policies;
- macroeconomic conditions, both nationally and locally; and
- any other change in the competitive landscape of our industry, including consolidation among our competitors or partners.

The cumulative effects of these factors could result in large fluctuations and unpredictability in our quarterly and annual operating results. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Investors should not rely on its past results as an indication of our future performance.

This variability and unpredictability could also result in our failing to meet the expectations of industry or financial analysts or investors for any period. If our revenue or operating results fall below the expectations of analysts or investors or below any forecasts we may provide to the market, or if the forecasts we provide to the market are below the expectations of analysts or investors, the price of our common stock could decline substantially. Such a stock price decline could occur even when it has met any previously publicly stated revenue or earnings guidance it may provide.

Changes in laws, regulations or rules, or a failure to comply with any laws, regulations or rules, may adversely affect our business, investments and results of operations.

We are subject to laws, regulations and rules enacted by national, regional and local governments and Nasdaq. In particular, we are required to comply with certain SEC, Nasdaq and other legal or regulatory requirements. Compliance with, and monitoring of, applicable laws, regulations and rules may be difficult, time consuming and costly. Those laws, regulations or rules and their interpretation and application may also change from time to time and those changes could have a material adverse effect on our business, investments and results of operations. In addition, a failure to comply with applicable laws, regulations or rules, as interpreted and applied, could have a material adverse effect on our business and results of operations.

Our Articles of Incorporation designates specific courts as the exclusive forum for substantially all stockholder litigation matters, which could limit the ability of our stockholders to obtain a favorable forum for disputes with us or our directors, officers or employees.

Our Articles of Incorporation provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by applicable law the Second Judicial District Court of Washoe County, Nevada is the sole and exclusive forum for any or all actions, suits or proceedings, whether civil, administrative or investigative or that asserts any claim or counterclaim: (a) brought in our name or right or on our behalf; (b) asserting a claim for breach of any fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders; (c) arising or asserting a claim arising pursuant to any provision of the Nevada Revised Statutes (the "**NRS**") Chapters 78 or 92A or any provision of our Articles of Incorporation or our Bylaws; (d) to interpret, apply, enforce or determine the validity of our Articles of Incorporation or our Bylaws; or (e) asserting a claim governed by the internal affairs doctrine. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find the choice of forum provision contained in our Articles of Incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could adversely affect our business, financial condition and results of operations.

Our Articles of Incorporation also provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. This provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us and our directors, officers or other employees and may have the effect of discouraging lawsuits against our directors, officers and other employees. Furthermore, stockholders may be subject to increased costs to bring these claims, and the exclusive forum provision could have the effect of discouraging claims or limiting investors' ability to bring claims in a judicial forum that they find favorable.

Our Articles of Incorporation could discourage another company from acquiring us and may prevent attempts by our stockholders to replace or remove our management.

Provisions in our Articles of Incorporation and our Bylaws may discourage, delay, or prevent, a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. As our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. These provisions provide, among other things, that:

- our board of directors will be divided into three classes, with each class serving staggered three-year terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;

- our board of directors has the exclusive right to expand the size of its board of directors and to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;

- our stockholders may not act by written consent, which forces stockholder action to be taken at an annual or special meeting of stockholders;

- a special meeting of stockholders may be called only by a majority of our board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;

- our Articles of Incorporation prohibits cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;

- our board of directors may alter certain provisions of our Bylaws without obtaining stockholder approval;

- the approval of the holders of at least sixty-six and two-thirds percent (66 2⁄3%) of our common shares entitled to vote at an election of our board of directors is required to adopt, amend, alter or repeal our Bylaws or amend, alter, change or repeal or adopt any provision of our Articles of Incorporation inconsistent with the provisions of our Articles of Incorporation regarding the election and removal of directors;

- stockholders must provide advance notice and additional disclosures to nominate individuals for election to our board of directors or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain voting control of our common stock; and

- our board of directors is authorized to issue shares of preferred stock and to determine the terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer.

We are an emerging growth company and any decision to comply only with certain reduced reporting and disclosure requirements applicable to emerging growth companies could make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies but not to "emerging growth companies," including:

- not being required to have an independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act;

- reduced disclosure obligations regarding executive compensation in our periodic reports and annual report on Form 10-K; and

- exemptions from the requirements of holding non-binding advisory votes on executive compensation and stockholder approval of any golden parachute payments not previously approved.

As a result, the stockholders may not have access to certain information that they may deem important. Our status as an emerging growth company will end as soon as any of the following takes place:

- the last day of the fiscal year in which we have at least $1.235 billion in annual revenue;

- the date we qualify as a "large accelerated filer," with at least $700.0 million of equity securities held by non-affiliates;

- the date on which we have issued, in any three-year period, more than $1.0 billion in non-convertible debt securities; or

- the last day of the fiscal year ending after the fifth anniversary of our IPO.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We may elect to take advantage of this extended transition period and as a result, our financial statements may not be comparable with similarly situated public companies.

We cannot predict if investors will find our common stock less attractive if we choose to rely on any of the exemptions afforded emerging growth companies. If some investors find our common stock less attractive because we rely on any of these exemptions, there may be a less active trading market for our common stock and the market price of our common stock may be more volatile and may decline.

If we fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired, which may adversely affect investor confidence in us and, as a result, the market price of our common stock.

As a public company, we will be required to comply with the requirements of the Sarbanes-Oxley Act, including, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. See "*We have identified material weaknesses in our internal control over financial reporting. These material weaknesses could continue to adversely affect our ability to report our results of operations and financial condition accurately and in a timely manner" and Part II – Item 9A – Controls and Procedures*. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our management, including our principal executive and financial officers.

We must continue to improve our internal control over financial reporting. We will be required to make a formal assessment of the effectiveness of our internal control over financial reporting and once we cease to be an emerging growth company, we will be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. To achieve compliance with these requirements within the prescribed time period, we will be engaging in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of our internal control over financial reporting, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. There is a risk that we will not be able to conclude, within the prescribed time period or at all, that our internal control over financial reporting is effective as required by Section 404 of the Sarbanes-Oxley Act. Moreover, our testing, or the subsequent testing by our independent registered public accounting firm, may reveal additional deficiencies in our internal control over financial reporting that are deemed to be material weaknesses.

Any failure to implement and maintain effective disclosure controls and procedures and internal control over financial reporting, including the identification of one or more material weaknesses, could cause investors to lose confidence in the accuracy and completeness of our financial statements and reports, which would likely adversely affect the market price of our common stock. In addition, we could be subject to sanctions or investigations by Nasdaq, the SEC and other regulatory authorities.

Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our financial condition and results of operations.

We will be subject to income taxes in the United States, and our tax liabilities will be subject to the allocation of expenses in differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of stock-based compensation;
- costs related to intercompany restructurings;
- changes in tax laws, regulations or interpretations thereof; or
- lower than anticipated future earnings in jurisdictions where we have lower statutory tax rates and higher than anticipated future earnings in jurisdictions where we have higher statutory tax rates.

In addition, we may be subject to audits of our income, sales and other transaction taxes by taxing authorities. Outcomes from these audits could have an adverse effect on our financial condition and results of operations.

Item 1B. Unresolved Staff Comments

Not applicable.

Item 1C. Cybersecurity

Cybersecurity Risk Management

We, like other companies in our industry, face several cybersecurity risks in connection with our business. Our business strategy, results of operations, and financial condition have not, to date, been affected by risks from cybersecurity threats. During the reporting period, we have not experienced any material cyber incidents, nor have we experienced a series of immaterial incidents, which would require disclosure.

In the ordinary course of our business, we use, store and process data including data of our employees, partners, collaborators, and vendors. To effectively prevent, detect, and respond to cybersecurity threats, we maintain a cyber risk management program, which is comprised of a wide array of policies, standards, architecture, and processes. The cyber risk management program falls under the responsibility of our Chief Executive Officer, who in turn, manages our outsourced experts in information technology ("**IT**") and cybersecurity. Under the guidance of our Chief Executive Officer, we task reputable third-party IT experts that utilize a wide variety of software to secure the environment. We also utilize a variety of cybersecurity software from reputable vendors in cybersecurity.

We have implemented a cybersecurity risk management program that is designed to identify, assess, and mitigate risks from cybersecurity threats to this data and our systems and ensure the effectiveness of our security controls. Our cybersecurity risk management program incorporates several components, including information security program assessments, continuous monitoring of critical risks from cybersecurity threats using automated tools, restoration testing, periodic threat testing, and documented standards, policies, and procedures. We deploy a wide range of security tools across the environment, require multifactor authentication across all critical systems, and implement access control policies to further limit protect the data within the systems.

We periodically engage third parties to conduct risk assessments, including periodic penetration testing and other system vulnerability analyses. As a result of these assessments and testing, we have not identified any material cybersecurity risks. We also maintain documentation of our system hardening progress and plans. Additionally, our program requires cybersecurity training, which includes social engineering and phishing training, on a quarterly basis, for all employees.

Governance

Our Board of Directors (the "**Board**") is responsible for the oversight of cybersecurity risk management. The Chief Executive Officer reports to our Board. The Chief Executive Officer provides updates to the Board on our cybersecurity risk management program, including any critical cybersecurity risks, ongoing cybersecurity initiatives and strategies, and applicable regulatory requirements and industry standards on a regular basis. The Chief Executive Officer also notifies the Board of any cybersecurity incidents (suspected or actual) and provides updates on the incidents as well as cybersecurity risk mitigation activities as appropriate.

Item 2. Properties

Our headquarters is located at 1190 Trademark Drive #108, Reno, Nevada 89521 in a 99,000 square foot manufacturing facility. The lease for this building was entered into on March 1, 2021 and expires on April 30, 2026. The current rent is $59,750 payable monthly.

On February 8, 2022, we entered into a 124-month lease for an additional 390,240 square foot warehouse. The building has passed inspections and a certificate of substantial completion has been issued in Reno, Nevada. The rent under the lease $230,000 became payable monthly on March 25, 2024 upon substantial completion of the project.

We maintain a warehouse facility at 12815 Old Virginia Road in Reno, Nevada. This is a 59,500 square foot facility that we use to store and stage materials in preparation for production work. The lease for this space was entered into on December 1, 2021, and expires December 31, 2026; the current monthly rent is $49.732.

On April 12, 2024, we entered into the Fernley Lease Agreement, effective April 1, 2024, for the approximately 64,000 square foot Premises located at 2275 East Newlands Road, Fernley, Nevada, to be used for general, warehousing, assembly/light manufacturing, painting of products, storage fulfillment, distribution of our products. The Fernley Lease Agreement expires April 1, 2029. The current monthly rent is $44,800.

Our Research & Development lab is a 9,600 square foot facility located in Sparks, Nevada. The lease for these premises was entered into on July 27, 2020 and expires on July 31, 2025. The current monthly rent is $9,336.

Our podcast studio is a 1,772 square foot facility located in Sparks, Nevada. The lease for this space was assumed by us pursuant to the Asset Purchase Agreement by and between us and Bourns Productions on January 1, 2022, and expired September 30, 2023. We renewed this lease on August 1, 2023 for a one-year term that began on October 1, 2023 and will expire September 20, 2024. The current monthly rent is $1,375. We do not own any real property.

Item 3. Legal Proceedings

From time to time, we may become involved in litigation or other legal proceedings. We are not currently a party to any litigation or legal proceedings that, in the opinion of our management, are likely to have a material adverse effect on our business. Regardless of outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

Item 4. Mine Safety Disclosures

Not applicable.

Part II

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

Market Information

Our common stock is currently listed on the Nasdaq Global Market under the symbol "DFLI" and our Public Warrants are currently listed on the Nasdaq Capital Market under the symbol "DFLIW". As of April 12, 2024, the closing price of our common stock and warrants was $0.46 and $0.03, respectively. As of April 12, 2024, there were 91 holders of record of our common stock and 2 holders of record of our Public Warrants.

Dividend Policy

We currently intend to retain all available funds and any future earnings to fund the growth and development of our business. We have never declared or paid any cash dividends on our common stock. We do not intend to pay cash dividends to our stockholders in the foreseeable future. Investors should not purchase our common stock with the expectation of receiving cash dividends.

Any future determination to declare dividends will be made at the discretion of our board of directors and will depend on our financial condition, operating results, capital requirements, general business conditions, and other factors that our board of directors may deem relevant.

Recent Sales of Unregistered Securities

None.

Item 6. [Reserved]

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

As a result of the completion of the Business Combination, the financial statements of Legacy Dragonfly are now the financial statements of us. Prior to the Business Combination, we had no operating assets but, upon consummation of the Business Combination, the business and operating assets of Legacy Dragonfly acquired by us became our sole business and operating assets. Accordingly, the financial statements of Legacy Dragonfly and their respective subsidiaries as they existed prior to the Business Combination and reflecting our sole business and operating assets going forward, are now the financial statements of us.

All statements other than statements of historical fact included in this section regarding our financial position, business strategy and the plans and objectives of management for future operations, are forward- looking statements. When used in this section, words such as "anticipate," "believe," "estimate," "expect," "intend" and similar expressions, as they relate to our management, identify forward-looking statements. Such forward-looking statements are based on the beliefs of management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those contemplated by the forward- looking statements as a result of certain factors detailed herein. All subsequent written or oral forward-looking statements attributable to us or persons acting on our behalf are qualified in their entirety by this paragraph.

Some of the information contained in this discussion and analysis or set forth elsewhere, including information with respect to our plans and strategy for our business include forward-looking statements that involve risks, uncertainties and assumptions. You should read the sections titled "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors" for a discussion of important 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.

Overview

We are a manufacturer of non-toxic deep cycle lithium-ion batteries that are designed to displace lead acid batteries in a number of different storage applications and end markets including RV, marine vessel, and solar and off-grid industries, with disruptive cell manufacturing and solid-state cell technology currently under development.

Since 2020, we have sold over 290,000 batteries. For the years ended December 31, 2023 and 2022, we sold 64,096 and 96,034 batteries, respectively, and had $64.4 million and $86.3 million in net sales, respectively. We currently offer a line of batteries across our "Battle Born" and "Dragonfly" brands, each differentiated by size, power and capacity, consisting of seven different models, four of which come with a heated option. We primarily sell "Battle Born" branded batteries directly to consumers and "Dragonfly" branded batteries to OEMs.

Our decrease in 2023 total sales is a reflection of weaker demand from both OEM and DTC customers in our core RV and marine markets due to rising interest rates and inflation. Our RV OEM customers currently include Keystone, THOR, Airstream, and REV, and we are in ongoing discussions with a number of additional RV OEMs to further increase adoption of our products. Related efforts include seeking to have RV OEMs "design in" our batteries as original equipment and entering into arrangements with members of the various OEM dealer networks to stock our batteries for service and for aftermarket replacement sales.

We currently source the lithium iron phosphate cells incorporated into our batteries from a limited number of carefully selected suppliers that can meet our demanding quality standards and with whom we have developed long-term relationships.

To supplement our battery offerings, we are also a reseller of accessories for battery systems. These include chargers, inverters, monitors, controllers, solar panels, and other system accessories from brands such as Victron Energy, Progressive Dynamics, Magnum Energy and Sterling Power.

In addition to our conventional LFP batteries, we have been developing proprietary dry electrode cell manufacturing processes and solid-state cell technology. We believe that our solid-state technology design allows for a much safer, more efficient battery cell that we believe will be a key differentiator in the energy storage market.

The Business Combination

On October 7, 2022, or the Closing Date, we consummated the Business Combination. Pursuant to the Business Combination Agreement, Merger Sub merged with and into Legacy Dragonfly, with Legacy Dragonfly surviving the merger and becoming a wholly-owned direct subsidiary of Chardan. Thereafter, Merger Sub ceased to exist and Chardan was renamed Dragonfly Energy Holdings Corp. Legacy Dragonfly is deemed the accounting acquirer, which means that Legacy Dragonfly's financial statements for previous periods will be disclosed in our future periodic reports filed with the SEC. Following the Business Combination, our business is the business of Legacy Dragonfly.

The Business Combination was accounted for as a reverse recapitalization. Under this method of accounting, Chardan was treated as the acquired company for financial statement reporting purposes.

ChEF Equity Facility

We have the ChEF Equity Facility. We have chosen to be conservative because of the performance of our common stock in February and March 2023. Much of this was due to our low public float, low institutional interest (since we are pre-lockup expiration), and low visibility in general. Moving forward, after the lockup expiration, we intend to market more heavily to institutions and expect the trading volume to increase and the stock price to stabilize. Under these conditions, we intend to use the ChEF Equity Facility to help maintain minimum cash balances required by the lenders as we continue to execute on growing the business through product releases, customer/market expansion, and R&D milestones. We expect to use the ChEF Equity Facility as a regular source of funds over the next twelve months as the lock-up on shares expires and our available share balance increases, allowing for more consistent purchases under the ChEF Equity Facility. Use of the ChEF Equity Facility may adversely affect us, including the market price of our common stock and future issuances may be dilutive to existing stockholders.

June 2023 Offering

On June 20, 2023, we entered into the Underwriting Agreement with the Underwriters, pursuant to which we sold to the Underwriters, in a firm commitment underwritten public offering, or the June 2023 Offering, an aggregate of (i) 10,000,000 shares of common stock, par value $0.0001 and (ii) Investor Warrants to purchase up to 10,000,000 shares of common Stock, at the combined public offering price of $2.00 per share and accompanying Investor Warrant, less underwriting discounts and commissions, and (iii) Underwriters' Warrants to purchase up to an aggregate of 570,250 shares of common stock. In addition, we granted the Underwriters a 45-day over-allotment option to purchase up to an additional 1,500,000 shares of common stock and/or Investor Warrants to purchase up to an aggregate of 1,500,000 shares of Common Stock at the public offering price per security, less underwriting discounts and commissions.

The Investor Warrants are exercisable for five years from the closing date of the Offering, have an exercise price of $2.00 per share and are immediately exercisable. In the event of certain fundamental transactions, holders of the Investor Warrants will have the right to receive the Black Scholes Value (as defined in the Investor Warrants) of their Investor Warrants calculated pursuant to the formula set forth in the Investor Warrants, payable either in cash or in the same type or form of consideration that is being offered and being paid to the holders of common stock. The Underwriters' Warrants are exercisable upon issuance and will expire on June 20, 2028. The initial exercise price of the Underwriters' Warrants is $2.50 per share, which equals 125% of the per share public offering price in the Offering. As part of the June 2023 Offering, the Underwriters partially exercised their over-allotment option in the amount of 1,405,000 shares of Common Stock and Investor Warrants to purchase 1,405,000 shares of common stock. The June 2023 Offering closed on June 22, 2023. The aggregate net proceeds from the June 2023 Offering, including the partial overallotment option, was approximately $20.7 million.

December 2023 Private Placement

On December 29, 2023, we received the December 2023 Waiver from the Term Loan Lenders in regards to our compliance with the Tests as of the last day of the quarter ended December 31, 2023. The December 2023 Waiver provided for a one-time issuance of the Waiver Penny Warrants to purchase up to 1,286,671 Waiver Penny Warrant Shares, at an exercise price of $0.01 per share, in connection with the Term Loan Lender's agreement to waive the Tests under the Term Loan for the quarter ended December 31, 2023. The Waiver Penny Warrants were immediately exercisable upon issuance and will expire ten years from the date of issuance.

As of December 31, 2023, we had cash totaling $12.7 million. Our net loss for the years ended December 31, 2023 and December 31, 2022, were $13.8 million and $40.0 million, respectively. As a result of being a publicly traded company, we continue to need to hire additional personnel and implement procedures and processes to address public company regulatory requirements and customary practices. We expect to incur additional annual expenses as a public company for, among other things, directors' and officers' liability insurance, director fees and additional internal and external accounting and legal and administrative resources, including increased audit and legal fees. As discussed under "*—Liquidity and Capital Resources*" below we expect that we will need to raise additional funds, including through the use of the ChEF Equity Facility and the issuance of equity, equity-related or debt securities or by obtaining additional credit from financial institutions to fund, together with our principal sources of liquidity, ongoing costs, such as research and development relating to our solid-state batteries, expansion of our facilities, and new strategic investments. If such financings are not available, or if the terms of such financings are less desirable than we expect, we may be forced to take actions to reduce our capital or operating expenditures, including not seeking potential acquisition opportunities, eliminating redundancies, or reducing or delaying our production facility expansions, which may adversely affect our business, operating results, financial condition and prospects.

Key Factors Affecting Our Operating Results

Our financial position and results of operations depend to a significant extent on the following factors:

End Market Consumers

The demand for our products ultimately depends on demand from consumers in our current end markets. We generate sales through (1) direct-to-customer and (2) through OEMs, particularly in the RV market.

An increasing proportion of our sales has been and is expected to continue to be derived from sales to RV and other OEMs, driven by continued efforts to develop larger and more complete storage systems. Our RV OEM sales have been on a purchase order basis, without firm revenue commitments, and we expect that this will likely continue to be the case. Therefore, future RV OEM sales will be subject to risks and uncertainties, including the number of RVs these OEMs manufacture and sell, which in turn may be driven by the expectations these OEMs have around end market consumer demand.

Demand from end market consumers is impacted by a number of factors, including travel restrictions, fuel costs and energy demands (including an increasing trend towards the use of green energy), as well as overall macro-economic conditions and inflation. Sales of our batteries have benefited from the increased adoption of the RV lifestyle, the demand for and inclusion of additional appliances and electronics in RVs, and the accelerating trend of solar power adoption among RV customers. However, in recent months rising fuel costs and other macro-economic conditions have caused a downward shift in decisions taken by end market consumers around spending in the RV market and in July 2023, we were notified by our largest RV OEM customer that, due to weaker demand for its products and their subsequent focus on reducing costs, it would no longer install our storage solutions as standard equipment, but rather return to offering those solutions as an option to dealers and consumers. While this customer is not moving to a different solution or competitor, as a result in this change in strategy there was a material limiting effect on our revenue in 2023. Based on our discussions with customers and current unit forecast projections, we expect our revenue in the RV market to increase in 2024.

Our strategy includes plans to expand into new end markets that we have identified as opportunities for our LFP batteries, including industrial, rail, specialty and work vehicles, material handling, solar integration, and emergency and standby power, in the medium term, and data centers, telecom and distributed on-grid storage in the longer term. We believe that our current LFP batteries and, eventually, our solid-state batteries, will be well-suited to supplant traditional lead-acid batteries as a reliable power source for the variety of low power density uses required in these markets (such as powering the increasing number of on-board tools needed in emergency vehicles). The success of this strategy requires (1) continued growth of these addressable markets in line with our expectations and (2) our ability to successfully enter these markets. We expect to incur significant marketing costs understanding these new markets, and researching and targeting customers in these end markets, which may not result in sales. If we fail to execute on this growth strategy in accordance with our expectations, our sales growth would be limited to the growth of existing products and existing end markets.

Supply

We currently rely on two carefully selected cell manufacturers located in China, and a single supplier, also located in China, to manufacture our proprietary battery management system, and we intend to continue to rely on these suppliers going forward. Our close working relationships with our China-based LFP cell suppliers, reflected in our ability to increase our purchase order volumes (qualifying us for related volume-based discounts) and order and receive delivery of cells in anticipation of required demand, has helped us moderate increased supply-related costs associated with inflation, currency fluctuations and U.S. government tariffs imposed on our imported battery cells and to avoid potential shipment delays. To mitigate against potential adverse production events, we opted to build our inventory of key components, such as battery cells. However, as many of the supply chain challenges and delays that were prevalent over the last several years have eased, we are actively working down our inventory to more appropriate safety stock levels.

As a result of our battery chemistry and active steps we have taken to manage our inventory levels, we have not been subject to the shortages or price impacts that have been present for manufacturers of nickel manganese cobalt and nickel cobalt aluminum batteries. As we look toward the production of our solid-state cells, we have signed a Commercial Offtake Agreement with a lithium mining company located in Nevada for the supply of lithium, which we expect will enable us to further manage our cost of goods over time.

Product and Customer Mix

Our product sales consist of sales of seven different models of LFP batteries, along with accessories for battery systems (individually or bundled). These products are sold to different customer types (e.g., consumers, OEMs and distributors) and at different prices and involve varying levels of costs. In any particular period, changes in the mix and volume of particular products sold and the prices of those products relative to other products will impact our average selling price and our cost of goods sold. Despite our work to moderate increased supply-related costs, the price of our products may also increase as a result of increases in the cost of components due to inflation, currency fluctuations and tariffs. OEM sales typically result in lower average selling prices and related margins, which could result in margin erosion, negatively impact our growth or require us to raise our prices. However, this reduction is typically offset by the benefits of increased sales volumes. Sales of third-party sourced accessories typically have lower related margin. We expect accessory sales to increase as we further develop full-system design expertise and product offerings and consumers increasingly demand more sophisticated systems, rather than simple drop-in replacements. In addition to the impacts attributable to the general sales mix across our products and accessories, our results of operations are impacted by the relative margins of products sold. As we continue to introduce new products at varying price points, our overall gross margin may vary from period to period as a result of changes in product and customer mix.

Production Capacity

All of our battery assembly currently takes place at our 99,000 square foot headquarters and manufacturing facility located in Reno, Nevada. We currently operate three LFP battery production lines. Consistent with our operating history, we plan to continue to automate additional aspects of our battery production lines. Our existing facility has the capacity to add up to four additional LFP battery production lines and construct and operate a pilot production line for our solid-state cells, all designed to maximize the capacity of our manufacturing facility. Although our automation efforts are expected to reduce our costs of goods, we may not fully recognize the anticipated savings when planned and could experience additional costs or disruptions to our production activities.

In addition, we have entered into a lease for an additional 390,240 square foot warehouse in Reno, Nevada, which is expected to be completed in the second half of 2024. This facility, combined with our existing facility, will allow further scaling of our increasingly automated battery pack assembly capabilities, expand our warehousing space, and allow for deployment of our solid-state cell manufacturing.

Competition

We compete with traditional lead-acid battery manufacturers and lithium-ion battery manufacturers, who primarily either import their products or components or manufacture products under a private label. As we continue to expand into new markets, develop new products and move towards production of our solid-state cells, we will experience competition with a wider range of companies. These competitors may have greater resources than we do, and may be able to devote greater resources to the development of their current and future technologies. Our competitors may be able to source materials and components at lower costs, which may require us to evaluate measures to reduce our own costs, lower the price of our products or increase sales volumes in order to maintain our expected levels of profitability.

Research and Development

Our research and development is primarily focused on the advanced manufacturing of solid-state lithium-ion batteries using an LFP catholyte, a solid electrolyte and an intercalation-based anolyte (intercalation being the reversible inclusion of a molecule or ion into layered solids). The next stage in our technical development is to construct the battery to optimize performance and longevity to meet and exceed industry standards for our target storage markets. Ongoing testing and optimizing of more complicated batteries incorporating layered pouch cells will assist us in determining the optimal cell chemistry to enhance conductivity and increase the number of cycles (charge and discharge) in the cell lifecycle. This is expected to require significant additional expense, and we may need to raise additional funds to continue these research and development efforts.

Components of Results of Operations

Net Sales

Net sales is primarily generated from the sale of our LFP batteries to OEMs and consumers, as well as chargers and other accessories, either individually or bundled.

Cost of Goods Sold

Cost of goods sold includes the cost of cells and other components of our LFP batteries, labor and overhead, logistics and freight costs, and depreciation of manufacturing equipment.

Gross Profit

Gross profit, calculated as net sales less cost of goods sold, may vary between periods and is primarily affected by various factors including average selling prices, product costs, product mix and customer mix.

Operating Expenses

Research and development

Research and development costs include personnel-related expenses for scientists, experienced engineers and technicians as well as the material and supplies to support the development of new products and our solid-state technology. As we work towards completing the development of our solid-state lithium-ion cells and the manufacturing of batteries that incorporate this technology, we anticipate that research and development expenses will increase significantly for the foreseeable future as we continue to invest in product development and optimizing and producing solid-state cells.

General and administrative

General and administrative costs include personnel-related expenses attributable to our executive, finance, human resources, and information technology organizations, certain facility costs, and fees for professional services.

Selling and marketing

Selling and marketing costs include outbound freight, personnel-related expenses, as well as trade show, industry event, marketing, customer support, and other indirect costs. We expect to continue to make the necessary sales and marketing investments to enable the execution of our strategy, which includes expanding into additional end markets.

Total Other Income (Expense)

Other income (expense) consists primarily of interest expense, the change in fair value of the warrant liability and amortization of debt issuance costs.

Results of Operations

Comparisons for the Years Ended December 31, 2023 and 2022

The following table sets forth our results of operations for the years ended December 31, 2023 and 2022. This data should be read together with our financial statements and related notes included elsewhere in this Annual Report, and is qualified in its entirety by reference to such financial statements and related notes.

	Years ended December 31,			
	2023	% Net Sales	2022	% Net Sales
	(in thousands)			
Net Sales	$ 64,392	100.0	$ 86,251	100.0
Cost of Goods Sold	48,946	76.0	62,633	72.6
Gross profit	15,446	24.0	23,618	27.4
Operating expenses				
Research and development	3,863	6.0	2,764	3.2
General and administrative	26,389	41.0	41,566	48.2
Sales and marketing	12,623	19.6	13,671	15.9
Total Operating expenses	42,875	66.6	58,001	67.2
Loss From Operations	(27,429)	(42.6)	(34,383)	(39.9)
Other Income (Expense)				
Other income (expense)	19	0.0	40	0.0
Interest expense, net	(16,015)	(24.9)	(6,979)	(8.1)
Change in fair market value of warrant liability	29,582	45.9	5,446	6.3
Debt extinguishment	-	-	(4,824)	(5.6)
Total Other Income (Expense)	13,586	21.1	(6,317)	(7.3)
Loss Before Taxes	(13,843)	(21.5)	(40,700)	(47.2)
Income Tax Benefit	(26)	0.0	(709)	(0.8)
Net Loss	$ (13,817)	(21.5)	$ (39,991)	(46.4)

	Years ended December 31,	
	2023	2022
	(in thousands)	
DTC	36,875	52,446
% Net Sales	57.3	60.8
OEM	27,517	33,805
% Net Sales	42.7	39.2
Net Sales	$ 64,392	$ 86,251

Net Sales

Net sales decreased by $21.9 million, or 25.3%, to $64.4 million for the year ended December 31, 2023, as compared to $86.3 million for the year ended December 31, 2022. This decrease was primarily due to lower DTC and OEM battery and accessory sales due to a decline in demand in our core RV markets, and a slight decrease in average sale prices for our batteries. For the year ended December 31, 2023, OEM revenue decreased by $6.3 million as a result of weaker overall demand in the RV market. DTC revenue decreased by $15.6 million as a result of decreased customer demand for our products due to rising interest rates and inflation. We expect our sales to increase as the cyclical recovery of the RV market gains momentum in the coming quarters.

Cost of Goods Sold

Cost of revenue decreased by $13.7 million, or 21.9%, to $48.9 million for the year ended December 31, 2023, as compared to $62.6 million for the year ended December 31, 2022. This decrease was primarily due to a $13.1 million decrease in product cost due to lower unit volume, partially offset by higher material cost associated with consuming higher priced inventory and an adjustment to customs due to tariff correction of $0.3 million, and a $0.6 million decrease in overhead expense associated with lower labor cost due to reduced headcount. We expect our Cost of Goods Sold to increase in conjunction with the anticipated increase in revenue over the next 12 months.

Gross Profit

Gross profit decreased by $8.2 million, or 34.6%, to $15.4 million for the year ended December 31, 2023, as compared to $23.6 million for the year ended December 31, 2022. The decrease in gross profit was primarily due to lower unit volumes and a change in revenue mix that included a larger percentage of lower margin OEM sales and a lower percentage of higher margin DTC sales, together with higher material costs as noted above. Gross Profit percentage decreased by 4.3% from 27.4% in 2022 to 23.1% in 2023. Lower volume caused a reduction in absorption of labor and overhead impacting gross profit by 2.3% along with an increase in material costs reducing gross profit by 1.1%. We expect our Gross Profit, as a percentage of revenue, to remain relatively stable over the next 12 months.

Research and Development Expenses

Research and development expenses increased by $1.1 million, or 39.8%, to $3.9 million for the year ended December 31, 2023, as compared to $2.8 million for the year ended December 31, 2022. The increase was primarily due $0.8 million in higher material and patent expense along with increased wages and depreciation expense associated with cell manufacturing development work. While we expect to continue to grow its Research and Development headcount, it expects to do so at a slower rate than in prior years.

General and Administrative Expenses

General and administrative expenses decreased by $15.2 million, or 36.5%, to $26.4 million for the year ended December 31, 2023, as compared to $41.6 million for the year ended December 31, 2022. This decrease was primarily due to the absence of $23.4 million of fiscal year 2022 expenses associated with the Business Combination and a decrease in employee-related costs in the amount of $2.5 million offset by an increase in stock-based compensation costs of $4.5 million. We also incurred higher compliance, insurance, and professional fees related to public company costs in the amount of $4.5 million, and a $1.7 million increase in investor relations expenses. We expect General and Administrative Expenses, as a percentage of revenue, to decline over the next 12 months.

Selling and Marketing Expenses

Sales and marketing expenses decreased by $1.1 million, or 7.7%, to $12.6 million for the year ended December 31, 2023, as compared to $13.7 million for the year ended December 31, 2022. This decrease was primarily due to a $2.0 million reduction in shipping costs due to lower unit volumes, partially offset by higher employee related costs of $0.8 million due to increased headcount and higher stock-based compensation. We expect our Selling and Marketing Expenses to be relatively stable over the next 12 months.

Total Other Income (Expense)

Other income totaled $13.6 million for the year ended December 31, 2023 as compared to total other expense of $6.3 million for the year ended December 31, 2022. Other income in 2023 is comprised primarily of a change in fair market value of warrant liability in the amount of $29.6 million, partially offset by interest expense of $16.0 million related to our debt securities. Other expense in 2022 is comprised primarily of interest expense of $6.9 million related to senior secured note of $45 million combined with debt securities of $75 million, debt extinguishment expense of $4.8 million due to the retirement of the $45 million in senior secured notes as a result of the Business Combination, partially offset by $5.4 million in the change of the fair market value of our warrants.

Income Tax Benefit

The income tax benefit for the year ended December 31, 2023, was minimal as compared to a $0.7 million benefit for the year ended December 31, 2022. The income tax benefit reflects our expected use of losses in the period against future tax obligations. Management evaluated the positive and negative evidence bearing upon the realizability of its deferred tax assets and determined that it is more likely than not that we will not recognize the benefits of the deferred tax assets primarily due to us entering into a 3-year cumulative loss position. As a result, a full valuation allowance totaling $19.7 million was recorded as of December 31, 2023.

Net Loss

We experienced a net loss of $13.8 million for the year ended December 31, 2023, as compared to a net loss of $40.0 million for the year ended December 31, 2022. As described above, this result was driven by lower sales due to reduced demand in the RV market, partially offset by lower cost of goods sold, lower operating expenses and increased other income.

Critical Accounting Estimates

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States. The preparation of these consolidated financial statements requires us to make judgments and estimates that affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities in our financial statements. We base our estimates on historical experience, known trends and events and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions. On a recurring basis, we evaluate our judgments and estimates in light of changes in circumstances, facts, and experience. The effects of material revisions in an estimate, if any, will be reflected in the consolidated financial statements prospectively from the date of the change in the estimate.

We consider an accounting estimate to be critical if: (1) the accounting estimate requires us to make assumptions about matters that were highly uncertain at the time the accounting estimate was made, and (2) changes in the estimate that are reasonably likely to occur from period to period, or use of different estimates that we reasonably could have used in the current period, would have a material impact on our financial condition or results of operations.

Management has discussed the development and selection of these critical accounting estimates with the Audit Committee of our board of directors. In addition, there are other items within our financial statements that require estimation but are not deemed critical as defined above. Changes in estimates used in these and other items could have a material impact on our financial statements.

We believe that the following accounting policies are those most critical to the judgments and estimates used in the preparation of our financial statements.

Inventory Valuation

We periodically review physical inventory for excess, obsolete, and potentially impaired items and reserves. Any such inventory is written down to net realizable value. The reserve estimate for excess and obsolete inventory is dependent on expected future use and requires management judgement. The level of the estimate is assessed by considering the recent sales experience, the aging of inventories, and other factors that affect inventory obsolescence.

Warrants

We apply relevant accounting guidance for warrants to purchase our stock based on the nature of the relationship with the counterparty. For warrants issued to investors or lenders in exchange for cash or other financial assets, we follow guidance issued within ASC 480, Distinguishing Liabilities from Equity ("**ASC 480**"), and ASC 815, Derivatives and Hedging ("**ASC 815**"), to assist in the determination of whether the warrants should be classified as liabilities or equity. Warrants that are determined to require liability classifications are measured at fair value upon issuance and are subsequently remeasured to their then fair value at each subsequent reporting period with changes in fair value recorded in current earnings. Warrants that are determined to require equity classifications are measured at fair value upon issuance and are not subsequently remeasured unless they are required to be reclassified. See "*Note 10—Warrants*" in our accompanying consolidated financial statements for information on the warrants. Changes in assumptions used to estimate fair value could occur from stock pricing volatility depending on our performance and our position in the industry and changes in market interest rates which can result in materially different results.

Equity-Based Compensation

We use the Black-Scholes option-pricing model to determine the fair value of option grants. In estimating fair value, management is required to make certain assumptions and estimates such as the expected life of units, volatility of our future share price, risk-free rates, future dividend yields and estimated forfeitures at the initial grant date. Restricted stock unit awards are valued based on the closing trading price of our common stock on the date of grant. Changes in assumptions used to estimate fair value could occur from stock pricing volatility depending on our performance and our position in the industry and changes in market interest rates which can result in materially different results.

Income Taxes

We account for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences of temporary differences between the carrying amounts and tax bases of assets and liabilities using enacted rates. The effect of a change in tax rates on deferred taxes is recognized in income in the period that includes the enactment date.

We recognize the financial statement effect of an uncertain income tax position when it is more likely than not, based on the technical merits, that the position will be sustained upon examination. Recognized income tax positions are measured at the largest amount that is greater than 50% likely to be realized. A valuation allowance is recorded to reduce deferred income tax assets to an amount, which in the opinion of management is more likely than not to be realized.

Management judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities, and any valuation allowance recorded against our deferred tax assets. We consider factors such as the cumulative income or loss in recent years; reversal of deferred tax liabilities; projected future taxable income exclusive of temporary differences; the character of the income tax asset, including income tax positions; tax planning strategies and the period over which we expect the deferred tax assets to be recovered in the determination of the valuation allowance. In the event that actual results differ from these estimates or we adjust our estimates in the future, we may need to adjust our valuation allowance, which could materially impact our financial position and results of operations.

The amount of the deferred tax asset considered realizable could be adjusted if our actual results in the future do not generate taxable income that is sufficient to allow us to utilize our deferred tax assets. Our future taxable income projections are subject to a high degree of uncertainty and could be impacted, both positively and negatively, by changes in our business or the markets in which we operate. A change in the assessment of the realizability of our deferred tax assets could materially impact our results of operations.

Non-GAAP Financial Measures

This Annual Report includes a non-GAAP measure that we use to supplement our results presented in accordance with U.S. GAAP. EBITDA is defined as earnings before interest and other income (expenses), income taxes, and depreciation and amortization. Adjusted EBITDA is calculated as EBITDA adjusted for stock-based compensation, ERP implementation, non-recurring debt transaction and business combination expenses. Adjusted EBITDA is a performance measure that we believe is useful to investors and analysts because it illustrates the underlying financial and business trends relating to our core, recurring results of operations and enhances comparability between periods.

Adjusted EBITDA is not a recognized measure under U.S. GAAP and is not intended to be a substitute for any U.S. GAAP financial measure and, as calculated, may not be comparable to other similarly titled measures of performance of other companies in other industries or within the same industry. Investors should exercise caution in comparing our non-GAAP measure to any similarly titled measure used by other companies. This non-GAAP measure excludes certain items required by U.S. GAAP and should not be considered as an alternative to information reported in accordance with U.S. GAAP.

The table below presents our adjusted EBITDA, reconciled to net (loss) income for the years ended December 31, 2023 and 2022.

	Years ended December 31,	
	2023	2022
	(in thousands)	
Net (loss)	$ (13,817)	$ (39,991)
Interest Expense	16,015	6,979
Taxes	(26)	(709)
Depreciation	1,237	891
EBITDA	3,409	(32,830)
Adjusted for:		
Stock-Based Compensation(1)	6,710	2,467
June 2023 Offering Costs (2)	904	-
Promissory Note Forgiveness(3)	-	469
Loss on Disposal of Assets	712	56
Separation Agreement(4)	720	1,197
Business Combination Expenses(5)	-	21,337
Debt extinguishment (6)	-	4,824
Change in fair market value of warrant liability (7)	(29,582)	(5,446)
Adjusted EBITDA	$ (17,127)	$ (7,926)

(1) Stock-Based Compensation is comprised of costs associated with option and RSU grants made to our employees, consultants and board members.

(2) June 2023 Offering Costs related to the warrant liability are comprised of fees and expenses, including legal, accounting, and other expenses associated with this offering.

(3) Promissory Note Forgiveness is comprised of the loan that was forgiven, prior to the Business Combination, in connection with the promissory note, with a maturity date of March 1, 2026, between us and John Marchetti, our Senior Vice President of Operations and our former Chief Financial Officer.

(4) Separation Agreement in 2022 is comprised of $1.2 million in cash severance associated with the Separation Agreement, dated October 25, 2022, as amended on November 14, 2022, between us and Sean Nichols, our former Chief Operating Officer. Separation Agreement in 2023 is comprised of $720 in cash severance associated with separation agreement dated April 26, 2023, between us and our former Chief Legal Officer.

(5) Business Combination Expenses is comprised of fees and expenses, including legal, accounting, and others associated with the Business Combination.

(6) Debt extinguishment expenses are comprised of expenses incurred in connection with the early debt repayment of the Series 2021-6 Notes that occurred in conjunction with the Business Combination.

(7) Change in fair market value of warrant liabilities represents the change in fair value from the date the warrants were issued through December 31, 2023.

Liquidity and Capital Resources

Liquidity describes the ability of a company to generate sufficient cash flows to meet the cash requirements of its business operations, including working capital needs, debt service, acquisitions, contractual obligations and other commitments. We assess liquidity in terms of our cash flows from operations and their sufficiency to fund our operating and investing activities. As of December 31, 2023, we had cash totaling $12.7 million.

We expect our capital expenditures and working capital requirements to increase materially in the near future, as we continue our research and development efforts (particularly those related to solid-state lithium-ion battery development), expand our production lines, scale up production operations and look to enter into adjacent markets for our batteries (with operating expenses expected to increase across all major expense categories). We expect to deploy a significant amount of capital to continue our optimization and commercialization efforts dedicated to our solid-state technology development, as well as continued investment to automate and increase the production capacity of our existing assembly operation, expansion of our facilities and new strategic investments. To date, our focus has been on seeking to prove the fundamental soundness of our manufacturing techniques and our solid-state chemistry. Moving forward, our solid-state related investments will focus on chemistry optimization and establishing a pilot line for pouch cell production. Over the next two to three years, we expect to spend in excess of $50 million on solid-state development and cell manufacturing technologies. In connection with the contraction of our business and uncertainty around the timing of future needs, we reduced our purchase activities in 2023. As a result, our inventory balance at December 31, 2023 decreased by $11.4 million to $38.8 million, compared to $50.2 million at December 31, 2022.

We expect that we will need to raise additional funds, including through the use of the ChEF Equity Facility and the issuance of equity, equity-related or debt securities or by obtaining additional credit from financial institutions to fund, together with our principal sources of liquidity, ongoing costs, such as research and development relating to our solid-state batteries, expansion of our facilities, and new strategic investments. If such financings are not available, or if the terms of such financings are less desirable than we expect, we may be forced to take actions to reduce our capital or operating expenditures, including by not seeking potential acquisition opportunities, eliminating redundancies, or reducing or delaying our production facility expansions, which may adversely affect our business, operating results, financial condition and prospects. Further, any future debt or equity financings may be dilutive to our current stockholders.

Financing Obligations and Requirements

On November 24, 2021, we issued $45 million of fixed rate senior notes, secured by among other things, a security interest in our intellectual property. As part of the Business Combination, we entered into the Term Loan, the proceeds of which were used, in part, to repay the $45 million fixed rate senior notes, and ChEF Equity Facility. As of December 31, 2023, we had $76 million outstanding under the Term Loan.

The Term Loan proceeds were used to: (i) support the Business Combination, (ii) prepay the fixed rate senior notes at closing of the Business Combination, (iii) pay fees and expenses in connection with the foregoing, (iv) to provide additional growth capital and (v) for other general/corporate purposes. The Term Loan will mature on October 7, 2026, or the Maturity Date, and will be subject to quarterly amortization of 5% per annum beginning 24 months after issuance. The definitive documents for the Term Loan incorporate certain mandatory prepayment events and certain affirmative and negative covenants and exceptions hereto. The financial covenants for the Term Loan include a maximum senior leverage ratio covenant, a minimum liquidity covenant, a springing fixed charge coverage ratio covenant, and a maximum capital expenditures covenant. On March 29, 2023 and September 29, 2023 we obtained a waiver from our Administrative Agent and the Term Loan Lenders of our failures to satisfy the fixed charge coverage ratio and maximum senior leverage ratio with respect to the minimum cash requirements under the Term Loan during the quarter ended March 31, 2023 and September 30, 2023, respectively. On December 29, 2023, we received an additional waiver from our Administrative Agent and Term Loan Lenders in regards to our compliance with the Tests as of the last day of the quarter ended December 31, 2023. On March 31, 2024, we received a waiver from the Administrative Agent and the Term Loan Lenders in regard to our compliance with the liquidity requirement under the Term Loan as of the last day of the fiscal quarter ended March 31, 2024. It is probable that we will fail to meet these covenants within the next twelve months. In accordance with U.S. GAAP, we reclassified our notes payable from a long-term liability to a current liability. The Term Loan accrues interest (i) until April 1, 2023 at a per annum rate equal to adjusted SOFR is a margin equal to 13.5%, of which 7% will be payable in cash and 6.5% will be paid in-kind, (ii) thereafter until October 1, 2024, at a per annum rate equal to adjusted SOFR plus 7% payable in cash plus an amount ranging from 4.5% to 6.5%, depending on the senior leverage ratio of the consolidated company. In each of the foregoing case, adjusted SOFR will be no less than 1%.

We may elect to prepay all or any portion of the amounts owed prior to the Maturity Date, provided that we provide notice to the Administrative Agent and the amount is accompanied by the applicable prepayment premium, if any. Prepayments of the Term Loan are required to be accompanied by a premium of 5% of the principal amount so prepaid if made prior to the October 7, 2023, 3% if made on and after October 7, 2023 but prior to October 7, 2024, 1% if made after October 7, 2024 but prior to October 7, 2025, and 0% if made on or after October 7, 2025. If the Term Loan is accelerated following the occurrence of an event of default, Legacy Dragonfly is required to immediately pay to lenders the sum of all obligations for principal, accrued interest, and the applicable prepayment premium.

Pursuant to the Term Loan Agreement, we have guaranteed the obligations of Legacy Dragonfly and such obligations will be guaranteed by any of Legacy Dragonfly's subsidiaries that are party thereto from time to time as guarantors. Also pursuant to the Term Loan Agreement, the Administrative Agent was granted a security interest in substantially all of the personal property, rights and assets of us as and Legacy Dragonfly to secure the payment of all amounts owed to lenders under the Term Loan Agreement. In addition, we entered into a Pledge Agreement pursuant to which we pledged to the Administrative Agent our equity interests in Legacy Dragonfly as further collateral security for the obligations under the Term Loan Agreement. At the closing of the Business Combination, we issued to the Term Loan Lenders (i) the Penny Warrants and (ii) the $10 Warrants.

Pursuant to the Purchase Agreement, on the terms of and subject to the satisfaction of the conditions in the Purchase Agreement, including the filing and effectiveness of a registration statement registering the resale by CCM LLC of the shares of common stock issued to it under the Purchase Agreement, we will have the right from time to time at our option to direct CCM LLC to purchase up to a specified maximum amount of shares of common stock, up to a maximum aggregate purchase price of $150 million over the term of the ChEF Equity Facility. In connection with the ChEF Equity Facility, we filed a registration statement registering the resale of up to 21,512,027 shares that may be resold into the public markets by CCM LLC, which represented approximately 36% of the shares of our common stock outstanding as of December 31, 2023. During the year ended December 31, 2022, we did not sell any shares of our common stock under the ChEF Equity Facility. During the year ended December 31, 2023, we issued and sold approximately 588,500 shares of our common stock under this facility, resulting in net cash proceeds of $1,278,566. From January 1, 2024 through April 16, 2024, we did not issue any shares of common stock under this facility. Any sales of such shares into the public market could have a significant negative impact on the trading price of our common stock. This impact may be heightened by the fact that sales to CCM LLC will generally be at prices below the current trading price of our common stock. If the trading price of our common stock does not recover or experiences a further decline, sales of shares of common stock to CCM LLC pursuant to the Purchase Agreement may be a less attractive source of capital and/or may not allow us to raise capital at rates that would be possible if the trading price of our common stock were higher.

On January 24, 2024, we issued the January Note in the Principal Amount of $1.0 million to Brian Nelson, one of our directors, in a private placement in exchange for cash in an equal amount. The January Note became due and payable in full on February 5, 2024. We were also obligated to pay the January Loan Fee in the amount of $50,000 to Mr. Nelson on February 5, 2024. The January Principal Amount of the January Note and the January Loan Fee were paid in full on February 1, 2024. On February 27, 2024, we issued the February Note to Brian Nelson in the February Principal Amount of $1.7 million in a private placement in exchange for cash in an equal amount. The February Note became due and payable in full on March 1, 2024. We were also obligated to pay the February Loan Fee in the amount of $85,000 to Mr. Nelson on March 1, 2024. The February Principal Amount of the February Note and the February Loan Fee were paid in full on March 1, 2024.

We have also filed a registration statement registering the resale of up to 47,428,544 shares and 12,266,971 warrants to purchase common stock that may be resold and/or issued into the public markets, which represents approximately 79% of the shares of our common stock outstanding as of December 31, 2023. The selling securityholders will determine the timing, pricing and rate at which they sell such shares into the public market. Although the current trading price of our common stock is below $10.00 per share, which was the sales price for units in the Chardan IPO, certain of the selling security holders have an incentive to sell because they purchased shares and/or warrants at prices below the initial public offering price and/or below the recent trading prices of our securities. Additionally, while sales by such investors may experience a positive rate of return based on the trading price at the time they sell their shares, the public securityholders may not experience a similar rate of return on the securities they purchased due to differences in the prices at which such public securityholders purchased their shares and the trading price. Given the substantial number of shares of common stock being registered for potential resale by the selling securityholders pursuant to such prospectus, the sale of shares by the selling securityholders, or the perception in the market that the selling securityholders of a large number of shares intend to sell shares, may increase the volatility of the market price of our common stock, may prevent the trading price of our securities from exceeding the Chardan IPO offering price and may cause the trading prices of our securities to experience a further decline.

In June 2023, we completed the June 2023 Offering, which provided net proceeds to us, including the partial over-allotment option exercise, of approximately $20.7 million. In July 2023, upon a request from our lenders under the Term Loan Agreement, we repaid $5.3 million to satisfy a portion of its outstanding principal.

In 2024, we identified an underpayment of tariffs to CBP in the amount of approximately $1.58 million in the aggregate, related to the improper classification and valuation of certain of the products used in our batteries. We have reported the underpayment to CBP.

Going Concern

For the year ended December 31, 2023, we incurred losses and had a negative cash flow from operations. As of December 31, 2023, we had approximately $12.7 million in cash and cash equivalents and working capital of $15.5 million.

Under the Term Loan Agreement, we are obligated to comply with certain financial covenants, which include maintaining a maximum senior leverage ratio, minimum liquidity, a springing fixed charge coverage ratio, and maximum capital expenditures. On March 29, 2023 and September 29, 2023, we obtained waivers from our Administrative Agent and Term Loan Lenders of our failures to satisfy the fixed charge coverage ratio and maximum senior leverage ratio with respect to the minimum cash requirements under the Term Loan for the quarters ended, March 31, 2023 and September 30, 2023. On December 29, 2023, we received an additional waiver from our Administrative Agent and Term Loan Lenders in regard to our compliance with the Tests as of the last day of the quarter ended December 31, 2023. On March 31, 2024, we received an additional waiver from our Administrative Agent and Term Loan Lenders in regard to our compliance with our liquidity requirement as of the last day of the fiscal quarter ended March 31, 2024. It is probable that we will fail to meet these covenants within the next twelve months. If we are unable to comply with the financial covenants in our loan agreement, the Term Loan Lenders have the right to accelerate the maturity of the Term Loan. These conditions raise substantial doubt about our ability to continue as a going concern. As a result, our independent registered public accounting firm included an explanatory paragraph in its report on our 2023 consolidated financial statements, with respect to this uncertainty.

In addition, we may need to raise additional debt and/or equity financing to fund our operations and strategic plans and meet our financial covenants. We have historically been able to raise additional capital through issuance of equity and/or debt financing and we intend to use the ChEF Equity Facility and raise additional capital as needed. However, we cannot guarantee that we will be able to raise additional equity, contain expenses, or increase revenue, and comply with the financial covenants under the Term Loan. If such financings are not available, or if the terms of such financings are less desirable than we expect, we may be forced to take actions to reduce our capital or operating expenditures, including by not seeking potential acquisition opportunities, eliminating redundancies, or reducing or delaying our production facility expansions, which may adversely affect our business, operating results, financial condition and prospects. Further, future debt or equity financings may be dilutive to our current stockholders.

Cash Flows for the Years ended December 31, 2023 and 2022

	Years ended December 31,			
	2023		2022	
Net Cash provided by/(used in):	(in thousands)			
Operating Activities	$	(17,706)	$	(45,696)
Investing activities	$	(6,885)	$	(6,827)
Financing activities	$	19,523	$	41,674

Operating Activities

Net cash used in operating activities was $17.7 million for the year ended December 31, 2023, primarily due to a net loss during the period and the change in fair market value of the warrant liability, partially offset by a decrease in inventory as a result of management’s decision to lower overall stocking levels to adjust for more modest demand.

Net cash used in operating activities was $45.7 million for the year ended December 31, 2022 primarily due to a net loss during the period, largely driven by Business Combination expenses, and an increase in purchased inventory to support future growth and to protect against potential supply disruptions.

Investing Activities

Net cash used in investing activities was $6.9 million for the year ended December 31, 2023, as compared to $6.8 million for the year ended December 31, 2022. The cash used in investing activities was primarily driven by capital expenditures to support our core battery business and our ongoing efforts to develop solid-state battery technology and manufacturing processes.

Financing Activities

Net cash provided by financing activities was $19.5 million for the year ended December 31, 2023, primarily as a result of proceeds $20.7 million from the June 2023 Offering.

Net cash provided by financing activities was $41.7 million for the year ended December 31, 2022, primarily as a result of proceeds from the $75.0 million term loan as part of the Business Combination, and $15.0 million from the strategic investment made by THOR, partially offset by a $45.0 million expense for the repayment of the senior secured notes.

Contractual Obligations

Our estimated future obligations consist of short-term and long-term operating and financing lease liabilities. As of December 31, 2023, we had $1.3 million in short-term operating and financing lease liabilities and $2.3 million in long-term operating, and financing lease liabilities. As disclosed above, we have a Term Loan and as of December 31, 2023, the principal amount outstanding under the Term Loan was $69.7 million.

As disclosed above, consistent with the Debt Commitment Letter dated May 15, 2022 by and between CCM 5, and EICF EIP, in connection with the Closing, Chardan, Legacy Dragonfly and the Initial Term Loan Lenders entered into the Term Loan Agreement setting forth the terms of a senior secured term loan facility in an aggregate principal amount of $75 million. The Chardan Lender backstopped its commitment under the Debt Commitment Letter by entering into a Backstop Commitment Letter, with the Backstop Lender, pursuant to which the Backstop Lender committed to purchase from the Chardan Lender the Backstopped Loans immediately following the issuance of the Term Loan on the Closing Date. Pursuant to an assignment agreement, the Backstopped Loans were assigned by CCM 5 to the Backstop Lender on the Closing Date.

Pursuant to the terms of the Term Loan Agreement, the Term Loan was advanced in one tranche on the Closing Date. The proceeds of the Term Loan were used (i) to refinance on the Closing Date prior indebtedness, (ii) to support thine Business Combination under the Business Combination Agreement, (iii) for working capital purposes and other corporate purposes, and (iv) to pay any fees associated with transactions contemplated under the Term Loan Agreement and the other loan documents entered into in connection therewith, including the transactions described in the foregoing clauses (i) and (ii) and fees and expenses related to the business combination. The Term Loan amortizes in the amount of 5% per annum beginning 24 months after the Closing Date and matures on the fourth anniversary of the Closing Date ("**Maturity Date**"). The Term Loan accrues interest (i) until April 1, 2023, at a per annum rate equal to the adjusted SOFR plus a margin equal to 13.5%, of which 7% will be payable in cash and 6.5% will be paid in-kind, (ii) thereafter until October 1, 2024, at a per annum rate equal to adjusted SOFR plus 7% payable in cash plus an amount ranging from 4.5% to 6.5%, depending on the senior leverage ratio of the consolidated company, which will be paid-in-kind and (iii) at all times thereafter, at a per annum rate equal to adjusted SOFR plus a margin ranging from 11.5% to 13.5% payable in cash, depending on the senior leverage ratio of the consolidated company. In each of the foregoing cases, adjusted SOFR will be no less than 1%.

JOBS Act Accounting Election

As an emerging growth company under the JOBS Act, we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. We have elected not to opt out of such extended transition period. Accordingly, when an accounting standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, will adopt the new or revised accounting standard at the time private companies adopt the new or revised accounting standard, unless early adoption is permitted by the accounting standard, and we elect early adoption. This may make comparison of our financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Not applicable.

Item 8. Financial Statements and Supplementary Data

Our consolidated audited financial statements as of and for the years ended December 31, 2023 and December 31, 2022, together with the report of the independent registered public accounting firm thereon and the notes thereto, are presented beginning at page F-2.

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

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") is (1) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and (2) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

As of December 31, 2023, our management, including with the participation of our Chief Executive Officer and Interim Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based upon the evaluation described above, our Chief Executive Officer and Interim Chief Financial Officer concluded that, for the reasons set forth below, our disclosure controls and procedures were not effective as of December 31, 2023.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f). Our internal control over financial reporting is a process designed under the supervision of our principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and preparation of our financial statements for external purposes in accordance with generally accepted accounting principles.

Due to its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and, even when determined to be effective, can only provide reasonable, not absolute, assurance with respect to financial statement preparation and presentation. Projections of any evaluation of effectiveness to future periods are subject to risk that controls may become inadequate as a result of changes in conditions or deterioration in the degree of compliance.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Interim Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("**COSO**") issued in May 2013 and related COSO guidance. Based on our evaluation under this framework, management concluded that, as of December 31, 2023, our internal control over financial reporting was not effective and could lead to a material misstatement of account balances or disclosures.

A material weakness is a control deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. Our management concluded that we have material weaknesses as a result of our failure to capture, and record, and pay tariffs correctly related to the imported merchandise on previously filed 2022 and 2021 financial statements.

Management's Remediation Measures

While we have improved our organizational capabilities and remediated the prior year material weaknesses during 2023, a new material weakness, described above, remains un-remediated as of December 31, 2023. Our remediation efforts will continue to take place. Management is committed to maintaining a strong internal control environment. In response to the identified material weaknesses in the prior year, management has taken a number of remediation actions during the year ended December 31, 2023, and are continuing its actions to remediate the 2023 material weakness around tariffs. Remediation actions taken during the year are outlined below.

We concluded that the material weaknesses identified in our Annual Report on Form 10-K for the year ended December 31, 2022 (discussed below) have been remediated (the "**Remediated Material Weaknesses**"):

> *Control Environment*. We concluded that we did not maintain effective controls in the following areas: (i) insufficient number of accounting and financial reporting resources with the appropriate level of knowledge, experience and training, (ii) ineffective identification and assessment of risks impacting internal control over financial reporting, and (iii) ineffective evaluation and determination as to whether the components of internal control were present and functioning.
>
> *Control activities*. We concluded that the material weaknesses contributed to the following additional material weaknesses in business processes: (i) designing and implementing procedures surrounding completion, accuracy and review of account reconciliations; (ii) designing and implementing controls to assess the completeness, accuracy and accounting analysis of material contracts entered into by us; (iii) designing and implementing controls to sufficiently supervise and review the work completed by specialist engaged by us; (iv) designing and implementing controls to ensure the accuracy of period-end inventory count procedures to ensure proper financial reporting; and (v) designing and implementing control procedures to ensure the accuracy of the financial statements to the underlying accounting records and ensure the completeness of required disclosures.

During the year ended December 31, 2023, we completed the implementation of the following remedial measures designed to remediate the material weaknesses in internal control over financial reporting noted in the December 31, 2022 Form 10-K:

- Engaged outside resources for complex accounting matters and drafting and retaining position papers for all complex, non-recurring transactions.
- Implemented a risk assessment process by which management identifies risks of misstatement related to all account balances.
- Developed monitoring activities and protocols that will allow us to timely assess the design and the operating effectiveness of controls over financial reporting and make necessary changes to the design of controls, if any.
- Segregated key functions within our financial and information technology processes supporting our internal controls over financial reporting.
- Continued to enhance and formalize our accounting, business operations, and information technology policies, procedures, and controls to achieve complete, accurate, and timely financial accounting, reporting and disclosures.
- Enhanced policies and procedures to retain adequate documentary evidence for certain management review controls over certain business processes including precision of review and evidence of review procedures performed to demonstrate effective operation of such controls.
- Developed internal controls documentation, including comprehensive accounting policies and procedures over financial processes, including around physical inventory observations, and related disclosures.
- Adopted a process to identify and assess our disclosure controls and procedures, including the preparation and review of presentation and disclosure requirement checklists.

We are also currently implementing additional measures to address the material weakness relating to tariffs, which include:

- Designing new controls to capture, record, and pay tariffs related to the imported merchandise.

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm on our internal control over financial reporting due to an exemption established by the JOBS Act for "emerging growth companies." In addition, we are currently a non-accelerated filer and are therefore not required to provide an attestation report on our internal control over financial reporting until such time as we are an accelerated filer or large accelerated filer.

Changes in Internal Control over Financial Reporting

Except for the material weakness and the remediation efforts described above, no other changes in our internal control over financial reporting (as defined by Rules 13a015(f) and 15d-15(f) under the Exchange Act) occurred during the quarter ended December 31, 2023, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

As a public company, we are required pursuant to Section 404(a) of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for each annual report on Form 10-K to be filed with the SEC. This assessment will need to include disclosure of any material weaknesses identified by our management in internal control over financial reporting. If in the future we are no longer classified under the definition of an "emerging growth company," and/or a "non-accelerated filer," our independent registered public accounting firm will also be required, pursuant to Section 404(b) of the Sarbanes-Oxley Act, to attest to the effectiveness of our internal control over financial reporting in each annual report on Form 10-K to be filed with the SEC. We will be required to disclose material changes made in our internal control over financial reporting on a quarterly basis. Failure to comply with the Sarbanes-Oxley Act could potentially subject us to sanctions or investigations by the SEC, Nasdaq, or other regulatory authorities, which would require additional financial and management resources.

Item 9B. Other Information

(a) Effective April 12, 2024, we entered into the Amended Employee Agreements with our Chief Executive Officer, our Chief Revenue Officer and our Chief Marketing Officer. The Amended Employee Agreements allow us to issue a combination of cash and equity awards on an annual basis up to a specified amount ($1,532,000 for our Chief Executive Officer, $490,000 for our Chief Revenue Officer and $236,000 for our Chief Marketing Officer), subject to approval and such other terms and conditions imposed by the compensation committee of the board of directors.

Effective April 12, 2024, we issued a total of 836,295 RSUs under the 2022 Plan to the following employees: (i) 567,407 RSUs to our Chief Executive Officer; (ii) 181,481 RSUs to our Chief Revenue Officer; and (iii) 87,407 RSUs to our Chief Marketing Officer. Each of the RSUs granted will vest in three equal annual installments, with the first vesting date on the one (1) year anniversary of the date of issuance and the following two vesting dates on each subsequent anniversary of the date of issuance, subject to each employees' continued employment as of each vesting date. In addition to the RSU awards, our Board also approved the following cash awards to the above referenced employees: (i) $510,666.67 to our Chief Executive Officer; (ii) $163,333.33 to our Chief Revenue Officer; and (iii) $78,667.67 to our Chief Marketing Officer. Each of the approved cash awards will not be paid out to the employees until we have achieved a minimum cash balance of $30,000,000, and are subject to each employee's continued employment on the date of payment.

On April 12, 2024, our Board issued each of our non-employee directors 222,222 RSUs in connection with their service as directors for the year ended December 31, 2023. The RSUs will vest in three equal annual installments, with the first vesting date on the one (1) year anniversary date of their issuance, subject to the directors continued service on our Board on each vesting date.

On April 15, 2024, our Board approved an amendment to our Director Compensation Policy offering directors long-term incentive awards that are issuable subject to the sole discretion of our compensation committee. Each such long-term incentive award is payable in the form of cash and or equity awards. Each such award shall be determined each fiscal year and are subject to the director's continued service with us and other conditions as our compensation committee deems appropriate. Where equity awards are issued, such awards are subject to the terms and conditions of the 2022 Plan.

On April 12, 2024, we entered into the Fernley Lease Agreement, pursuant to which we agreed to lease the approximately 64,000 square foot Premises located in Fernley, Nevada.

The initial term of the Fernley Lease Agreement (the "**Term**") is for a period of sixty (60) months, effective April 1, 2024. The base rent for the Premises, payable monthly, is $44,800.00 for the first twelve months of the Term and is subject to a three percent (3.0%) increase on the anniversary of each year. We also will be responsible for twenty-five percent (25%) of any operating expenses, taxes and insurance expenses incurred by the Landlord in connection with the building in which the Premises are located (the "**Expenses**") as well as utility expenses. The Expenses are subject to recalculation and increase upon the completion of the Initial Improvements (as defined in the Fernley Lease Agreement). The Landlord is responsible for completing the Initial Improvements. The Fernley Lease Agreement also contains customary default provisions allowing the Landlord to terminate the Fernley Lease Agreement if we fail to cure certain breaches of our obligations under the Fernley Lease Agreement within a specified period of time upon written notice to us. In addition, we are obligated to indemnify, and hold harmless, the Landlord for certain losses incurred in connection with or arising out of any injury to persons or damage to property occurring in or on the Premises, or resulting from any accident or other negligent or willfully wrongful act or omission of us on or about the Premises. Concurrent with the execution of the Fernley Lease Agreement, we paid the Landlord a security deposit of $50,422.79.

(b) During the fiscal quarter ended December 31, 2023, none of our directors or "officers" (as defined in Rule 16a-1(f) under the Exchange Act) adopted or terminated any "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(c) of Regulation S-K.

Item 9C. Disclosure Regarding Foreign Jurisdiction that Prevent Inspections

Not applicable.

PART III

Item 10. Directors, Executive Officers, and Corporate Governance

Information required by this item is incorporated by reference to our Proxy Statement for the 2024 Annual Meeting of Stockholders.

Item 11. Executive Compensation

Information required by this item is incorporated by reference to our Proxy Statement for the 2024 Annual Meeting of Stockholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Information required by this item is incorporated by reference to our Proxy Statement for the 2024 Annual Meeting of Stockholders.

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

Information required by this item is incorporated by reference to our Proxy Statement for the 2024 Annual Meeting of Stockholders.

Item 14. Principal Accounting Fees and Services

Information required by this item is incorporated by reference to our Proxy Statement for the 2024 Annual Meeting of Stockholders.

Part IV

Item 15. Exhibit and Financial Statement Schedules

(a) The following documents are filed as part of this report:

1. Financial Statements

The list of consolidated financial statements set forth in the accompanying Index to the Consolidated Financial Statements at page F-1 of this Annual Report on Form 10-K is incorporated herein by reference. Such consolidated financial statements are filed as part of this Annual Report on Form 10-K.

2. Financial Statement Schedules

All schedules have been omitted because the required information is either not required, not applicable or because the information required is included in the consolidated financial statements or notes thereto.

3. Exhibits

		Incorporated By Reference		
Exhibit No.	**Description**	**Form**	**Exhibit**	**Filing Date**
2.1#	Agreement and Plan of Merger, dated as of May 15, 2022, by and among Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.), Bronco Merger Sub, Inc. and Dragonfly Energy Corp. (included as Annex A to the proxy statement/prospectus).	S-4	2.1	07/22/2022
2.2	Amendment to Agreement and Plan of Merger, dated as of July 12, 2022, by and among Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.), Bronco Merger Sub, Inc. and Dragonfly Energy Corp.	S-4	2.1(a)	07/22/2022
2.3	Plan of Conversion.	8-K	2.1	03/31/2023
3.1	Articles of Incorporation of Dragonfly Energy Holdings Corp.	8-K	3.1	03/31/2023
3.2	Certificate of Amendment to the Articles of Incorporation of Dragonfly Energy Holdings Corp., dated November 29, 2023.	8-K	3.1	11/29/2023
3.3	Bylaws of Dragonfly Energy Holdings Corp.	8-K	3.2	03/31/2023
4.1	Specimen Common Stock Certificate of Dragonfly Energy Holdings Corp.	8-K	4.1	10/11/2022
4.2	Form of $10 Warrant of Dragonfly Energy Holdings Corp.	8-K	4.2	10/11/2022
4.3	Form of Penny Warrant of Dragonfly Energy Holdings Corp.	8-K	4.3	10/11/2022
4.4	Warrant Agreement, dated as of October 19, 2022, between Dragonfly Energy Holdings Corp. and American Stock Transfer & Trust Company, LLC.	S-1	4.4	10/21/2022
4.5	Specimen Warrant Certificate of Dragonfly Energy Holdings Corp.	10-K	4.5	4/17/2023
4.6	Promissory Note of the Company, dated March 5, 2023.	8-K	4.1	03/09/2023
4.7	Form of June 2023 Warrant.	8-K	4.1	06/21/2023
4.8	Form of Underwriters' Warrant.	S-1/A	4.8	06/14/2023
4.9	Form of December 2023 Lender Penny Warrant.	8-K	4.1	12/29/2023
4.10*	Description of Securities.			
10.1	Sponsor Support Agreement, dated as of May 15, 2022, by and among Chardan NexTech Investments 2 LLC, Dragonfly Energy Corp. and Chardan NexTech Investments 2 LLC (included as Annex E to the proxy statement/prospectus).	S-4	10.4	07/22/2022
10.2	Commitment Letter, dated as of May 15, 2022, by and among Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.), Dragonfly Energy Corp., CCM Investments 5 LLC and EICF Agent LLC (included as Annex J to the proxy statement/prospectus).	S-4	10.5	07/22/2022

10.3	Equity Facility Letter Agreement, dated as of May 15, 2022, by and among Dragonfly Energy Corp., Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.) and CCM Investments 5 LLC (included as Annex K to the proxy statement/prospectus).	S-4	10.6	07/22/2022
10.4	Subscription Agreement, dated as of May 15, 2022, between Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.) and Chardan NexTech Investments 2 LLC (included as Annex F to the proxy statement/prospectus).	S-4	10.7	07/22/2022
10.5++	Dragonfly Energy Holdings Corp. 2022 Equity Incentive Plan.	8-K	10.5	10/11/2022
10.6++	Dragonfly Energy Holdings Corp. Employee Stock Purchase Plan.	8-K	10.6	10/11/2022
10.7++	Form of Director Indemnification Agreement.	S-4/A	10.10	09/14/2022
10.8	Multi-tenant Industrial Triple Net Lease, dated as of March 1, 2021, between Dragonfly Energy Corp. and Icon Reno Property Owner Pool 3 Nevada, LLC.	S-4	10.11	07/22/2022
10.9	Lease, dated as of February 8, 2022, between Dragonfly Energy Corp. and Prologis, L.P.	S-4	10.12	07/22/2022
10.10#	Purchase Agreement, dated as of October 7, 2022, between Dragonfly Energy Holdings Corp. and Chardan Capital Markets LLC.	8-K	10.10	10/11/2022
10.11	Registration Rights Agreement, dated as of October 7, 2022, between Dragonfly Energy Holdings Corp. and Chardan Capital Markets LLC.	8-K	10.11	10/11/2022
10.12	Term Loan Agreement, dated as of October 7, 2022, by and among the Dragonfly Energy Holdings Corp., Dragonfly Energy Corp., the lenders from time to time party thereto and Alter Domus (US) LLC.	8-K	10.12	10/11/2022
10.13	Pledge Agreement, dated as of October 7, 2022, by and among Dragonfly Energy Holdings Corp. and Alter Domus (US) LLC.	8-K	10.13	10/11/2022
10.14++	Employment Agreement, dated as of January 1, 2022, by and between Dragonfly Energy Corp. and Denis Phares.	8-K	10.14	10/11/2022
10.15++	Amendment to Employment Agreement, dated as of May 15, 2022, by and between Dragonfly Energy Corp. and Denis Phares.	8-K	10.15	10/11/2022
10.16++	Employment Agreement, dated as of January 1, 2022, by and between Dragonfly Energy Corp. and Sean Nichols.	8-K	10.16	10/11/2022
10.17++	Amendment to Employment Agreement, dated as of May 15, 2022, by and between Dragonfly Energy Corp. and Sean Nichols.	8-K	10.17	10/11/2022
10.18++	Employment Agreement, dated as of August 17, 2021, by and between Dragonfly Energy Corp. and John Marchetti.	8-K	10.18	10/11/2022
10.19++	Dragonfly Energy Corp. 2019 Stock Incentive Plan.	8-K	10.19	10/11/2022
10.20++	Dragonfly Energy Corp. 2021 Stock Incentive Plan.	8-K	10.20	10/11/2022
10.21	Amended and Restated Registration Rights Agreement, dated as of October 7, 2022, by and among Dragonfly Energy Holdings Corp. and each of the stockholders thereto.	8-K	10.21	10/11/2022
10.22++	Director Compensation Policy.	S-1	10.22	11/4/2022
10.23++	Employment Agreement, dated as of October 11, 2022, by and between Dragonfly Energy Holdings Corp. and Denis Phares.	S-1	10.23	11/4/2022
10.24++	Employment Agreement, dated as of October 11, 2022, by and between Dragonfly Energy Holdings Corp. and John Marchetti.	S-1	10.24	11/4/2022
10.25++	First Amended and Restated Employment Agreement, dated February 24, 2023, by and between Dragonfly Energy Holdings Corp. and John Marchetti.	8-K	10.1	03/02/2023
10.26	Separation Agreement by and between Dragonfly Energy Holdings Corp. and Sean Nichols, dated October 25, 2022.	10-K	10.26	04/17/2023
10.27	First Amendment to Separation Agreement by and between Dragonfly Energy Holdings Corp. and Sean Nichols, dated November 14, 2022.	10-K	10.27	04/17/2023
10.28	Asset Purchase Agreement, dated April 22, 2022, by and among Dragonfly Energy Corp., Thomason Jones Company, LLC, William Thomason and Richard Jones.	10-K	10.28	04/17/2023
10.29	Manufacturing Supply Agreement, dated November 19, 2021, by and between Dragonfly Energy Holdings Corp. and Keystone RV Company.	10-K	10.29	04/17/2023

10.30	Asset Purchase Agreement, dated January 1, 2022, by and between Dragonfly Energy Holdings Corp. and Bourns Productions, Inc.	10-K	10.30	04/17/2023
10.31	Assignment and Assumption Agreement, dated January 1, 2022, by and between Dragonfly Energy Corp. and Bourns Productions, Inc.	10-K	10.31	04/17/2023
10.32	Assignment and Assumption of Lease Agreement, dated January 1, 2022, by and among Dragonfly Energy Corp., Bourns Productions, Inc. and Los Angeles & Steel Co.	10-K	10.32	04/17/2023
10.33	Research and Development Lab Lease, dated April 25, 2019, by and between Dragonfly Energy Corp. and BRE RS Greg Park Owner LLC.	10-K	10.33	04/17/2023
10.34	Amendment No. 1 to Research and Lab Lease, dated March 12, 2020, by and between Dragonfly Energy Corp. and DRE RS Greg Park Owner LLC.	10-K	10.34	04/17/2023
10.35	Amendment No. 2 to Research and Lab Lease, dated July 27, 2020, by and between Dragonfly Energy Corp. and DRE RS Greg Park Owner LLC.	10-K	10.35	04/17/2023
10.36	Amendment No. 3 to Research and Lab Lease, dated August 26, 2020, by and between Dragonfly Energy Corp. and DRE RS Greg Park Owner LLC.	10-K	10.36	04/17/2023
10.37	Amendment No. 4 to Research and Lab Lease, dated December 16, 2020, by and between Dragonfly Energy Corp. and BRS RS Greg Park Owner LLC.	10-K	10.37	04/17/2023
10.38	Amendment No. 5 to Research and Lab Lease, dated January 28, 2022, by and between Dragonfly Energy Corp. and BRS RS Greg Park Owner LLC.	10-K	10.38	04/17/2023
10.39	Limited Waiver, dated as of March 29, 2023, to the Term Loan, Guarantee and Security Agreement, dated as of October 7, 2022, by and among Dragonfly Energy Holdings Corp., Dragonfly Energy Corp., the lenders from time to time party thereto and Alter Domus (US) LLC.	8-K	10.1	03/29/2023
10.40	Limited Waiver, dated as of December 29, 2023, to the Term Loan, Guarantee and Security Agreement, dated as of October 7, 2022, by and among Dragonfly Energy Holdings Corp., Dragonfly Energy Corp., the lenders from time to time party thereto and Alter Domus (US) LLC.	8-K	10.1	12/29/2023
10.42*++	Employment Agreement, dated as of November 7, 2022, by and between Dragonfly Energy Holdings Corp. and Wade Seaburg.			
10.43*++	Employment Agreement, dated as of November 7, 2022, by and between Dragonfly Energy Holdings Corp. and Tyler Bourns.			
10.44*	Fernley Lease, dated April 12, 2024, by and between Dragonfly Energy Corp., Cottonmill Properties, LLC, and Marlene Thier.			
10.45*++	Amendment No. 1 to Employment Agreement, effective as of April 12, 2024, by and between Dragonfly Energy Holdings Corp. and Denis Phares.			
10.46*++	Amendment No. 1 to Employment Agreement, effective as of April 12, 2024, by and between Dragonfly Energy Holdings Corp. and Wade Seaburg.			
10.47*++	Amendment No. 1 to Employment Agreement, effective as of April 12, 2024, by and between Dragonfly Energy Holdings Corp. and Tyler Bourns.			
16.1	Letter dated November 21, 2023 from BDO USA, P.C. to the Securities Exchange Commission.	8-K	16.1	11/21/2023
21.1	List of Subsidiaries.	8-K	21.1	10/11/2022
23.1*	Consent of Marcum LLP			
23.2*	Consent of BDO USA, P.C.			
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 Principal 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 Chief Executive Officer Required Under Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. §1350.			
97.1*	Dragonfly Energy Holdings Corp. Compensation Recovery Policy.			
101.INS*	Inline XBRL Instance Document.			
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.			
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.			
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.			
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.			
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.			
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document).			

* Filed herewith.

** Furnished herewith.

\# Portions of schedules and exhibits to the agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

++ Indicates a management contract or compensatory plan.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Annual Report to be signed on its behalf by the undersigned, thereunto duly authorized, in Reno, Nevada, on the 16th day of April, 2024.

DRAGONFLY ENERGY HOLDINGS CORP.

By: */s/ Denis Phares*
Denis Phares
Chief Executive Officer, Interim Chief Financial Officer and President
(Principal Executive Officer and Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Act of 1933, this Annual Report has been signed by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
/s/ Denis Phares Denis Phares	Chief Executive Officer, Interim Chief Financial Officer, President and Chairman (Principal Executive Officer and Principal Financial and Accounting Officer)	April 16, 2024
/s/ Jonathan Bellows Jonathan Bellows	Director	April 16, 2024
/s/ Perry Boyle Perry Boyle	Director	April 16, 2024
/s/ Karina Montilla Edmonds Karina Montilla Edmonds	Director	April 16, 2024
/s/ Luisa Ingargiola Luisa Ingargiola	Director	April 16, 2024
/s/ Brian Nelson Brian Nelson	Director	April 16, 2024
/s/ Rick Parod Rick Parod	Director	April 16, 2024

Item 8. Financial Statements and Supplemental Data

DRAGONFLY ENERGY HOLDINGS CORP.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors
of Dragonfly Energy Holdings Corp.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Dragonfly Energy Holdings Corp. (the "Company") as of December 31, 2023, the related consolidated statements of operations, stockholders' equity and cash flows for the year ended December 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023, and the results of its operations and its cash flows for the year ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 15 to the financial statements, the 2022 financial statements have been revised to correct for the under reporting of tariffs. The financial statements of the Company for the year ended December 31, 2022, before the effects of the adjustments to correct the errors discussed in Note 15 to the financial statements, were audited by other auditors whose report, dated April 17, 2023, expressed an unqualified opinion on those statements and included an explanatory paragraph regarding the Company's ability to continue as a going concern. We have also audited the adjustments described in Note 15 that were applied to revise the 2022 financial statements to correct the errors. In our opinion, such adjustments are appropriate and have been properly applied. Except for the corrections described in Note 15 we were not engaged to audit, review, or apply any procedures to the financial position of the Company as of December 31, 2022, and the results of its operations and its cash flows for the year then ended, other than stated above and, accordingly, we do not express an opinion or any other form of assurance on the 2022 financial statements taken as a whole.

Explanatory Paragraph – Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As more fully described in Note 2, the Company incurred loss from operations and had negative cash flow from operations and concluded it is probable the Company will not comply with future covenants of the Term Loan and does not have sufficient resources to repay the Term Loan, which raises substantial doubt about its ability to continue as a going concern. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

/s/ Marcum LLP

Marcum LLP

We served as the Company's auditor since 2023.

New York, NY
April 16, 2024

Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors

Dragonfly Energy Holdings Corp.

Reno, Nevada

Opinion on the Consolidated Financial Statements

We have audited, before the effects of the adjustments for the correction of the error described in Note 15, the accompanying consolidated balance sheet of Dragonfly Energy Holdings Corp. (the "Company") as of December 31, 2022, the related consolidated statements of operations, shareholders' equity, and cash flows for the year then ended (the 2022 consolidated financial statements before the effects of the adjustments discussed in Note 15 are not presented herein). In our opinion, except for the error described in Note 15, the 2022 consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

We were not engaged to audit, review, or apply any procedures to the adjustments for the correction of the error described in Note 15 and, accordingly, we do not express an opinion or any other form of assurance about whether such adjustments are appropriate and have been properly applied. Those adjustments were audited by Marcum LLP.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company has incurred losses and has a negative cash flow from operations and concluded it is probable the Company will not comply with future covenants of the Term Loan and does not have sufficient resources to repay the Term Loan, which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

/s/ BDO USA, LLP

We served as the Company's auditor from 2021 to 2023.

Spokane, Washington

April 17, 2023

DRAGONFLY ENERGY HOLDINGS CORP.
CONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2023 AND 2022
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	2023	2022
Current Assets		
Cash and cash equivalents	$ 12,713	$ 17,781
Accounts receivable, net of allowance for credit losses	1,639	1,444
Inventory	38,778	50,189
Prepaid expenses	772	1,624
Prepaid inventory	1,381	2,002
Prepaid income tax	519	525
Other current assets	118	267
Total Current Assets	55,920	73,832
Property and Equipment		
Machinery and equipment	16,714	10,214
Office furniture and equipment	319	275
Leasehold improvements	1,727	1,709
Vehicle	33	195
Total	18,793	12,393
Less accumulated depreciation	(2,824)	(1,633)
Property and Equipment	15,969	10,760
Operating lease right of use asset, net	3,315	4,513
Total Assets	$ 75,204	$ 89,105
Current Liabilities		
Accounts payable	10,258	13,475
Accrued payroll and other liabilities	7,107	6,250
Accrued tariffs	1,713	932
Customer deposits	201	238
Uncertain tax position liability	91	128
Notes payable, current portion, net of debt issuance costs	19,683	19,242
Operating lease liability, current portion	1,288	1,188
Financing lease liability, current portion	36	10
Total Current Liabilities	40,377	41,463
Long-Term Liabilities		
Warrant liabilities	4,463	32,831
Accrued expenses-long term	152	492
Operating lease liability, net of current portion	2,234	3,541
Financing lease liability, net of current portion	66	35
Total Long-Term Liabilities	6,915	36,899
Total Liabilities	47,292	78,362
Commitments and Contingencies (See Note 6)		
Stockholders' Equity		
Preferred stock, 5,000,000 shares at $0.0001 par value, authorized, no shares issued and outstanding as of December 31, 2023 and 2022, respectively	-	-
Common stock, 250,000,000 shares at $0.0001 par value, authorized, 60,260,282 and 43,272,728 shares issued and outstanding as of December 31, 2023 and 2022, respectively	6	4
Additional paid in capital	69,445	38,461
Accumulated deficit	(41,539)	(27,722)
Total Stockholders' Equity	27,912	10,743
Total Liabilities and Stockholders' Equity	$ 75,204	$ 89,105

DRAGONFLY ENERGY HOLDINGS CORP.
CONSOLIDATED STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 31, 2023 AND 2022
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	2023	2022
Net Sales	$ 64,392	$ 86,251
Cost of Goods Sold	48,946	62,633
Gross Profit	15,446	23,618
Operating Expenses		
Research and development	3,863	2,764
General and administrative	26,389	41,566
Selling and marketing	12,623	13,671
Total Operating Expenses	42,875	58,001
Loss From Operations	(27,429)	(34,383)
Other Income (Expense)		
Other income (expense)	19	40
Interest expense, net	(16,015)	(6,979)
Change in fair market value of warrant liability	29,582	5,446
Debt extinguishment	-	(4,824)
Total Other Income (Expense)	13,586	(6,317)
Loss Before Taxes	(13,843)	(40,700)
Income Tax Benefit	(26)	(709)
Net Loss	$ (13,817)	$ (39,991)
Loss Per Share- Basic and Diluted	$ (0.26)	$ (1.04)
Weighted Average Number of Shares – Basic and Diluted	52,786,481	38,565,307

DRAGONFLY ENERGY HOLDINGS CORP.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
YEARS ENDED DECEMBER 31, 2023 AND 2022
(IN THOUSANDS, EXCEPT SHARE DATA)

	Common Stock		Additional Paid-In	Accumulated	
	Shares	Amount	Capital	Deficit	Total
Balance – January 1, 2022	36,496,998	4	3,619	12,269	15,892
Net loss	-	-	-	(39,991)	(39,991)
Stock purchase agreement	1,498,301	-	15,000	-	15,000
Exercise of stock options	581,351	-	706	-	706
Reverse capitalization, net of transaction costs (See note 3)	4,238,936	-	-	-	-
Cashless exercise of liability classified warrants	457,142	-	16,669	-	16,669
Stock compensation expense	-	-	2,467	-	2,467
Balance – December 31, 2022	43,272,728	4	38,461	(27,722)	10,743
Net loss	-	-	-	(13,817)	(13,817)
Common stock issued in public offering (ATM), net of costs	588,500	-	1,273	-	1,273
Common stock issued in public offering, net of costs	11,405,000	1	7,877	-	7,878
Exercise of stock options	917,662	-	586	-	586
Exercise of public warrants	64,971	-	747	-	747
Exercise of investor warrants	273,100	-	546	-	546
Cashless exercise of liability classified warrants	3,069,323	1	13,245	-	13,245
Shares issued for vested restricted stock units	641,998	-	-	-	-
Stock compensation expense	-	-	6,710	-	6,710
Balance – December 31, 2023	60,260,282	$ 6	$ 69,445	$ (41,539)	$ 27,912

DRAGONFLY ENERGY HOLDINGS CORP.
CONSOLIDATED STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31, 2023 AND 2022
(IN THOUSANDS)

	2023	2022
Cash flows from Operating Activities		
Net Loss	$ (13,817)	$ (39,991)
Adjustments to Reconcile Net Loss to Net Cash		
Used in Operating Activities		
Stock based compensation	6,710	2,467
Debt extinguishment	-	4,824
Assumption of warrant liability	-	1,990
Amortization of debt discount	1,470	1,822
Change in fair market value of warrant liability	(29,582)	(5,446)
Deferred tax liability	-	(453)
Non-cash interest expense (paid-in kind)	4,938	1,192
Provision for credit losses	114	108
Depreciation	1,237	891
Loss on disposal of property and equipment	116	56
Write-off of prepaid inventory	596	-
Changes in Assets and Liabilities		
Accounts receivable	(309)	(769)
Inventories	11,411	(22,732)
Prepaid expenses	852	(1,467)
Prepaid inventory	25	5,459
Other current assets	149	1,520
Other assets	1,198	1,196
Income taxes payable	6	(1,156)
Accounts payable and accrued expenses	(3,527)	4,428
Accrued tariffs	781	433
Uncertain tax position liability	(37)	128
Customer deposits	(37)	(196)
Total Adjustments	(3,889)	(5,705)
Net Cash Used in Operating Activities	(17,706)	(45,696)
Cash Flows From Investing Activities		
Proceeds from disposal of property and equipment	-	35
Purchase of property and equipment	(6,885)	(6,862)
Net Cash Used in Investing Activities	(6,885)	(6,827)

DRAGONFLY ENERGY HOLDINGS CORP.
CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)
YEARS ENDED DECEMBER 31, 2023 AND 2022
(IN THOUSANDS)

(continued from previous page)	2023	2022
Cash Flows From Financing Activities		
Proceeds from public offering	24,177	-
Payments from public offering costs	(1,258)	
Proceeds from note payable, related party	1,000	-
Repayment of note payable, related party	(1,000)	-
Proceeds from term loan	-	75,000
Repayment of note payable	(5,275)	(45,000)
Proceeds from exercise of public warrants	747	-
Payment of debt issuance costs	-	(4,032)
Proceeds from exercise of options	586	706
Proceeds from stock purchase agreement	-	15,000
Proceeds from exercise of investor warrants	546	-
Net Cash Provided by Financing Activities	19,523	41,674
Net Decrease in Cash and cash equivalents	(5,068)	(10,849)
Cash and cash equivalents – beginning of year	17,781	28,630
Cash and cash equivalents – end of year	$ 12,713	$ 17,781
Supplemental Disclosures of Cash Flow Information:		
Cash paid for income taxes	$ 238	$ 773
Cash paid for interest	$ 9,102	$ 2,252
Supplemental Non-Cash Items		
Purchases of property and equipment, not yet paid	$ 96	$ 419
Recognition of warrant liability – Investor Warrants	$ 13,762	$ -
Recognition of warrant liability – Penny Warrants	$ 698	$ -
Non-cash impact of cash exercise of liability classified warrants	$ 617	$ -
Cashless exercise of liability classified warrants	$ 12,629	$ 16,669

NOTE 1 – NATURE OF BUSINESS

Dragonfly Energy Holdings Corp. ("New Dragonfly" or the "Company") sells lithium-ion battery packs for use in a wide variety of applications. The Company sells to distributors under the Dragonfly Energy brand name, and sells direct to consumers under the trade name Battleborn Batteries. In addition, the Company develops technology for improved lithium-ion battery manufacturing and assembly methods.

On October 7, 2022, a merger transaction between Chardan NexTech Acquisition 2 Corporation ("CNTQ"), Dragonfly Energy Corp. ("Legacy Dragonfly"), and Bronco Merger Sub, Inc. ("Merger Sub") was completed pursuant to which Merger Sub was merged with and into Legacy Dragonfly, with Legacy Dragonfly surviving the merger. As a result of the merger, Legacy Dragonfly became a wholly owned subsidiary of New Dragonfly.

Although New Dragonfly was the legal acquirer of Legacy Dragonfly in the merger, Legacy Dragonfly is deemed to be the accounting acquirer, and the historical financial statements of Legacy Dragonfly became the basis for the historical financial statements of New Dragonfly upon the closing of the merger. New Dragonfly together with its wholly owned subsidiary, Dragonfly Energy Corp., is referred to hereinafter as the "Company".

Furthermore, the historical financial statements of Legacy Dragonfly became the historical financial statements of the Company upon the consummation of the merger. As a result, the financial statements included in this Annual Report reflect (i) the historical operating results of Legacy Dragonfly prior to the merger; (ii) the combined results of CNTQ and Legacy Dragonfly following the close of the merger; (iii) the assets and liabilities of Legacy Dragonfly at their historical cost and (iv) the Legacy Dragonfly's equity structure for all periods presented, as affected by the recapitalization presentation after completion of the merger. See Note 3 – Reverse Capitalization for further details of the merger.

On March 31, 2023, the Company changed its state of incorporation from the State of Delaware to the State of Nevada (the "Reincorporation") pursuant to a plan of conversion dated March 30, 2023 (the "Plan of Conversion"). Pursuant to the Plan of Conversion, the issued and outstanding shares of common stock of the Company were automatically converted into common stock of the reincorporated company at the effective time of the Reincorporation.

On November 29, 2023, the Company filed an amendment to the articles of incorporation with the State of Nevada, to increase the number of authorized shares of its common stock to 250,000,000 shares. The par value remained at $0.0001 per share.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND GOING CONCERN

Basis of presentation

The accompanying consolidated financial statements and related notes have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and in accordance with generally accepted accounting principles generally accepted in the United States of America ("U.S. GAAP") and present the consolidated financial statements of the Company and its wholly owned subsidiary.

Principles of consolidation

The accompanying consolidated financial statements and related notes have been prepared in accordance with U.S. GAAP and present the consolidated financial statements of the Company and its wholly owned subsidiary. All significant intercompany transactions and balances are eliminated in consolidation.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Going Concern

The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

For the year ended December 31, 2023 and 2022, the Company incurred loss from operations and had negative cash flow from operations. As of December 31, 2023, the Company had $12,713 in cash and cash equivalents and working capital of $15,543. The Company's ability to achieve profitability and positive cash flow depends on its ability to increase revenue, contain its expenses and maintain compliance with the financial covenants in its outstanding indebtedness agreements.

In connection with the Company's senior secured term loan facility in an aggregate principal amount of $75,000 (the "Term Loan"), the Company is obligated to comply with certain financial covenants, which include maintaining a maximum senior leverage ratio, minimum liquidity, a springing fixed charge coverage ratio, and maximum capital expenditures **(See Note 7).** On March 29, 2023, the Company obtained a waiver from the Term Loan administrative agent and lenders of its failures to satisfy the fixed charge coverage ratio and maximum senior leverage ratio with respect to the minimum cash requirements under the Term Loan during the quarter ended March 31, 2023. On September 29, 2023 and December 29, 2023, the Company obtained a second and third waiver from the Term Loan administrative agent and lenders of its failures to satisfy the fixed charge coverage ratio and maximum senior leverage ratio with respect to the minimum cash requirements under the Term Loan during the quarters ended September 30, 2023 and December 31, 2023. On March 31, 2024, the Company obtained a waiver from the Term Loan administrative agent and lenders of its failures to satisfy the liquidity test during the quarter ended March 31, 2023. If the Company is unable to obtain a waiver or if the Company is unable to comply with such covenants, the lenders have the right to accelerate the maturity of the Term Loan. These conditions raise substantial doubt about the Company's ability to continue as a going concern.

In addition, the Company may need to raise additional debt and/or equity financings to fund its operations, strategic plans, and meet its financial covenants. The Company has historically been able to raise additional capital through issuance of equity and/or debt financings and the Company intends to use its equity facility and raise additional capital as needed. However, the Company cannot guarantee that it will be able to raise additional equity, contain expenses, or increase revenue, and comply with the financial covenants under the Term Loan.

Recently adopted accounting pronouncements:

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. The FASB subsequently issued amendments to ASU 2016-13, which have the same effective date and transition date of January 1, 2023. These standards replace the existing incurred loss impairment model with an expected credit loss model and requires a financial asset measure at amortized cost to be presented at the net amount expected to be collected. The Company determined that this change did not have a material impact to the financial statements or financial statement disclosures.

Recently issued accounting pronouncements:

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures ("ASU 2023-07"). ASU 2023-07 requires, among other updates, enhanced disclosures about significant segment expenses that are regularly provided to the CODM, as well as the aggregate amount of other segment items included in the reported measure of segment profit or loss. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, and requires retrospective adoption. Early adoption is permitted. The Company is evaluating the impact of this guidance on its consolidated financial statements and related disclosures

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures ("ASU 2023-09"). ASU 2023-09 requires enhanced annual disclosures regarding the rate reconciliation and income taxes paid information. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, and may be adopted on a prospective or retrospective basis. Early adoption is permitted. The Company is evaluating the impact of this guidance on its consolidated financial statements and related disclosures.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Cash and Cash Equivalents

The Company considers all short-term debt securities when purchased with a maturity of three months or less to be cash equivalents. As of December 31, 2023 and 2022, the Company held no Cash Equivalents.

From time to time the Company has amounts on deposit with financial institutions that exceed federally insured limits. The Company has not experienced any significant losses in such accounts.

Accounts Receivable

The Company's trade receivables are recorded when billed and represent claims against third parties that will be settled in cash. Generally, payment is due from customers within 30- 90 days of the invoice date and the contracts do not have significant financing components. Trade accounts receivables are recorded gross and are net of any applicable allowance. The allowance for credit losses as of December 31, 2023 and 2022 were not material.

Inventory

Inventories **(Note 5),** which consist of raw materials and finished goods, are stated at the lower of cost (first in, first out) or net realizable value, net of reserves for obsolete inventory. We continually analyze our slow moving and excess inventories. Based on historical and projected sales volumes and anticipated selling prices, we established reserves. Inventory that is in excess of current and projected use is reduced by an allowance to a level that approximates its estimate of future demand. Products that are determined to be obsolete are written down to net realizable value. The Company had a reserve of $67 and $0 as of December 31, 2023 and 2022, respectively.

Property and Equipment

Property and equipment are stated at cost, including the cost of significant improvements and renovations. Costs of routine repairs and maintenance are charged to expense as incurred. Depreciation and amortization are calculated by the straight line method over the estimated useful lives for owned property, or, for leasehold improvements, over the shorter of the asset's useful life or term of the lease. Depreciation expense for the years ended December 31, 2023 and 2022 was $1,237 and $891, respectively.

The various classes of property and equipment and estimated useful lives are as follows:

Office furniture and equipment	3 to 7 years
Vehicles	5 years
Machinery and equipment	3 to 7 years
Leasehold improvements	Shorter of Useful Life or Remaining Term of Lease

Use of Estimates

The preparation of financial statements in conformity with U.S GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The Company utilizes the use of estimates in its calculations for the reserve for obsolete or slow moving inventory, warrant liability, equity based compensation, and income taxes.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Impairment of Long-Lived Assets

The Company evaluates its long-lived assets, including property and equipment, for impairment whenever events or changes in circumstances indicate that the carrying amount of these asset may not be recoverable. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate over its remaining life. When indications of impairment are present and the estimated undiscounted future cash flows from the use of these assets is less than the assets' carrying value, the related assets will be written down to fair value. There were no impairments of the Company's long-lived assets for the periods presented.

Warrants

The Company applies relevant accounting guidance for warrants to purchase the Company's stock based on the nature of the relationship with the counterparty. For warrants issued to investors or lenders in exchange for cash or other financial assets, the Company follows guidance issued within ASC 480, Distinguishing Liabilities from Equity ("ASC 480"), and ASC 815, Derivatives and Hedging ("ASC 815"), to assist in the determination of whether the warrants should be classified as liabilities or equity. Warrants that are determined to require liability classification are measured at fair value upon issuance and are subsequently remeasured to their then fair value at each subsequent reporting period with changes in fair value recorded in current earnings. Warrants that are determined to qualify for equity classification are measured at fair value upon issuance and are not subsequently remeasured unless they are required to be reclassified.

Commitments and Contingencies

Liabilities for loss contingencies arising from claims, assessments, litigation, fines, and penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. Legal costs incurred in connection with loss contingencies are expensed as incurred.

Revenue Recognition

Under Topic 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration that the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of Topic 606, the entity performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable the entity will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer.

Revenue is recognized when control of the promised goods is transferred to the customer or reseller, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods and services. Revenue associated with products holding rights of return are recognized when the Company concludes there is not a risk of significant revenue reversal in the future periods for the expected consideration in the transaction. There are no material instances including discounts and refunds where variable consideration is constrained and not recorded at the initial time of sale. Generally, our revenue is recognized at a point in time for standard promised goods at the time of shipment when title and risk of loss pass to the customer.

The Company may receive payments at the onset of the contract before delivery of goods for customers in the retail channel. Payment terms for distributors and OEMs are typically due within 30-90 days after shipment. In such instances, the Company records a customer deposit liability. The Company recognizes these contract liabilities as sales after the revenue criteria are met. As of December 31, 2023 and 2022, the contract liability related to the Company's customer deposits approximated $201 and $238, respectively.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

The Company recognized $230 of the contract liability pertaining to the year ended December 31, 2022 during the year ended December 31, 2023. After the year ended December 31, 2023, the residual balance of $8 was recognized during the quarter ending March 31, 2024. The entire contract liability balance of $434 as of January 1, 2022 was recognized as revenue during the year ended December 31, 2022.

Disaggregation of Revenue

The following table present our disaggregated revenues by distribution channel:

	December 31,	
Sales	2023	2022
Direct to Customer	36,875	52,446
Original equipment manufacturer	27,517	33,805
Total	$ 64,392	$ 86,251

During the year ended December 31, 2023, the Company deemed it more appropriate to classify Retail and Distributor revenues as a single line item referred to as direct-to-consumer revenue. The Company has combined previously reported retail and distributor amounts to direct-to-consumer revenue to conform with current year presentation. The consolidation into direct-to-consumer revenue is motivated by the Company's strategic perspective on its operations and better represents how it evaluates their sales channels.

Shipping and Handling

Shipping and handling fees paid by customers are recorded within net sales, with the related expenses recorded in cost of sales. Shipping and handling costs associated with outbound freight are included in sales and marketing expenses. Shipping and handling costs associated with outbound freight totaled $3,466 and $5,440 for the years ended December 31, 2023 and 2022, respectively.

Product Warranty

The Company offers assurance type warranties from 5 to 10 years on its products. The Company estimates the costs associated with the warranty obligation using historical data of warranty claims and costs incurred to satisfy those claims. The Company estimates, based upon a review of historical warranty claim experience, the costs that may be incurred under our warranties and record a liability in the amount of such estimate at the time a product is sold. Factors that affect our warranty liability include the number of units sold, historical and anticipated rates of warranty claims, and cost per claim. We periodically assess the adequacy of our recorded warranty liability and adjust the accrual as claims data and historical experience warrants. The Company has assessed the costs of fulfilling its existing assurance type warranties and has determined that the estimated outstanding warranty obligation on December 31, 2023 and 2022 to be $307 and $328, respectively.

	December 31,	
	2023	2022
Beginning warranty obligation	$ 328	$ -
Provision of warranty expense	397	328
Settlement of warranty claims	(418)	-
Ending warranty obligation	$ 307	$ 328

Concentrations

Receivables from two customers comprised approximately 28% and 10%, respectively, of accounts receivable as of December 31, 2023. Receivables from three customers comprised approximately 18%, 10% and 10%, respectively, of accounts receivable as of December 31, 2022. There are no other significant accounts receivable concentration.

Sales from one customer comprised approximately 16% of revenue for the year ended December 31, 2023. Sales from one customer accounted for approximately 22% of revenue for the year ended December 31, 2022.

Payables to one vendor comprised approximately 65% of accounts payables as of December 31, 2023. Payables to one vendor comprised approximately 61% of accounts payables as of December 31, 2022.

For the year ended December 31, 2023, one vendor accounted for approximately 14% of the Company's total purchases.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Concentrations (continued)

For the year ended December 31, 2022, one vendor accounted for approximately 28% of the Company's total purchases.

Deferred Financing Costs

The incremental cost, including the fair value of warrants, directly associated with obtaining debt financing is capitalized as deferred financing costs upon the issuance of the debt and amortized over the term of the related debt agreement using the effective-interest method with such amortized amounts included as a component of interest expense in the consolidated statement of operations. Unamortized deferred financing costs are presented on the consolidated balance sheets as a direct deduction from the carrying amount of the related debt obligation.

Research and Development

The Company expenses research and development costs as incurred. Research and development expenses include salaries, contractor and consultant fees, supplies and materials, as well as costs related to other overhead such as depreciation, facilities, utilities, and other departmental expenses. The costs we incur with respect to internally developed technology and engineering services are included in research and development expenses as incurred as they do not directly relate to acquisition or construction of materials, property or intangible assets that have alternative future uses.

Advertising

The Company expenses advertising costs as they are incurred and are included in selling and marketing expenses. Advertising expenses amounted to $2,167 and $2,334 for the years ended December 31, 2023 and 2022, respectively.

Stock-Based Compensation

The Company accounts for stock based compensation arrangements with employees and non employee consultants using a fair value method which requires the recognition of compensation expense for costs related to all stock based payments, including stock options (Note 12). The fair value method requires the Company to estimate the fair value of stock based payment awards to employees and non employees on the date of grant using an option pricing model. Stock based compensation costs are based on the fair value of the underlying option calculated using the Black Scholes option pricing model and recognized as expense on a straight line basis over the requisite service period, which is the vesting period. Restricted stock unit awards are valued based on the closing trading value of the Company's common stock on the date of grant and then amortized on a straight-line basis over the requisite service period of the award. The Company measures equity based compensation awards granted to non employees at fair value as the awards vest and recognizes the resulting value as compensation expense at each financial reporting period.

Determining the appropriate fair value model and related assumptions requires judgment, including estimating stock price volatility, expected dividend yield, expected term, risk free rate of return, and the estimated fair value of the underlying common stock. Due to the lack of company specific historical and implied volatility data, the Company has based its estimate of expected volatility on the historical volatility of a group of similar companies that are publicly traded. The historical volatility is calculated based on a period of time commensurate with the expected term assumption. The group of representative companies have characteristics similar to the Company, including stage of product development and focus on the lithium-ion battery industry. The Company uses the simplified method, which is the average of the final vesting tranche date and the contractual term, to calculate the expected term for options granted to employees as it does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term. The risk free interest rate is based on a treasury instrument whose term is consistent with the expected term of the stock options. The Company uses an assumed dividend yield of zero as the Company has never paid dividends and has no current plans to pay any dividends on its common stock. The Company accounts for forfeitures as they occur.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Income Taxes

Deferred income tax assets and liabilities (Note 15) are determined based on the estimated future tax effects of net operating loss, credit carryforwards and temporary differences between the tax basis of assets and liabilities and their respective financial reporting amounts measured at the current enacted tax rates.

The Company recognizes a tax benefit for an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The Company has a liability of $91 and $128 as of December 31, 2023 and 2022, respectively, of uncertain tax positions.

The Company's accounting policy is to include penalties and interest related to income taxes if any, in selling, general and administrative expenses. We regularly assess the need to record a valuation allowance against net deferred tax assets if, based upon the available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

Net (Loss) Earnings per Common Share

Basic net (loss) earnings per share is calculated by dividing net (loss) earnings by the weighted-average number of common shares outstanding during the period. Diluted net (loss) earnings per share is calculated using the weighted-average number of common shares outstanding during the period and, if dilutive, the weighted-average number of potential shares of common stock.

The weighted-average number of common shares included in the computation of diluted net (loss) earnings gives effect to all potentially dilutive common equivalent shares, including outstanding stock options and warrants.

Common stock equivalent shares are excluded from the computation of diluted net (loss) earnings per share if their effect is antidilutive. In periods in which the Company reports a net loss, diluted net loss per share is generally the same as basic net loss per share since dilutive common shares are not assumed to have been issued if their effect is anti-dilutive.

The following table sets forth the number of potential shares of common stock that have been excluded from diluted net loss per share because their effect was anti-dilutive:

	December 31, 2023	December 31, 2022
Warrants	24,510,575	16,708,414
Restricted stock units	47,000	180,000
Options	2,364,787	3,642,958
Weighted average number of common shares-basic	26,922,362	20,531,372

As the Merger has been accounted for as a reverse recapitalization, the consolidated financial statements of the merged entity reflect the continuation of the pre-merger Legacy Dragonfly financial statements; Dragonfly equity has been retroactively adjusted to the earliest period presented to reflect the legal capital of the legal acquirer, CNTQ. As a result, net (loss) earnings per share was also retrospectively adjusted for periods ended prior to the Merger. See–Note 3 - Reverse Capitalization for details and discussion of the retrospective adjustment of net loss per share.

Leases

At the inception of an arrangement, the Company determines whether the arrangement is or contains a lease based on the unique facts and circumstances present in the arrangement including the use of an identified asset(s) and the Company's control over the use of that identified asset. The Company elected, as allowed under FASBASU 2016-02, Leases ("ASC 842"), to not recognize leases with a lease term of one year or less on its balance sheet. Leases with a term greater than one year are recognized on the balance sheet as right-of-use ("ROU") assets and current and non-current lease liabilities, as applicable.

Segment Reporting

Operating segments are identified as components of an enterprise for which separate discrete financial information is available for evaluation by the Company's Chief Executive Officer to make decisions with respect to resource allocation and assessment of performance. To date, the Company has viewed its operations and manages its business as one operating segment.

Reclassification

Certain prior period amounts have been reclassified to conform to the current period presentation in the consolidated financial statements and these accompanying notes. The reclassifications did not have a material impact on the Company's consolidated financial statements and related disclosures. The impact on any prior period disclosures was immaterial.

NOTE 3 - REVERSE CAPITALIZATION

On October 7, 2022, Legacy Dragonfly consummated a merger with CNTQ. Legacy Dragonfly was deemed to be the accounting acquirer in the merger. The determination was primarily based on Legacy Dragonfly's stockholders having a majority of the voting power in the combined Company, Legacy Dragonfly having the ability to appoint a majority of the Board of Directors of the Company, Legacy Dragonfly's existing management team comprising the senior management of the combined Company, Legacy Dragonfly comprising the ongoing operations of the combined Company and the combined Company assumed the name "Dragonfly Energy Holdings Corp.". Accordingly, for accounting purposes, the merger was treated as the equivalent of Legacy Dragonfly issuing stock for the net assets of CNTQ, accompanied by a recapitalization. The net assets of CNTQ are stated at historical cost, with no goodwill or other intangible assets recorded.

In accordance with guidance applicable to these circumstances, the equity structure has been restated in all comparable periods up to October 7, 2022, to reflect the number of shares of the Company's common stock, $0.0001 par value per share, issued to Legacy Dragonfly's stockholders in connection with the merger. As such, the shares and corresponding capital amounts and earnings per share related to Legacy Dragonfly's outstanding convertible preferred stock and Legacy Dragonfly's common stock prior to the merger have been retroactively restated as shares reflecting the exchange ratio of 1.182 established in the merger. Legacy Dragonfly's convertible preferred stock previously classified as temporary equity was retroactively adjusted, converted into common stock and reclassified to permanent equity as a result of the reverse recapitalization.

Immediately before the closing of the merger, and prior to the PIPE Financing, and the funds remaining after such redemptions, totaling approximately $6,265, became available to finance transaction expenses and the future operations of New Dragonfly. In connection with the merger, CNTQ entered into agreements with new investors and existing Legacy Dragonfly investors to subscribe and purchase an aggregate of approximately 500,000 shares of CNTQ Class A common stock (the "PIPE Financing").

The PIPE Financing was consummated on September 26, 2022 and resulted in gross proceeds of an additional approximately $5,017, prior to payment of the transaction costs. As part of the PIPE Financing, the Company entered an initial Term Loan for an aggregate principal amount of $75,000. The Company incurred debt issuance costs of $1,950 of original issuance discount and additional $2,081 of transaction costs that were allocated to the Term Loan, resulting in net cash proceeds of $70,969. In addition, $52,956 of Term Loan warrants based on their combined relative fair values was recorded as a debt discount resulting in initial carrying amount of debt of $18,013. Pursuant to the terms of the loan agreement, the Term Loan was advanced in one tranche on the closing date and the funds were used to refinance on the closing date prior indebtedness of $42,492 (including payment of make-whole interest related to early extinguishment of debt), (ii) to support the Transaction under the Merger Agreement, (iii) for working capital purposes and other corporate purposes, and (iv) to pay any fees associated with transactions contemplated under the Term Loan Agreement and the other loan documents entered into in connection therewith, including the transactions described in the foregoing clauses (i) and (ii) and fees and expenses related to the merger. The direct and incremental transaction costs of approximately $13,221 were allocated to all instruments assumed and issued in the merger on a relative fair value basis. As such, the Company allocated $2,081 to the Term Loan, $9,633 to equity instruments, which was expensed in general and administrative expenses as the offering costs exceeded the proceeds received, and $1,507 to the warrant liabilities assumed and warrant liabilities issued with the term debt, which was expensed within the general and administrative expenses within the statement of operations.

Additionally, pursuant to the terms of the merger, the Company assumed $18,072 of CNTQ accrued and unpaid transaction expenses, of which all were paid upon consummation of the merger. As detailed below, $10,197 of these costs were expensed as the amount exceeded the proceeds received and such costs were determined not be a return to investors.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 3 - REVERSE CAPITALIZATION (CONTINUED)

Upon the closing of the merger, the Company's certificate of incorporation was amended and restated to, among other things, increase the total number of authorized shares of all classes of capital stock to 175,000,000 common shares, of which 170,000,000 were designated as common stock and 5,000,000 were designated as preferred stock, both having a par value of $0.0001 per share.

Upon the closing of the merger, holders of Legacy Dragonfly common stock and preferred stock received shares of common stock in an amount determined by application of the Exchange Ratio. For periods prior to the merger, the reported share and per share amounts have been retroactively converted by applying the Exchange Ratio. The consolidated assets, liabilities, and results of operations prior to the merger are those of Legacy Dragonfly.

The following table summarizes the elements of the merger allocated to the Consolidated Statements of Operations:

		Amounts
Cash: CNTQ trust and PIPE Investors	$	10,979
Cash: CNTQ		303
Gross Proceeds		11,282
Net liabilities assumed in merger transaction		(1,017)
Warrant liability assumed in merger		(1,990)
CNTQ note payable settlement at close		(400)
CNTQ transaction cost paid at close		(18,072)
Net deficit assumed in recapitalization	$	(10,197)

	Number of Shares
Common stock, outstanding prior to merger	3,093,348
Less: Redemption of CNTQ shares	(2,016,912)
CNTQ Public Shares	1,076,436
CNTQ Sponsor Shares	3,162,500
Merger and PIPE financing shares	4,238,936
Legacy Dragonfly shares (1)(2)	38,576,650
Total shares of common stock immediately after merger	42,815,586

1)- The number of Legacy Dragonfly shares was determined from the shares of Legacy Dragonfly outstanding immediately prior to the closing of the merger converted at the Exchange Ratio. All fractional shares were rounded down.

2)- The preferred shares of Legacy Dragonfly were exchanged on a 1 to 1 ratio to common stock and the shares were then exchanged for shares of Dragonfly Energy Holdings Corp. at the Exchange Ratio.

<u>*Warrants*</u>

As part of the reverse capitalization transaction, the Company issued public warrants, private placement warrants and Term Loan warrants. Refer to Note 10 for a further description of the warrants.

NOTE 3 - REVERSE CAPITALIZATION (CONTINUED)

Earnout

The former holders of shares of Legacy Dragonfly common stock (including shares received as a result of the conversion of Legacy Dragonfly Preferred Stock into New Dragonfly Common Stock) are entitled to receive their pro rata share of up to 40,000,000 additional shares of common stock (the "Earnout Shares"). The Earnout Shares are issuable in three tranches. The first tranche of 15,000,000 shares is issuable if New Dragonfly's 2023 total audited revenue is equal to or greater than $250,000 and New Dragonfly's 2023 audited operating income is equal to or greater than $35,000. The second tranche of 12,500,000 shares is issuable upon achieving a volume-weighted average trading price threshold of at least $22.50 on or prior to December 31, 2026 and the third tranche of 12,500,000 is issuable upon achieving a volume-weighted average trading price threshold of at least $32.50 on or prior to December 31, 2028. To the extent not previously earned, the second tranche is issuable if the $32.50 price target is achieved by December 31, 2028.

The Company accounts for the Earnout Shares as either equity-classified or liability-classified instruments based on an assessment of the Earnout Shares specific terms and applicable authoritative guidance in ASC 480, Distinguishing Liabilities from Equity ("ASC 480") and ASC 815, as defined below. The Company has determined that the Earnout Shares are indexed to the Company's common stock and are therefore not precluded from equity classification. Such accounting determination will be assessed at each financial statement reporting date to determine whether equity classification remains appropriate. If the Earnout Shares are later determined to be liability-classified instruments, the Company would recognize subsequent changes in the fair value of such Earnout Shares within earnings at each reporting period during the earnout period. The value of the Earnout Shares was prepared utilizing a Monte Carlo simulation model. The significant assumptions utilized in determining the fair value of Earnout Shares include the following: (1) a price for our common stock of approximately $14.00; (2) a risk-free rate of 4.24%; (3) projected revenue and EBITDA of $255,100 and $41,000, respectively; (4) expected volatility of future annual revenue and future annual EBITDA of 42.0% and 64.0% respectively; (5) discount rate of 4.24%; and (6) expected probability of change in control of 15.0%.

The accounting treatment of the Earnout Shares have been recognized at fair value upon the closing of the merger and classified in stockholders' equity. Because the merger is accounted for as a reverse recapitalization, the recognition of the Earnout Shares has been treated as a deemed dividend and has been recorded within additional-paid-in-capital and has no net impact on additional paid-in capital.

NOTE 4 - FAIR VALUE MEASUREMENTS

ASC 820, Fair Value Measurements and Disclosures ("ASC 820"), establishes a fair value hierarchy for instruments measured at fair value that distinguishes between assumptions based on market data (observable inputs) and the Company's own assumptions (unobservable inputs). Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the inputs that market participants would use in pricing the asset or liability and are developed based on the best information available in the circumstances.

ASC 820 identifies fair value as the exchange price, or exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As a basis for considering market participant assumptions in fair value measurements, ASC 820 establishes a three-tier fair value hierarchy that distinguishes between the following:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for a similar asset or liability, either directly or indirectly.
- Level 3 inputs are unobservable inputs that reflect the Company's own assumptions about the inputs that market participants would use in pricing the asset or liability.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 4 - FAIR VALUE MEASUREMENTS (CONTINUED)

Financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. To the extent that the valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by the Company in determining fair value is greatest for instruments categorized in Level 3. A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

The following table presents assets and liabilities that were measured at fair value in the Consolidated Balance Sheets on a recurring basis as of December 31, 2023 and 2022:

	Carrying Amount	Fair Value	(Level 1)	(Level 2)	(Level 3)
	As of December 31, 2023				
Liabilities					
Warrant liability- Term Loan	$ 1,014	$ 1,014	$ -	$ -	$ 1,014
Warrant liability- June Public Offering	3,434	3,434	-	-	3,434
Warrant liability- Private Placement Warrants	15	15	-	15	-
Total liabilities	$ 4,463	$ 4,463	$ -	$ 15	$ 4,448

The following table presents assets and liabilities that were measured at fair value in the Consolidated Balance Sheets on a recurring basis as of December 31, 2022:

	Carrying Amount	Fair Value	(Level 1)	(Level 2)	(Level 3)
	As of December 31, 2022				
Liabilities					
Warrant liability- Term Loan	$ 30,841	$ 30,841	$ -	$ -	$ 30,841
Warrant liability- Private placement warrants	1,990	1,990	-	1,990	-
Total liabilities	$ 32,831	$ 32,831	$ -	$ 1,990	$ 30,841

The carrying amounts of accounts receivable and accounts payable are considered level 1 and approximate fair value as of December 31, 2023 and 2022 because of the relatively short maturity of these instruments.

The carrying value of the term loan as of December 31, 2023 and, 2022 approximates fair value as the interest rate does not differ significantly from the current market rates available to the Company for similar debt and is considered level 2.

Level 3 Rollforward

Fair value measurements categorized within Level 3 are sensitive to changes in assumptions or methodology used to determine fair value, and such changes could result in a significant increase or decrease in the fair value.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 4 - FAIR VALUE MEASUREMENTS (CONTINUED)

Level 3 Rollforward (continued)

The changes for Level 3 items measured at fair value on recurring basis using significant unobservable inputs are as follows:

	Warrant Liability - Term Loan	Warrant Liability- June Public Offering
Fair value as of December 31, 2022	$ 30,841	$ -
Additions	698	13,762
Warrant exercises	(11,284)	(617)
Change in fair value, loss (gain) included in net loss[1]	(19,241)	(9,711)
Fair value as of December 31, 2023	$ 1,014	$ 3,434

	Warrant Liability - Term Loan
Fair value as of December 31, 2021	$ -
Additions	52,956
Warrant exercises	(16,669)
Change in fair value, loss (gain) included in net loss[1]	(5,446)
Fair value as of December 31, 2022	$ 30,841

[1]*Changes in fair value of warrant liabilities are disclosed separately in the Consolidated Statements of Operations*

NOTE 5 - INVENTORY

Inventory consists of the following:

	December 31, 2023	December 31, 2022
Raw material	$ 31,604	$ 42,929
Finished goods	7,174	7,260
Total inventory	$ 38,778	$ 50,189

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 6 - COMMITMENTS AND CONTINGENCIES

Litigation

From time to time the Company may be named in claims arising in the ordinary course of business. Currently, no legal proceedings, governmental actions, administrative actions, investigations or claims are pending against the Company or involve the Company that, in the opinion of the Company's management, could reasonably be expected to have a material adverse effect on the Company's business and financial condition.

Operating Leases

The Company has leases related to the main office, warehouse space, research and development lab, engineering office, and sales office, all located in Reno, Nevada. The leases require annual escalating monthly payments ranging from $111 to $128. On February 2, 2022, the Company entered into a 124-month lease agreement in Reno, Nevada. The lease calls for monthly base rent of $230, $23 of fixed operating expense costs, and estimated monthly property taxes of $21. The monthly base rent and fixed operating expense costs are subject to escalation of 3% and 2.4%, respectively, on an annual basis. As of December 31, 2023, the lease has not commenced as the Company does not have control over the asset. Subsequent to year end the building has passed inspections and a certificate of substantial completion has been issued. The monthly rent under the lease will begin July 24, 2024.

The following table presents the breakout of the operating leases as of:

	December 31, 2023	December 31, 2022
Operating lease right-of-use assets	$ 3,315	$ 4,513
Short-term operating lease liabilities	1,288	1,188
Long-term operating lease liabilities	2,234	3,541
Total operating lease liabilities	$ 3,522	$ 4,729
Weighted average remaining lease term	2.6 years	3.6 years
Weighted average discount rate	5.2%	5.2%

Assumptions used in determining our incremental borrowing rate include our implied credit rating and an estimate of secured borrowing rates based on comparable market data.

At December 31, 2023, the future minimum lease payments under these operating leases are as follows:

Fiscal Years Ending	
December 31, 2024	$ 1,435
December 31, 2025	1,435
December 31, 2026	893
Total lease payments	3,763
Less imputed interest	241
Total operating lease liabilities	$ 3,522

Lease cost	Classification	For The Years Ended December 31, 2023	2022
Operating lease cost	Cost of goods sold	$ 1,393	$ 1,476
Operating lease cost	Research and development	90	95
Operating lease cost	General and administration	47	50
Operating lease cost	Selling and marketing	47	49
Total lease cost		$ 1,577	$ 1,670

All lease costs included in the schedule above are fixed.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 6 - COMMITMENTS AND CONTINGENCIES (CONTINUED)

Financing Leases

During the years ended December 31, 2023 and 2022, the Company entered into a finance lease agreement for equipment to support the Company's operations. Payments under the finance lease agreement are fixed for a term of 3-5 years. The leased assets are recognized in property plant & equipment.

The following table presents the breakout of the financing leases as of:

	December 31, 2023	December 31, 2022
Finance lease right-of-use assets	$ 106	$ 45
Short-term finance lease liabilities	36	10
Long-term finance lease liabilities	66	35
Total finance lease liabilities	$ 102	$ 45
Weighted average remaining lease term	2.7 years	4.2 years
Weighted average discount rate	5.2%	5.2%

Assumptions used in determining our incremental borrowing rate include our implied credit rating and an estimate of secured borrowing rates based on comparable market data.

At December 31, 2023, the future minimum lease payments under these financing leases are as follows:

Fiscal Years Ending	
December 31, 2024	$ 41
December 31, 2025	41
December 31, 2026	24
December 31, 2027	4
Total lease payments	110
Less imputed interest	8
Total financing lease liabilities	$ 102

Other Contingencies

See Note 8 for further discussion regarding contingent consideration arising from the April 2022 Asset Purchase agreement with Thomason Jones Company, LLC.

See Note 3 for further discussion regarding the earnout related to the reverse capitalization transaction.

NOTE 7 - LONG TERM DEBT

Financing—Trust Indenture

On November 24, 2021, the Company entered into agreements to issue $45,000 in fixed rate senior notes (“Series 2021 6 Notes”) pursuant to a Trust Indenture held by UMB Bank, as trustee and disbursing agent, and Newlight Capital, LLC as servicer. The trust and debt documents also required the entry into a Lender Collateral Residual Value Insurance Policy (the “Insurance Policy”, with UMB Bank as named insured for $45,000), and the engagement of a placement agent, which is Tribe Capital Markets, LLC.

Upon closing date of the financing the Company received a wire for $35,474, which is comprised of the gross proceeds of $45,000 less $3,188 in deposits to certain reserve accounts (see subsection labeled Reserve Accounts below), and $6,338 in expenses withdrawn from the gross proceeds, which included $4,725 in prepaid policy premiums and related costs underlying the Insurance Policy (see subsection labeled Collateral below), a prepaid loan monitoring fee of $60 and $1,553 in debt issuance costs.

The obligation for the Series 2021-6 Notes underlying the Trust Indenture is $45,000 in principal on the date of the closing of the financing. The debt bears interest at 5.50% per annum accruing monthly on a 360 day basis. Late payments will be subject to a $50 late fee and default interest based on a rate 5 percentage points above the applicable interest immediately prior to such default. The Company was making interest only payments on the unpaid principal amount in arrears, commencing December 1, 2021 and ending on November 1, 2022 (for interest accruing from the Financing Closing Date through October 31, 2022). Beginning on December 1, 2022, the Company was obligated to repay the debt in twenty four equal installments of principal in the amount of $1,875, plus accrued interest on the unpaid principal amount. Any remaining obligations were due and payable on November 1, 2024 (the “Maturity Date”). The obligations under the Trust Indenture will be deemed to be repaid or prepaid to the same extent, in the same amounts and at the same times as the Series 2021-6 Notes are redeemed with funds provided except for payments made from the proceeds of the Insurance Policy (see subsection labelled Collateral below) as such funds must be reimbursed by the Company to the insurer. During the year ended December 31, 2022, a total of $1,873 of interest expense was incurred under the debt. Amortization of the debt issuance costs amounted to $1,783 during the year ended December 31, 2022. In connection with the merger on October 7, 2022, the Company entered into a Term Loan, Guarantee and Security Agreement (see subsection labeled Term Loan Agreement below) and the outstanding principal balance for the Series 2021-6 Notes underlying the Trust Indenture was paid in full.

Term Loan Agreement

On October 7, 2022, in connection with the merger, CNTQ, Legacy Dragonfly and CCM Investments 5 LLC, an affiliate of CCM LLC (“CCM 5”, and in connection with the Term Loan, the “Chardan Lender”), and EICF Agent LLC (“EIP” and, collectively with the Chardan Lender, the “Initial Term Loan Lenders”) entered into the Term Loan, Guarantee and Security Agreement (the “Term Loan Agreement”) setting forth the terms of a senior secured term loan facility in an aggregate principal amount of $75,000 (the “Term Loan”). The Chardan Lender backstopped its commitment under the Debt Commitment Letter by entering into a backstop commitment letter, dated as of May 20, 2022 (the “Backstop Commitment Letter”), with a certain third party financing source (the “Backstop Lender” and collectively with EIP, the “Term Loan Lenders”), pursuant to which the Backstop Lender committed to purchase from the Chardan Lender the aggregate amount of the Term Loan held by the Chardan Lender (the “Backstopped Loans”) immediately following the issuance of the Term Loan on the Closing Date. Pursuant to an assignment agreement, the Backstopped Loans were assigned by CCM 5 to the Backstop Lender on the Closing Date.

NOTE 7 - LONG TERM DEBT (CONTINUED)

Pursuant to the terms of the Term Loan Agreement, the Term Loan was advanced in one tranche on the Closing Date. The proceeds of the Term Loan were used (i) to refinance on the Closing Date prior indebtedness (including the obligations underlying the Trust Indenture), (ii) to support the Transaction under the merger Agreement, (iii) for working capital purposes and other corporate purposes, and (iv) to pay any fees associated with transactions contemplated under the Term Loan Agreement and the other loan documents entered into in connection therewith, including the transactions described in the foregoing clauses (i) and (ii) and fees and expenses related to the merger. The Term Loan amortizes in the amount of 5% per annum (or $937.5 on the first day of each calendar quarter) beginning 24 months after the Closing Date and matures on the fourth anniversary of the Closing Date ("Maturity Date"). The Term Loan accrues interest (i) until April 1, 2023, at a per annum rate equal to the adjusted Secured Overnight Financing Rate ("SOFR") plus a margin equal to 13.5%, of which 7% will be payable in cash and 6.5% will be paid in kind, (ii) thereafter until October 1, 2024, at a per annum rate equal to adjusted SOFR plus 7% payable in cash plus an amount ranging from 4.5% to 6.5%, depending on the senior leverage ratio of the consolidated company, which will be paid in kind and (iii) at all times thereafter, at a per annum rate equal to adjusted SOFR plus a margin ranging from 11.5% to 13.5% payable in cash, depending on the senior leverage ratio of the consolidated company. In each of the foregoing cases, adjusted SOFR will be no less than 1%.

During the year ended December 31, 2023, the Company prepaid the first four installments of the Term Loan which amounted to $5,275 and delayed the first principal payment to October 2025.

In connection with the entry into the Term Loan Agreement, and as a required term and condition thereof, the Company issued (i) the penny warrants to the Term Loan Lenders exercisable to purchase an aggregate of 2,593,056 and (ii) the $10 warrants to issue warrants to the Term Loan Lenders exercisable to purchase an aggregate of 1,600,000 shares of common stock at $10 per share. Refer to Note 12 for further information.

Unless the obligations under the Term Loan are accelerated under the terms of the agreement, the maturity date will be October 7, 2026.

The Term Loan Lenders have been granted a first priority lien, and security interest in, the mortgaged properties underlying the Company's mortgages.

During the years ended December 31, 2023 and 2022, a total of $14,272 and $3,195, respectively, of interest expense was incurred under the debt. Amortization of the debt issuance costs amounted to $1,471 and $38, respectively, during the years ended December 31, 2023 and 2022.

The carrying balance of $19,683 on December 31, 2023 consisted of $69,725 in principal, plus $6,130 PIK interest, less $56,172 in unamortized debt discount related to the debt issuance costs. The carrying balance of $19,242 on December 31, 2022 consisted of $75,000 in principal, plus $1,192 payment in kind interest, less $56,950 in unamortized debt discount related to the debt issuance costs.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 7 - LONG TERM DEBT (CONTINUED)

Term Loan Agreement (continued)

Financial Covenants

The Company is subject to restrictive financial covenants pertaining to Maximum Senior Leverage Ratio, Liquidity, Fixed Charge Coverage Ratio, and Capital Expenditures as defined in the Term Loan Agreement. As of December 31, 2023, the Company was not in compliance with our financial covenants pertaining to the fixed charge coverage ratio, liquidity, and the maximum senior leverage ratio. On December 29, 2023, the Company received a waiver from its Administrative Agent and Term Loan Lenders in regards to its compliance with the Tests as of the last day of the quarter ended December 31, 2023. If the Company is unable to obtain a waiver or if the Company is unable to comply with such covenants, the lenders have the right to accelerate the maturity of the Term Loan. Because of this, the entire debt is classified as current instead of long-term debt.

At December 31, 2023, the future debt maturities are as follows:

For Year Ended December 31,	
2024	-
2025	938
2026	78,731
Total	79,669
Less: Estimated interest paid-in-kind	(3,814)
Total debt	75,855
Less: Unamortized debt issuance costs	(56,172)
Total carrying amount	19,683
Less: Current portion of debt	(19,683)
Total long-term debt	$ -

NOTE 8 - ASSET PURCHASE AGREEMENT

Thomason Jones Company, LLC

In April 2022, the Company entered into an Asset Purchase Agreement with William Thomason, Richard Jones, and Thomason Jones Company, LLC whereby the Company acquired inventory and intellectual property assets for a price not to exceed $700 cash plus contingent payments of $1,000 each to William Thomason and Richard Jones (the “Earn Out”). The transaction was determined to be a business combination under the guidance in Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 805: Business Combinations. The Company followed the guidance under ASC 805-10-55 and determined the contingent consideration to be separate from the business combination and the earn out to be recognized as contingent compensation to Mr. Thomason and Mr. Jones as the contingency became probable of being met. The Company concluded the purchase price to be $444 and was allocated in its entirety to inventory.

Pursuant to the terms of the agreement dated April 2022, Dragonfly Energy Corp. agreed to a contingent compensation arrangement with Mr. Thomason and Mr. Jones. According to this agreement, if Dragonfly Energy Corp. realizes $3,000 in gross sales from products sold under the Wakespeed brand or which incorporate any portion of the Purchased Intellectual Property (IP) within twenty-four months of the acquisition, the Company is obligated to pay each of Thomason and Jones $1,000. The Company may satisfy this obligation in cash or by issuing common stock at its discretion.

The Company has determined that this arrangement constitutes compensation for post-acquisition services. Consequently, the Company has recognized this contingent consideration as a compensation expense, measured at its fair value at the acquisition date. The fair value was determined using a probability-weighted expected outcome approach, considering the likelihood of reaching the gross sales target.

As of December 31, 2023, the Company has recognized $2,000 of compensation expense in connection with this arrangement. This expense is reflected in the statement of operations under Sales and marketing expense. The total amount has been recognized as compensation expense as of December 31, 2023, since it was deemed earned and no further service performance was required.

NOTE 9 - RELATED PARTY

The Company loaned its former Chief Financial Officer $469 to repay amounts owed by him to his former employer and entered into a related Promissory Note with a maturity date of March 1, 2026. The loan was forgiven in full in March of 2022, prior to the merger and was recorded within general and administrative expense.

On October 25, 2022, the Company entered into a separation and release of claims agreement with its former Chief Operating Officer ("COO"). As consideration for the COO's execution of the agreement, the Company agreed to pay the employee a lump sum payment of $100 which is included in general and administrative expenses in the statements of operations, payments equivalent to $1,000 divided into 24 monthly payments commencing on December 1, 2022, and all outstanding equity-based compensation awards to become fully vested and exercisable. The COO shall have 12 months from the termination date to exercise outstanding options. The twelve (12) month period ended on November 7, 2023 in which the COO exercised 100,000 options and 77,316 options expired

In February 2023, the Company entered into an agreement with its former COO in which the COO waived their rights to a transaction bonus resulting from the merger transaction (Note 1) in lieu of a Company van. The Company accounted for the cost of the van as an employee bonus, resulting in $116 of general and administrative expense for the current period.

On March 5, 2023, the Company entered into a convertible promissory note (the "March Note") with a board member in the amount of $1,000, or the March Principal Amount. Upon execution of the Note and funding of the original principal sum, a payment of $100 (the "March Loan Fee") was fully earned as of the date of the March Note and was due and payable in full in cash on April 4, 2023. The Company paid the March Principal Amount and the March Loan Fee on April 1, 2023 and April 4, 2023, respectively.

On April 26, 2023, the Company entered into a separation and release of claims agreement with its former Chief Legal Officer ("CLO"). As consideration for the CLO's execution of the agreement, the Company agreed to pay the employee payments equivalent to $720 divided into 24 monthly payments commencing on June 1, 2023, and all outstanding equity based compensation awards to become fully vested and exercisable at an expense of $76. The CLO shall have 3 months from the termination date to exercise outstanding options. The three (3) month period ended on July 26, 2023 in which the options were not exercised and the options were forfeited as a result.

NOTE 10 - WARRANTS

Common Stock Warrants classified as Equity

Public Warrants

Each Public Warrant entitles the holder to the right to purchase one share of common stock at an exercise price of $11.50 per share. The Company may elect to redeem the Public Warrants subject to certain conditions, at a price of $0.01 per Public Warrant if (i) 30 days' prior written notice of redemption is provided to the holders, and (ii) the last reported sale price of the Company's common stock equals or exceeds $16.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within a 30-trading day period ending on the third business day prior to the date on which the Company sends the notice of redemption to the warrant holders. On the Closing Date, there were 9,487,500 Public Warrants issued and outstanding.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 10 - WARRANTS (CONTINUED)

Common Stock Warrants classified as Equity (Continued)

Public Warrants (Continued)

The measurements of the Public Warrants after the detachment of the Public Warrants from the Units are classified as Level 1 due to the use of an observable market quote in an active market under the ticker DFLIW. For periods subsequent to the detachment of the Public Warrants from the Units, the close price of the Public Warrant price was used as the fair value of the Warrants as of each relevant date.

During the year ended December 31, 2023, the Company received proceeds from public warrant exercises of $747 in exchange for 64,971 common shares. The Company did not receive any proceeds from public warrants during the year ended December 31, 2022.

June 2023 Offering (Underwriter and Investor Warrants)

In connection with the entry into the underwriting agreement as further described in Note 11 of the financial statements, (the "June 2023 Offering") the Company issued (i) underwriters warrants to purchase up to an aggregate of 570,250 shares of Common Stock (the "Underwriters' Warrants") which are exercisable upon issuance and will expire on June 20, 2028. The initial exercise price of the Underwriters' Warrants is $2.50 per share, which equals 125% of the per share public offering price in the June 2023 Offering and (ii) warrants to purchase up to 10,000,000 shares of Common Stock to the investors in the offering together with shares of Common Stock (the "Investor Warrants"), at the combined public offering price of $2.00 per share of Common Stock and accompanying Investor Warrant, less underwriting discounts and commissions. The Company also granted the underwriters a 45-day over-allotment option to purchase up to an additional 1,500,000 shares of Common Stock and/or Investor Warrants to purchase up to 1,500,000 shares of Common Stock at the public offering price per security, less underwriting discounts and commissions. The underwriters exercised their over-allotment option to purchase an additional 1,405,000 shares of Common Stock and Investor Warrants to purchase up to 1,405,000 shares of Common Stock. The Company accounts for the Investor Warrants issued in connection with the Offering in accordance with the guidance contained in ASC 815-40. Such guidance provides that because the Investor Warrants do not meet the criteria for equity treatment thereunder, each warrant must be recorded as a liability. This liability is subject to re-measurement at each balance sheet date. With each such re-measurement, the warrant liabilities will be adjusted to its current fair value, with the change in fair value recognized in the Company's statement of operations. The Company will reassess the classification at each balance sheet date. It was determined that the Underwriters' Warrants were not precluded from equity treatment and have been accounted for as such.

Underwriters' Warrants:

	Common Stock Warrants
Underwriters' Warrants Outstanding, January 1, 2023	-
Underwriters' Warrants issued	570,250
Underwriters' Warrants Outstanding, December 31, 2023	570,250

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 10 - WARRANTS (CONTINUED)

Common Stock Warrants classified as Liability

Private Placement Warrants

On October 7, 2022, in connection with the merger, the Company assumed the outstanding private placement warrants of CNTQ. There were no Private Placement Warrants outstanding prior to the merger. The Private Placement Warrants (the "Private Warrants") may not be redeemed by the Company so long as the Private Placement Warrants are held by the initial purchasers, or such purchasers' permitted transferees. The Private Warrants: (i) will be exercisable either for cash or on a cashless basis at the holders' option and (ii) will not be redeemable by the Company, in either case as long as the Private Warrants are held by the initial purchasers or any of their permitted transferees (as prescribed in the Subscription Agreement). During the year ended December 31, 2023, private placement warrant holders exercised 3,126,472 warrants on a cashless basis, with the Company agreeing to issue 1,100,000 shares of Common Stock in connection with such exercise. There were 1,501,386 and 4,627,858 private warrants outstanding as of December 31, 2023 and 2022, respectively. The Company accounts for the Private Warrants issued in connection with the Initial Public Offering in accordance with the guidance contained in ASC 815-40. Such guidance provides that because the private warrants do not meet the criteria for equity treatment thereunder, each private warrant must be recorded as a liability. This liability is subject to re-measurement at each balance sheet date. With each such re-measurement, the warrant liabilities will be adjusted to its current fair value, with the change in fair value recognized in the Company's statement of operations. The Company will reassess the classification at each balance sheet date.

Warrant Class	Shares	Inception Date Fair Value	Initial Recognition Date	Exercise Price	Expiration Date
Private Placement Warrants	4,627,858	1,990	10/7/2022	11.5	8/11/2026

The private placement warrants are classified as Level 2 as the transfer of Private Placement Warrants to anyone who is not a permitted transferee would result in the Private Placement Warrants having substantially similar terms as the Public Warrants (with the exception of a different remaining life). We determined, through use of a Binomial Lattice model, that the fair value of each Private Placement Warrant less a discount for the difference in remaining life is equivalent to that of each Public Warrant.

Term Loan Warrants

In connection with the entry into the Term Loan Agreement on October 7, 2022, and as a required term and condition thereof, the Company issued (i) the penny warrants to the Term Loan Lenders exercisable to purchase an aggregate of 2,593,056 shares of Common Stock (the "Penny Warrants") and (ii) the $10 warrants to issue warrants to the Term Loan Lenders exercisable to purchase an aggregate of 1,600,000 shares of Common Stock at $10 per share (the "$10 Warrants" and, together with the Penny Warrants, the "Term Loan Warrants"). The $10 Warrants were exercised on a cashless basis on October 10, 2022, with the Company issuing 457,142 shares of Common Stock in connection with such exercise. During the year ended December 31, 2023, Penny Warrant holders exercised 2,000,000 warrants on a cashless basis, with the Company agreeing to issue 1,996,323 shares of Common Stock in connection with such exercise. During the year ended December 31, 2023 the Company issued additional Penny Warrants to purchase 4,783 shares of Common Stock to the Term Loan Lenders in accordance with the anti-dilution provisions of the penny warrants with respect to certain sales made by the Company under the ChEF Equity Facility. In addition, pursuant to the Company's limited waiver agreement on December 29, 2023 between the Company and the lenders and lending agent, the Company agreed to issue to the lenders additional penny warrants exercisable to purchase an aggregate 1,286,671 shares of its Common Stock. The Company concluded the Penny Warrants are not considered indexed to the Company's Common Stock and to be accounted for as liabilities under ASC 815. As such, the estimated fair value is recognized as a liability each reporting period, with changes in the fair value recognized within income each period. There were no Term Loan Warrants outstanding prior to the merger.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 10 - WARRANTS (CONTINUED)

Common Stock Warrants classified as Liability (Continued)

The following table provides the significant inputs to the Black-Scholes method for the fair value of the Penny Warrants:

	As of December 31, 2023	As of December 31, 2022
Common stock price	$ 0.54	$ 11.09
Exercise price	0.01	0.01
Dividend yield	0%	0%
Term	10	9.77
Volatility	96.00%	90.00%
Risk-free rate	3.90%	3.90%
Fair value	$ 0.54	$ 11.89

The following table provides the significant inputs to the Black-Scholes method for the fair value of the Investor Warrants issued in the June 2023 Offering:

	As of December 31, 2023
Common stock price	$ 0.54
Exercise price	$ 2.00
Dividend yield	0%
Term	4.48
Volatility	106.00%
Risk-free rate	3.90%
Fair value	$ 0.31

The following table presents a roll-forward of the Company’s warrants from January 1, 2023 to December 31, 2023:

Private Warrants:

	Common Stock Warrants
Warrants Outstanding, January 1, 2022	-
Assumed in the merger	4,627,858
Warrants Outstanding, December 31, 2022	4,627,858
Warrants Outstanding, January 1, 2023	4,627,858
Exercise of warrants	(3,126,472)
Balances, December 31, 2023	1,501,386

Public Warrants:

	Common Stock Warrants
Warrants Outstanding, January 1, 2022	-
Assumed in the merger	9,487,500
Warrants Outstanding, December 31, 2022	9,487,500
Warrants Outstanding, January 1, 2023	9,487,500
Exercise of warrants	(64,971)
Balances, December 31, 2023	9,422,529

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 10 - WARRANTS (CONTINUED)

Term Loan Warrants:

	Common Stock Warrants
Warrants Outstanding, January 1, 2022	-
Issued in conjunction with merger	4,193,056
Exercised subsequent to the merger	(1,600,000)
Warrants Outstanding, December 31, 2022	2,593,056
Warrants Outstanding, January 1, 2023	2,593,056
Exercise of warrants	(2,000,000)
Warrants issued	1,291,454
Warrants Outstanding, December 31, 2023	1,884,510

Investor Warrants:

	Common Stock Warrants
Warrants Outstanding, January 1, 2023	-
Issuance of warrants	11,405,000
Exercise of warrants	(273,100)
Warrants outstanding, December 31, 2023	11,131,900

The following table presents a roll forward of the aggregate fair values of the Company's warrant liabilities for which fair value is determined by Level 3 Inputs. The only class of warrants that were determined to be Level 3 were the term loan and June Offering Investor Warrants.

		Warrant Liability
Balances, January 1, 2022	$	-
Issuance of warrants		52,956
Exercise of warrants		(16,669)
Change in fair value of warrants		(5,446)
Balances, December 31, 2022	$	30,841
Balances, January 1, 2023	$	30,841
Issuance of warrants		14,460
Exercise of warrants		(11,901)
Change in fair value of warrants		(28,952)
Balances, December 31, 2023	$	4,448

NOTE 11 - COMMON STOCK

The Company is authorized to issue up to 250,000,000 shares of common stock with $0.0001 par value. Common stockholders are entitled to dividends if and when declared by the Board of Directors subject to the rights of the preferred stockholders. As of December 31, 2023 and 2022, there were 60,260,282 and 43,272,728 shares issued and outstanding. No dividends on common stock had been declared by the Company.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 11 - COMMON STOCK (CONTINUED)

On June 12, 2022, Dragonfly entered into a Stock Purchase Agreement with THOR Industries, whereby THOR purchased shares of Dragonfly common stock for $15,000 in cash. The Stock Purchase agreement was issued in connection with a binding agreement among the parties whereby the parties would use commercially reasonable efforts to enter into a mutually agreed distribution and joint development agreement. The final terms of the agreement have not yet been determined.

For the year ended December 31, 2023 and 2022, the Company had reserved shares of common stock for issuance as follows:

	December 31, 2023	December 31, 2022
Options issued and outstanding	2,364,787	3,642,958
Common stock outstanding	60,260,282	43,272,728
Warrants outstanding	24,510,575	16,708,414
Earnout shares	40,000,000	40,000,000
Shares available for future issuance	4,469,280	4,924,914
Total	131,604,924	108,549,014

ChEF Equity Facility

The Company and CCM LLC entered into a purchase agreement (the "Purchase Agreement") and a Registration Rights Agreement (the "ChEF RRA") in connection with the merger. Pursuant to the Purchase Agreement, the Company has the right to sell to CCM LLC an amount of shares of common stock, up to a maximum aggregate purchase price of $150,000, from time to time, pursuant to the terms of the Purchase Agreement.

Pursuant to, on the terms of, and subject to the satisfaction of the conditions in the Purchase Agreement, including the filing and effectiveness of a registration statement registering the resale by CCM LLC of the shares of common stock issued to it under the Purchase Agreement, the Company will have the right from time to time at its option to direct CCM LLC to purchase up to a specified maximum amount of shares of common stock, up to a maximum aggregate purchase price of $150,000, over the term of the equity facility ("ChEF Equity Facility").

Under the terms of the Purchase Agreement, CCM LLC will not be obligated to (but may, at its option, choose to) purchase shares of common stock to the extent the number of shares to be purchased would exceed the lowest of the number of shares of common stock (i) which would result in beneficial ownership (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder) by CCM LLC, together with its affiliates, of more than 9.9%, (ii) which would cause the aggregate purchase price on the applicable VWAP Purchase Date (as defined in the Purchase Agreement) for such purchases to exceed $3,000 and (iii) equal to 20% of the total number of shares of common stock that would count towards VWAP on the applicable Purchase Date of such purchase.

The net proceeds from any sales under the Purchase Agreement will depend on the frequency with, and prices at, which shares of common stock are sold to CCM LLC. To the extent the Company sells shares of common stock under the Purchase Agreement, it currently plans to use any proceeds therefrom for working capital and other general corporate purposes.

In addition, pursuant to the ChEF RRA, the Company has agreed to provide CCM LLC with certain registration rights with respect to the shares of common stock issued subject to the Purchase Agreement.

NOTE 11 - COMMON STOCK (CONTINUED)

The Purchase Agreement will automatically terminate on the earliest to occur of (i) the 36-month anniversary of the later of (x) the closing of the merger and (y) effective date of the Initial Registration Statement (as defined in the Purchase Agreement), (ii) the date on which CCM LLC shall have purchased 150,000,000 of shares of common stock pursuant to the Purchase Agreement, (iii) the date on which common stock shall have failed to be listed or quoted on Nasdaq or any successor principal market and (iv) the commencement of certain bankruptcy proceedings or similar transactions with respect to the Company or all or substantially all of its property.

Under the terms of the Purchase Agreement, the Company issued 588,500 shares pursuant to the Purchase Agreement with CCM LLC for aggregate net proceeds to the Company of $1,273 from the period January 1, 2023 through December 31, 2023.

June 2023 Offering

In the June 2023 Offering, the Company sold an aggregate of (i) 10,000,000 shares of its Common Stock and, (ii) accompanying Investor Warrants to purchase up to 10,000,000 shares of Common Stock, at the combined public offering price of $2.00 per share and accompanying Investor Warrant, less underwriting discounts and commissions, and (iii) the Underwriters' Warrants.

The Investor Warrants are exercisable for five years from the closing date of the June 2023 Offering, have an exercise price of $2.00 per share and are immediately exercisable. In the event of certain fundamental transactions, holders of the Investor Warrants will have the right to receive the Black Scholes Value (as defined in the Investor Warrants) of their Investor Warrants calculated pursuant to the formula set forth in the Investor Warrants, payable either in cash or in the same type or form of consideration that is being offered and being paid to the holders of Common Stock. The Underwriters' Warrants are exercisable upon issuance at an exercise price of $2.50 per share and will expire on June 20, 2028.

The Company granted the underwriters a 45-day over-allotment option to purchase up to an additional 1,500,000 shares of Common Stock and/or Warrants to purchase up to an aggregate of 1,500,000 shares of Common Stock at the public offering price per security, less underwriting discounts and commissions, of which the underwriters exercised for 1,405,000 shares of Common Stock and Investor Warrants to purchase up to 1,405,000 shares of Common Stock and the remaining was not exercised within the 45-day window.

The Company received gross proceeds of $22,810 and incurred $2,074 of offering related costs. The gross proceeds were first allocated to the liability classified warrants based upon the transaction date fair value and then to the equity classified warrants with the residual allocated to the common shares. The offering related costs were allocated based on the relative fair value of all instruments, of which $1,169 was accounted for as a reduction of additional-paid-in-capital and $904 was recorded within general and administrative expenses. The Company accounted for the investor warrants issued in connection with the Public Offering and the exercise of the underwriters' over-allotment option in accordance with the guidance contained in ASC 815-40. Such guidance provides that the warrants described above are precluded from equity classification. The fair value of the warrants were recorded as a liability in the amount of $13,762 on issuance and are being fair valued at each reporting period.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 12 - STOCK-BASED COMPENSATION

In July of 2021, the Board of Directors approved the 2021 Stock Incentive Plan (the “2021 Plan” and, together with the 2019 Plan, the “Prior Plans”) with a term of ten years. The Plan was administered by the Board of Directors, which was authorized to grant, at its discretion, awards to employees, directors, and consultants. The maximum number of common shares reserved for grants of awards under the Plan was 1,000,000 shares which was amended and increased to 2,000,000 in May of 2022. The Plan provides for the grant of stock options (both incentive stock options and nonqualified stock options), and the grants and sale of RSUs. Shares issued under this Plan may be drawn from authorized and unissued shares, or shares reacquired by the Company.

In connection with the merger, shareholders and board members approved the Dragonfly Energy Holdings 2022 Equity Incentive Plan (the “2022 Plan”). A total of 2,785,950 shares of common stock was initially reserved for issuance under the 2022 Plan, with the potential for additional shares to be issued under the plan. The 2022 Plan replaced the Prior Plans, which the Company assumed in the merger. Following the Closing, no additional awards will be granted under the Prior Plans, although all stock awards granted under the Prior Plans that are outstanding immediately prior to the Closing will be assumed by the Company and continue to be subject to the terms and conditions as set forth in the agreements evidencing such stock awards and the terms of the applicable Prior Plan.

If an incentive award granted under the 2022 Plan expires, terminates, is unexercised or is forfeited, or if any shares are surrendered to us in connection with an incentive award, the shares subject to such award and the surrendered shares will become available for future awards under the 2022 Plan. The number of shares subject to the 2022 Plan, and the number of shares and terms of any Incentive Award may be adjusted in the event of any change in our outstanding common stock by reason of any stock dividend, spin-off, stock split, reverse stock split, recapitalization, reclassification, merger, consolidation, liquidation, business combination or exchange of shares, or similar transaction.

The Company maintains an Employee Stock Purchase Plan (“ESPP”) which is designed to allow eligible employees and the eligible employees of our participating subsidiaries to purchase shares of our common stock, at semi-annual intervals, with their accumulated payroll deductions. A total of 2,464,400 shares of the Company’s common stock will initially be available for issuance under the ESPP. The share limit will automatically increase on the first trading day in January of each year by an amount equal to lesser of (1) 1% of the total number of outstanding shares of our common stock on December 31 in the prior year, (2) 1,500,000 shares, or (3) such number as determined by the Company’s board of directors.

A summary of the Company’s option activity and related information follows:

	Number of Options (1)	Weighted-Average Exercise Price	Weighted-Average Grant Date Fair Value	Weighted-Average Remaining Contractual Life (in years)	Aggregate intrinsic value
Balances, January 1, 2022	3,690,955	$ 1.98	$ 1.38	8.52	$ 6,550
Options granted	572,428	3.46	1.57		-
Options forfeited	(39,074)	3.13	1.73		-
Options exercised	(581,351)	1.16	0.89		-
Balances, December 31, 2022	3,642,958	$ 2.02	$ 1.21	7.90	$ 35,898
Balances, January 1, 2023	3,642,958	$ 2.02	$ 1.21	7.90	$ 35,898
Options granted	143,607	7.50	3.82		632
Options forfeited	(504,116)	2.95	1.63		439
Options exercised	(917,662)	0.64	1.28		585
Balances, December 31, 2023	2,364,787	$ 2.69	$ 1.57	7.60	$ 60
At December 31, 2023					
Vested and Exercisable	1,530,078	$ 2.43		7.44	$ 60
Vested and expected to vest	2,364,787	$ 2.69		7.60	$ 60

(1) Number of options and weighted average exercise price prior to the merger has been adjusted to reflect the exchange of Legacy Dragonfly’s stock options for New Dragonfly stock options at an exchange ratio of approximately 1.182 as a result of the merger. See Note 3 for further information.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 12 - STOCK-BASED COMPENSATION (CONTINUED)

Share-based compensation expense for options and RSUs totaling $6,710 and $2,467 was recognized in the Company's consolidated statements of operations for the year ended December 31, 2023 and 2022, respectively. Of the $6,710 of share-based compensation incurred during the year ended December 31, 2023, $133 is allocated to cost of goods sold, $116 to research and development, $1,097 to selling and marketing, and $5,364 to general and administrative expenses. Of the $2,467 of share-based compensation incurred during the year ended December 31, 2022, $155 is allocated to cost of goods sold, $149 to research and development, $654 to selling and marketing, and $1,509 to general and administrative expenses.

The valuation methodology used to determine the fair value of the options issued during the year was the Black Scholes option pricing model. The Black Scholes model requires the use of a number of assumptions including volatility of the stock price, the fair value of the underlying stock, the average risk free interest rate, and the weighted average expected life of the options. The expected term was estimated using the simplified method due to lack of sufficient history of option exercises.

	2023	2022
Weighted average fair value of options granted	$ 3.82	$ 1.57
Risk-free interest rate	4.20%	2.71%
Volatility	45.0%	45.0%
Expected life (years)	6.45	5.68
Dividend yield	0.00%	0.00%

Restricted Stock Units

On October 7, 2022, the Company granted 180,000 restricted stock units under the 2022 Plan which vested in full one year from the grant date. The fair value of the restricted stock units on the date of grant was $2,520, which is recognized as compensation expense over the requisite service period based on the value of the underlying shares on the date of grant. On February 10, 2023, the Company granted 461,998 restricted stock units under the 2022 Plan which vested in full immediately upon grant. The fair value of the restricted stock units on the date of grant was $3,464 and was recorded as compensation expense during the year ended December 31, 2023. The Company granted an additional 47,000 restricted stock units which have not vested. The fair value of the 47,000 unvested restricted stock units was $126 and an expense of $22 was recorded during the year ended December 31, 2023.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 12 - STOCK-BASED COMPENSATION (CONTINUED)

Restricted Stock Units (Continued)

There were no grants of restricted stock units prior to October 7, 2022. The following table presents the restricted stock units activity for the year ended December 31, 2023:

	Number of Shares	Weighted-Average Fair Market Value
Unvested shares at January 1, 2022	-	$ -
Granted and unvested	180,000	14.00
Unvested shares, December 31, 2022	180,000	$ 14.00
Unvested shares, January 1, 2023	180,000	$ 14.00
Granted and unvested	508,998	7.06
Vested	(641,998)	9.32
Unvested shares, December 31, 2023	47,000	$ 2.69

As of December 31, 2023, there were 4,469,280 shares of unissued authorized and available for future awards under the 2022 Equity Incentive Plan and Employee Stock Purchase Plan.

NOTE 13 - SUPPLIER AGREEMENT

On May 9, 2023, Ioneer Rhyolite Ridge LLC (“seller”), an emerging lithium-boron producer, and the Company announced a commercial offtake agreement partnership whereby the seller is developing the Rhyolite Ridge Project which, once completed, is expected to produce 20 ktpa of lithium carbonate, and 174 ktpa of boic acid (the “project”). Beginning on the Supply Start Date which is the date the seller notifies the Company that the project is fully completed and commissioned in accordance with the engineering, procurement and construction contract, and for the duration of the supply period, the Company shall purchase and receive product from seller, on the terms and conditions of the agreement. The agreement calls for a minimum annual purchase requirement. The agreement becomes effective when the seller has informed the Company that the seller has made a positive financial investment decision in respect of the project.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 14 - INCOME TAXES

The income tax expense consists of the following items:

	2023	2022
Current - Federal	$ (36)	$ (317)
Current – State	10	60
Deferred – Federal	-	(448)
Deferred – State	-	(4)
Total tax expense	$ (26)	$ (709)

Components of deferred tax assets (liabilities) are as follows:

	2023	2022
Deferred tax assets:		
Start up costs	$ 850	$ -
Lease liability	804	1,071
Stock based compensation	1,305	139
Accrued expenses	1,179	506
Allowance for bad debt	62	75
Research and development credit	847	200
Fixed assets and intangibles	1,657	25
Interest expense	4,907	1,595
Prepaid expenses	512	960
Net Operating Loss	7,891	3,727
Inventory (Sec. 263A)	360	62
Deferred tax asset	$ 20,374	$ 8,360
Deferred tax liabilities:		
Right of Use Asset	757	1,036
Deferred tax liability	757	1,036
Net deferred tax asset (liability)	19,617	7,324
Valuation Allowance	(19,617)	(7,324)
Net deferred tax asset	$ -	$ -

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 14 - INCOME TAXES (CONTINUED)

Reconciliation between the effective tax rate on income from continuing operations and the statutory rate for the year ending December 31, 2023 and 2022, is as follows:

	2023		2022	
	Tax	Percentage	Tax	Percentage
Book income (loss) before taxes	$ (2,902)	21.00%	(8,547)	21.00%
Permanent differences (transaction costs)	-	-%	2,185	(5.37)%
Permanent differences (warrants)	-	-%	(1,144)	2.81%
Permanent differences (other than tax))	(6,089)	44.07%	458	(1.13)%
State taxes, net	(1,233)	8.92%	(722)	1.77%
Deferred true-up	(1,617)	11.71%	(288)	0.71%
Research and development credits	(647)	4.68%	(200)	0.49%
Research and development capitalization	(300)	2.17%	-	-%
Uncertain tax positions	132	(0.96)%	128	(0.31)%
Other	68	(0.49)%	97	(0.24)%
Rate Change	268	(1.94)%		
Change in valuation allowance	12,294	(88.96)%	7,324	(18.00)%
Total	$ (26)		(709)	
Effective tax rate		0.20%		1.74%

The tax returns of the Company are open for three years form the date of filing. At the report date, federal tax returns are open for the Company for 2020, 2021 and 2022.

Under the provisions of the Internal Revenue Code, the net operating loss and tax credit carryforwards are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. Net operating loss and tax credit carryforwards may become subject to an annual limitation in the event of certain cumulative changes in the ownership interest of significant shareholders over a three-year period in excess of 50 percent, as defined under Sections 382 and 383 of the Internal Revenue Code, respectively, as well as similar state provisions. This could limit the amount of tax attributes that can be utilized annually to offset future taxable income or tax liabilities. The amount of the annual limitation is determined based on the value of the Company immediately prior to the ownership change. Subsequent ownership changes may further affect the limitation in future years. The Company has not yet evaluated if section 382 was triggered.

Subject to the limitations described below, as of December 31, 2023, the Company had federal net operating loss carryforwards of approximately $34,941 available to reduce future taxable income which do not expire, but are limited to 80% utilization against taxable income. As of December 31, 2023, the Company had state net operating loss carryforwards of approximately $14,969 available to reduce future taxable income, which start to expire in 2037. The Company also had research and development credits of $847 as of December 31, 2023 to offset future federal income taxes, which are set to expire in 2042.

Management of the Company evaluated the positive and negative evidence bearing upon the realizability of its deferred tax assets and determined that it is more likely than not that the Company will not recognize the benefits of the deferred tax assets. As a result, a full valuation allowance was recorded as of December 31, 2023. The valuation allowance as of December 31, 2023 was $19,617, primarily due to the company entering into a 3 year cumulative loss position and no expectation of income for the year ended December 31, 2023.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 14 - INCOME TAXES (CONTINUED)

As part of the Tax Cuts and Jobs Act that was enacted in December of 2017, taxpayers are required to capitalize research and development expenses and amortize them over five years if the expense is incurred in the US and over fifteen years if incurred in a foreign jurisdiction. The effective date for that provision is for tax years beginning on or after January 1, 2022. The new capitalization requirement increased deferred tax assets related to research and development expenses and decreased taxable loss in the current year, both of which were offset by a full valuation allowance.

The roll-forward of the Company's gross uncertain tax positions is as follows:

	Gross Uncertain Tax Position
Balance at January 1, 2022	$ -
Additions for current year tax positions	128
Balance at December 31, 2022	128
Additions for current year tax positions	(37)
Balance at December 31, 2023	$ 91

The Company's total uncertain tax positions decreased during the year ended December 31, 2023 because of a reserve established on federal research and development credits generated in the current year. None of the uncertain tax positions that, if realized, would affect the Company's effective tax rate in future periods due to a valuation allowance provided against the Company's net deferred tax assets.

On August 16, 2022, the Inflation Reduction Act of 2022 (the "IR Act") was signed into federal law. The IR Act provides for, among other things, a new U.S. federal 1% excise tax on certain repurchases of stock by publicly traded U.S. domestic corporations and certain U.S. domestic subsidiaries of publicly traded foreign corporations occurring on or after January 1, 2023. The excise tax is imposed on the repurchasing corporation itself, not its shareholders from which shares are repurchased. The amount of the excise tax is generally 1% of the fair market value of the shares repurchased at the time of the repurchase. However, for purposes of calculating the excise tax, repurchasing corporations are permitted to net the fair market value of certain new stock issuances against the fair market value of stock repurchases during the same taxable year. In addition, certain exceptions apply to the excise tax. The U.S. Department of the Treasury (the "Treasury") has been given the authority to provide regulations and other guidance to carry out and prevent the abuse or avoidance of the excise tax. During the year ended December 31, 2023, the Company did not undergo any repurchases of its stock that were subject to the IR Act.

NOTE 15 - REVISIONS OF PREVIOUSLY ISSUED FINANCIAL STATEMENTS

The Company has revised the previously issued 2022 financial statements for the underpayment of tariffs to U.S. Customs and Border Protection ("CBP") in the amount of $1.58 million in the aggregate, related to the improper classification and valuation of certain of the products used in its batteries. The Company has reported the underpayment to CBP. The underpayment of tariffs was primarily the result of utilizing an improper tariff rate. The additional amount of the tariffs was allocated between inventory and cost of goods sold based on the status of imported items (i.e. included in the inventories held vs included in the inventories already sold to customers).

In accordance with Staff Accounting Bulletin ("SAB") 99, Materiality, and SAB 108, Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements, the Company evaluated the materiality of the error from qualitative and quantitative perspectives, and concluded that the error was immaterial to any prior annual or interim financial statements. Notwithstanding this conclusion, management has revised the accompanying consolidated financial statements for 2022 and related notes included herein to correct this error for the 2022 financial statements presented.

The following tables present the effect of correcting this error on the Company's previously issued financial statements.

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

NOTE 15 - REVISIONS OF PREVIOUSLY ISSUED FINANCIAL STATEMENTS (CONTINUED)

	As of December 31, 2022		
Consolidated Balance Sheet	As previously reported	Adjustment	As revised
Inventory	$ 49,846	$ 343	$ 50,189
Total Current Assets	73,489	343	73,832
Total Assets	88,761	343	89,105
Accrued tariffs	-	$ 932	$ 932
Total Current Liabilities	40,531	932	41,463
Total Liabilities	77,430	932	78,362
Total Equity	11,332	(589)	10,743

	For the Year ended December 31, 2022		
Consolidated Statement of Operations	As previously reported	Adjustment	As revised
Cost of Goods Sold	$ 62,247	$ 386	$ 62,633
Gross Profit	24,004	(386)	23,618
Loss From Operations	(33,997)	(386)	(34,383)
Interest expense	(6,945)	(34)	(6,979)
Total Other Expense	(6,283)	(34)	(6,317)
Loss before taxes	(40,280)	(420)	(40,700)
Net Loss	(39,571)	(420)	(39,991)
Loss Per Share	(1.03)	(0.01)	(1.04)

	For the Year ended December 31, 2022		
Consolidated Statement of Cash Flows	As previously reported	Adjustment	As revised
Net Loss	$ (39,571)	$ (420)	$ (39,991)
Change in Inventory	(22,719)	(13)	(22,732)
Change in Accrued tariffs	-	433	433
Change in Cash Used in Operating Activities	(45,696)	-	(45,696)

	For the Year ended December 31, 2022		
Consolidated Statement of Shareholder' Equity	As previously reported	Adjustment	As revised
Retained Earnings Balance – January 1, 2022	$ 12,438	$ (169)	$ 12,269
Net Loss	(39,571)	(420)	(39,991)
Retained Earnings Deficit – December 31, 2022	(27,133)	(589)	(27,722)

NOTE 17 - SUBSEQUENT EVENTS

On January 26, 2024 the Company entered into a convertible promissory note (the “January Note”) with a board member in the amount of $1,000, or the January Principal Amount. Upon execution of the January Note and funding of the original principal sum, a payment of $50 (the “January Loan Fee”) was fully earned as of the date of the January Note and was due and payable in full in cash on February 2, 2024. The Company paid the January Principal Amount and the January Loan Fee on February 1, 2024.

On February 27, 2024 the Company entered into a convertible promissory note (the “February Note”) with a board member in the amount of $1,700, or the February Principal Amount. Upon execution of the February Note and funding of the original principal sum, a payment of $85 (the “February Loan Fee”) was fully earned as of the date of the February Note and was due and payable in full in cash on March 1, 2024. The Company paid the February Principal Amount and the February Loan Fee on March 1, 2024.

On March 31, 2024, the Company received a waiver from its Administrative Agent and Term Loan Lenders in regard to the Company’s compliance with its liquidity requirement as of the last day of the fiscal quarter ended March 31, 2024.

Effective April 12, 2024, the Company entered into amendments to the employment agreements with its Chief Executive Officer, its Chief Revenue Officer and its Chief Marketing Officer to amend the terms of their annual equity compensation (the “Amended Employee Agreements”). The Amended Employee Agreements allow the Company to issue a combination of cash and equity awards on an annual basis up to a specified amount ($1,532 for the Chief Executive Officer, $490 for the Chief Revenue Officer and $236 for the Chief Marketing Officer), subject to approval and such other terms and conditions imposed by the compensation committee of the board of directors.

On April 12, 2024, the Company issued a total of 836 RSUs to the following employees: (i) 568 RSUs to the Chief Executive Officer; (ii) 181 RSUs to the Chief Revenue Officer; and (iii) 87 RSUs to the Chief Marketing Officer. Each of the RSUs granted will vest in three equal annual installments, with the first vesting date on the one (1) year anniversary of the date of issuance and the following two vesting dates on each subsequent anniversary of the date of issuance, subject to each employees’ continued employment as of each vesting date. In addition to the RSU awards, the Board also approved the following cash awards to the above referenced employees: (i) $511 to the Chief Executive Officer; (ii) $163 to the Chief Revenue Officer; and (iii) $79 to the Chief Marketing Officer. Each of the approved cash awards will not be paid out to the employees until the Company has achieved a minimum cash balance of $30,000, and are subject to each employee’s continued employment on the date of payment.

On April 12, 2024, the board of directors authorized the issuance of 222 RSUs to each director in connection with their service as directors for the year ended December 31, 2023. The RSUs will vest in three equal annual installments, with the first vesting date on the one (1) year anniversary date of their issuance, subject to the directors continued service on with the Company on each vesting date.

On April 15, 2024, the board of directors approved an amendment to the Company’s Director Compensation Policy offering its directors long-term incentive awards that are issuable subject to the sole discretion of the Company’s compensation committee. Each such long-term incentive award is payable in the form of cash and or equity awards. Each such award shall be determined each fiscal year and are subject to the director’s continued service with the Company and other conditions as the Company’s compensation committee deems appropriate. Where equity awards are issued, such awards are subject to the terms and conditions of the Dragonfly Energy Holdings Corp. 2022 Equity Incentive Plan.

On April 12, 2024 the Company entered into a lease agreement, pursuant to which the Company agreed to lease an approximately 64 square foot facility (the “Premises”) located in Fernley, Nevada, to be used for general, warehousing, assembly/light manufacturing, painting of products, storage fulfillment, distribution of the Company’s products, and other uses as permitted under the Fernley Lease Agreement (the “Fernley Lease Agreement”). The initial term of the Fernley Lease Agreement (the “Term”) is for a period of sixty (60) months, effective April 1, 2024. The base rent for the Premises, payable monthly, is $45 for the first twelve months of the Term and is subject to a three percent (3.0%) increase on the anniversary of each year. The Company also will be responsible for twenty-five percent (25%) of any operating expenses, taxes and insurance expenses incurred by the Landlord in connection with the building in which the Premises are located (the “Expenses”) as well as utility expenses. The Expenses are subject to recalculation and increase upon the completion of the Initial Improvements (as defined in the Fernley Lease Agreement). The Landlord is responsible for completing the Initial Improvements. The Fernley Lease Agreement also contains customary default provisions allowing the Landlord to terminate the Fernley Lease Agreement if the Company fails to cure certain breaches of its obligations under the Fernley Lease Agreement within a specified period of time upon written notice to the Company. Concurrent with the execution of the Fernley Lease Agreement, the Company paid the Landlord a security deposit of $50.

Exhibit 4.10

DESCRIPTION OF SECURITIES

*The following description summarizes the most important terms of our capital stock. It is subject to and qualified in its entirety by reference to our articles of incorporation ("**Charter**") and bylaws ("**Bylaws**"), which are included as exhibits to our annual report, of which this exhibit is a part. We encourage you to read our Charter, our Bylaws and the applicable provisions of the Nevada Revised Statutes (the "**NRS**"), for additional information.*

Authorized Capitalization

We have 255,000,000 shares of capital stock authorized under our Charter, which consists of 250,000,000 shares of common stock with a par value of $0.0001 per share and 5,000,000 shares of preferred stock with par value $0.0001 per share.

Common Stock

Holders of our common stock are entitled to such dividends as may be declared by our board of directors out of funds legally available for such purposes. Holders of our common stock are entitled to receive proportionately any dividends as may be declared by our board, subject to any preferential dividend rights of any series of preferred stock that we may designate and issue in the future. The shares of common stock are neither redeemable nor convertible. Holders of common stock have no preemptive or subscription rights to purchase any of our securities. The rights, preferences and privileges of holders of our common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future. Each holder of our common stock is entitled to one vote for each such share outstanding in the holder's name. No holder of common stock is entitled to cumulate votes in voting for directors.

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

Preferred Stock

Our board of directors has the authority, without further action by our stockholders, to issue up to 5,000,000 shares of preferred stock in one or more series and to fix the designations, rights, preferences, privileges and restrictions thereof, without further vote or action by the stockholders. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, redemption, liquidation preferences and the number of shares constituting, or the designation of, such series, any or all of which may be greater than the rights of common stock. The issuance of our preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon our liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change in control of our company or other corporate action. No shares of preferred stock are outstanding, and we have no present plan to issue any shares of preferred stock.

Public Warrants

The following summary of certain terms and provisions of our Public Warrants is not complete and is subject to, and qualified in its entirety by the provisions of the respective Warrant Agreement and form of Public Warrant which are filed as exhibits to this annual report of which this exhibit is a part. We encourage you to review the terms and provisions set forth in the Warrant Agreement and form of Public Warrant. The Public Warrants are administered by American Stock Transfer & Trust Company, LLC, as the warrant agent.

Exercisability

The Public Warrants will expire on October 7, 2027 at 5:00 p.m., New York City time, or earlier upon redemption or liquidation. The Public Warrants are exercisable, at the option of each holder, in whole or in part by delivering to us and the warrant agent a duly executed exercise notice accompanied by payment in full for the number of common stock purchased upon such exercise. If a registration statement registering under the Securities Act of 1933, as amended (the "**Securities Act**") the issuance of the shares of common stock underlying the Public Warrants is not effective or available, the holder may, in its sole discretion, elect to exercise the Public Warrants for cash or on a cashless basis, and we will not be obligated to issue any shares to registered holders seeking to exercise their Public Warrants, unless the issuance of the shares upon such exercise is registered or qualified under the securities laws of the state of the exercising registered holder, or an exemption from registration or qualification is available.

A holder of a Public Warrant may notify us in writing in the event it elects to be subject to a requirement that such holder will not have the right to exercise such warrant, to the extent that after giving effect to such exercise, such person (together with such person's affiliates), to the warrant agent's actual knowledge, would beneficially own in excess of 9.99% (or such other amount as a holder may specify) of the shares of common stock outstanding immediately after giving effect to such exercise.

Exercise Price

Each whole redeemable Public Warrant entitles the registered holder to purchase one share of common stock at a price of $11.50 per share, subject to adjustment for stock splits or combinations, stock dividends and distributions, reclassifications, subdivisions, and other similar transactions. Pursuant to the Amended And Restated Warrant Agreement, a Public Warrant holder may exercise its warrants only for a whole number of shares of common stock. No fractional shares will be issued in connection with the exercise of a Public Warrant. In lieu of fractional shares, we will, upon exercise, round down to the nearest whole number of shares of common stock to be issued to the Public Warrant holder.

Adjustments; Fundamental Transaction

The exercise price and the number of shares underlying the Public Warrants are subject to appropriate adjustment in the event of stock splits, stock dividends on our common shares, stock combinations or similar events affecting our common shares. If, at any time while the Public Warrants are outstanding, (1) we consolidate or merge with or into another corporation whether or not the Company is the surviving corporation, (2) we sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of our assets, or any of its significant subsidiaries (as defined in Rule 1-02 of Regulation S-X) or (3) we effect any reclassification or recapitalization of the ordinary shares or any compulsory exchange pursuant to which the ordinary shares are converted into or exchanged for other securities, cash or property, or each, a "Fundamental Transaction," then upon any subsequent exercise of the Warrants, the holders thereof will have the right to receive the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of ordinary shares then issuable upon exercise of those Warrants, and any additional consideration payable as part of the Fundamental Transaction.

Redemption

We may call the Public Warrants for redemption in accordance with the terms summarized below:

- in whole and not in part;
- at a price of $0.01 per warrant;
- upon a minimum of 30 days' prior written notice of redemption (the "30-day redemption period") to each warrant holder;
- if, and only if, the last sales price of our common stock equals or exceeds $16.00 per share for any ten (10) trading days within a 30-trading day period ending three business days before we send the notice of redemption; and
- if, and only if, there is a current registration statement in effect with respect to the offer and sale of the shares of common stock underlying such warrants at the time of redemption and for the entire 30-trading day period referred to above and continuing each day thereafter until the date of redemption.

We may not exercise our redemption right if the issuance of shares of common stock upon exercise of the Public Warrants (i) is not exempt from registration or qualification under applicable state blue sky laws – we will use our best efforts to register or qualify such shares or (ii) we are unable to effect such registration or qualification. However, there may be instances in which registered holders of our public warrants may be unable to exercise such public warrants but registered holders of our Private Warrants, described below, may be able to exercise such Private Warrants.

Transferability

Subject to applicable laws and the limitations provided within the Amended and Restated Warrant Agreement, the Public Warrants may be transferred at the option of the holders upon surrender of the to the warrant agent, together with the appropriate instruments of transfer.

Rights as a Stockholders

Except as otherwise provided in the Warrant Agreement or by virtue of such holder's ownership of common stock, holders of the Public Warrants do not have rights or privileges of holders of common stock, including any voting rights, until a holder exercises such Public Warrant.

Governing Law

The Public Warrants and Warrant Agreement are governed by New York law.

Anti-Takeover Effects of the Charter, the Bylaws and Nevada Law

We are a Nevada corporation and are generally governed by the NRS. The following is a brief description of the provisions in our Charter, Bylaws and the NRS that could have an effect of delaying, deferring, or preventing a change in control of the Company.

The provisions of the NRS, our Charter, and Bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Combinations with Interested Stockholders

The "combinations with interested stockholders" provisions of Sections 78.411 to 78.444, inclusive, prohibit a Nevada corporation with at least 200 stockholders of record from engaging in various business "combinations" with any person deemed to be an "interested stockholder" for a period of two years after the date that the person first become an interested stockholder, unless the business combination or the transaction by which the person first became an interested stockholder is approved by the corporation's board of directors before the person first became an interested stockholder, or the business combination is approved by the board of directors and thereafter is approved at a meeting of the corporation's stockholders by the affirmative vote of at least 60% of the outstanding voting power of the corporation not beneficially owned by the interested stockholder, its affiliates, and associates.

Following the expiration of the two-year period, the corporation is prohibited from engaging in a business "combinations" with the interested stockholder, unless: (i) the business combination or the transaction by which the person first became an interested stockholder is approved by the corporation's board of directors before the person first became an interested stockholder; (ii) the business combination is approved by a majority of the outstanding voting power of the corporation held by disinterested stockholders; or (iii) the aggregate amount of the consideration to be received in the business combination by all of the holders of outstanding common shares of the corporation not beneficially owned by the interested stockholder is at least equal to the higher of: (a) the highest price per share paid by the interested stockholder, at a time when the interested stockholder was the beneficial owner, directly or indirectly, of 5 percent or more of the outstanding voting shares of the corporation, for any common shares of the same class or series acquired by the interested stockholder within two years immediately before the date of announcement with respect to the combination or within two years immediately before, or in, the transaction in which the person became an interested stockholder, whichever is higher, plus, in either case, interest compounded annually from the earliest date on which the highest price per share was paid through the date of consummation at the rate for one-year obligations of the United States Treasury in effect on that earliest date, less the aggregate amount of any dividends paid in cash and the market value of any dividends paid other than in cash, per common share since that earliest date, and (b) the market value per common share on the date of the announcement of the business combination or on the date that the person first became an interested stockholder, whichever is higher, plus interest compounded annually from that date through the date of consummation at the rate for one-year obligations of the United States Treasury in effect on that date, less the aggregate amount of any dividends paid in cash and the market value of any dividends paid other than in cash, per common share since that date.

In general, an “interested stockholder” is any person who is (i) the direct or indirect beneficial owner of 10% or more of the voting power of the outstanding voting shares of the corporation, or (ii) an affiliate or associate of the corporation and at any time within two years immediately before the date in question was the direct or indirect beneficial owner of 10% or more of the voting power of the then outstanding shares of the corporation.

Companies are entitled to opt out of the business combination provisions of the NRS. In our Charter, we have not opted out of the business combination provisions of NRS 78.411 to 78.444, inclusive.

Acquisition of Controlling Interests

Nevada law also protects the corporation and its stockholders from persons acquiring a “controlling interest” in a corporation. The provisions can be found in NRS 78.378 to 78.3793, inclusive. Delaware law does not have similar provisions.

The restriction on acquisition of a controlling interest applies to corporations which have 200 or more stockholders of record (at least 100 of whom have had addresses in Nevada at all times during the 90 days immediately preceding the date of the acquisition) and conducts business in Nevada, unless the Charter or bylaws of the corporation in effect on the tenth day after the acquisition of a controlling interest provide otherwise. NRS 78.3785 provides that a “controlling interest” means the ownership of outstanding voting shares of an issuing corporation sufficient to enable the acquiring person, individually or in association with others, directly or indirectly, to exercise (i) one fifth or more but less than one third, (ii) one third or more but less than a majority, or (iii) a majority or more of the voting power of the issuing corporation in the election of directors. Once an acquirer crosses one of these thresholds by acquiring a controlling interest in the corporation, the shares which the acquirer acquired in the transaction taking it over the threshold and within the 90 days immediately preceding the date when the acquiring person acquired or offered to acquire a controlling interest in the corporation become “control shares.” Pursuant to NRS 78.379, any person who acquires a controlling interest in a corporation may not exercise voting rights on any control shares unless such voting rights are conferred by a majority vote of the disinterested stockholders of the issuing corporation at an annual meeting or a special meeting of such stockholders held upon the request and at the expense of the acquiring person, or, if the acquisition would adversely alter or change any preference or any relative or other right given to any other class or series of outstanding shares, the holders of a majority of each class or series affected. In the event that the control shares are accorded full voting rights and the acquiring person acquires control shares with a majority or more of all the voting power, any stockholder, other than the acquiring person, who does not vote in favor of authorizing voting rights for the control shares is entitled to demand payment for the fair value of such person’s shares, and, provided that the proper procedure is adhered to, the corporation must comply with the demand.

NRS 78.378(1) provides that the control share statutes of the NRS do not apply to any acquisition of a controlling interest in an issuing corporation if the Charter or bylaws of the corporation in effect on the 10th day following the acquisition of a controlling interest by the acquiring person provide that the provisions of those sections do not apply to the corporation or to an acquisition of a controlling interest specifically by types of existing or future stockholders, whether or not identified. NRS 78.378(2) provides that the corporation may impose stricter requirements if it so desires. We have not opted out of the control share statutes, and will be subject to these statutes if we are an “issuing corporation” as defined in such statutes.

The effect of the Nevada control share statutes is that the acquiring person, and those acting in association with the acquiring person, will obtain only such voting rights in the control shares as are conferred by a resolution of the stockholders at an annual or special meeting. The Nevada control share law, if applicable, could have the effect of discouraging takeovers of our Company.

Charter and Bylaws

Our Charter and Bylaws provide for:

- classifying our board of directors into three classes;
- authorizing the issuance of "blank check" preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- limiting the removal of directors by the stockholders;
- requiring the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then outstanding shares of stock entitled to vote in the election of directors, voting as a single class, to adopt, amend alter or repeal our Bylaws and amend certain provisions of our Chart, including provisions relating to the size of the board, removal of directors, special meetings, and actions by written consent;
- prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- eliminating the ability of stockholders to call a special meeting of stockholders;
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings; and
- establishing Nevada as the exclusive jurisdiction for certain stockholder litigation against us.

Authorized Shares

Section 78.207 of the NRS provides that without any action by our shareholders, we may increase or decrease the number of authorized shares in a class or series of our shares and correspondingly effect a forward or reverse split of any class or series of the our shares (and change the par value thereof), so long as the action taken does not adversely change or alter any right or preference of our shareholders and does not include any provision or provisions pursuant to which only money will be paid or scrip issued to stockholders who hold 10% or more of the outstanding shares of the affected class and series, and who would otherwise be entitled to receive fractions of shares in exchange for the cancellation of all of their outstanding shares. Series A common stock and preferred stock have been established, and our board has authority to establish more than one series of preferred stock, and the different series shall have such relative rights and preferences, with such designations, as our board may by resolution provide. Issuance of such a new series could, depending upon the terms of the class or series, delay, defer, or prevent a change of control of our Company.

Limitation on Liability and Indemnification of Directors and Officers

Section 78.138 of the NRS provides that, unless the corporation's Charter provide otherwise, a director or officer will not be individually liable unless the presumption that it is acting in good faith and on an informed basis with a view to the interests of the corporation has been rebutted, and it is proven that (i) the director's or officer's acts or omissions constituted a breach of his or her fiduciary duties, and (ii) such breach involved intentional misconduct, fraud, or a knowing violation of the law.

Section 78.7502 of the NRS provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he:(a) is not liable pursuant to NRS 78.138; or (b) acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person is liable pursuant to NRS 78.138 or did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, or that, with respect to any criminal action or proceeding, he had reasonable cause to believe that his conduct was unlawful.

Section 78.7502 of the NRS provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he: (a) as not liable pursuant to NRS 78.138; or (b) acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 78.751 of the NRS provides that to the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

Unless otherwise restricted by the Charter, bylaws, or other agreement. Section 78.751 of the NRS permits a Nevada company to indemnify its officers and directors against expenses incurred by them in defending a civil or criminal action, suit, or proceeding as they are incurred and in advance of final disposition thereof upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that the director or officer is not entitled to be indemnified by the corporation. The Charter, bylaws, or other agreement may require a corporation to advance such expenses upon receipt of such an undertaking. Section 78.751 of the NRS further permits a Nevada company to grant its directors and officers additional rights of indemnification under its articles of incorporation, bylaws, or other agreement; provided, however, that unless advanced or otherwise ordered by a court, indemnification may not be made to or on behalf of any director or officer finally adjudged by a court, after exhaustion of appeals, to be liable for intentional misconduct, fraud, or a knowing violation of law that was material to the cause of action.

Section 78.752 of the NRS provides that a Nevada company may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee, or agent of the company, or is or was serving at the request of the company as a director, officer, employee, or agent of another company, partnership, joint venture, trust, or other enterprise, for any liability asserted against him and liability and expenses incurred by him in his capacity as a director, officer, employee, or agent, or arising out of his status as such, whether or not the company has the authority to indemnify him against such liability and expenses.

Our Charter provides that the Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced, without interest, if it shall ultimately be determined by final adjudication from which there is no further right to appeal that the indemnitee is not entitled to be indemnified.

In addition, we have entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us to indemnify our directors and executive officers for certain expenses, including attorneys' fees, judgments and fines incurred by a director or executive officer in any action or proceeding arising out of their services as one of our directors or executive officers or any other company or enterprise to which the person provides services at our request.

We maintain a directors' and officers' insurance policy pursuant to which our directors and officers are insured against liability for actions taken in their capacities as directors and officers. We believe these provisions in the Charter and the Bylaws and these indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or control persons, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Choice of Forum Provisions

Our Charter, in Article XI, includes a mandatory forum provision that, to the fullest extent permitted by law, and unless we consent in writing, the Second Judicial District Court, in and for the State of Nevada, located in Washoe County, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought in the name or right of the Company or on our behalf, (b) any action asserting a claim for breach of any fiduciary duty owed by any of our current or former directors, officers, employees or stockholders to the Company or our stockholders, (c) any action arising or asserting a claim arising pursuant to any provision of NRS Chapters 78 or 92A or any provision of the Charter or Bylaws, (d) any action to interpret, apply, enforce or determine the validity of the Charter or Bylaws or (e) any action asserting a claim governed by the internal affairs doctrine.

These provisions would not apply to suits brought to enforce a duty or liability created by the Exchange Act, or any other claim for which the federal courts have exclusive jurisdiction. Any person or entity purchasing or otherwise acquiring or holding any interest in our securities shall be deemed to have notice of and consented to these provisions. Our exclusive forum provision will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our shareholders will not be deemed to have waived our compliance with these laws, rules and regulations.

Our Transfer Agent and Warrant Agent

The transfer agent for our shares of common stock and warrant agent for all of our warrants is American Stock Transfer & Trust Company, LLC.

Stock Exchange Listing

Our common stock is currently listed on the Nasdaq Global Market under the symbol "DFLI" and our Public Warrants are currently listed on the Nasdaq Capital Market under the symbol "DFLIW".

Exhibit 10.42

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made and entered into as of November 7, 2022, by and between Wade Seaburg (the "Executive") and Dragonfly Energy Holdings Corp., a Nevada corporation (the "Company").

WHEREAS, the Company desires to employ the Executive on the terms and conditions set forth herein; and

WHEREAS, the Executive desires to be employed by the Company on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. Term. Subject to Section 5 of this Agreement, the Executive's initial term of employment hereunder shall be from the period beginning on November 7, 2022 (the "Effective Date") for a period of three years. (the "Initial Term"). Thereafter, the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for successive periods of three years, unless either party provides written notice of its intention not to extend the term at least 90 days prior to the end of the Initial Term or extension thereof. The period during which the Executive is employed by the Company hereunder is hereinafter referred to as the "Employment Term."

2. Position and Duties.

2.1 Position. During the Employment Term, the Executive shall serve as the Chief Revenue Officer of the Company, reporting to the Dragonfly Energy Holdings Corp. Chief Executive Officer. In such position, the Executive shall have such duties, authority, and responsibilities as are consistent with the Executive's position.

2.2 Duties.

(a) During the Employment Term, the Executive shall devote substantially all of the Executive's business time and attention to the performance of the Executive's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

(b) Notwithstanding the foregoing, the Executive shall be permitted to hold a majority ownership stake in Structure Sales, LLC, an Indiana limited liability company ("Structure Sales"), of which the Executive is the sole member.

3. Place of Performance. During the Employment Term, the principal place of the Executive's employment shall be in Lafayette, Indiana; provided, that, subject to any health or safety concerns related to the COVID-19 pandemic or other similar extraordinary circumstances and upon the request of the Company's Chief Executive Officer, the Executive will spend an average of 5 days per month at the Company's principal executive office currently located in Reno, Nevada. In addition thereto, the Executive may be required to travel on Company business during the Employment Term. When the Executive is not working from the Company's principal executive offices in Reno, Nevada, the Executive may work remotely from the Executive's primary residence in Lafayette, Indiana, so long as doing so does not interfere with the Executive's responsibilities under this Agreement.

4. Compensation.

4.1 Base Salary. The Company shall pay the Executive an annual rate of base salary of $340,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. The Executive's base salary shall be reviewed at least annually by the Board and the Board may increase but not decrease the Executive's base salary during the Employment Term. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "Base Salary."

4.2 Annual Bonus.

(a) For each fiscal year of the Employment Term, the Executive shall be eligible to receive an annual bonus (the “Annual Bonus”) of up to 92% of the Executive’s base annual salary. The decision to provide any Annual Bonus and the amount and terms of any Annual Bonus shall be in the sole and absolute discretion of the Compensation Committee of the Board (the “Compensation Committee”).

(b) The Annual Bonus, if any, will be paid within two and a half (2 1/2) months after the end of the applicable fiscal year.

(c) Except as otherwise provided in Section 5, in order to be eligible to receive an Annual Bonus, the Executive must be employed by the Company on the date that Annual Bonuses are paid.

4.3 Equity Awards. With respect to each fiscal year of the Company ending during the Employment Term, the Executive shall be eligible to receive an annual long-term incentive award with a value of no less than $490,000 (based on the grant date value of any such award). The Compensation Committee may grant up to an additional $50,000 in long- term incentive awards based on Executive’s performance, or ability to achieve certain metrics set by the Compensation Committee. All terms and conditions applicable to each such award shall be determined by the Compensation Committee.

4.4 Fringe Benefits and Perquisites. During the Employment Term, the Executive shall be entitled to fringe benefits and perquisites consistent with those provided to similarly situated executives of the Company.

4.5 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, “Employee Benefit Plans”), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.6 Vacation; Paid Time Off. During the Employment Term, the Executive shall be entitled to twenty (20) paid vacation days per calendar year (prorated for partial years) in accordance with the Company's vacation policies, as in effect from time to time. The Executive shall receive other paid time off in accordance with the Company's policies for executive officers as such policies may exist from time to time and as required by applicable law.

4.7 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

4.8 Indemnification. The Company shall indemnify and hold the Executive harmless to the maximum extent permitted under applicable law and the Company's bylaws for acts and omissions in the Executive's capacity as an officer, director, or employee of the Company.

4.9 Clawback Provisions. Notwithstanding any other provisions in this Agreement to the contrary, any incentive-based or other compensation paid to the Executive under this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

5.Termination of Employment. The Employment Term and the Executive's employment hereunder may be terminated by either the Company or the Executive at any time and for any reason or for no particular reason; provided that, unless otherwise provided herein, either party shall be required to give the other party at least 30 days advance written notice of any termination of the Executive's employment. Upon termination of the Executive's employment during the Employment Term, the Executive shall be entitled to the compensation and benefits described in this Section 5 and shall have no further rights to any compensation or any other benefits from the Company or any of its affiliates.

5.1 Expiration of the Term, For Cause, or Without Good Reason.

(a) The Executive's employment hereunder may be terminated upon either party's failure to renew the Agreement in accordance with Section 1, by the Company for Cause or by the Executive without Good Reason and the Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary and accrued but unused paid time off which shall be paid on the pay date immediately following the date of the Executive's termination in accordance with the Company's customary payroll procedures;

(ii) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy; and

(iii) such employee benefits (including equity compensation), if any, to which the Executive may be entitled under the Company's employee benefit plans as of the date of the Executive's termination; provided that, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iii) are referred to herein collectively as the "Accrued Amounts."

(b) For purposes of this Agreement, "Cause" shall mean:

(i) the Executive's willful failure to perform the Executive's duties (other than any such failure resulting from incapacity due to physical or mental illness);

(ii) the Executive's willful failure to comply with any valid and legal directive of the Dragonfly Energy Holding Corp. Board of Directors;

(iii) the Executive's willful engagement in dishonesty, illegal conduct, or gross misconduct, which is, in each case, materially injurious to the Company or its affiliates;

(iv) the Executive's embezzlement, misappropriation, or fraud, whether or not related to the Executive's employment with the Company;

(v) the Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude;

(vi) the Executive's material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct;

(vii) the Executive's material breach of any material obligation under this Agreement or any other written agreement between the Executive and the Company; or

(viii) the Executive's engagement in conduct that brings the Company negative publicity or into public disgrace, embarrassment, or disrepute.

For purposes of this provision, none of the Executive's acts or failures to act shall be considered "willful" unless the Executive acts, or fails to act, in bad faith or without reasonable belief that the action or failure to act was in the best interests of the Company. The Executive's actions, or failures to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the Company shall be conclusively presumed to be in good faith and in the best interests of the Company.

Except for a failure, breach, or refusal which, by its nature, cannot reasonably be expected to be cured, the Executive shall have 15 business days from the delivery of written notice by the Company within which to cure any acts constituting Cause.

(c) For purposes of this Agreement, "Good Reason" shall mean the occurrence of any of the following, in each case during the Employment Term without the Executive's prior written consent:

(i) a material reduction in the Executive's Base Salary other than a general reduction in Base Salary that affects all similarly situated executives in substantially the same proportions;

(ii) the Company requiring the Executive to relocate from the Executive's principal place of employment in Lafayette, Indiana;

(iii) any material breach by the Company of any material provision of this Agreement or any material provision of any other agreement between the Executive and the Company;

(iv) the Company's failure to obtain an agreement from any successor to the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no succession had taken place, except where such assumption occurs by operation of law;

(v) a material, adverse change in the Executive's title, authority, duties, or responsibilities (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

(vi) a material adverse change in the reporting structure applicable to the Executive.

To terminate the Executive's employment for Good Reason, the Executive must provide written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 15 days of the Executive's initial awareness of such grounds and the Company must have at least 10 days from the date on which such notice is provided to cure such circumstances. If the Executive does not terminate the Executive's employment for Good Reason within 45 days of the expiration of said 10 day cure period, then the Executive will be deemed to have waived the Executive's right to terminate for Good Reason with respect to such grounds.

5.2 Without Cause or for Good Reason. The Employment Term and the Executive's employment hereunder may be terminated by the Executive for Good Reason or by the Company without Cause. In the event of such termination, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6 of this Agreement and the agreements referenced therein and the Executive's execution, within 21 days following receipt, of a release of claims in favor of the Company, its affiliates and their respective officers and directors in a form provided by the Company and reasonably acceptable to the Executive (the "Release") (such 21-day period, the "Release Execution Period"), and the Release becoming effective according to its terms, the Executive shall be entitled to receive the following:

(a) equal installment payments payable in accordance with the Company's normal payroll practices, but no less frequently than monthly, which are in the aggregate equal to the Executive's Base Salary for the year that includes the date of the Executive's termination, which shall begin within 30 days following the date of the Executive's termination and continue until the 2nd anniversary of the Executive's date of termination; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payments shall not begin until the beginning of the second taxable year; provided further that, the first installment payment shall include all amounts that would otherwise have been paid to the Executive during the period beginning on the date of the Executive's termination and ending on the first payment date if no delay had been imposed;

(b) If the Executive timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Company shall reimburse the Executive for the monthly COBRA premium paid by the Executive for the Executive and the Executive's dependents. Such reimbursement shall be paid to the Executive on the first of the month immediately following the month in which the Executive timely remits the premium payment. The Executive shall be eligible to receive such reimbursement until the earliest of: (i) the twelve-month anniversary of the date of the Executive's termination; (ii) the date the Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which the Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's making payments under this Section 5.2(c) would violate the nondiscrimination rules applicable to non-grandfathered, insured group health plans under the Affordable Care Act (the "ACA"), or result in the imposition of penalties under the ACA and the related regulations and guidance promulgated thereunder, the parties agree to reform this Section 5.2(c) in a manner as is necessary to comply with the ACA.

(c) Notwithstanding the terms of the Dragonfly Energy Holding Corp. Stock Incentive Plan and all successor plans or any applicable award agreements:

(i) all outstanding equity-based compensation awards that do not vest based on the attainment of performance goals shall become fully vested and the restrictions thereon shall lapse; provided that, any delays in the settlement or payment of such awards that are set forth in the applicable award agreement and that are required under Section 409A ("Section 409A") of the Internal Revenue Code of 1986, as amended (the "Code") shall remain in effect; and

(ii) all outstanding equity-based compensation awards that vest based on the attainment of performance goals shall remain outstanding and shall vest or be forfeited in accordance with the terms of the applicable award agreements, if the applicable performance goals are satisfied.

5.3 Change in Control Termination.

(a) Notwithstanding any other provision contained herein, if the Executive's employment hereunder is terminated by the Executive for Good Reason or by the Company on account of its failure to renew the Agreement in accordance with Section 1 or without Cause (other than on account of the Executive's death or Disability), in each case three months before or twelve (12) months following a Change in Control, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6 of this Agreement and the Executive's execution of a Release which becomes effective within 21 days following the Termination Date, the Executive shall be entitled to receive a lump sum payment equal to one and a half (1½) times the sum of the Executive's Base Salary for the year in which the Termination Date occurs (or if greater, the year immediately preceding the year in which the Change in Control occurs), which shall be paid within 30 days following the Termination Date; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payment shall not be made until the beginning of the second taxable year.

(b) If the Executive timely and properly elects health plan continuation coverage under COBRA, the Company shall reimburse the Executive for the monthly COBRA premium paid by the Executive for the Executive and the Executive's dependents. Such reimbursement shall be paid to the Executive on the first of the month immediately following the month in which the Executive timely remits the premium payment. The Executive shall be eligible to receive such reimbursement until the earliest of: (i) the twelve-month anniversary of the Termination Date; (ii) the date the Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which the Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's payments under this Section 5.3(b) would violate the nondiscrimination rules applicable to non- grandfathered, insured group plans under the ACA, or result in the imposition of penalties under the ACA, the parties agree to reform this Section 5.3(b) in a manner as is necessary to comply with the ACA.

(c) Notwithstanding the terms of any equity incentive plan or award agreements, as applicable:

(i) all outstanding unvested stock options granted to the Executive during the Employment Term shall become fully vested and exercisable for the remainder of their full term;

(ii) all outstanding equity-based compensation awards, that do not vest based on the attainment of performance goals shall become fully vested and the restrictions thereon shall lapse; provided that, any delays in the settlement or payment of such awards that are set forth in the applicable award agreement and that are required under Section 409A shall remain in effect; and

(iii) all outstanding equity-based compensation awards, that vest based on the attainment of performance goals shall remain outstanding and shall vest or be forfeited in accordance with the terms of the applicable award agreements, if the applicable performance goals are satisfied.

(d) For purposes of this Agreement, "Change in Control" shall mean the occurrence of any of the following after the Effective Date:

(i) one person (or more than one person acting as a group) acquires ownership of stock of the Company that, together with the stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of such corporation; provided that, a Change in Control shall not occur if any person (or more than one person acting as a group) owns more than 50% of the total fair market value or total voting power of the Company's stock and acquires additional stock;

(ii) one person (or more than one person acting as a group) acquires (or has acquired during the twelve-month period ending on the date of the most recent acquisition) ownership of the Company's stock possessing 30% or more of the total voting power of the Company's stock;

(iii) a majority of the members of the Board are replaced during any twelve-month period by directors whose appointment or election is not endorsed by a majority of the Board before the date of appointment or election; or

(iv) the sale of all or substantially all of the Company's assets.

Notwithstanding the foregoing, a Change in Control shall not occur unless such transaction constitutes a change in the ownership of the Company, a change in effective control of the Company, or a change in the ownership of a substantial portion of the Company's assets under Section 409A.

5.4 Death or Disability.

(a) The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Employment Term, and the Company may terminate the Executive's employment on account of the Executive's Disability.

(b) If the Executive's employment is terminated during the Employment Term on account of the Executive's death or Disability, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the following:

(i) the Accrued Amounts; and

(ii) a lump sum payment equal to the Annual Bonus, if any, that the Executive would have earned for the fiscal year that includes the date of the Executive's termination based on the achievement of applicable performance goals for such year, which shall be payable on the date that annual bonuses are paid to the Company's similarly situated executives, but in no event later than two-and-a-half (2 1/2) months following the end of the fiscal year that includes the date of the Executive's termination.

Notwithstanding any other provision contained herein, all payments made in connection with the Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "Disability" shall mean the Executive's inability, due to physical or mental incapacity, to perform the essential functions of the Executive's job, with or without reasonable accommodation, for one hundred eighty (180) days out of any three hundred sixty-five (365) day period or one hundred twenty (120) consecutive days. Any question as to the existence of the Executive's Disability as to which the Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Executive and the Company. The determination of Disability made in writing to the Company and the Executive shall be final and conclusive for all purposes of this Agreement.

5.5 Notice of Termination. Any termination of the Executive's employment hereunder by the Company or by the Executive during the Employment Term (other than termination pursuant to Section 5.4(a) on account of the Executive's death) shall be communicated by written notice of termination ("Notice of Termination") to the other party hereto in accordance with Section 15. The Notice of Termination shall specify:

(a) the termination provision of this Agreement relied upon;

(b) to the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and

(c) the applicable date of termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered if the Company terminates the Executive's employment without Cause, or no less than 30 days following the date on which the Notice of Termination is delivered if the Executive terminates the Executive's employment with or without Good Reason; provided that, the Company shall have the option to provide the Executive with a lump sum payment in lieu of such notice.

5.6 Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

6. Confidential Information and Restrictive Covenants. As a condition of the Executive's employment with the Company, the Executive shall enter into and abide by the Company's Restrictive Covenant Agreement, attached hereto and incorporation herein as Exhibit A.

7. Governing Law, Jurisdiction, and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of Nevada without regard to conflicts of law principles. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the state of Nevada, county of Washoe. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue. This provision remains in full force and effect upon change of situs of the corporation to any other jurisdiction.

8. Entire Agreement. Unless specifically provided herein, this Agreement, together with the Restrictive Covenant Agreement, contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

9. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive and by the Lead Independent Director of the Board of Directors of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

10. Severability. Should any provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

11. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

12. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13. Section 409A.

13.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with such intent. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any nonqualified deferred compensation payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

13.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with the Executive's termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the date of the Executive's termination or, if earlier, on the Executive's death (the "Specified Employee Payment Date"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

13.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(b) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

13.4 Section 280G.

(a) If any of the payments or benefits received or to be received by the Executive (including, without limitation, any payments or benefits received in connection with a Change in Control or the Executive's termination of employment, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) (all such payments collectively referred to herein as the "280G Payments") constitute "parachute payments" within the meaning of Section 280G of the Code and will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), the Company shall pay to the Executive, no later than the time such Excise Tax is required to be paid by the Executive or withheld by the Company, an additional amount equal to the sum of the Excise Tax payable by the Executive, plus the amount necessary to put the Executive in the same after-tax position (taking into account any and all applicable federal, state, and local excise, income, or other taxes at the highest applicable rates on such 280G Payments and on any payments under this Section 5.9 or otherwise) as if no Excise Tax had been imposed.

(b) All calculations and determinations under this Section 5.9 shall be made by an independent accounting firm or independent tax counsel appointed by the Company (the "Tax Counsel") whose determinations shall be conclusive and binding on the Company and the Executive for all purposes. For purposes of making the calculations and determinations required by this Section 5.9, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and the Executive shall furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section 5.9. The Company shall bear all costs the Tax Counsel may reasonably incur in connection with its services.

14. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

15. Notice. Notices and all other communications provided for in this Agreement shall be given in writing by personal delivery, electronic delivery, or by registered mail to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

Dragonfly Energy Holdings Corp.
1190 Trademark Drive #108
Reno, NV 89521
Attn: Chief Legal Officer

If to the Executive:

Wade Seaburg

16. Representations of the Executive. The Executive represents and warrants to the Company that:

The Executive's acceptance of employment with the Company and the performance of the Executive's duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which the Executive is a party or is otherwise bound.

The Executive's acceptance of employment with the Company and the performance of the Executive's duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer or third-party.

17. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

18. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

19. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT THE EXECUTIVE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT THE EXECUTIVE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF THE EXECUTIVE'S CHOICE BEFORE SIGNING THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DRAGONFLY ENERGY HOLDINGS CORP.

By: */s/ Denis Phares*
Name: Denis Phares
Title: Chief Executive Officer

EXECUTIVE

Signature: */s/ Wade Seaburg*
Print Name: Wade Seaburg

RESTRICTIVE COVENANT AGREEMENT

As a condition of my being retained as an employee of Dragonfly Energy Holdings Corp., its subsidiaries, affiliates, successors or assigns (together, the "Company"), and in consideration of Five Thousand Dollars ($5,000.00) paid to me by Company, I agree to the following:

1. Non-Compete. I shall not, at any time during the period of my employment with the Company and for 1 year immediately following the termination of my employment with the Company (collectively, the "Non-compete Period"), and within a 100-mile radius of the corporate office location at the time of termination of employment, directly or indirectly engage in, provide services to, have any equity interest in (except as a holder of less than 2% of the combined voting power of the outstanding stock of a publicly held company) or consulting relationship with, or manage or operate any person, firm, corporation, partnership or other business that competes with the business of the Company within the energy storage industry (whether as director, officer, employee, agent, representative, partner, security holder, consultant or otherwise).

2. Non-Disclosure and Non-Use of Confidential Information. I will at all times during the term of my employment and at all times thereafter, maintain the confidentiality of the Confidential Information (as defined below), and will not, directly or indirectly, disclose any of the Confidential Information to any person or entity, except as is strictly necessary in the performance of my assigned duties as an employee of the Company or as required by law or legal process. In addition, I will not at any time during the term of my employment or at any time thereafter use any of the Confidential Information for my direct or indirect benefit, or the direct or indirect benefit of any person or entity other than the Company. The fact that any information or data is not marked as confidential or proprietary shall not adversely affect its status as Confidential Information. I understand that the term "Confidential Information" shall mean all technical, financial, commercial and other information and data, without regard to form or medium, relating to the Company or any of its actual or prospective customers that is not generally known to the public. However, any information and data which becomes generally known to the public because of my failure to abide by this Agreement or another's breach of confidentiality obligations with respect to such information will be considered Confidential Information. By way of illustration, I understand that Confidential Information includes, but is not limited to, the following kinds of information and data: customer and prospect lists; pricing information; information relating to actual or prospective transactions with customers; technology; inventions; know-how; computer codes and instructions; business or market studies; business and product development plans and efforts; personnel data; and information, financial or otherwise, relating to the Company's actual and prospective customers, consultants, contractors and vendors and the nature and terms of the Company's relationship with any of them.

3. Former Employee Information. I represent that I have abided by any and all policies, directives, requirements and restrictions on the part of my current and previous employers concerning possession and use of proprietary information or property and that I will not disclose to the Company or use any such information or property in connection with my employment with the Company in violation of any such policies, directives, requirements or restrictions.

4. Third Party Information. I recognize that the Company has received and in the future will receive confidential or proprietary information from third parties subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold any such confidential or proprietary information that I have access to in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company's policies and agreements with any such third party and in compliance with all securities and other laws and regulations.

5. Property. I will not remove or transfer from any of the Company's offices or premises any materials or property of the Company (including, without limitation, materials and property containing Confidential Information), except as is strictly necessary in the performance of my assigned duties as an employee. Promptly upon the Company's request, and in any event promptly upon the termination of my employment, I will return to the Company all materials and property that I removed and I will not retain copies of any of such materials and property.

6. Assignment of Inventions. I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title and interest throughout the world in and to any and all inventions, discoveries, original works of authorship and derivative works thereof, developments, concepts, know-how, improvements, trademarks or trade secrets, whether or not patentable or registrable under copyright, trademark or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the term of my employment, whether during working hours or otherwise, in each case in any manner related to the Company's actual or anticipated business (collectively referred to as "Inventions"). I further acknowledge that all Inventions which are original works of authorship or otherwise constitute copyrightable subject matter are "works made for hire" within the meaning of the United States Copyright Act and any similar laws of other jurisdictions (to the greatest extent permitted by applicable law) and are compensated by my salary, and to the extent any such work is determined not to be a "work for hire", that I will assign to the Company any such original work of authorship as its exclusive property. I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company, which notes shall be and remain property of the Company. I hereby waive and irrevocably quitclaim to the Company any and all claims, of any nature whatsoever, which I may now or hereafter have for infringement of any and all proprietary rights assigned to the Company. I agree, whether before or after termination of my employment with the Company, to assist the Company (at its expense), or in every reasonable way to secure the Company's rights in the Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries.

7. Non-Solicitation. During my employment with the Company and for a period of 1 year after the termination of my employment with the Company, whether such termination is with or without cause, and whether such termination is effected by either the Company or me, I will not, directly or indirectly, for myself or any third party other than the Company (i) recruit or solicit or request the employment or services of any person who is an employee of the Company, or entice any employee of the Company to leave the employ of the Company, or to violate any agreement with the Company; or (ii) solicit sales from any of the Company's customers for any product or service which competes with any product or service sold or provided by the Company prior to my termination of my employment with the Company or which, at the time of the termination of my employment with the Company is intended to be sold or provided by the Company to any customer or potential customer (including in connection with any pending or proposed transactions), and about which I had access to Confidential Information or on which I worked in any capacity at any time during my employment with the Company. I acknowledge that the limitations of time and scope of activity agreed to above are reasonable because, among other things, the Company is engaged in a highly competitive industry and these limitations are necessary to protect the trade secrets, Confidential Information, and goodwill of the Company. I further acknowledge that I will be able to obtain suitable employment in my chosen profession without violating this Agreement should my employment with the Company end.

8. Returning Company Documents. I agree that, at the time of termination of my employment with the Company, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, customer or prospect lists, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, materials, flow charts, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to my employment or otherwise belonging to the Company, its or any of its successors or assigns. I further agree that any property situated on the Company's premises and owned by the Company including, computers, software, printers, voicemail, email, telephones, facsimile, disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. In the event of the termination of my employment, I agree to sign a certification reaffirming my obligations under this Agreement.

9. Notification to Other Parties. I hereby grant consent to notification by the Company to any other parties besides the Company with whom I maintain, or may hereafter maintain, an employment or consulting relationship, including parties with whom such relationship commences after the effective date of this Agreement, of my rights and obligations under this Agreement.

10. No Restrictions. I certify that I am not subject to any employment contract, non-compete agreement, non-solicitation agreement or other similar restrictions or agreements, except as disclosed in writing to the Company's Compensation Committee and Chief Legal Officer. I further represent that I will not be breaching any such agreement or restriction by accepting employment with the Company and performing my duties in connection therewith. I represent and warrant that all information that I have furnished and that I will furnish to the Company in connection with my employment with the Company is or will be true and complete.

11. Survival of Provisions; Amendment; Assignment. My obligations as set forth in this Agreement will survive the termination of my employment with the Company. None of the provisions contained in this Agreement can be changed without a written agreement signed by each of me and the Company. I acknowledge that I have no right or power to assign this Agreement. I also acknowledge that the Company may freely assign this Agreement in connection with any merger, reorganization, sale of all or any material portion of its assets, or any similar transaction.

12. Equitable Relief. If I breach or threaten to breach any provision of this Agreement, the Company will be entitled, as a matter of right, to injunctive relief, including specific performance, with respect to any such breach or threatened breach. The Company's rights and remedies under this Section 13 are in addition to and cumulative with any other rights and remedies to which the Company may be entitled.

13. Severability. I acknowledge that the obligations and restrictions contained in this Agreement are reasonable and necessary to protect the legitimate interests of the Company. Each provision in this Agreement is an independent provision and the enforceability of any one provision will not affect the enforceability of any other provision. However, if any particular provision of this Agreement is determined by a court to be excessively broad as to duration, geographic scope, activity or subject to be enforceable, then that provision will be deemed amended by limiting and reducing it so as to be valid and enforceable to the maximum extent compatible with the laws of such jurisdiction.

14. No Waiver of Rights; Binding Obligation. Any waiver by the Company of any power or right under this Agreement must be in writing and signed by the Company to be enforceable. Any waiver by the Company will not operate as a waiver of any other or future breach under this Agreement. This Agreement will be binding upon me and my heirs, executors and administrators and will inure to the benefit of the Company and its successors and assigns.

15. Governing Law; Choice of Forum and Venue. This Agreement will be governed and construed as to its validity, interpretation and effect by the laws of Nevada notwithstanding the choice of law rules of Nevada or any other jurisdiction that would dictate application of the laws of any other jurisdiction. I also hereby irrevocably and unconditionally consent to the exclusive jurisdiction and venue of the state and federal courts serving Washoe County, Nevada. These provisions remain in full force in effect, regardless of any change in situs of the company.

IN WITNESS WHEREOF, I have signed this Agreement as of the date written below.

EXECUTIVE

Date: Nov 4, 2022

Signature: */s/ Wade Seaburg*

Print Name: Wade Seaburg

Exhibit 10.43

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made and entered into as of November 7, 2022, by and between Tyler Bourns (the "Executive") and Dragonfly Energy Holdings Corp., a Delaware corporation (the "Company").

WHEREAS, the Company desires to employ the Executive on the terms and conditions set forth herein; and

WHEREAS, the Executive desires to be employed by the Company on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. Term. Subject to Section 5 of this Agreement, the Executive's initial term of employment hereunder shall be from the period beginning on November 7, 2022 (the "Effective Date") for a period of three years. (the "Initial Term"). Thereafter, the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for successive periods of three years, unless either party provides written notice of its intention not to extend the term at least 90 days prior to the end of the Initial Term or extension thereof. The period during which the Executive is employed by the Company hereunder is hereinafter referred to as the "Employment Term."

2. Position and Duties.

2.1 Position. During the Employment Term, the Executive shall serve as the Chief Marketing Officer of the Company, reporting to the Dragonfly Energy Holdings Corp. Chief Executive Officer. In such position, the Executive shall have such duties, authority, and responsibilities as are consistent with the Executive's position.

2.2 Duties. During the Employment Term, the Executive shall devote substantially all of the Executive's business time and attention to the performance of the Executive's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

3. Place of Performance. The principal place of Executive's employment shall be the Company's principal executive office currently located in Reno, Nevada; provided that, the Executive may be required to travel on Company business during the Employment Term. The Executive may work remotely from the Executive's residence in Reno, Nevada so long as doing so does not interfere with the Executive's responsibilities under this Agreement; provided, that, subject to any health or safety concerns related to the COVID-19 pandemic or other similar extraordinary circumstances, the Executive shall be required to spend on average 16 days per month in the office.

4. Compensation.

4.1 Base Salary. The Company shall pay the Executive an annual rate of base salary of $280,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. The Executive's base salary shall be reviewed at least annually by the Board and the Board may increase but not decrease the Executive's base salary during the Employment Term. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "Base Salary."

4.2 Annual Bonus.

(a) For each fiscal year of the Employment Term, the Executive shall be eligible to receive an annual bonus (the "Annual Bonus") of up to 30% of the Executive's base annual salary. The decision to provide any Annual Bonus and the amount and terms of any Annual Bonus shall be in the sole and absolute discretion of the Compensation Committee of the Board (the "Compensation Committee").

(b) The Annual Bonus, if any, will be paid within two and a half (2 1/2) months after the end of the applicable fiscal year.

(c) Except as otherwise provided in Section 5, in order to be eligible to receive an Annual Bonus, the Executive must be employed by the Company on the date that Annual Bonuses are paid.

4.3 Equity Awards. With respect to each fiscal year of the Company ending during the Employment Term, the Executive shall be eligible to receive an annual long-term incentive award with a value of no less than $236,000 (based on the grant date value of any such award). All terms and conditions applicable to each such award shall be determined by the Compensation Committee.

4.4 Fringe Benefits and Perquisites. During the Employment Term, the Executive shall be entitled to fringe benefits and perquisites consistent with those provided to similarly situated executives of the Company.

4.5 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, "Employee Benefit Plans"), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.6 Vacation; Paid Time Off. During the Employment Term, the Executive shall be entitled to twenty (20) paid vacation days per calendar year (prorated for partial years) in accordance with the Company's vacation policies, as in effect from time to time. The Executive shall receive other paid time off in accordance with the Company's policies for executive officers as such policies may exist from time to time and as required by applicable law.

4.7 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

4.8 Indemnification. The Company shall indemnify and hold the Executive harmless to the maximum extent permitted under applicable law and the Company's bylaws for acts and omissions in the Executive's capacity as an officer, director, or employee of the Company.

4.9 Clawback Provisions. Notwithstanding any other provisions in this Agreement to the contrary, any incentive-based or other compensation paid to the Executive under this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

5. Termination of Employment. The Employment Term and the Executive's employment hereunder may be terminated by either the Company or the Executive at any time and for any reason or for no particular reason; provided that, unless otherwise provided herein, either party shall be required to give the other party at least 30 days advance written notice of any termination of the Executive's employment. Upon termination of the Executive's employment during the Employment Term, the Executive shall be entitled to the compensation and benefits described in this Section 5 and shall have no further rights to any compensation or any other benefits from the Company or any of its affiliates.

5.1 Expiration of the Term, For Cause, or Without Good Reason.

(a) The Executive's employment hereunder may be terminated upon either party's failure to renew the Agreement in accordance with Section 1, by the Company for Cause or by the Executive without Good Reason and the Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary and accrued but unused paid time off which shall be paid on the pay date immediately following the date of the Executive's termination in accordance with the Company's customary payroll procedures;

(ii) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy; and

(iii) such employee benefits (including equity compensation), if any, to which the Executive may be entitled under the Company's employee benefit plans as of the date of the Executive's termination; provided that, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iii) are referred to herein collectively as the "Accrued Amounts."

(b) For purposes of this Agreement, "Cause" shall mean:

(i) the Executive's willful failure to perform the Executive's duties (other than any such failure resulting from incapacity due to physical or mental illness);

(ii) the Executive's willful failure to comply with any valid and legal directive of the Dragonfly Energy Holdings Corp. Board of Directors;

(iii) the Executive's willful engagement in dishonesty, illegal conduct, or gross misconduct, which is, in each case, materially injurious to the Company or its affiliates;

(iv) the Executive's embezzlement, misappropriation, or fraud, whether or not related to the Executive's employment with the Company;

(v) the Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude;

(vi) the Executive's material violation of the Company's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct;

(vii) the Executive's material breach of any material obligation under this Agreement or any other written agreement between the Executive and the Company; or

(viii) the Executive's engagement in conduct that brings the Company negative publicity or into public disgrace, embarrassment, or disrepute.

For purposes of this provision, none of the Executive's acts or failures to act shall be considered "willful" unless the Executive acts, or fails to act, in bad faith or without reasonable belief that the action or failure to act was in the best interests of the Company. The Executive's actions, or failures to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the Company shall be conclusively presumed to be in good faith and in the best interests of the Company.

Except for a failure, breach, or refusal which, by its nature, cannot reasonably be expected to be cured, the Executive shall have 40 business days from the delivery of written notice by the Company within which to cure any acts constituting Cause.

(c) For purposes of this Agreement, “Good Reason” shall mean the occurrence of any of the following, in each case during the Employment Term without the Executive’s prior written consent:

(i) a material reduction in the Executive’s Base Salary other than a general reduction in Base Salary that affects all similarly situated executives in substantially the same proportions;

(ii) a relocation of the Executive’s principal place of employment by more than 50 miles;

(iii) any material breach by the Company of any material provision of this Agreement or any material provision of any other agreement between the Executive and the Company;

(iv) the Company’s failure to obtain an agreement from any successor to the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no succession had taken place, except where such assumption occurs by operation of law;

(v) a material, adverse change in the Executive’s title, authority, duties, or responsibilities (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law); or

(vi) a material adverse change in the reporting structure applicable to the Executive.

To terminate the Executive’s employment for Good Reason, the Executive must provide written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 15 days of the initial existence of such grounds and the Company must have at least 10 days from the date on which such notice is provided to cure such circumstances. If the Executive does not terminate the Executive’s employment for Good Reason within 40 days after the first occurrence of the applicable grounds, then the Executive will be deemed to have waived the Executive’s right to terminate for Good Reason with respect to such grounds.

5.2 Without Cause or for Good Reason. The Employment Term and the Executive's employment hereunder may be terminated by the Executive for Good Reason or by the Company without Cause. In the event of such termination, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6 of this Agreement and the agreements referenced therein and the Executive's execution, within 21 days following receipt, of a release of claims in favor of the Company, its affiliates and their respective officers and directors in a form provided by the Company (the "Release") (such 21-day period, the "Release Execution Period"), and the Release becoming effective according to its terms, the Executive shall be entitled to receive the following:

(a) equal installment payments payable in accordance with the Company's normal payroll practices, but no less frequently than monthly, which are in the aggregate equal to the Executive's Base Salary for the year that includes the date of the Executive's termination, which shall begin within 30 days following the date of the Executive's termination and continue until the 2nd anniversary of the Executive's date of termination; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payments shall not begin until the beginning of the second taxable year; provided further that, the first installment payment shall include all amounts that would otherwise have been paid to the Executive during the period beginning on the date of the Executive's termination and ending on the first payment date if no delay had been imposed;

(b) If the Executive timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Company shall reimburse the Executive for the monthly COBRA premium paid by the Executive for the Executive and the Executive's dependents. Such reimbursement shall be paid to the Executive on the first of the month immediately following the month in which the Executive timely remits the premium payment. The Executive shall be eligible to receive such reimbursement until the earliest of: (i) the twelve-month anniversary of the date of the Executive's termination; (ii) the date the Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which the Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's making payments under this Section 5.2(c) would violate the nondiscrimination rules applicable to non-grandfathered, insured group health plans under the Affordable Care Act (the "ACA"), or result in the imposition of penalties under the ACA and the related regulations and guidance promulgated thereunder, the parties agree to reform this Section 5.2(c) in a manner as is necessary to comply with the ACA.

(c) Notwithstanding the terms of the Dragonfly Energy Holdings Corp. Stock Incentive Plan and all successor plans or any applicable award agreements:

(i) all outstanding equity-based compensation awards that do not vest based on the attainment of performance goals shall become fully vested and the restrictions thereon shall lapse; provided that, any delays in the settlement or payment of such awards that are set forth in the applicable award agreement and that are required under Section 409A ("Section 409A") of the Internal Revenue Code of 1986, as amended (the "Code") shall remain in effect; and

(ii) all outstanding equity-based compensation awards that vest based on the attainment of performance goals shall remain outstanding and shall vest or be forfeited in accordance with the terms of the applicable award agreements, if the applicable performance goals are satisfied.

5.3 Change in Control Termination.

(a) Notwithstanding any other provision contained herein, if the Executive's employment hereunder is terminated by the Executive for Good Reason or by the Company on account of its failure to renew the Agreement in accordance with Section 1 or without Cause (other than on account of the Executive's death or Disability), in each case three months before or twelve (12) months following a Change in Control, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6 of this Agreement and the Executive's execution of a Release which becomes effective within 21 days following the Termination Date, the Executive shall be entitled to receive a lump sum payment equal to one and a half (1½) times the sum of the Executive's Base Salary for the year in which the Termination Date occurs (or if greater, the year immediately preceding the year in which the Change in Control occurs), which shall be paid within 30 days following the Termination Date; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payment shall not be made until the beginning of the second taxable year.

(b) If the Executive timely and properly elects health plan continuation coverage under COBRA, the Company shall reimburse the Executive for the monthly COBRA premium paid by the Executive for the Executive and the Executive's dependents. Such reimbursement shall be paid to the Executive on the first of the month immediately following the month in which the Executive timely remits the premium payment. The Executive shall be eligible to receive such reimbursement until the earliest of: (i) the twelve-month anniversary of the Termination Date; (ii) the date the Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which the Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's payments under this Section 5.3(b) would violate the nondiscrimination rules applicable to non- grandfathered, insured group plans under the ACA, or result in the imposition of penalties under the ACA, the parties agree to reform this Section 5.3(b) in a manner as is necessary to comply with the ACA.

(c) Notwithstanding the terms of any equity incentive plan or award agreements, as applicable:

(i) all outstanding unvested stock options granted to the Executive during the Employment Term shall become fully vested and exercisable for the remainder of their full term;

(ii) all outstanding equity-based compensation awards, that do not vest based on the attainment of performance goals shall become fully vested and the restrictions thereon shall lapse; provided that, any delays in the settlement or payment of such awards that are set forth in the applicable award agreement and that are required under Section 409A shall remain in effect; and

(iii) all outstanding equity-based compensation awards, that vest based on the attainment of performance goals shall remain outstanding and shall vest or be forfeited in accordance with the terms of the applicable award agreements, if the applicable performance goals are satisfied.

(d) For purposes of this Agreement, "Change in Control" shall mean the occurrence of any of the following after the Effective Date:

(i) one person (or more than one person acting as a group) acquires ownership of stock of the Company that, together with the stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of such corporation; provided that, a Change in Control shall not occur if any person (or more than one person acting as a group) owns more than 50% of the total fair market value or total voting power of the Company's stock and acquires additional stock;

(ii) one person (or more than one person acting as a group) acquires (or has acquired during the twelve-month period ending on the date of the most recent acquisition) ownership of the Company's stock possessing 30% or more of the total voting power of the Company's stock;

(iii) a majority of the members of the Board are replaced during any twelve-month period by directors whose appointment or election is not endorsed by a majority of the Board before the date of appointment or election; or

(iv) the sale of all or substantially all of the Company's assets.

Notwithstanding the foregoing, a Change in Control shall not occur unless such transaction constitutes a change in the ownership of the Company, a change in effective control of the Company, or a change in the ownership of a substantial portion of the Company's assets under Section 409A.

5.4 Death or Disability.

(a) The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Employment Term, and the Company may terminate the Executive's employment on account of the Executive's Disability.

(b) If the Executive's employment is terminated during the Employment Term on account of the Executive's death or Disability, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the following:

(i) the Accrued Amounts; and

(ii) a lump sum payment equal to the Annual Bonus, if any, that the Executive would have earned for the fiscal year that includes the date of the Executive's termination based on the achievement of applicable performance goals for such year, which shall be payable on the date that annual bonuses are paid to the Company's similarly situated executives, but in no event later than two-and-a-half (2 1/2) months following the end of the fiscal year that includes the date of the Executive's termination.

Notwithstanding any other provision contained herein, all payments made in connection with the Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "Disability" shall mean the Executive's inability, due to physical or mental incapacity, to perform the essential functions of the Executive's job, with or without reasonable accommodation, for one hundred eighty (180) days out of any three hundred sixty-five (365) day period or one hundred twenty (120) consecutive days. Any question as to the existence of the Executive's Disability as to which the Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Executive and the Company. The determination of Disability made in writing to the Company and the Executive shall be final and conclusive for all purposes of this Agreement.

5.5 Notice of Termination. Any termination of the Executive's employment hereunder by the Company or by the Executive during the Employment Term (other than termination pursuant to Section 5.4(a) on account of the Executive's death) shall be communicated by written notice of termination ("Notice of Termination") to the other party hereto in accordance with Section 15. The Notice of Termination shall specify:

(a) the termination provision of this Agreement relied upon;

(b) to the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and

(c) the applicable date of termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered if the Company terminates the Executive's employment without Cause, or no less than 30 days following the date on which the Notice of Termination is delivered if the Executive terminates the Executive's employment with or without Good Reason; provided that, the Company shall have the option to provide the Executive with a lump sum payment in lieu of such notice.

5.6 Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

6. Confidential Information and Restrictive Covenants. As a condition of the Executive's employment with the Company, the Executive shall enter into and abide by the Company's Restrictive Covenant Agreement, attached hereto and incorporation herein as Exhibit A.

7. Governing Law, Jurisdiction, and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of Nevada without regard to conflicts of law principles. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the state of Nevada, county of Washoe. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue. This provision remains in full force and effect upon change of situs of the corporation to any other jurisdiction.

8. Entire Agreement. Unless specifically provided herein, this Agreement, together with the Restrictive Covenant Agreement, contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

9. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive and by the Lead Independent Director of the Board of Directors of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

10. Severability. Should any provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

11. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

12. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13. Section 409A.

13.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with such intent. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any nonqualified deferred compensation payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

13.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with the Executive's termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the date of the Executive's termination or, if earlier, on the Executive's death (the "Specified Employee Payment Date"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

13.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(b) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

13.4 Section 280G.

(a) If any of the payments or benefits received or to be received by the Executive (including, without limitation, any payments or benefits received in connection with a Change in Control or the Executive's termination of employment, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) (all such payments collectively referred to herein as the "280G Payments") constitute "parachute payments" within the meaning of Section 280G of the Code and will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), the Company shall pay to the Executive, no later than the time such Excise Tax is required to be paid by the Executive or withheld by the Company, an additional amount equal to the sum of the Excise Tax payable by the Executive, plus the amount necessary to put the Executive in the same after-tax position (taking into account any and all applicable federal, state, and local excise, income, or other taxes at the highest applicable rates on such 280G Payments and on any payments under this Section 5.9 or otherwise) as if no Excise Tax had been imposed.

(b) All calculations and determinations under this Section 5.9 shall be made by an independent accounting firm or independent tax counsel appointed by the Company (the "Tax Counsel") whose determinations shall be conclusive and binding on the Company and the Executive for all purposes. For purposes of making the calculations and determinations required by this Section 5.9, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and the Executive shall furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section 5.9. The Company shall bear all costs the Tax Counsel may reasonably incur in connection with its services.

14. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

15. Notice. Notices and all other communications provided for in this Agreement shall be given in writing by personal delivery, electronic delivery, or by registered mail to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

Dragonfly Energy Holdings Corp.
1190 Trademark Drive #108
Reno, NV 89521
Attn: Chief Legal Officer

If to the Executive:

Tyler Bourns

16. Representations of the Executive. The Executive represents and warrants to the Company that:

The Executive's acceptance of employment with the Company and the performance of the Executive's duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which the Executive is a party or is otherwise bound.

The Executive's acceptance of employment with the Company and the performance of the Executive's duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer or third-party.

17. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

18. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

19. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT THE EXECUTIVE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT THE EXECUTIVE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF THE EXECUTIVE'S CHOICE BEFORE SIGNING THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DRAGONFLY ENERGY HOLDINGS CORP.

By: */s/ Denis Phares*
Name: Denis Phares
Title: Chief Executive Officer

EXECUTIVE

Signature: */s/ Tyler Bourns*
Print Name: *Tyler Bourns*

RESTRICTIVE COVENANT AGREEMENT

As a condition of my being retained as an employee of Dragonfly Energy Holdings Corp., its subsidiaries, affiliates, successors or assigns (together, the “Company”), and in consideration of Five Thousand Dollars ($5,000.00) paid to me by Company, I agree to the following:

1. Non-Compete. I shall not, at any time during the period of my employment with the Company and for 1 year immediately following the termination of my employment with the Company (collectively, the “Non-compete Period”), and within a 100-mile radius of the corporate office location at the time of termination of employment. During the Non-compete Period, I will not directly or indirectly engage in, provide services to, have any equity interest in (except as a holder of less than 2% of the combined voting power of the outstanding stock of a publicly held company) or consulting relationship with, or manage or operate any person, firm, corporation, partnership or other business that competes with the business of the Company within the energy storage industry (whether as director, officer, employee, agent, representative, partner, security holder, consultant or otherwise).

2. Non-Disclosure and Non-Use of Confidential Information. I will at all times during the term of my employment and at all times thereafter, maintain the confidentiality of the Confidential Information (as defined below), and will not, directly or indirectly, disclose any of the Confidential Information to any person or entity, except as is strictly necessary in the performance of my assigned duties as an employee of the Company or as required by law or legal process. In addition, I will not at any time during the term of my employment or at any time thereafter use any of the Confidential Information for my direct or indirect benefit, or the direct or indirect benefit of any person or entity other than the Company. The fact that any information or data is not marked as confidential or proprietary shall not adversely affect its status as Confidential Information. I understand that the term “Confidential Information” shall mean all technical, financial, commercial and other information and data, without regard to form or medium, relating to the Company or any of its actual or prospective customers that is not generally known to the public. However, any information and data which becomes generally known to the public because of my failure to abide by this Agreement or another’s breach of confidentiality obligations with respect to such information will be considered Confidential Information. By way of illustration, I understand that Confidential Information includes, but is not limited to, the following kinds of information and data: customer and prospect lists; pricing information; information relating to actual or prospective transactions with customers; technology; inventions; know-how; computer codes and instructions; business or market studies; business and product development plans and efforts; personnel data; and information, financial or otherwise, relating to the Company’s actual and prospective customers, consultants, contractors and vendors and the nature and terms of the Company’s relationship with any of them.

3. Former Employee Information. I represent that I have abided by any and all policies, directives, requirements and restrictions on the part of my current and previous employers concerning possession and use of proprietary information or property and that I will not disclose to the Company or use any such information or property in connection with my employment with the Company in violation of any such policies, directives, requirements or restrictions.

4. Third Party Information. I recognize that the Company has received and in the future will receive confidential or proprietary information from third parties subject to a duty on the Company’s part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold any such confidential or proprietary information that I have access to in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company’s policies and agreements with any such third party and in compliance with all securities and other laws and regulations.

5. Property. I will not remove or transfer from any of the Company's offices or premises any materials or property of the Company (including, without limitation, materials and property containing Confidential Information), except as is strictly necessary in the performance of my assigned duties as an employee. Promptly upon the Company's request, and in any event promptly upon the termination of my employment, I will return to the Company all materials and property that I removed and I will not retain copies of any of such materials and property.

6. Assignment of Inventions. I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title and interest throughout the world in and to any and all inventions, discoveries, original works of authorship and derivative works thereof, developments, concepts, know-how, improvements, trademarks or trade secrets, whether or not patentable or registrable under copyright, trademark or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the term of my employment, whether during working hours or otherwise, in each case in any manner related to the Company's actual or anticipated business (collectively referred to as "Inventions"). I further acknowledge that all Inventions which are original works of authorship or otherwise constitute copyrightable subject matter are "works made for hire" within the meaning of the United States Copyright Act and any similar laws of other jurisdictions (to the greatest extent permitted by applicable law) and are compensated by my salary, and to the extent any such work is determined not to be a "work for hire", that I will assign to the Company any such original work of authorship as its exclusive property. I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company, which notes shall be and remain property of the Company. I hereby waive and irrevocably quitclaim to the Company any and all claims, of any nature whatsoever, which I may now or hereafter have for infringement of any and all proprietary rights assigned to the Company. I agree, whether before or after termination of my employment with the Company, to assist the Company (at its expense), or in every reasonable way to secure the Company's rights in the Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries.

6. Non-Solicitation. During my employment with the Company and for a period of 1 year after the termination of my employment with the Company, whether such termination is with or without cause, and whether such termination is effected by either the Company or me, I will not, directly or indirectly, for myself or any third party other than the Company (i) recruit or solicit or request the employment or services of any person who is an employee of the Company, or entice any employee of the Company to leave the employ of the Company, or to violate any agreement with the Company; or (ii) solicit sales from any of the Company's customers for any product or service which competes with any product or service sold or provided by the Company prior to my termination of my employment with the Company or which, at the time of the termination of my employment with the Company is intended to be sold or provided by the Company to any customer or potential customer (including in connection with any pending or proposed transactions), and about which I had access to Confidential Information or on which I worked in any capacity at any time during my employment with the Company. I acknowledge that the limitations of time and scope of activity agreed to above are reasonable because, among other things, the Company is engaged in a highly competitive industry and these limitations are necessary to protect the trade secrets, Confidential Information, and goodwill of the Company. I further acknowledge that I will be able to obtain suitable employment in my chosen profession without violating this Agreement should my employment with the Company end.

7. Returning Company Documents. I agree that, at the time of termination of my employment with the Company, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, customer or prospect lists, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, materials, flow charts, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to my employment or otherwise belonging to the Company, its or any of its successors or assigns. I further agree that any property situated on the Company's premises and owned by the Company including, computers, software, printers, voicemail, email, telephones, facsimile, disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. In the event of the termination of my employment, I agree to sign a certification reaffirming my obligations under this Agreement.

8. Notification to Other Parties. I hereby grant consent to notification by the Company to any other parties besides the Company with whom I maintain, or may hereafter maintain, an employment or consulting relationship, including parties with whom such relationship commences after the effective date of this Agreement, of my rights and obligations under this Agreement.

9. No Restrictions. I certify that I am not subject to any employment contract, non-compete agreement, non-solicitation agreement or other similar restrictions or agreements, except as disclosed in writing to the Company's Compensation Committee and Chief Legal Officer. I further represent that I will not be breaching any such agreement or restriction by accepting employment with the Company and performing my duties in connection therewith. I represent and warrant that all information that I have furnished and that I will furnish to the Company in connection with my employment with the Company is or will be true and complete.

12. Survival of Provisions; Amendment; Assignment. My obligations as set forth in this Agreement will survive the termination of my employment with the Company. None of the provisions contained in this Agreement can be changed without a written agreement signed by each of me and the Company. I acknowledge that I have no right or power to assign this Agreement. I also acknowledge that the Company may freely assign this Agreement in connection with any merger, reorganization, sale of all or any material portion of its assets, or any similar transaction.

13. Equitable Relief. If I breach or threaten to breach any provision of this Agreement, the Company will be entitled, as a matter of right, to injunctive relief, including specific performance, with respect to any such breach or threatened breach. The Company's rights and remedies under this Section 13 are in addition to and cumulative with any other rights and remedies to which the Company may be entitled.

14. Severability. I acknowledge that the obligations and restrictions contained in this Agreement are reasonable and necessary to protect the legitimate interests of the Company. Each provision in this Agreement is an independent provision and the enforceability of any one provision will not affect the enforceability of any other provision. However, if any particular provision of this Agreement is determined by a court to be excessively broad as to duration, geographic scope, activity or subject to be enforceable, then that provision will be deemed amended by limiting and reducing it so as to be valid and enforceable to the maximum extent compatible with the laws of such jurisdiction.

15. <u>No Waiver of Rights; Binding Obligation</u>. Any waiver by the Company of any power or right under this Agreement must be in writing and signed by the Company to be enforceable. Any waiver by the Company will not operate as a waiver of any other or future breach under this Agreement. This Agreement will be binding upon me and my heirs, executors and administrators and will inure to the benefit of the Company and its successors and assigns.

16. <u>Governing Law; Choice of Forum and Venue</u>. This Agreement will be governed and construed as to its validity, interpretation and effect by the laws of Nevada notwithstanding the choice of law rules of Nevada or any other jurisdiction that would dictate application of the laws of any other jurisdiction. I also hereby irrevocably and unconditionally consent to the exclusive jurisdiction and venue of the state and federal courts serving Washoe County, Nevada. These provisions remain in full force in effect, regardless of any change in situs of the company.

IN WITNESS WHEREOF, I have signed this Agreement as of the date written below.

EXECUTIVE

Date: November 4, 2022

Signature: */s/ Tyler Bourns*
Print Name: Tyler Bourns

Exhibit 10.44

INDUSTRIAL SPACE LEASE

COTTONMILL PROPERTIES, LLC,
a California limited liability company

and

MARLENE THIER,
as trustee of the Thier Family Trust,
as tenants in common,

collectively, **Landlord**

and

DRAGONFLY ENERGY CORP.,
a Nevada corporation,

Tenant

2275 East Newlands Road, Fernley, Nevada

April 12, 2024

INDUSTRIAL SPACE LEASE

THIS LEASE ("**Lease**"), dated April 12, 2024, is made by and between COTTONMILL PROPERTIES, LLC, a California limited liability company, and MARLENE THIER, as trustee of the Thier Family Trust, as tenants in common (collectively, "**Landlord**"), and DRAGONFLY ENERGY CORP., a Nevada corporation ("**Tenant**").

1. DEFINED TERMS, TABLE OF CONTENTS, EXHIBITS, PREMISES AND LANDLORD'S RESERVED RIGHTS

1.01. *Defined Terms:*

Landlord's Notice Address:	c/o Jones Development Company, LLC 914 Dewing Ave Lafayette, CA 94549
Tenant's Notice Address:	Dragonfly Energy Corp. 1190 Trademark Drive, Suite 108 Reno, NV 89521 Attention: Legal Department
Property:	All of the real property and improvements commonly referred to as 2275 East Newlands Road in Fernley, Nevada, as depicted in ***Exhibit A*** attached hereto.
Building:	That certain industrial building located on the Property, as shown in ***Exhibit A***.
Premises:	That certain industrial space located on the west end of the Building as depicted in ***Exhibit B*** attached hereto.
Rentable Square Feet of the Premises:	Approximately 64,000 rentable square feet of space. Landlord shall remeasure the Premises upon completion of Initial Improvements and such remeasurement shall be binding on the parties for all purposes under this Lease.
Rentable Square Feet of the Building:	Approximately 256,000 rentable square feet of space
Term:	Sixty (60) months, commencing on the Rent Commencement Date
Commencement Date:	April 1, 2024
Rent Commencement Date:	Two (2) months following the Commencement Date
Monthly Base Rent:	Forty-Four Thousand Eight Hundred and no/100 Dollars ($44,800), based on $0.70 per rentable square foot per month per month (subject to adjustment following Landlord's remeasurement upon completion of Initial Improvements)
Adjustment Dates for Rent Escalations:	On each anniversary date of the Commencement Date, the Monthly Base Rent for the Premises shall be increased by three percent (3.0%)
Security Deposit:	Fifty Thousand Four Hundred Twenty-Two and 79/100 Dollars ($50,422.79)

Tenant's Share of Tax Expenses, Insurance Expenses and Operating Expenses:	Twenty-Five percent (25%) (subject to recalculation following Landlord's remeasurement of the Premises)
Commercial Liability Policy Limit:	Two Million Dollars ($2,000,000)
Permitted Use:	General office, warehousing, assembly/light manufacturing, painting of products, storage fulfillment, distribution of Tenant's products, and other uses as allowed by applicable Regulations (as defined below). Tenant shall be solely responsible for any use approval with required regulatory agencies and governmental entities. Tenant may implement a processing facility at the pilot and post-pilot scales for battery materials manufacturing subject to Landlord's approval of Tenant's MSDS sheets, *Exhibit D* and the processes intended by Tenant to take place in the Premises.
Broker:	Kidder Matthews on behalf of both Tenant and Landlord.

The foregoing provisions constitute the defined terms ("**Defined Terms**"). Each reference in this Lease to Section 1.01 or the Defined Terms shall be construed to incorporate the applicable Defined Terms in this Section 1.01.

LANDLORD:

COTTONMILL PROPERTIES, LLC,
a California limited liability company

By: Jones Partners, LLC
Title: Managing Member

By: */s/ Randall S. Jones*
Name Printed: Randall S. Jones
Title: Manager

THIER FAMILY TRUST

By: */s/ Marlene Thier*
Name Printed: Marlene Thier
Title: Trustee

TENANT:

DRAGONFLY ENERGY CORP.,
a Nevada corporation

By: */s/ Denis Phares*
Name Printed: Denis Phares
Title: Chief Executive Officer

1.03. *Exhibits*. The following Exhibits are attached to this Lease and incorporated herein by reference thereto.

Exhibit A – Real Property Depiction [Section 1.01]
Exhibit B – Premises Floor Plan [Section 1.04]
Exhibit C – Initial Improvements [Sections 2, 3]
Exhibit D – Environmental Disclosure [Section 10.03]
Exhibit E – Rules and Regulations [Section 16.13]

1.04. *Premises*. Landlord hereby leases to Tenant, subject to the provisions of this Lease, the Premises in the Building, as shown on Premises Floor Plan in *Exhibit B*, excluding the Common Area, as hereinafter defined, and all of the outside walls of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electrical equipment or other utilities or Building facilities which are reserved solely to Landlord and Landlord shall have rights of access through the Premises for the purpose of operating, maintaining and repairing the same. Any statement of square footage set forth in this Lease, or that may have been used in calculating Rent, Operating Expenses, Tax Expenses and/or Insurance Expenses (as hereinafter defined), is an approximation prepared by Landlord which Landlord and Tenant agree is reasonable and the Monthly Base Rent thereon is not subject to revision whether or not the actual square footage is more or less.

1.05. *Common Area*. Tenant may, as appurtenant to the Premises and subject to the terms of this Lease and compliance with applicable Regulations (as defined in Section 16.11) and Rules and Regulations (as defined in Section 16.13 below), use the following areas (collectively "**Common Area**") in common with other tenants and occupants, the walkways, sidewalks, driveways, roadways and other surfaced areas, fences, and drainage. The Building and Common Area (plus any other real property and improvements identified in *Exhibit B*, if attached to this Lease) shall be collectively known as the "**Property**".

The right herein granted to use the Common Area shall not be deemed to include the right to store any property, temporarily or permanently, in the Common Area. Any such storage shall be permitted only by the prior written consent of Landlord, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord. For avoidance of doubt, any area in which Tenant is permitted to store a liquid nitrogen tank (as approved in writing by Landlord) shall be deemed to be part of the Premises for all purposes under this Lease.

1.06. *Landlord's Reserved Rights.* Provided that the exercise of the following rights does not unreasonably interfere with Tenant's use of the Premises, Landlord shall have the right, in Landlord's sole discretion, from time to time:

a. To make changes to the Common Area, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, roadways, landscaped areas, walkways, and utility raceways;
b. To install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises or outside the Premises; and to make any alterations to the Premises that, in Landlord's reasonable judgment, are required or authorized by any existing or future governmental codes;
c. To change the boundary lines of the Property; and
d. To install, use, maintain, repair, alter or relocate and replace any Common Area; provided, however, that substitutions, if any, shall be substantially equivalent or better in quality.
e. To close temporarily any of the Common Area for maintenance purposes so long as reasonable access to the Premises remains available.
f. To use the Common Area while engaged in making additional improvements, repairs or alterations to the Property, or any portion thereof;
g. To grant easements and licenses on, under and over the Common Area; and
h. To do and perform such other acts and make such other changes in, to or with respect to the Common Area and Property and Landlord may, in the exercise of sound business judgment, deem to be appropriate.

Such rights are exercisable without notice (provided that Landlord shall endeavor to provide Tenant with reasonable advance notice, absent an emergency) and without liability to Tenant for damage or injury to property, person or business and without affecting an eviction, constructive or actual, or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for abatement of Rent. Landlord shall make commercially reasonable efforts to minimize interference with Tenant's business operations in connection with any exercise of rights under this Section 1.06.

2. IMPROVEMENTS

2.01. *Tenant's Acceptance of Premises.*

a. On the Commencement Date, Landlord shall deliver the Premises to Tenant broom clean, free of debris and with all mechanical, plumbing and electric systems serving the Premises in good working order (subject to ongoing Initial Improvement work); provided that if such systems are not in good working order, as Tenant's sole remedy, Landlord shall repair same as expeditiously as practicable so long as Tenant notifies Landlord of a defect or nonworking condition within thirty (30) days of the Commencement Date, failing which, such good condition shall be presumed (and if the nonworking condition or defect is due to the actions or inaction of Tenant or any Tenant Parties, then Tenant shall reimburse Landlord for the costs of repair or replacement upon demand). Tenant shall accept the Premises "as is" on the Commencement Date (as hereinafter defined). Except for the Landlord's obligation, to construct the Initial Improvements described in *Exhibit C*, which shall be completed following the Commencement Date, Landlord shall have no obligation to construct any improvements in the Premises, and any other alteration to or improvement of the Premises shall be governed by Section 8 below. By taking possession of or using the Premises, Tenant shall be deemed to accept the same in their condition existing as of the date of such possession or use and subject to Regulations. Tenant shall, at Tenant's sole cost and expense, comply with all Regulations now in force or which may hereafter be in force relating to the Premises and the use of the Premises, and Tenant shall secure any permits therefore.

Tenant shall have a period of thirty (30) days after the Initial Improvements are substantially completed in which to notify Landlord in writing of any construction deficiencies or any failure of the Initial Improvements to comply with any Regulations or any uncompleted punch list items (the punch list shall be limited to items required to be accomplished by Landlord under the *Exhibit C*) and, except as hereafter provided and as Tenant's sole option, Landlord will repair, replace or complete at its expense all items referenced in such notice within thirty (30) days after receipt of such notice, subject to Unavoidable Delays (as hereinafter defined), or as soon thereafter as Landlord, acting in good faith, can repair, replace or complete the same. If Landlord reasonably contends that a particular item in such notice is not justified, the parties will refer the issue to Landlord's Architect for resolution. Landlord's Architect's determination shall be final and binding upon the parties. Nothing in this Section shall limit or expand Landlord's maintenance and repair obligations set forth in Section 7.03. Tenant acknowledges that the only warranties and representations Landlord has made in connection with the physical condition of the Premises or Tenant's use of the same upon which it has relied directly or indirectly are those expressly provided in this Lease. As used herein, "Unavoidable Delays" means delays due to fire, earthquake, inclement weather, acts of God, acts of the public enemy, riot, insurrection, governmental delays or regulations of the sales of materials or supplies or the transportation thereof, strikes or boycotts, shortages of material or labor, epidemics, any other causes beyond the reasonable control of Landlord.

b. Notwithstanding the foregoing, Landlord represents and warrants that on the Commencement Date, the following shall be in good working order and condition: the plumbing, lighting, air conditioning, heating, and ventilating systems, fire sprinkler system, roof membrane, structural portion of the exterior walls, foundation, flooring (not including floor coverings) and loading doors serving the Premises (the "**Warranted Items**"); provided, however, that the Warranted Items shall be deemed to be in good working order and condition unless Tenant notifies Landlord otherwise within twelve (12) months following the Commencement Date. If Tenant so notifies Landlord, as Tenant's sole and exclusive remedy, Landlord shall correct such Warranted Item at Landlord's sole cost and expense as soon as practicable; provided, however, that Tenant (and not Landlord) shall be liable for the repair and replacement of any Warranted Items that (i) are damaged by the negligent actions or inactions, willful misconduct or breach of this Lease by Tenant or any Tenant's Parties (as defined in Section 10.06 below), or (ii) are not in good working order and condition as a result of any Tenant's Alterations or Utility Installations under Section 8.02 below to the Premises or Building made by or at the request of Tenant (other than Initial Improvements).

2.02. *Construction.*

a. *Initial Improvements to be Completed by Landlord*. Landlord and Tenant have agreed upon construction of initial improvements within the Premises pursuant to *Exhibit C*.

b. *Construction*. Landlord shall construct the Initial Improvements (as defined in *Exhibit C*) substantially in accordance with the *Exhibit C*. Such work shall be completed following the Commencement Date, and Landlord and Tenant shall cooperate to allow the Initial Improvements to be completed simultaneously with Alterations that Tenant will make to prepare the Premises for its occupancy. Landlord shall make commercially reasonable efforts to complete the Initial Improements within sixty (60) days following the Commencement Date.

c. *Landlord Interference with Initial Tenant Alterations*. If Landlord's construction of Initial Improvements interferes with Tenant's construction of Alterations, and such interference is not discontinued within two (2) business days following written notice from Tenant, then the Rent Commencement Date shall be delayed day for day for each day thereafter that Tenant is delayed in completing its initial Alterations due to Landlord's interference in connection with completion of Initial Improvements.

3. TERM

3.01. *Commencement Date.* The Term shall commence on the Commencement Date set forth in Section 1.01. Tenant shall not be allowed access to the Premises until insurance certificates have been approved by Landlord, as required under this Lease.

3.02. *Term.* The Term of this Lease shall be for the period as stated in Section 1.01, commencing on the Commencement Date of the Term as provided in Section 3.01 and, unless sooner terminated in accordance with the terms of this Lease, shall expire on the last day of the sixtieth (60^{th}) full month following the Rent Commencement Date (the "**Expiration Date**"). If the last day of the Term falls on a date other than the last day of the month, then the Term shall be extended so that the last day of the Term shall be the last calendar day of the calendar month in which the Term would otherwise end. Upon Landlord's request following the Rent Commencement Date for the Premises and/or remeasurement upon completion of Initial Improvements, Tenant shall execute a memorandum confirming the Term, rentable square footage of the Premises, Monthly Base Rent, Rent Commencement Date, Tenant's Share of Tax Expenses, Insurance Expenses and Operating Expenses, and other information as reasonably requested by Landlord, which memorandum shall thereupon be deemed a part of this Lease; provided, however, the execution of such memorandum shall not be a condition precedent to the parties' obligations hereunder.

4. RENT

4.01. *Monthly Base Rent*. Beginning on the Rent Commencement Date and continuing throughout the Term, Tenant shall pay the Monthly Base Rent to Landlord in advance upon the first day of each calendar month of the Term, at Landlord's address or at such other place designated by Landlord in a notice to Tenant, without any prior demand or invoice therefore. If the Rent Commencement Date shall occur on a day other than the first day of a calendar month, then Tenant shall pay, upon the Rent Commencement Date, a pro rata portion of the Monthly Base Rent, prorated on a per diem basis, with respect to the portions of the fractional calendar month included in the Term. Upon executing this Lease, Tenant shall pay Tenant's Security Deposit as provided in Section 4.06 below.

4.02. *Escalation*. The Monthly Base Rent shall be adjusted during the Term as provided in Section 1.01.

4.03. *Additional Rent and Estimated Payments*. "**Additional Rent**" shall include all monies, except for Monthly Base Rent, required to be paid by Tenant to Landlord under the Lease, including without limitation, any late payments, interest, and payments required to be made by Tenant to Landlord on account of costs incurred by Landlord for Tax Expenses, Insurance Expenses, and/or Operating Expenses. Additional Rent shall be payable by Tenant within ten (10) days after a reasonably detailed statement of actual expenses is presented to Tenant by Landlord (provided that Tax Expenses, Insurance Expenses, and Operating Expenses shall not be payable until the Rent Commencement Date). At Landlord's option, however, an amount may be estimated by Landlord from time to time of Additional Rent payable by Tenant and the same shall be payable monthly during each accounting year of the Term, on the same day as Base Rent is due hereunder. At the end of each year there shall be an adjustment made to account for any difference between the actual and the estimated Additional Rent for the previous year. If Tenant has overpaid the amount of Additional Rent owing pursuant to this provision, Landlord shall credit Tenant the amount of such overpayment in determining Tenant's estimated payments for the following lease year; provided, that in the case of overpayment for the final lease year of the Term, Landlord shall refund such overpayment to Tenant within thirty (30) days after Landlord finalizes its statement for such final year. If Tenant has underpaid the amount of Additional Rent owing pursuant to this provision, Tenant shall pay the amount of such underpayment to Landlord, as Additional Rent, within thirty (30) days after receipt of such final statement from Landlord. Except as set forth to the contrary in this Section 4.03, Tenant's Shares of, respectively, Tax Expenses, Insurance Expenses, and Operating Expenses, shall be as set forth in Section 1.01. For any period during the Term in which the Building or Property is not fully occupied, Landlord shall compute and charge Tenant for, respectively, Operating Expenses, Tax Expenses, and Insurance Expenses, based upon the ratio that the Rentable Square Feet of the Premises bears to the Rentable Square Feet of the Building or Property, as applicable; Tenant's Share of, respectively, Tax Expenses, Insurance Expenses, and Operating Expenses shall be adjusted accordingly for such period of time. Notwithstanding the foregoing, to the extent Operating Expenses vary, as reasonably determined by Landlord, according to the level of occupancy of the Building (or Property, as applicable), Landlord may compute and charge Tenant for such variable expenses an amount greater than Tenant's Share of Operating Expenses equal to Landlord's reasonable estimate of the extent to which such variable Operating Expenses are attributable to Tenant's occupancy**.** In the event that Tenant or any other tenant within the Building has a use, performs acts (including, without limitation, construction within the Building), or whose presence or occupancy results, in Landlord's good faith determination, in an inequitable allocation of either Operating Expenses, Tax Expenses, or Insurance Expenses among the tenants of the Building, then Landlord may, without any obligation to do so and notwithstanding any provision to the contrary in this Lease, reallocate one or more of Tenant's Share of, respectively, Operating Expenses, Tax Expenses, and/or Insurance Expenses in such a manner so as to achieve an allocation of such expenses which Landlord determines to be equitable in Landlord's good faith determination. Notwithstanding anything to the contrary in this Lease, in the event that Landlord sells a portion of the Property, Tenant's Share of, respectively, Tax Expenses, Insurance Expenses and Operating Expenses after such sale shall be based upon the ratio that the Rentable Square Feet of the Premises bears to the Rentable Square Feet of the Property then owned by Landlord after any such sale. Charges for, respectively, Tax Expenses, Insurance Expenses and Operating Expenses shall be prorated to the date of any sale of a portion of the Property to reflect the recalculation described in the preceding sentence.

4.04. *Rent Defined*. Monthly Base Rent and Additional Rent shall be deemed to constitute "**Rent**". Rent shall be paid in lawful money of the United States without any abatement, set off or deduction whatsoever.

4.05 *Interest and Late Charge.* If any installment of Rent is not paid promptly when due, such amount shall bear interest at the rate of ten percent (10%) per annum from the date on which said payment shall be due until the date on which Landlord shall receive said payment regardless of whether or not a notice of default or notice of termination has been given by Landlord. In addition, Tenant shall pay Landlord a late charge of ten percent (10%) of the amount delinquent. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay Rent is difficult to ascertain, said late charge being the best estimate of the damage which Landlord shall suffer in the event of Tenant's late payment. This provision shall not relieve Tenant of Tenant's obligation to pay Rent at the time and in the manner herein specified.

4.06. *Security Deposit*. Upon execution of this Lease, Tenant shall deposit the Security Deposit set forth in Section 1.01 in cash with Landlord. The Security Deposit shall secure Tenant's obligation to: (i) pay Rent; (ii) maintain the Premises and repair damages thereto; (iii) surrender the Premises to Landlord in clean condition and good repair upon termination of this Lease; and (iv) discharge Tenant's other obligations hereunder. Landlord may use and commingle the Security Deposit with other funds of Landlord. If Tenant fails to perform any of Tenant's obligations hereunder, Landlord may, but without obligation, apply all or any portion of the Security Deposit toward fulfillment of Tenant's unperformed obligations. If Landlord does so apply any portion of the Security Deposit, Tenant shall upon demand by Landlord, immediately pay Landlord sufficient cash to restore the Security Deposit to the full original amount. The Security Deposit shall not bear interest. Upon termination of this Lease, if Tenant has performed Tenant's obligations hereunder, Landlord shall return the Security Deposit to Tenant. If Landlord transfers Landlord's rights under this Lease, Landlord may deliver the Security Deposit to the transferee, whereupon Landlord shall be released from any further liability to Tenant with respect to the Security Deposit. Unless otherwise expressly agreed in writing by Landlord, no part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any monies to be paid by Tenant under this Lease.

5. TAX EXPENSES

5.01. *Tenant's Obligations*. Tenant shall pay to Landlord, pursuant to the terms of Section 4.03, Tenant's Share of Tax Expenses assessed against the Premises, Building, Common Area or Property during each calendar year of the Term of this Lease, commencing on the Rent Commencement Date. "**Tax Expenses**" shall mean and include the sum of the following: all real estate, land, fixed improvement, structural improvement, Landlord's personal property used for the Project and other taxes relating to the Property, governmental and quasi-governmental assessments and charges, commercial rental taxes, fees and levies, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature for public improvements, services, benefits, or otherwise, and all other fees or taxes which may be levied which: (i) are assessed, levied, conformed, imposed or become a lien upon the Property; (ii) are imposed in lieu of any of the above and become payable by Landlord during the Term, or (iii) may be assessed after the expiration of the Term for a period during the Term; provided, however, that:

a. Any water charges, sewer charges or utility fees contained in any tax bill shall not be deemed a "Tax Expense", but shall be payable by Tenant as a utility charge in accordance with Section 9.01 [Utilities] below.

b. The amount owed by Tenant for Tax Expenses, as set forth in this Section 5.01, shall be prorated between Landlord and Tenant so that Tenant shall pay for amounts applicable to the period of time occurring prior to the expiration of the Term; and

c. Tax Expenses shall not include interest, fees, interests or any other costs resulting from the late payment of Tax Expenses to the applicable authority (unless due to Tenant's failure to pay Rent in accordance with the terms of this Lease.

5.02. *Limitation.* Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate, inheritance, succession or documentary transfer tax of Landlord, or any income, profits or revenue tax or charge, upon the net income of Landlord; provided, however, that if under the laws of the United States Government or the state, city or county in which the Property is located, or any political subdivision thereof or any improvement district therein, a tax or excise on rent, or any other tax however described, is levied or assessed by any such body against Landlord on account of rentals payable to Landlord from the Property, Tenant shall pay Tenant's Share of such tax or excise on rent as Tenant's Share is set forth under Tenant's Share of Tax Expenses under Section 1.01 and Section 4.03.

5.03. *Personal Property Taxes*. Prior to delinquency, Tenant shall pay all taxes and assessments levied upon Tenant's inventories, merchandise, furniture, trade fixtures, equipment and other personal property located on or about the Premises, as well as any taxes due to improvements or alterations made to the Premises by Tenant.

6. INSURANCE

6.01. *Tenant's Obligations.* Tenant shall pay to Landlord, pursuant to the terms of Section 4.03, Tenant's Share of Insurance Expenses (as defined in Section 1.01) incurred during each calendar year of the Term of this Lease, commencing on the Rent Commencement Date. As used herein, "**Insurance Expenses**" shall include the cost of premiums for insurance maintained by Landlord under this Article 6 and any deductible portion of any insured loss concerning the Common Area, Building or Property. The amount owed by Tenant for Insurance Expenses, as set forth in this Section 6.01, shall be prorated between Landlord and Tenant so that Tenant shall pay that proportion attributable to the Term.

6.02. *Landlord's Property.* During the Term, Landlord shall procure and maintain in full force with respect to the Property, a policy or policies of all risk insurance (including standard sprinkler leakage coverage and any other endorsements or types of coverage required by the holder of any fee or leasehold mortgage) in an amount equal to the full insurance replacement value (replacement cost new, including debris removal, and demolition) thereof. If the annual premiums charged Landlord for such casualty insurance exceed the standard premium rates because the nature of Tenant' operations results in increased exposure, then Tenant shall, upon receipt of appropriate premium invoices, reimburse Landlord for such increased amount.

6.03. *Landlord's Liability Insurance.* During the Term, Landlord shall procure and maintain in force a commercial general liability insurance covering the Property in commercially reasonable amounts as determined by Landlord, from time to time in Landlord's reasonable discretion.

6.04. *Tenant's Liability.* During the Term of this Lease and any early entry onto the Property by Tenant, Tenant shall, at Tenant's sole cost and expense, maintain in full force a policy or policies of commercial general liability insurance, rated A-VI or better in "Best Insurance Guide" and in the form customary to the locality in which the Property is located, insuring Tenant's activities and those of Tenant's employees, agents, licensees and invitees with respect to the Premises against loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in the Premises in amounts of not less than the greater of the Commercial General Liability Policy Limits set forth in Section 1.01, and combined single occurrence limit for personal injury and property damage of Five Million Dollars ($5,000,000). If Tenant has in full force and effect a blanket policy of liability insurance with the same coverage for the Property as described above, as well as coverage of other premises and properties of Tenant, or in which Tenant has some interest, such blanket insurance shall satisfy the requirement hereof. Such insurance shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. All such policies shall provide that such coverage shall be primary and non-contributing and that any insurance maintained by Landlord shall be excess insurance only. Such coverage shall also contain the following endorsements: (i) deleting any employee exclusion of personal injury coverage; (ii) including employees as additional insureds; (iii) providing for coverage of employer's automobile non-ownership liability; (iv) deleting any liquor liability exclusion, (v) an "Additional Insured-Managers or Lessors of Premises Endorsement", and (vi) the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

6.05. *Fire and All Risk Coverage Insurance.* During the Term of this Lease and any early entry onto the Property, Tenant shall, at Tenant's sole cost and expense, procure and maintain in full force a policy or policies of special form property insurance, including sprinkler leakage if the Premises is equipped with an automatic sprinkler system, in an amount not less than one hundred percent (100%) replacement value covering Tenant's merchandise, inventories, furniture, trade fixtures, equipment and Tenant's Alterations and Utility Installations and other personal property that Tenant owns or has installed at Tenant's sole cost and expense to the Premises. Landlord and Tenant agree that proceeds from such insurance policy or policies shall be used for the repair or replacement of Tenant's Alterations and Utility Installations, trade fixtures and personal property.

6.06. *Rental Abatement Insurance.* During the Term of this Lease, Landlord may maintain in full force and effect rental abatement insurance against abatement or loss of Rent with respect to the Property in case of fire or other casualty, in an amount and with coverage periods as reasonably determined by Landlord.

6.07. *Insurance Certificates; Other Requirements.* Tenant shall furnish to Landlord on the Commencement Date (or upon any earlier entry onto the Property), and thereafter within thirty (30) days prior to the expiration of each such policy, certificates of insurance issued by the insurance carrier of each policy of insurance required to be carried by Tenant pursuant hereto. Each certificate shall expressly provide that such policies shall not be cancellable or subject to reduction of coverage or otherwise be subject to modification except after thirty (30) days prior written notice to the parties named as additional insureds in this Section 6.07. Landlord, Jones Development Company, LLC, Landlord's successors and assigns, and any nominee of Landlord holding any interest in the Premises, including, without limitation any ground lessor and holder of any fee or leasehold mortgage of which Tenant has been notified in writing shall be named as additional insureds under each policy of insurance maintained by Tenant. All insurance policies required to be carried by Tenant under this Lease shall: (i) be written by companies rated A-VI or better in "Best's Insurance Guide" and authorized to do business in Nevada; and (ii) name any parties designated by Landlord as additional insureds. Any deductible amounts under any insurance policies required to be carried by Tenant hereunder shall be subject to Landlord's prior written approval. In any event deductible amounts shall not exceed Ten Thousand Dollars ($10,000.00) without Landlord's prior written consent, in its sole discretion. If at any time during the Term the amount or coverage of any insurance which Tenant is required to carry under this Lease is, in Landlord's good faith judgment, materially less than the amount or type of insurance coverage typically carried by owners or lessees or properties located in the same general market area as the Property, Landlord shall have the right to require Tenant to increase the amount or change the types of insurance coverage required under this Section.

6.08. *Tenant's Failure.* If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs resulting from said failure. Tenant shall also be responsible for reimbursing Landlord for any costs incurred by Landlord pursuant to Section 16.18. Nothing herein shall be a waiver of any of Landlord's rights and remedies under any other article of this Lease or at law or equity.

6.09. *Waiver of Subrogation.* Without affecting any other rights or remedies, Tenant and Landlord each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The parties agree to have their respective property damage and workers compensation insurance carriers waive any right to subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance is not invalidated thereby.

6.10. *Indemnification of Landlord.* Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold Landlord, and its respective partners, members, managers, employees, authorized agents and property manager (collectively, "**Landlord's Authorized Representatives**"), and the Property harmless from and against all claims, liabilities, penalties, losses, damages, costs and expenses, claims or judgments (including, without limitation, reasonable attorneys' fees) in connection with or arising out of any injury to persons or damage to Property occurring in or on the Premises, or resulting from any accident or other occurrence on or about the Property occasioned by any negligent or willfully wrongful act or omission of Tenant, Tenant's officers, managers, employees, agents, sub-tenants, or contractors, visitors or invitees, or arising from Tenant's use, maintenance, occupations or operation of the Premises, Building or Common Area, or caused by or related to any default by Tenant or any Tenant Parties under this Lease; provided, however that Tenant shall not be required to indemnify Landlord for any injury or damage to the extent arising as the result of the gross negligence or willful misconduct of Landlord or Landlord's Authorized Representatives. Landlord need not have first paid any such claim in order to be defended or indemnified. All indemnification obligations provided in this Lease shall survive its termination or expiration. Landlord or Landlord's Authorized Representatives need not have first paid any such claim in order to be defended or indemnified. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Lease.

6.11. *Earthquake, Flood and Additional Insurance.* In addition to any other insurance policies carried by Landlord or Landlord's Authorized Representatives in connection with the Property, Landlord may elect to procure and maintain in full force and effect during the Term, with respect to the Property, a policy of earthquake/volcanic action and flood and/or surface water insurance, in an amount not to exceed one hundred percent (100%) of the full insurance replacement value (including debris removal and demolition of the Property, including rental value insurance against abatement or loss of rent in the case of damage or loss covered under such earthquake/volcanic and flood and/or surface water insurance. Landlord may maintain such other commercially reasonable insurance as required by its lender or determined by Landlord to be prudent.

6.12. *Workers' Compensation Insurance.* During the Term of this Lease and for Tenant, any early entry onto the Project, both parties shall, procure at their sole cost and expense, procure and maintain in full force Workers' Compensation Insurance in compliance with Nevada law.

6.13. *Business Interruption Insurance.* During the Term of this Lease and any early entry onto the Property, Tenant shall, at Tenant's sole cost and expense, procure and maintain in full force a policy of Business Interruption Insurance adequate to insure Tenant's typical exposure at the Premises over a one (1) year period of time.

6.14. *Comprehensive Automobile Liability Insurance.* During the Term of this Lease and any early entry onto the Property, if Tenant operates owned, hired or non-owned vehicles on the Property then Tenant shall, at its sole cost and expense, procure and maintain in full force a policy of Comprehensive Automobile Liability Insurance, at a limit of liability of not less than Five Million Dollars ($5,000,000) combined bodily injury and property damage.

6.15. *Landlord's Disclaimer.* Neither Landlord nor Landlord's Authorized Representatives shall be responsible or liable at any time for damage to Tenant's equipment, fixtures or other personal property or to Tenant's business, and neither Landlord nor Landlord's Authorized Representatives shall be responsible or liable to Tenant or to those claiming by, through or under Tenant for any damage to person or property that may be occasioned by the acts or omissions of third parties and neither Landlord nor Landlord's Authorized Representatives shall be responsible or liable for any defect in any building or Common Area in the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall they be responsible or liable for any damage to any person or to any property of Tenant or other person caused by bursting, breakage or leakage, steam or the running, seepage or overflow of water or sewage in any part of the Premises or by the use of reclaimed water or for any damage caused by or resulting from acts of God or the elements or for any damage caused by or resulting from any defect or negligence in the occupancy, construction, operation or use of any of the Property, machinery, apparatus or equipment by any other person or by or from the acts or negligence of any occupant of the Property, except to the extent such defect, damage or loss is caused by the gross negligence or willful misconduct of Landlord or Landlord's Authorized Representatives. Notwithstanding Landlord's or Landlord's Authorized Representatives' negligence or breach of this Lease, neither Landlord nor its Authorized Representatives shall be liable for injury to Tenant's business or for any loss of income or profit therefrom.

7. OPERATING EXPENSES, REPAIRS AND MAINTENANCE

7.01. *Common Area Operating Expenses.* Beginning on the Rent Commencement Date, Tenant shall pay to Landlord, pursuant to the terms of Section 4.03, Tenant's Share (as defined in Section 1.01) of all Common Area Operating Expenses, as hereinafter defined, incurred during each calendar year of the Term of this Lease, in accordance with the following provisions. "**Operating Expenses**" shall include all costs and expenses incurred by Landlord for the administration, management, cleaning, maintenance, painting and repair of the Property (including, without limitation, the Common Area), and shall include, without limitation, the costs and expenses of:

a. Costs relating to the operation, repair and maintenance, in neat, clean good order and condition, and, if reasonably necessary, the replacement of the following:

(i) The Common Area and Common Area improvements, including, but not limited to, parking areas, security offices, loading and unloading areas, trash areas, waste treatment facilities, electric substations, water storage and treatment facilities, recycled water delivery systems, roadways, railways, railway crossings, spur tracks, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, storm water systems, detention basins, Common Area lighting facilities, fences and gates, roofs, exterior walls of the Buildings, Buildings systems and roof drainage systems.
(ii) Routine roof maintenance, small patching, cleaning and maintenance of roof drains and rain leaders.
(iii) Monument signs and any tenant directories.
(iv) Any fire sprinkler or life safety systems.

(v) Pest control services, security services, owner's association dues and fees, the cost to repaint the exterior of any structures.

(vi) All other areas and improvements that are within the exterior boundaries of the Property, but outside of the Premises and/or any other space occupied by a tenant.

b. Property management fees as follows: (1) three percent (3%) of Monthly Base Rent; and (2) the market rate wages and benefits of a single property manager employee of Landlord's property manager engaged in managing the Property.

c. The cost of any utilities, including, but not limited to, water, sewer, gas, electricity, internet and telephone to serve the Common Area.

d. Maintaining and repairing mechanical, plumbing, electrical, lighting and life safety systems and reserves set aside for maintenance, repair and replacement of the Common Area and Common Area equipment.

e. License, permit and inspection fees.

f. Any deductible portion of an insured loss concerning the Buildings or the Common Area.

g. Landlord shall have the right to include Capital Expenditures (as defined below) in Operating Expenses, provided that such Capital Expenditures are limited to the repair or replacement of existing improvements, and facilities (as distinguished from new capital improvements) at the Property, but excluding designated tenant premises (collectively, "**Permitted Capital Expenditures**") and are amortized over the reasonable useful life of the item being replaced and/or repaired in accordance with generally accepted accounting principles. "**Capital Expenditures**" means those expenditures which, in accordance with generally accepted accounting principles, are not fully chargeable to current expenses in the year the expenditure is incurred.

h. The cost of any other services to be provided by Landlord that are stated elsewhere in this Lease to be a Common Area Operating Expense.

Notwithstanding anything to the contrary contained herein, in no event shall Operating Expenses include any of the following: (1) costs of correcting any non-compliance of the Building of Property with applicable governmental requirements as of the date of mutual execution of this Lease; (2) costs for which Landlord is reimbursed, receives a credit or is otherwise compensated (other than tenant reimbursements for Operating Expenses, Insurance Expenses and Tax Expenses); (3) rent or other amounts payable under any ground lease or master lease, or interest, amortization or other repayment of indebtedness or costs, fees, points or other expenses in connection with any financing or refinancing of all or any part of the Property; (4) Capital Expenditures, other than the annual amortized amount of Permitted Capital Expenditures expressly set forth above; (5) costs of correcting defects in the initial design or construction of the Property resulting from inferior or deficient workmanship; (6) any costs relating to Hazardous Materials, except for minor matters such as customary automobile gasoline and oil spills; (7) costs of repair or restoration required due to casualty damage or condemnation (except for commercially reasonable deductibles or amounts not exceeding commercially reasonable deductibles); (8) interest or penalties incurred as a result of Landlord's failure to pay any bill as it shall become due; (9) any amount paid to any corporation or other entity related to Landlord that is in excess of the amount which would have been paid in the absence of such relationship; (10) costs related to the operation of Landlord as an entity rather than the operating of the Property (including, without limitation, costs of formation of the entity, internal accounting, legal matters and/or preparation of tax returns) or costs associated with selling the Property or any interest therein; (11) leasing commissions and attorneys' fees incurred in connection with leasing, renovating, or improving space for tenants or other occupants or prospective tenants (including, without limitation, permit. license, and inspection fees); and (12) any depreciation or amortization of the Building or other buildings and improvements on the Property.

7.02. *Tenant Repairs and Maintenance.*. Subject to the casualty and condemnation provisions of Sections 11 and 12 and except for any repair and maintenance obligations of Landlord which are specifically described in Sections 2 and 7.03, Tenant, at Tenant's sole cost and expense, shall maintain the Premises and every part thereof in good order and in a clean and safe condition, and shall repair and replace (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises), without limitation, the following: Interior surfaces of walls and ceilings; floors; wall and floor coverings; interior and exterior windows and plate glass; skylights (if any); window coverings; doors, roll up doors, locks on closing devices; window casements and frames; storefronts; signs; awnings (if any); canopies and display windows; plumbing; electrical wiring and systems within the Premises (including replacement of light bulbs, tubes and ballasts); all heating, ventilation and air conditioning equipment and systems serving the Premises; exterior entrances; and all switches, fixtures and equipment in the Premises. Tenant shall, at Tenant's sole cost and expense, immediately replace all broken or damaged glass, including skylights (if any), in the Premises with glass equal to the specification and quality of the original glass. Tenant shall, at Tenant's sole cost and expense, enter a regularly scheduled (not less than quarterly) preventive maintenance/service contract, with a maintenance contractor approved by Landlord, for servicing all heating, ventilation and air conditioning systems and equipment serving the Premises. If Tenant does not enter into such a contract, Landlord shall be entitled to enter into such a contract, and Tenant shall pay to Landlord, as Additional Rent, upon demand by Landlord, any costs incurred by Landlord in procuring and maintaining such a contract. Upon receipt of reasonable notice from Tenant, Landlord shall perform, at the expense of Tenant, all repairs and maintenance to plumbing, pipes and electrical wiring located within walls, above ceiling surfaces and below floor surfaces resulting from the use of the Premises by Tenant. Landlord shall be responsible for any plumbing, pipes, electrical wiring, switches, fixtures or equipment located in the Premises but serving another tenant. Tenant shall at Tenant's sole cost and expense, repair any area, in the Premises or the Common Area, damaged by Tenant, Tenant's agents, employees, contractors, or visitors, provided that Tenant obtains Landlord's prior approval with respect to the method and quality of such repair. Any repair or replacement required of Tenant shall be made with equipment and/or materials at least equal to the specification and quality of the original and shall be made by contractors approved by Landlord. Tenant shall install rug protectors in all carpeted areas in which desk chairs are located Tenant shall keep all areas immediately adjoining the Premises free from trash, litter and obstructions resulting from Tenant's business at the Premises. Tenant shall separately provide for the removal of its refuse from the Premises. Tenant recognizes the use of some chemicals and/or maintenance techniques are potentially harmful to the Premises or the Property, and consequently, Tenant's use of such chemicals and or maintenance techniques shall be subject to Landlord's prior written approval, in its sole discretion.

7.03. *Landlord Repairs and Maintenance.* Landlord shall, subject to the casualty and condemnation provisions of Sections 11 and 12 and Tenant's obligations under Section 7.02, maintain the Common Area, plumbing, pipes and conduits located in the Common Area, the foundation and subfloors of the Building, and exterior walls of the Building, and the roof of the Building (excluding interior ceiling) in good condition, order and repair. There shall be no abatement of Rent during the performance of any work described in this Section 7.03. Landlord shall not be liable to Tenant for injury or damage that may result from any defect in the construction or condition of the Premises, nor for any damage that may result from interruption of Tenant's use of the Premises during any repairs by Landlord. Tenant hereby waives the provisions of any Requirements regarding Tenant's right to terminate this Lease or make repairs and deduct the cost thereof from Rent. There shall be no abatement of Rent during the performance of any work described in this Section 7.03. Landlord shall not be liable to Tenant for any damage that may result from reasonable interruption of Tenant's use of the Premises during any repairs by Landlord.

Notwithstanding anything contained Section 7.03 in this Lease to the contrary, and unless such maintenance, repair or replacement is required as a result of (a) the acts or omissions of Tenant or any Tenant Parties; or (b) Tenant's Alterations or Utility Installations under Section 8.02 below, Landlord shall, during the Term of this Lease, be responsible at its sole cost and expense (subject to the inclusion of such costs in Operating Expenses) to maintain, repair and if needed replace (i) the roof in watertight condition, (ii) the structural walls, and (iii) all utility systems serving the Premises to the point of connection into the Premises. Landlord, at its sole cost and expense (subject to the inclusion of such costs in Operating Expenses) shall be responsible for correcting any violations of Laws (including without limitation the ADA) with respect to the common areas of the Building (to the extent such violations are not "grandfathered" in or elements for which Tenant is responsible under this Lease) to the extent that Landlord's failure to comply therewith would materially and adversely impact Tenant's use of or access to the Premises. Notwithstanding the foregoing, to the extent Landlord's compliance obligations in this paragraph are (i) triggered by Tenant's Alterations or Utility Installations, (B) Tenant's particular use of the Premises (as opposed to standard warehouse use, such as, for example, any high-hazard use), or (C) Tenant's particular employees or employment practices, Tenant shall reimburse Landlord for the costs incurred by Landlord in connection with fulfillment of its obligations under this paragraph. Landlord shall have the right to contest any alleged violation in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by law. Landlord, after the exhaustion of any and all rights to appeal or contest, will make all repairs, additions, alterations or improvements necessary to comply with the terms of any final order or judgment to the extent required under this paragraph.

7.04. *Inspection of Premises.* Landlord and its agents, contractors and representatives, may enter the Premises at reasonable times upon advance notice to Tenant (and any time in the case of an emergency, without notice) in order to inspect the same, to inspect the performance by Tenant of the terms and conditions hereof, to affix reasonable signs and displays and to show the Premises to prospective purchasers, tenants and lenders, and to make such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary or desirable, and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises. All such activities shall be without abatement of Rent or liability to Landlord.

7.05. *Liens.* Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Property free of all mechanic's and materialmen's liens in connection therewith. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work, in on or about the Premises. Landlord shall have the right to post in or on the Premises, or in the immediate vicinity thereof, notices of non-responsibility as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole cost and expense, defend and protect itself, Landlord and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Premises. If Landlord shall require, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to one hundred fifty percent (150%) of the amount of such contested lien claim or demand, indemnifying Landlord against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim.

7.06. *Audit Rights.* Tenant may audit Landlord's Operating Expenses, Insurance Expenses and Tax Expenses for the immediately preceding calendar year in order to verify the accuracy thereof provided that: (i) Tenant specifically notifies Landlord that it intends to conduct such audit within ninety (90) days after the receipt of Landlord's reconciliation for the prior accounting year; and (ii) such audit will be conducted only during regular business hours at the office where Landlord maintains such expense records and only after Tenant gives Landlord fourteen (14) days prior written notice. Any such audit must be completed by Tenant within ninety (90) days after notice of its intent to audit. Tenant shall deliver to Landlord a copy of the results of such audit within fifteen (15) days of its receipt by Tenant. No such audit shall be conducted if any other tenant has conducted an audit for the time period Tenant intends to audit and Landlord furnishes to Tenant a copy of the result of such audit. No audit shall be conducted at any time that Tenant is in default of any of the terms of this Lease. No subtenant shall have any right to conduct an audit and no assignee shall conduct an audit for any period during which such assignee is not in possession of the Premises. In the event that Tenant elects to audit in accordance with this Section, such audit must be conducted by an independent nationally recognized accounting firm that is not being compensated by Tenant on a contingency fee basis.

7.07. *Cap on Controllable Operating Expenses.* Notwithstanding anything to the contrary in this Paragraph 7, during the initial Lease Term, the Controllable Operating Expenses (hereinafter defined) shall not increase by more than three percent (3%) per calendar year, on a cumulative and compounding basis. "**Controllable Operating Expenses**" shall mean all Operating Expenses with the exception of (1) utility costs and refuse removal costs, (2) Insurance Expenses, (3) Tax Expenses and other taxes, (4) increases in the current minimum wages or increases in employee wages due to the unionization of the labor force or changes in laws, (5) costs to comply with governmental requirements and laws that were not in effect and enforced as of the Commencement Date, and (6) costs relating to unanticipated weather conditions and other events that are outside Landlord's reasonable control. During the first year of any Extension Term, Operating Expenses shall be at their actual cost, without any cap, but during subsequent years of any Extension Term, Controllable Operating Expenses shall not increase by more than three percent (3%) per calendar year, on a cumulative and compounding basis.

8. ALTERATIONS

8.01. *Fixtures and Personal Property.* Tenant, at Tenant's sole cost and expense, may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and removable without structural damage to the Building. Said trade fixtures, equipment and furniture shall remain Tenant's property and shall be removed by Tenant prior to expiration of the Term or earlier termination of the Lease (and any damage related to the installation and removal repaired). Tenant shall assume the risk of damage to any of Tenant's trade fixtures, equipment and furniture. Tenant shall repair, at Tenant's sole cost and expense, all damage caused by the installation or removal of trade fixtures, equipment and furniture. If Tenant fails to remove the foregoing items on or prior to termination of this Lease, Landlord may keep and use them or remove any of them and cause them to be stored or sold in accordance with applicable law, at Tenant's sole cost and expense.

8.02. *Alterations and Utility Installations.* Tenant shall not make or allow to be made any Alterations or Utility Installations (as defined below), to the Premises, either at the inception of this Lease or subsequently during the Term, without obtaining the prior written consent of Landlord. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations, whether by addition or deletion. The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, boilers, clarifiers, crane equipment, and fencing in or on the Premises. Tenant may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Landlord, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to three (3) month's Monthly Base Rent in the aggregate or a sum equal to one (1) month's Monthly Base Rent in any one year. Notwithstanding the foregoing, Tenant shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Landlord. With respect to any Alterations or Utility Installations approved by Landlord, Tenant shall, at Landlord's election, remove such Alterations or Utility Installations at Tenant's expense prior to expiration of the Term or earlier termination of the Lease and repair any damage caused by said removal. All Alterations or Utility Installations shall remain the property of Tenant until termination of this Lease, at which time they shall be and become the property of Landlord if Landlord so elects; provided, however, that Landlord may, at Landlord's option, upon written notice to Tenant at the time of Landlord's consent to such Alterations of Utility Installations (or, where consent is not required, within ten (10) days after notice of such Alterations or Utility Installations), require that Tenant, at Tenant's expense, within ten (10) business days after termination of the Lease, remove any or all Alterations or Utility Installations made by Tenant and restore the Premises to their condition existing prior to the construction of any such Alterations, additions or improvements. If Tenant fails to timely remove such Alterations or Utility Installations or Tenant's inventories, merchandise, furniture, trade fixtures, equipment or personal property, Landlord may keep and use them or remove any of them and trade fixtures cause them to be stored or sold accordance with applicable law, all at Tenant's sole cost and expense. The terms of the preceding two sentences shall survive the termination of the Lease. Tenant shall deliver to Landlord full and complete plans and specifications of all such Alterations or Utility Installations, and no such work shall be commenced by Tenant until Landlord has given its written approval thereof (where Landlord's consent is required) and Tenant has acquired all applicable permits therefore required by governmental authorities. Landlord does not expressly or implicitly covenant or warrant that any plans or specifications submitted by Tenant and reviewed or approved by Landlord are safe or that the same comply with any Applicable Regulations. Further, Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord) and hold Landlord harmless from any loss, cost or expense, including reasonable attorneys' fees and costs, incurred by Landlord as a result of any defects in design, materials or workmanship resulting from Tenant's Alterations or Utility Installations to the Premises. All repairs, Alterations or Utility Installations and restoration by Tenant hereinafter required or permitted shall be done in a good and workmanlike manner and in compliance with all Applicable Regulations and requirements of the insurers of the Building. Tenant shall reimburse Landlord for Landlord's reasonable out-of-pocket charges and expenses for reviewing and approving or disapproving plans and specifications and any other documents for any Alterations and Utility Installations proposed by Tenant. Tenant shall require that any contractors used by Tenant be licensed and carry a commercial general liability insurance policy in such amounts as Landlord may reasonably require. Landlord may require proof of such insurance prior to commencement of any work on the Premises.

a. Pursuant to NRS §108.234, Landlord hereby informs Tenant that Tenant must comply with the requirements of NRS §108.2403 and NRS §108.2407. Tenant shall take all actions necessary under the Nevada law to ensure that no liens encumbering Landlord's interest in the Premises, the Building and the Property arise as a result of Tenant's Alterations or other work, including, without limitation, the recording of a notice of posted security in the Official Records of Clark County Nevada, in accordance with NRS §108.2403 and either (i) establish a construction disbursement account pursuant to NRS §108.2403(l)(b)(l) or (ii) furnish and record, in accordance with NRS § 108.2403(l)(b)(2), a surety bond for the prime contract for Tenant's work at the Premises that meets the requirements of NRS §108.2415. The name and address of Tenant's prime contractor who will be performing Tenant's work will be provided to Landlord for Landlord's prior approval. Tenant shall notify Landlord immediately upon the signing of any contract with the prime contractor for the construction, alteration or repair of any portion of the Premises or Tenant's improvements to the Premises. Tenant may not begin any Alteration or other work in the Premises until Tenant has delivered evidence satisfactory to Landlord that Tenant has complied with the terms of this Section 8.02(a).

b. In accordance with NRS §108.234(2), Tenant agrees that Landlord's interest in the Premises shall not be subject to, and shall be immune from, the attachment of any lien arising as a result of Tenant's Alterations, including any improvement, construction, work or repair in the Premises by Tenant. Landlord may record a notice in writing to that effect with the Official Records of Lyon County, Nevada.

9. UTILITIES AND EASEMENTS

9.01. *Utilities.* Tenant shall pay prior to delinquency for all utilities and services supplied to the Premises, including, but not limited to, heat, water, reclaimed water, gas, electricity, telephone, internet, communication facilities, sewage, air conditioning, ventilating, refuse removal, cleaning of the Premises, together with any taxes thereon. If at any time Landlord reasonably determines that Tenant is using a disproportionate amount of water, electricity or other commonly metered utilities Landlord may allocate and bill Tenant for Tenant's share of such increased costs. Landlord shall not be liable to Tenant for interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute constructive eviction or grounds for rental abatement. If any such utilities are not separately metered, including any water charges, sewer charges or utility fees contained in any tax bill or pursuant to any private power purchase agreement related to the Project, Tenant shall pay a pro rata share, based on use, as reasonably determined by Landlord (and where utilities are separately sub-metered, Tenant shall pay for its usage as indicated by the sub-meter, which Landlord shall determine). Any such bills issued by Landlord shall be paid by Tenant on the date Monthly Base Rent is next due. Notwithstanding the foregoing, if there is an interruption in utilities which is caused by any grossly negligent or intentionally wrongful act or omission of Landlord, and such interruption prevents Tenant from using all or a substantial portion of the Premises (and Tenant does not in fact use the Premises), and such interruption continues for five (5) consecutive business days following written notice to Landlord of the interruption, then Tenant shall be entitled to an abatement in Monthly Base Rent applicable the portion of the Premises that is not able to be used by Tenant (based on the square footage), as equitably determined by Landlord, from the sixth (6^{th}) consecutive day until the interruption is corrected. In no event shall Tenant be entitled to abate Rent in the event of any moratorium, brown out, regulatory action, or lack of availability of utilities generally.

9.02. *Easements.* Landlord reserves to itself the right, from time to time, to grant, without the consent or joinder of Tenant, such easements, rights and dedications that Landlord deems necessary, and to cause the recordation of parcel maps, covenants, conditions and restrictions, so long as such easements, rights, dedications, maps, covenants, conditions and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign and deliver within ten (10) days after request by Landlord any documents reasonably requested by Landlord to effectuate any such easement rights, dedications, maps, covenants, conditions or restrictions.

10. USE OF PREMISES

10.01. *General.* Tenant shall use and occupy the Premises only for the Permitted Uses and for no other purpose. Tenant shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to neighboring properties. Landlord shall not unreasonably withhold or delay its consent to any written request for a modification of the Permitted Uses so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and is not significantly more burdensome to the Premises. If Landlord elects to withhold consent, Landlord shall within five (5) business days after such request give written notification of same, which notice shall include an explanation of Landlord's objections to the change in use. Tenant agrees, by Tenant's entry, that Tenant has conducted an investigation of the Premises and the acceptability of the Premises for Tenants use, to the extent that such investigation might affect or influence Tenant's execution of this Lease. Tenant acknowledges that Landlord has made no representations or warranties in connection with the physical condition of the Premises, Tenant's use of the same, or any other matter upon which Tenant has relied directly or indirectly for any purpose. Other than guide, signal and seeing eye dogs, Tenant shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles or insect infestation.

10.02. *Hazardous Materials.*

a. Tenant shall strictly comply with all Regulations now or hereinafter mandated or advised by any federal, state, local or other governmental agency with respect to the use, generation, storage, or disposal of hazardous, toxic, or radioactive materials (collectively, "Hazardous Materials"). As herein used, Hazardous Materials shall include, but not be limited to, those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., and applicable state law, including without limitation NRS §§ 459.428, 459.429, 459.430 and 590.740, each as hereafter amended or supplemented). Tenant shall not cause, or allow anyone else to cause, any Hazardous Materials to be used, generated, stored, released or disposed of in, on or about the Property without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord, and which consent may be revoked at any time. Tenant's indemnification of Landlord pursuant to Section 6.10, above, shall extend to all liability, including all foreseeable and unforeseeable consequential damages, directly arising out of the use, generation, storage, release or disposal of Hazardous Materials by Tenant or any person on the Premises during the Term, including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease. Neither the written consent by Landlord to the use, generation, storage, or disposal of Hazardous Materials nor the strict compliance by Tenant with all Regulations pertaining to Hazardous Materials shall excuse Tenant from Tenant's indemnification obligation pursuant to this Section, which obligation shall survive the termination of this Lease. Landlord, its lenders and its consultants shall have the right to enter into the Premises any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease. The cost of any such inspections shall be paid by Landlord, unless a violation of any Regulation, or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Tenant shall upon request reimburse Landlord for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination.

b. Landlord has provided Tenant with its most recent Phase I for the Property. Landlord represents and warrants to Tenant that to its actual knowledge, and except as set forth in such Phase I, on the Commencement Date, the Premises, including the ground or soil, the ground water and the improvements located thereon, is in compliance with all Laws governing Hazardous Materials. In the event that third party claims (including claims by governmental entities) are filed against Tenant (i) due to Hazardous Materials existing in, on or about the Property prior to the Commencement Date in violation of applicable Hazardous Materials Laws, or (ii) as a result of Landlord or its employees releasing Hazardous Materials on the Premises or Property after the Commencement Date in violation of applicable Hazardous Materials Laws, then Landlord shall indemnify, defend and hold harmless Tenant from and against such third party claims, administrative actions or proceedings, fines, penalties, damages, costs, and losses and other expenses, including reasonable attorneys' fees and court costs, imposed on or suffered at any time by Tenant as a result of such third party claims, except if caused by the actions or inactions of Tenant or any Tenant's Parties. This indemnification obligation shall survive expiration or termination of this Lease, including without limitation termination under this Section 10.02(b). Where the costs of clean-up and remediation will exceed twelve (12) months' rent, as reasonably determined by Landlord, Landlord may terminate this Lease upon written notice to Tenant.

10.03. *Environmental Disclosure.* Should Tenant wish to use, generate or store Hazardous Materials on or about the Property, Tenant shall complete, execute and deliver to Landlord an Environmental Disclosure Statement (the "**Environmental Disclosure**") in the form of *Exhibit D*, and Tenant shall certify to Landlord all information contained in the Environmental Disclosure as true and correct to the best of Tenant's knowledge and belief. The completed Environmental Disclosure, to the extent approved by Landlord in its sole and absolute discretion, shall be deemed incorporated into this Lease for all purposes, and Landlord shall be entitled to rely fully on the information contained therein. In the event Tenant provides an Environmental Disclosure, on each anniversary of the Commencement Date (each such date is hereinafter referred to as a "**Disclosure Date**"), until and including the first Disclosure Date occurring after the expiration or sooner termination of this Lease, Tenant shall disclose to Landlord, in writing, the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, generated, used or disposed of on, under or about the Premises for the twelve-month period prior to and after each Disclosure Date, or which Tenant intends to store, generate, or use on, under or about the Premises. At Landlord's option, Tenant shall, execute and deliver to Landlord an Environmental Disclosure as the same may be modified by Landlord from time to time whether or not Tenant wishes to use, generate or store Hazardous Materials on or about the Property.

10.04. *Reclaimed Water.* In the event the Property uses reclaimed water, Tenant acknowledges that Tenant shall comply with all Regulations governing the use thereof. Landlord may periodically conduct such tests as may be reasonably necessary for the use of reclaimed water, including a dual shut down test to establish that there exists no cross over in water systems, and the reasonable costs thereof shall be an Operating Expense.

10.05. *Signs.* Tenant shall have the right to install signage on the Building, subject to Landlord's reasonable approval and compliance with all Laws. Any sign placed by Tenant on the Premises shall contain only Tenant's name and address and no advertising material. No sign (including, but not limited to, signs advertising an assignment or subletting) shall be placed on the exterior of the Premises without Landlord's written approval of the location, material, size, design and content thereof nor without Tenant's obtaining any necessary permit therefore and compliance with all Regulations. If Landlord installs a sign for Tenant, Tenant shall reimburse Landlord for any costs incurred by Landlord within thirty (30) days of demand by Landlord. Tenant shall maintain its signage in compliance with all Applicable Regulations and in a good condition at all times. Tenant shall remove any sign upon termination of this Lease, using a contractor reasonably acceptable to Landlord, and shall return the Premises to their condition prior to the placement of said sign (including completing all necessary repainting and patching).

10.06. *Parking.* Landlord shall not be liable to Tenant nor shall this Lease be affected if any parking is impaired by moratorium, initiative, referendum or Regulation or by the operations of any other tenant. Any monetary obligations imposed relative to parking rights with respect to the Premises shall be considered as Tax Expenses and shall be paid by Tenant under Section 5. Landlord grants Tenant the right to use its pro rata share of parking spaces located in the parking areas adjoining the Premises. Specific parking spaces and rules regulating the use thereof may be designated, from time to time, by Landlord. Tenant shall ensure that Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees and subtenants ("**Tenant's Parties**") do not exceed Tenant's parking allocation set forth above at any time. Landlord may take such actions or incur such cost which it deems reasonably necessary to enforce the proper parking on the property, including the reasonable allocation to Tenant of all costs and expenses to do so. Tenant shall not use the areas outside of the Premises for the placement of dumpsters, refuse collection, outdoor storage or parking of cars and/or pickup trucks which are not in working order.

10.07. *Telephone and Telecommunications Services.* Tenant acknowledges and agrees that all telephone and telecommunications (including internet, satellite, broadband and wi-fi) services desired by Tenant shall be ordered and utilized at the sole cost and expense of Tenant. Unless Landlord otherwise requests or consents in writing, all of Tenant's telecommunications equipment shall be and remain solely in the Tenant's Premises and, if applicable, and in accordance with rules, regulations and conditions adopted by Landlord from time to time, the telephone or telecommunication closet(s) in the Building in which the Tenant's Premises is located. Unless otherwise specifically agreed in writing, Landlord shall have no responsibility for the maintenance of Tenant's telecommunications equipment, including wiring, nor for any wiring or other infrastructure to which Tenant's telecommunications equipment may be connected. Landlord shall have the right, upon reasonable prior notice to Tenant, to interrupt or turn off telecommunications facilities in the event of emergency or as necessary in connection with repairs to the Building or installation of telecommunication equipment for other tenants of the Building. Any and all telecommunications equipment installed in the Tenant's Premises or elsewhere in the Building by or on behalf of Tenant, including wiring, or other facilities for telecommunications transmittal, shall be removed prior to the expiration or earlier termination of the Term, by Tenant at its sole cost and expense. Landlord shall have the right, however, upon written notice to Tenant, given no later than thirty (30) days prior to the expiration or earlier termination of the Term, to require Tenant to abandon and leave in place, without additional payment to Tenant or credit against Rent, any and all telecommunications wiring and related infrastructure, whether located in Tenant's Premises or elsewhere in the Building. Tenant shall not utilize any wireless communications equipment (other than usual and customary cellular telephones and wifi internet), including antenna and satellite receiver dishes, within Tenant's Premises, the Building or the Property, nor mount any such equipment on the roof, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

11. DAMAGE AND DESTRUCTION

11.01. *Reconstruction.* If the Building is damaged or destroyed, Landlord shall, except as hereinafter provided, diligently repair or rebuild the Building to substantially the condition in which the Building existed immediately prior to such damage or destruction, provided that insurance is available to pay one hundred percent (100%) or more of the cost of such restoration, excluding the deductible amount. Landlord shall not be obligated to repair any trade fixtures, Alterations or Utility Installations made, installed or paid for by Tenant.

11.02. *Rent Abatement.* Monthly Base Rent shall be abated proportionately, but only to the extent of any proceeds received by Landlord from rental abatement insurance described in Section 6.06, during any period when, by reason of such damage or destruction, Landlord reasonably determines that there is substantial interference with Tenant's use of the Premises, having regard to the extent to which Tenant may be required to discontinue Tenant's use of the Premises. Such abatement shall commence upon the date of such damage or destruction and end upon substantial completion by Landlord of the repair or reconstruction which Landlord is obligated or undertakes to do. If Landlord reasonably determines that continuation of business is not practical pending reconstruction, Monthly Base Rent shall abate to the extent of proceeds from rental abatement insurance until reconstruction is substantially completed or until business is totally or partially resumed, whichever occurs earlier.

11.03. *Option to Terminate.* If the Building is damaged or destroyed to the extent that Landlord determines that the Building cannot, with reasonable diligence, be fully repaired or restored by Landlord within one hundred eighty (180) days after the date of the damage or destruction, notwithstanding the fact that the Premises have not been totally damaged or destroyed, the sole right of both Landlord and Tenant shall be the option to terminate this Lease. Landlord's determination with respect to the extent of damage or destruction shall be conclusive on Tenant. Landlord shall notify Tenant of Landlord's determination, in writing, within thirty (30) days after the date of the damage or destruction. If Landlord determines that the Building can be fully repaired or restored within the one hundred eighty (180) day period, or if Landlord determines that such repair or restoration cannot be made within said period but neither party elects to terminate within thirty (30) days from the date of said determination, this Lease shall remain in full force and effect and Landlord shall diligently repair and restore the damage as soon as reasonably possible.

11.04. *Uninsured Casualty.* In the event the Building is damaged or destroyed and is not fully covered by the insurance proceeds received by Landlord under the insurance policies required under Section 6.02, Landlord may terminate this Lease by written notice to Tenant given within thirty (30) days after the date of Landlord's receipt of written notice from Landlord's insurance company that said damage or destruction is not so covered. If Landlord does not elect to terminate this Lease, the Lease shall remain in full force and effect, and the Building shall be repaired and rebuilt in accordance with the provisions for repair set forth in Section 11.01.

11.05. *Waiver.* With respect to any damage or destruction which Landlord is obligated to repair or may elect to repair under the terms of this Section 11, Tenant waives all rights to terminate this Lease pursuant to rights otherwise presently or hereafter accorded by law to tenants, if any.

12. EMINENT DOMAIN

12.01. *Total Condemnation.* If all of the Premises is taken under the power of eminent domain or sold in lieu of condemnation, for any public or quasi-public use or purpose ("Condemned"), this Lease shall terminate as of the date of title vesting in such proceeding, and Rent shall be adjusted to the date of termination. Tenant shall immediately notify Landlord of any such occurrence.

12.02. *Partial Condemnation.* If any portion of the Premises is Condemned, and such partial condemnation renders the Premises unusable for Tenant's business, as reasonably determined by Landlord, or if a substantial portion of the Building is Condemned as reasonably determined by Landlord, this Lease shall terminate as of the date of title vesting in such proceeding and rent shall be adjusted to the date of termination. If such partial condemnation does not render the Premises unusable for the business of Tenant or less than a substantial portion of the Building is Condemned, Landlord shall promptly restore the Premises to the extent of any condemnation proceeds recovered by Landlord, less the portion thereof lost in such condemnation, and this Lease shall continue in full force and effect except that after the date of such title vesting the Base Rent, Tenant's Share of Tax Expenses, Tenant's share of Insurance Expenses, and Tenant's Share of Operating Expenses shall be adjusted as reasonably determined by Landlord.

12.03. *Landlord's Award.* If the Premises are wholly or partially Condemned, Landlord shall be entitled to the entire award paid for such condemnation, subject to the provisions of Section 12.04, and Tenant waives any claim to any part of the award from Landlord or the condemning authority.

12.04. *Tenant's Award.* Tenant shall have the right to recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded to Tenant in connection with loss of good will and costs in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment to a new location.

12.05. *Temporary Condemnation.* In the event the Premises is temporarily Condemned, as reasonably determined by Landlord, this Lease shall remain in effect and Tenant shall receive any award made for such condemnation. If a temporary condemnation remains in effect at the expiration or earlier termination of this Lease, Tenant shall pay Landlord the reasonable cost of performing any obligations required of Tenant by this Lease with respect to the surrender of the Premises, and upon such payment Tenant shall be excused from such obligations. If a temporary condemnation is for a period which extends beyond the Term, this Lease shall terminate as of the date of occupancy by the condemning authority, the award shall be distributed as provided in Sections 12.03 and 12.04 above, and Rent shall be adjusted to the date of such occupancy.

12.06. *Delivery of Documents.* Tenant shall immediately execute and deliver to Landlord all instruments required to effectuate the provisions of this Section 12.

13. DEFAULT

13.01. *Events of Default.* The occurrence of any of the following events shall constitute an "**Event of Default**" by Tenant with or without notice from Landlord:

a. *Vacating or Abandoning*. Vacating or abandoning the Premises, other than where required by applicable Regulations;

b. *Payment*. Failure to pay Rent when due hereunder;

c. *Performance*. Default in the performance of Tenant's covenants, agreements and obligations hereunder, except default in the payment of Rent, the default continuing for fifteen (15) days after notice thereof from Landlord;

d. *Assignment*. A general assignment by Tenant for the benefit of creditors or Tenant assigns or sublets its interest under this Lease in violation of the terms hereof;

e. *Bankruptcy*. The filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy;

f. *Receivership*. The appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold;

g. *Insolvency, Dissolution, Etc*. Tenant's insolvency or inability to pay Tenant's debts, or failure generally to pay Tenant's debts when due; or any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets; or Tenant taking any action toward the dissolution or winding up of Tenant's affairs or the cessation or suspension of Tenant's use of the Premises;

h. *Attachment*. Attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

i. *Estoppel/Financial Statements/SNDA*. Tenant's failure to execute (and notarize if required) and deliver to Landlord any document as provided in Section 15 below or a Financial Statement mandated by Section 16.02 within ten (10) days after Landlord's written request;

j. *False Financial Statements*. The discovery that any Financial Statement of Tenant or any Guarantor given to Landlord was materially false; or

k. *Insurance*. Tenant's failure to maintain insurance as required under this Lease or timely provide certificates thereof.

To the extent permitted by Law, Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, any right and privilege which it or any of them may have under any present or future law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof.

13.02. *Landlord's Remedies.* Upon the occurrence of an Event of Default, Landlord shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by applicable Regulations:

a. *Abandonment*. If Tenant abandons the Premises, at Landlord's election, this Lease shall continue in effect. Landlord shall not be deemed to have terminated this Lease other than by written notice of termination from Landlord, and Landlord shall have all of the remedies of a landlord provided by Regulations. After abandonment of the Premises by Tenant, Landlord may give notice of termination.

b. *Termination*. Following the occurrence of any Event of Default, Landlord shall have the right, as long as the Event of Default continues, to terminate this Lease by written notice to Tenant setting forth: (i) the Event of Default; (ii) the requirements to cure it; and (iii) a demand for possession, which shall be effective either three (3) days after it is given or upon expiration of the time specified in Section 13.01 hereinabove, whichever occurs later.

c. *Re-entry*. Following termination under Section 13.02 above, without prejudice to other remedies Landlord may have by reason of Tenant's default or such termination, Landlord may: (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

d. *Termination of Possession*. In the event Landlord elects not to terminate this Lease, but only to terminate Tenant's right of possession to the Premises, Landlord may re-enter the Premises without process of law if Tenant has vacated the Premises or, if Tenant has not vacated the Premises by an action for ejection, unlawful detainer, or other process of law, including, without limitation, by providing, without process of law, for the non-admittance of Tenant pursuant to NRS §40.253. Landlord may continue the Lease and Tenant's right to possession and recover the Rent as it becomes due, in which event Tenant may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect Landlord's interests, shall not constitute a termination of the Tenant's right to possession.

e. *Recovery*. Following termination of this Lease, Landlord may recover damages as allowed by applicable Regulations, including: (i) the worth at the time of the award of the amount by which the unpaid Rent and other amounts which had been earned at the time of termination; (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of the award exceeds the amount of rental loss Tenant proved could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's Failure to perform its obligations under this Lease. The "worth at the time of the award" of the amount referred to in (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

f. *Additional Remedies*. In addition to the foregoing remedies and so long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises without terminating this Lease, to incur expenses on behalf of Tenant in seeking a new subtenant, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the maximum rate permitted by law from the date of such expenditure until the same is repaid.

g. *Other*. If Tenant causes or threatens to cause a breach of any of the covenants, terms or conditions contained in this Lease, Landlord shall be entitled to obtain all sums held by Tenant, by any trustee or in any account provided for herein, to enjoin such breach or threatened breach, and to invoke any remedy allowed at law, in equity, by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Lease.

h. *Cumulative*. Each Right and remedy of Landlord provided for in this Lease or now or hereafter existing at law, in equity, by statue or otherwise, shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or equity, by statue or otherwise.

i. *Indemnification*. Nothing in this Section 13 shall affect the right of Landlord to indemnification by Tenant in accordance with Section 6.10 for liability arising from personal injuries or property damage prior to the termination of this Lease.

14. ASSIGNMENT AND SUBLETTING

14.01. *Approval.* Tenant shall not assign, sublease, mortgage, pledge or otherwise transfer this Lease, in whole or in part, nor sublet or permit occupancy by any party other than Tenant of all or any part of the Premises without Landlord's prior written consent which shall not be unreasonably withheld, conditioned or delayed. If Tenant is a corporation, limited liability company or a partnership, the transfer of fifty percent (50%) or more of the beneficial ownership interest of the corporate stock, membership interests or partnership interests of Tenant, as the case may be, shall constitute an assignment hereunder for which such consent is required; provided that if Tenant is a publicly-traded entity, a transfer of stock shall not be considered a violation of this sentence. This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void. Notwithstanding that Landlord shall have no legal obligation to do so, if Landlord should decide in the future to permit an assignment or subletting, such consent by Landlord to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting. Under no circumstances shall this lease be assigned, sublet, or assumed, in whole or in part, unless Landlord receives adequate assurance of future performance of all the terms and conditions of the Lease. Such adequate assurance shall include adequate assurance: (a) of the source of Rent due under the Lease; (b) that the assignment, subletting, or assumption of the Lease shall not cause any breach in any respect of any provision in any other lease, financing agreement, or master agreement relating to the Building or Property; and (c) that the assignment, subletting, or assumption shall not disrupt in any respect any tenant mix or balance in the Building or on the Premises. Tenant shall pay promptly upon billing any and all attorneys' fees and other costs reasonably incurred by Landlord for the review or preparation of any documents in connection with a proposed assignment or sublease.

14.02. *Landlord Option.*

a. *Right to Cancel*. In connection with any proposed assignment or sublease, Landlord shall have the option to cancel and terminate this Lease if the request is to assign the Lease or to sublet all of the Premises; or, if the request is to sublet a portion of the Premises only, to cancel and terminate this Lease with respect to such portion. Landlord may exercise said option by notifying Tenant in writing within thirty (30) days after Landlord's receipt from Tenant of such request, and in each case such cancellation or termination shall occur as of the date set forth in Landlord's notice of exercise of such option, which shall not be less than sixty (60) days nor more than one hundred twenty (120) days following the giving of such notice.

b. *Cancellation*. If Landlord exercises Landlord's option to cancel this Lease or any portion thereof, Tenant shall surrender possession of the Premises, or the portion thereof which is the subject of the option, as the case may be, on the date set forth in such notice in accordance with the provisions of this Lease relating to surrender of the Premises at the expiration of the Term. If this Lease is canceled as to a portion of the Premises only, Rent after the date of cancellation shall be abated on a pro rata basis, as determined by Landlord. After any such cancellation, Landlord may directly lease the Premises to any party, including, without limitation, any party with whom Tenant previously discussed an assignment or subletting.

c. *Noncancellation*. If Landlord does not exercise Landlord's option to cancel this Lease pursuant to the foregoing provisions, Landlord may withhold Landlord's consent to such proposed assignment or subletting, provided such consent is not unreasonably withheld.

14.03. *Bonus Rental.* Unless otherwise agreed by Landlord and Tenant in connection with Landlord's approval of a proposed sublease or assignment, if Tenant receives rent or other consideration for any assignment or sublease in excess of the Rent or, in case of the sublease of a portion of the Premises, in excess of such Rent that is fairly allocable to such portion, as determined by Landlord, after appropriate adjustments to assure that all other payments required hereunder are appropriately taken into account, Tenant shall pay Landlord one hundred percent (100%) of the difference between each such payment of rent or other consideration and the Rent required hereunder.

14.04. *Scope.* If this Lease is (a) assigned, (b) the underlying beneficial interest of Tenant is transferred or (c) the Premises or any part thereof is sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of Section 14.03; provided that no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant or covenants on the part of Tenant herein contained. No assignment or subletting shall affect the continuing liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease.

14.05. *Release.* The term "Landlord" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Tenant's interest in the prior lease. In the event of a transfer of Landlord's title or interest in the Premises or this Lease, Landlord shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Landlord. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Landlord shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by Landlord. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Landlord shall be binding only upon the Landlord as hereinabove defined.

14.06. *Waiver.* Tenant waives notice of any default of any assignee or sublessee and agrees that Landlord may, at Landlord's option, proceed against Tenant without having taken action against or joined such assignee or sublessee, except that Tenant shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

14.07. *Affiliates.* Notwithstanding the foregoing, Tenant, without the approval of Landlord (but with thirty (30) days' prior written notice indicating the basis upon which the transaction qualifies as an Exempt Transfer, defined below), and without being subject to any right of Landlord to recapture the Premises, to receive any portion of the consideration for the transfer, or to declare a default of this Lease, may assign the Lease, or sublease the whole of the Premises, to any of the following (collectively, "**Exempt Transfers**"): (i) any corporation, limited liability company or other entity which by virtue of its direct or indirect ownership of the stock, membership interests or other ownership interest, as applicable, of Tenant, has the power to direct Tenant's management and operations ("**Tenant's Parent**"); (ii) any corporation, limited liability company or other entity the management and operations of which Tenant, by virtue of Tenant's direct or indirect ownership of the stock, membership interests or other applicable ownership interest therein, has the power to direct; or (iii) any corporation, limited liability company or other entity the management and operations of which Tenant's Parent, by virtue of Tenant's Parent's direct or indirect ownership of the stock, membership interests or other applicable ownership interest therein, has the power to direct. Notwithstanding the foregoing, the original Tenant shall remain liable on the Lease after any transfer described in the preceding sentence, and in no event shall any such transfer release Tenant (or its transferee) from the use and/or any other requirements and obligations under this Lease. In no event shall the provisions of this Section 14.07 apply to, or be used to permit, a transaction designed primarily to avoid the requirement of obtaining Landlord's consent to an assignment or sublease to a third party (such as, by way of example and not by way of limitation, assignment of this Lease to a single-asset subsidiary of Tenant and the subsequent merger or consolidation of such subsidiary with, or the sale of such subsidiary's assets to, an entity not otherwise related to Tenant).

15. ESTOPPEL CERTIFICATE, ATTORNMENT AND SUBORDINATION

15.01. *Estoppel Certificate.* Within ten (10) days after request by Landlord, Tenant shall deliver, in recordable form, an estoppel certificate in the form determined by Landlord or Landlord's mortgagee or purchaser, to any proposed mortgagee, purchaser or Landlord. Tenant's failure to deliver said statement in such time period shall, at Landlord's option, be an Event of Default hereunder, or be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (c) no more than one month's Rent has been paid in advance.

15.02. *Attornment.* Tenant shall, if requested, attorn to the purchaser upon a foreclosure, sale of a grant of a deed in lieu of foreclosure of the Property, and recognize such purchaser as Landlord under this Lease in the event of (a) a foreclosure proceeding; (b) the exercise of the power of sale under any mortgage or deed of trust made by Landlord, Landlord's successors or assigns which encumbers the Premises, any part thereof; or (c) the termination of a ground lease; or (d) a sale of the Property.

15.03. *Subordination.* This Lease and the rights of Tenant hereunder are subject and subordinate to the lien of any mortgage or lien resulting from any other method of financing or refinancing, now or hereafter in force against the Premises, and to all advances made upon the security thereof, without the necessity of any further documentation evidencing such subordination, unless Landlord notifies Tenant otherwise in writing. Notwithstanding the foregoing, Tenant shall execute whatever documentation may be reasonably required to further effect the provisions of this Section 15.03.

16. MISCELLANEOUS

16.01. *Release.* The term "Landlord" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. In the event of a transfer of Landlord's title or interest in the Premises or this Lease, Landlord shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Landlord. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Landlord shall be binding only upon the Landlord as hereinabove defined.

16.02. *Holding Over.* Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Tenant fails to surrender the Premises in the condition required under this Lease upon expiration or termination of this Lease, then Tenant shall be a tenant at sufferance, and all other terms and conditions of this Lease shall apply except that the Monthly Base Rent shall be increased to (a) 104% of the Monthly Base Rent applicable during the month immediately preceding the expiration or termination for the first thirty (30) days of Tenant's holding over, and (b) one hundred twenty-five percent (125%) of the Monthly Base Rent applicable during the month immediately preceding the expiration or termination thereafter. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant. If Tenant holds over in excess of thirty (30) days, Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, liabilities, losses, damages and costs (including attorneys' fees and court costs) incurred by or asserted against Landlord and arising directly or indirectly from Tenant's failure to timely surrender the Premises, including but not limited to (i) any rent payable by or any loss, cost, or damages, including lost profits, claimed by any prospective tenant of the Premises or any portion thereof, and (ii) Landlord's damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises or any portion thereof by reason of such failure to timely surrender the Premises, and (iii) any costs related to delayed development, improvement or other construction resulting from Tenant holding over.

16.03. *Waiver.* No waiver by either party of any default or breach of any covenant by the other party hereunder shall be implied from any omission by a party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein by a party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Landlord to any act of Tenant requiring further consent or approval by Landlord shall not be deemed to waive or render unnecessary Landlord's consent or approval to any subsequent similar acts. No waiver by a party of any provision under this Lease shall be effective unless in writing and signed by the waiving party. Landlord's acceptance of full or partial payment of Rent during the continuance of any breach of this Lease shall not constitute a waiver of any such breach of this Lease. Efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not be construed as a waiver of Landlord's right to recover damages under Section 13.

16.04. *Financial Statements.* Within ten (10) days after Landlord's written request, Tenant shall deliver to Landlord current audited financial statements of Tenant. If Tenant is a publicly traded company, Tenant may fulfill this requirement by providing Landlord with access to a website that has such information.

16.05. *Accord and Satisfaction.* No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction of full payment of Rent, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

16.06. *Limitation of Landlord's Liability.* The obligations of Landlord under this Lease are not personal obligations of the individual partners, directors, members, managers, officers or shareholders of Landlord, and Tenant shall look solely to the Property for satisfaction of any liability and shall not look to other assets of Landlord nor seek recourse against the assets of the individual partners, directors, members, managers, officers or shareholders of Landlord.

16.07. *Entire Agreement.* This Lease sets forth all the covenants, agreements, conditions and understandings between Landlord and Tenant concerning the Property, and there are no covenants, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as set forth herein. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless in writing and signed by both Landlord and Tenant.

16.08. *Time.* Time is of the essence of this Lease.

16.09. *Attorneys' Fees.* In any action which Landlord or Tenant brings to enforce its respective rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and reasonable attorneys' fees shall be a part of the judgment in said action.

16.10. *Captions.* The captions and table of contents appearing in this Lease are inserted as a matter of convenience and in no way define or limit the provisions of this Lease.

16.11. *Severability.* If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

16.12. *Applicable Requirements.* This Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with all applicable municipal, county, state and federal statues, laws, rules, codes, regulations and ordinances, including zoning ordinances and regulations governing and relating to the use, occupancy or possession of the Premises (collectively, "**Laws**"). Tenant shall comply with all such Laws, as well as insurance company requirements and any covenants, conditions, restrictions and easements recorded on the Property (collectively, together with Laws, "**Regulations**"). Tenant shall be solely responsible for obtaining use approval and business licenses from the City of Fernley and any other required entity or agency.

16.13. *Rules and Regulations.* At all times during the Term, Tenant shall comply with the rules and regulations ("**Rules and Regulations**") for the Building and the Property, as set forth in *Exhibit E* (and such amendments as Landlord may reasonably adopt) attached hereto and by this reference made a part thereof. Tenant shall cause its employees, agents, suppliers, shippers, customers, contractors and invitees to abide and conform to the Rules and Regulations. Landlord shall not be responsible to Tenant for the non-compliance with said Rules and Regulations by other tenants or occupants of the Property; provided, however, that Landlord shall enforce such Rules and Regulations consistently and uniformly.

16.14. *Examination of Lease.* Submission of this Lease to Tenant does not constitute an option to Lease, and this Lease is not effective until execution and delivery by both Landlord and Tenant.

16.15. *Surrender.* Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as existed on the date Tenant originally took possession thereof with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear and casualty damage excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by industry-standard maintenance practice. Tenant shall repair any damage occasioned by the installation, maintenance or removal of trade fixtures, Tenant owned Alterations and/or Utility Installations, furnishings and equipment. Tenant shall also completely remove from the Project any and all Hazardous Materials brought or released onto the Premises by or for Tenant, even if such removal would require Tenant to perform or pay for work that exceeds statutory requirements. Trade fixtures shall remain the property of Tenant and shall be removed by Tenant.

Any personal property of Tenant not removed on or before the expiration of the Term or any earlier termination date shall be deemed to have been abandoned by Tenant and may be disposed of or retained by Landlord as Landlord may desire, but any removal or storage shall be at Tenant's sole cost and expense. The failure by Tenant to timely vacate the Premises pursuant to this Section 16.15 without the express written consent of Landlord shall constitute a holdover under the provisions of Section 16.02 above. Tenant shall not commit or allow any waste or damage to be committed on any portion of the Premises, Buildings or Property. All keys to the Premises or any part thereof shall be surrendered to Landlord upon expiration or sooner termination of the Term. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Premises and shall meet with Landlord for a joint inspection of the Premises at the time of vacating, but nothing contained herein shall be construed as an extension of the Term or as a consent by Landlord to any holding over by Tenant. In the event of Tenant's failure to give such notice or participate in such joint inspection, Landlord's inspection at or after Tenant's vacating the Premises shall conclusively be deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

16.16. *Authority.* If Tenant is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf, and bind Tenant, and that Tenant is duly formed in its state of formation and is and will be at all time throughout the term authorized to do business in the State of Nevada. Tenant shall, within thirty (30) days after request, deliver to Landlord satisfactory evidence of such authority.

16.17. Broker. Landlord and Tenant warrant that each have had no dealings with any real estate broker or agent other than the broker(s) set forth in Section 1.01 ("Broker") in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is entitled to any commission or finder's fee in connection with this Lease. Each of Landlord and Tenant agrees to indemnify, defend (by counsel reasonably acceptable to Landlord) and hold the other harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) arising out of the indemnifying party's breach of said warranty. Landlord shall pay all fees, commissions, and other amounts due the Broker in connection with the transaction contemplated by this Lease pursuant to the terms of a separate agreement.

16.18. *Landlord's Right to Perform.* Upon Tenant's failure to perform any obligation of Tenant hereunder, including without limitation, payment of Tenant's insurance premiums, charges of contractors who have supplied materials or labor to the Premises, etc., Landlord shall have the right to perform such obligations of Tenant on behalf of Tenant and/or to make payment on behalf of Tenant to such parties. Tenant shall reimburse Landlord the reasonable cost of Landlord's performing such obligations on Tenant's behalf, including reimbursement of any amounts that may be expended by Landlord, plus interest at the maximum rate permitted by law as Additional Rent.

16.19. *Modification for Lender.* If, in connection with obtaining financing for the Building or Property, the lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant shall not unreasonably withhold, condition or delay its consent thereto, provided that such modifications do not materially increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

16.20. *Notices.* All notices to be given hereunder shall be in writing and sent via nationally recognized overnight courier (such as FedEx or UPS), or delivered by personal delivery, to Landlord's Address and Tenant's Address as set forth in Section 1.01, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served on the earliest to occur of delivery, refusal of delivery by addressee, or failure of delivery because the addressee's fails to maintain an office or receive mail and overnight packages at the then–effective notice address.

16.21. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one agreement. Counterparts may be signed and delivered via electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Nevada's Electronic Transactions (Uniform Act) (NRS 719.240§ 1633.1, et seq.) or other applicable law, and including use of DocuSign or similar protocols) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. The parties will rely on any electronic signature provided in connection with this Lease as valid and effective for all purposes.

16.22 *OFAC.* Each of Landlord and Tenant hereby represents and warrants to the other party that, to the representing party's knowledge, as of the date of this Lease, neither the representing party nor any individual, entity, or organization holding any (or, if a publicly traded entity, a significant) ownership or controlling interest in the representing party, nor any officer or director of such entity, is an individual, entity, or organization with whom any United States law, regulation, or executive order prohibits U.S. companies and individuals from dealing, including, without limitation, names appearing on the U.S. Department of Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List. If the foregoing representation by a representing party is presently or later becomes untrue, the representing party shall be in material breach of this Lease and the other party shall have the remedies provided to such party under this Lease for a material breach; provided, however, if the breach is by Tenant, Landlord may immediately terminate this Lease upon written notice to Tenant without application of a notice and cure period. Further, Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Authorized Representatives from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, attorneys' fees and costs) incurred by Landlord arising from or relating to Tenant's breach of the foregoing representation by Tenant, which indemnity obligation shall survive the expiration or earlier termination of this Lease.

16.23 *Access to Building.* Subject to Landlord's rights under this Lease, and Landlord's fulfillment of its obligations hereunder, and subject to temporary closures due to emergencies, Tenant shall have access (including truck access) to the Premises seven (7) days a week and twenty-four (24) hours per day.

17. OPTION TO EXTEND TERM

17.01. *Extension Option.* Subject to the terms and conditions set forth in this Section 17, Tenant may at its option extend the Term of this Lease for two (2) additional five (5) year periods (each, an "Extension Term"). If Tenant exercises either or both Extension Options hereunder, all of the terms, covenants and conditions of this Lease shall continue in full force and effect during each Extension Term, including provisions regarding payment of Additional Rent, which shall remain payable on the terms herein set forth, except that (i) after exercising the first Extension Option, Tenant shall have one option to extend and, after exercising the second Extension Option, Tenant shall have no further right to extend this Lease, (ii) Tenant shall take the Premises in their then "as-is" state and condition during each Extension Term, and no work shall be required of Landlord, and (iii) the Monthly Base Rent payable by Tenant for an Extension Term shall be equal to the greater of Fair Market Rate and 103% of the Monthly Base Rent payable for the last full month immediately preceding such Extension Term. Upon exercise of an Extension Option, subject to Section 17.02 below, the "Term" as used in the Lease shall include the applicable Extension Term. To exercise an Extension Option, Tenant must deliver notice to Landlord no sooner than fifteen (15) months nor later than twelve (12) months prior to the expiration of the initial Term or Extension Term, as applicable, of this Lease.

17.02. *Fair Market Rent.* The "**Fair Market Rent**" for the Premises during an Extension Term shall be the prevailing market rental rate for Comparable Space (as defined below) for a term commencing on or about the commencement date of the Extension Term. For this purpose, "**Comparable Space**" shall mean commercial office space comparable to the Premises that is (i) comparable in size, location, and quality to the Premises; (ii) leased for a term comparable to the Extension Term; and (iii) located in comparable projects in Fernley, Nevada, and shall include the periodic rental increases of at least three percent (3%) per annum, or such greater increase as would be included for space leased for the period of the Extension Term. For purposes of this Paragraph 17, the term "Fair Market Rate" shall mean the rental rate that would be applicable for a lease term commencing on the commencement date of the Extension Term and that would be payable in any arms' length negotiations for the Premises in their then as-is condition, which rental rate shall be established by reference to rental terms in leases actually executed for comparable space under primary lease (and not sublease), taking into consideration the location of the Building and existing amenities (such as parking), situated in similar buildings engaged in then-prevailing ordinary rental market practices with respect to tenant concessions (if any) (e.g. not offering promotional deals and other concessions to tenants in an effort to alleviate cash flow problems or in response to a greater than average vacancy rate in a particular building).

a. The Monthly Base Rent shall be determined as follows:

i. If Tenant provides Landlord with its notice of exercise pursuant to Section 17.01 above, then, prior to the commencement of the Extension Term, Landlord shall deliver to Tenant a good faith written proposal of the Fair Market Rate. Within ten (10) business days after receipt of Landlord's proposal, Tenant shall notify Landlord in writing (1) that Tenant accepts Landlord's proposal or (2) that Tenant elects to submit the determination of Fair Market Rate to arbitration in accordance with Subparagraphs (ii) through (iv) below. If Tenant does not give Landlord a timely notice in response to Landlord's proposal, Landlord's proposal of the Fair Market Rate shall be binding upon Tenant.

ii. If Tenant timely elects to submit the determination of the Fair Market Rate to arbitration, Landlord and Tenant shall first negotiate in good faith in an attempt to determine the Fair Market Rate. If Landlord and Tenant are able to agree within thirty (30) days following the delivery of Tenant's notice to Landlord electing arbitration, then such agreement shall constitute a determination of the Fair Market Rate for purposes of this Section 17, and the parties shall immediately execute an amendment to this Lease stating the Monthly Base Rent for the Extension Term (although Tenant's failure to execute same shall not alter its obligations under this Lease to extend the Term and pay the Fair Market Rate). If Landlord and Tenant are unable to agree on the Fair Market Rate within such negotiating period, then within fifteen (15) days after the expiration of such negotiating period, the parties shall meet and concurrently deliver to each other in envelopes their respective final good faith estimates of the Fair Market Rate. If the higher of such estimates is not more than one hundred five percent (105%) larger than the lower, then the Fair Market Rate shall be the average of the two. Otherwise, the dispute shall be resolved by arbitration in accordance with subparagraphs (iii) and (iv) below.

iii. Within ten (10) business after the exchange of estimates, the parties shall select as an arbitrator an independent real estate broker with at least ten (10) years of experience in leasing commercial space in the metropolitan area in which the Premises are located (a "**Qualified Appraiser**"). If the parties cannot agree on a Qualified Appraiser, then within a second period of ten (10) business days, each shall select a Qualified Appraiser and within ten (10) business days thereafter the two appointed Qualified Appraisers shall select an independent Qualified Appraiser and the independent Qualified Appraiser shall be the sole arbitrator. If one party shall fail to timely select a Qualified Appraiser, then the Qualified Appraiser chosen by the other party shall be the sole arbitrator.

iv. Within ten (10) business days after submission of the matter to the Qualified Appraiser, the Qualified Appraiser shall determine the Fair Market Rate by choosing whichever of the estimates submitted by Landlord and Tenant the arbitrator judges to be more accurate. The Qualified Appraiser shall notify Landlord and Tenant of its decision, which shall be final and binding. If the Qualified Appraiser believes that expert advice would materially assist him, the arbitrator may retain one or more qualified persons to provide expert advice. The fees of the arbitrator and of the arbitration proceeding shall be split by the parties 50/50. The fees of any expert witnesses retained by the arbitrator shall be paid by the party whose estimate is not selected. Each party shall pay the fees of its respective counsel and the fees of any witness called by that party.

b. If the Fair Market Rate is not established prior to the commencement of the Extension Term, then Tenant shall continue to pay as Monthly Base Rent the sums in effect as of the last day of the prior Term of the Lease and, as soon as the Fair Market Rate is determined, Tenant shall immediately pay to Landlord any deficiency in the amount paid by Tenant during such period.

17.03. *Conditions to Exercise.* At Landlord's election the applicable Extension Option(s) provided herein shall be null and void, and Tenant shall have no right to renew this Lease pursuant thereto if, on the date Tenant exercises an Extension Option or on the date immediately preceding the commencement of the applicable Extension Term (i) the Tenant originally named in this Lease is not in occupancy of at least fifty percent (50%) of the entire Premises then demised hereunder or does not intend to continue to occupy at least fifty percent (50%) of the Premises then demised hereunder, or (ii) an Event of Default has occurred and is continuing, or (iii) more than three (3) Events of Default have occurred during the Term. If Tenant does not timely exercise the first Extension Option, the second Extension Option shall automatically expire and be of no further force or effect.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date and year first above written.

LANDLORD

COTTONMILL PROPERTIES, LLC,
a California limited liability company

By: Jones Partners, LLC
Title: Managing Member

By: */s/ Randall S. Jones*
Name Printed: Randall S. Jones
Title: Manager

Thier Family Trust

By: */s/ Marlene Thier*
Name Printed: Marlene Thier
Title: Trustee

TENANT

DRAGONFLY ENERGY CORPORATION,
a Nevada corporation

By: */s/ Denis Phares*
Name Printed: Denis Phares
Title: Chief Executive Officer

EXHIBIT A

(Real Property Depiction)

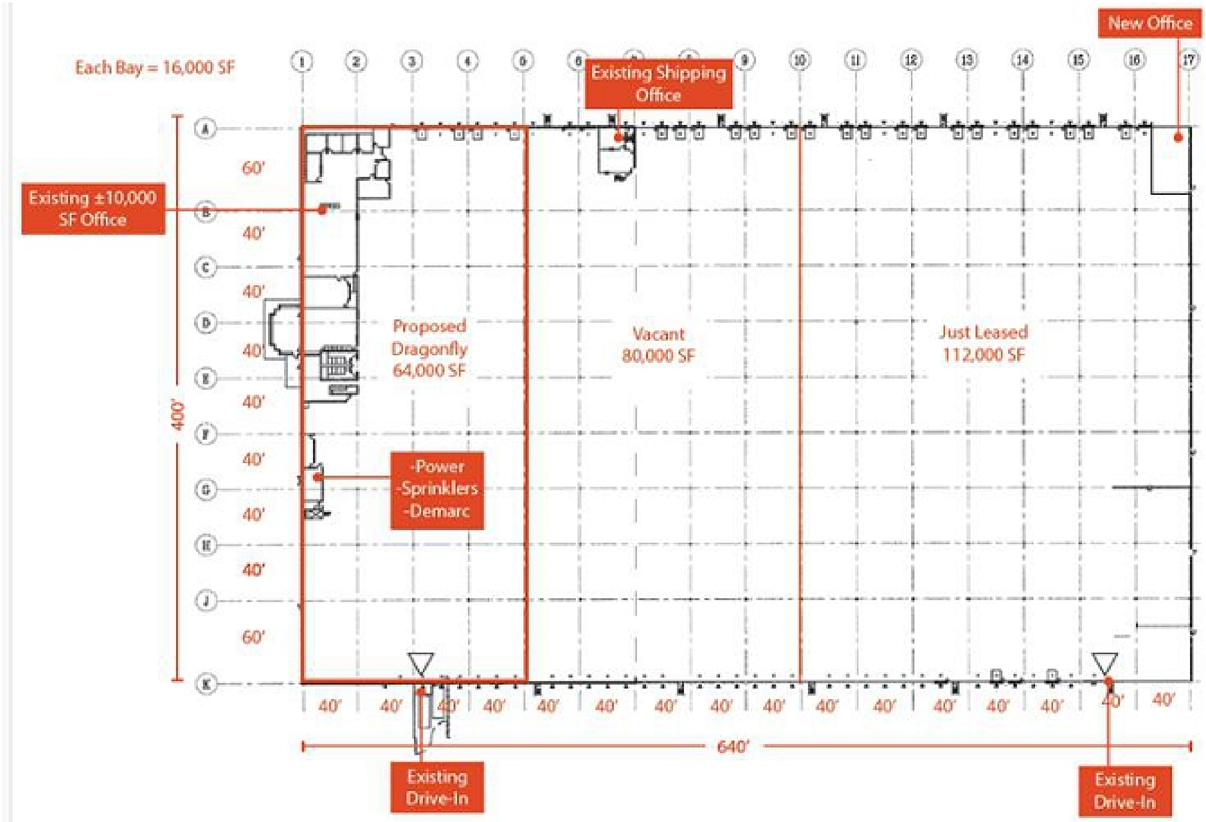
INITIALS

Landlord_________

Tenant_________

EXHIBIT B

(Premises Floor Plan)



INITIALS

Landlord_________

Tenant_________

EXHIBIT C
Initial Improvement Work Letter

This Work Letter forms a part of the Lease to which it is attached. The capitalized terms used and not otherwise defined herein shall have the same definitions as set forth in the Lease.

In consideration of the mutual covenants contained in the Lease and in this Work Letter, Tenant and Landlord agree that the Premises shall be improved as set forth hereinafter.

1. **Initial Improvements**. Landlord shall complete the following initial improvements (collectively, the "**Initial Improvements**"), in a good and workmanlike manner and in accordance with all Regulations in effect as of the date hereof, industry standards:

- Demising wall to appropriate SF. Because of Tenant's use, this demising wall will have to be a one-hour fire wall.

- Provide 2,000 Amps of 480V, 3Ph electrical service to Premises.

2. **[Intentionally Omitted]**

3. **Initial Improvement Costs**.

Landlord shall be responsible for the costs necessary to complete the Initial Improvements. As a part of its obligation hereunder and included within Initial Improvements, Landlord shall be responsible for the following:

(a) All costs of planning, architectural and engineering plans, specifications for the Initial Improvements, and other costs associated with completion of any needed plans.

(b) All costs of obtaining building permits and other necessary authorizations and approvals from the City of Fernley and other applicable jurisdictions for the Initial Improvements.

(c) All direct and indirect cost of procuring, constructing and installing the Initial Improvements in the Premises, including, but not limited to, the construction fee for overhead and profit and all labor and materials constituting the Initial Improvements.

(d) All fees payable to the general contractors, Landlord's Architect and/or Engineer if they are required by any Buildings official to redesign any portion of the Initial Improvements following Tenant's approval of the Plans.

Landlord shall not be responsible for the cost of any Alterations or Utility Installations installed or constructed by Tenant (except as set forth in Paragraph 8 below) or any of Tenant's trade fixtures, equipment, furniture, furnishings, telephone, internet, or computer equipment, or other personal property.

4. **Construction Contract.**

Following Tenant's approval of the Plans, Landlord shall promptly select one or more contractors to construct the Initial Improvements.

5. **Construction of Initial Improvements.**

(a) Landlord shall cause its contractor(s) to proceed to secure a building permit and commence construction. Tenant shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Landlord to obtain needed permits and certificates of occupancy (which may be temporary), if required. Minor changes, modifications or alterations to the Final Plans may be made without the prior written consent of Tenant, and shall become part of the Plans.

(b) Landlord shall use its diligent and commercially reasonable efforts to construct the Initial Improvements within sixty (60) days following the Commencement Date.

INITIALS

Landlord_________

Tenant_________

7. **Miscellaneous.**

(a) Tenant has designated John Marchetti (email: jmarchetti@dragonflyenergy.com, phone: 775-622-3448) as its sole representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of Tenant as required in this Work Letter. Landlord shall be entitled to rely on such person's consents, approvals, instructions requests, demands, notices and the like with respect to Initial Improvements. Landlord has designated Randy Jones (email: Randy@JonesDevelopers.com, phone: (510) 261-5500 / cell (510) 852-1136) as its sole representative with respect to the matters set forth in this Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of Landlord as required in this Work Letter.

(b) Time of the Essence. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days, and references to business days shall mean Monday through Friday, excluding Federal holidays. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

(c) Surrender. Any Initial Improvements shall at once become part of the Building and the property of Landlord. Tenant shall not be required to remove them upon expiration or termination of this Lease.

(d) Warranty. Upon completion of the Initial Improvements, Landlord shall provide Tenant the benefit of Landlord's rights under any warranties relating to items for which Tenant has repair and maintenance obligations under the Lease and received by Landlord from the Contractor and other suppliers, contractors and subcontractors.

8. **Landlord Contribution to Tenant's Initial Alterations**. Notwithstanding anything herein to the contrary, Landlord shall reimburse Tenant for the following Alterations to be completed by Tenant: actual, reasonable out-of-pocket cost of: (a) painting the office area (standard industrial office finish spec), to include entry area, private offices, storage room, Computer/Data Room, conference room, lunch room, employee entry and restrooms; (b) installing carpet in office area (standard industrial office finish spec), to include private offices, storage room, Computer/Data Room, conference room; (c) at Tenant's option, installing LVP flooring in Computer/Data Room and storage room in lieu of carpeting in those areas; (d) work for sidewalk, landscaping, and concrete pad necessitated in connection with approval of Tenant's CUP application, subject to the following:

(i) All costs of for the foregoing shall be at standard, market rates (not overtime rates) based on building standard materials, approved in advance by Landlord.

(ii) The work under item (d) shall be bid by KAP construction (or an alternate Tenant contractor) and approved by Landlord in advance.

(iii) All Alterations shall be completed in compliance with the Lease, including Section 8.02, using licensed and insured contractors reasonably acceptable to Landlord.

(iv) Landlord shall reimburse Tenant upon completion of such Alterations and Tenant's occupancy of the Premises for its business operations. In connection with its application for payment, Tenant shall provide Landlord with (x) invoices from Tenant's contractor(s) covering all work actually performed and construction and materials in place and describing in reasonable detail such work, construction and/or materials, (y) evidence of payment and (z) unconditional lien releases in a form reasonably acceptable to Landlord. Payment shall be due within thirty (30) days after receipt of same. All such work shall be warranted against defects for a reasonable period. If a certificate of occupancy is required based on Tenant's initial Alterations, Tenant shall provide Landlord with a copy thereof in connection with its request for payment.

(iv) Tenant shall seek reimbursement from Landlord, if at all, within six (6) months following the Commencement Date, subject to extension due to Unavoidable Delay, but in no event more than twelve (12) months.

(v) In no event shall Landlord be required to make payment to Tenant while an Event of Default is continuing.

(vi) Any work reimbursed by Landlord shall at once become part of the Building and property of Landlord.

INITIALS

Landlord_________

Tenant_________

EXHIBIT D

ENVIRONMENTAL DISCLOSURE STATEMENT

This Environmental Disclosure Statement is designed to solicit information concerning your proposed use of Hazardous Materials (as defined in Section 10.02 of the Lease) on property ("the Premises") owned by «Landlord», Landlord ("the Landlord"). Please complete the questionnaire and return it to Reynolds & Brown or its designee for evaluation. If additional space is necessary, please continue your answer on separate paper. In the event your proposed use, generation or storage of Hazardous Materials is considered to be significant, we may require further information. Thank you for your cooperation with this matter.

I. BACKGROUND INFORMATION

____
Name (Corporation, Partnership, Public Agency or individual)

____
Street Address

____
City, State, Zip Code

Contact Person and Title: ____

Telephone Number: (____) _____-________________

Address of the Premises (property to be leased)

____
Street Address

____
City, State, Zip Code

IF NOT APPLICABLE TO YOUR BUSINESS – INITIAL HERE__________________

II. DESCRIPTION OF PROPOSED FACILITY

A. Describe in detail your proposed facility and the type of operations to be conducted on the Premises including principal products to be produced and/or services to be performed:

B. What environmental laws (e.g. Resource Conservation and Recovery Act; Clean Air Act) must be complied with in connection with your proposed facility and operations? Identify the governmental agencies responsible for monitoring and evaluating the compliance of the proposed facility with any environmental law:

III. STORAGE OF HAZARDOUS MATERIALS

A. Do you intend to store any Hazardous Materials on the Premises?

If yes, describe (i) the Hazardous Materials to be store, (ii) the estimated quantity (on an annual basis) of Hazardous Materials to be store, and (iii) the proposed method of storage (e.g. above-ground storage tanks, underground storage tanks, drums, pipelines):

Hazardous Material	Method of Storage	Quantity
	(Describe capacity and composition of container)	(On an annual basis)

B. Identify any permits and/or licenses which must be obtained in connection with the storage of any Hazardous Materials:

IV. HAZARDOUS WASTE MANAGEMENT

Identify any Hazardous Materials (other than air emissions and wastewater described in V and VI) which will be generated by the facility, the hazard class, and the quantity of generation on a monthly basis:

Hazardous Material	Hazard Class	Quantity
		(On a monthly basis)

Describe the method(s) of disposal for each Hazardous Material:

Do you intend to treat or process any Hazardous Materials on the Premises? If yes, describe the proposed method(s) of treatment and/or processing:

Identify any permits and/or licenses which must be obtained in connection with (i) the disposal of each Hazardous Material and (ii) any treatment or processing of Hazardous Materials:

V. AIR EMISSIONS

A. Describe air emissions from each source of anticipated air pollutants including fuel burning equipment (describe type of fuel burned) on the Premises:

B. Describe the air pollution control equipment to be used to reduce emissions from each source of air emissions:

C. Describe the method(s) to be used to monitor any air emissions:

D. Identify any permits and/or licenses which must be obtained in connection with any air emissions:

VI. WATER DISCHARGES

A. List all sources of wastewater discharges to surface waters, septic systems or holding ponds:

B. List all sources of wastewater discharges to public sewer systems:

C. List the average daily flow for each discharge:

D. Identify any permits and/or licenses which must be obtained in connection with any wastewater discharge:

VII. PAST AND PRESENT OPERATIONS

A. Are there any governmental agency enforcement actions, past, pending or, to the best of your knowledge, threatened administrative or court orders or actions or consent decrees concerning compliance by your company with environmental laws in connection with facilities similar to the proposed facility? If yes, are there any continuing compliance obligations as a result of such orders or decrees?

B. Has your company received requests for information from governmental agencies responsible for regulating compliance with environmental laws? If yes, please explain the basis for such request(s):

C. Has your company been the subject of any administrative inquiries in connection with Hazardous Materials? If yes, please explain the basis for such inquiry:

D. Are there any past, pending or, to the best of your knowledge, threatened private actions against your company concerning compliance with environmental laws? If yes, what is the status and/or result of each action:

As an officer, a general partner or a duly authorized representative of the company, I am familiar with all operations of the company and the operations to be conducted on the Premises. I have made due inquiry in answering the foregoing questions and hereby certify to Landlord that to the best of my knowledge, information and belief the information disclosed above is true and correct and complete.

____

(Signature)

(Title)

Exhibit D

EXHIBIT E
RULES AND REGULATIONS

1. The sidewalks, entrances, lobby and public corridors shall be used only as a means of ingress and egress and shall remain unobstructed at all times. The entrance and exit doors of all suites are to be kept closed at all times except as required for orderly passage to and from a suite. Loitering in any part of the Building or obstruction of any means of ingress or egress shall not be permitted. Doors and windows shall not be covered or obstructed.

2. Plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no rubbish, newspapers, trash or other substances of any kind shall be thrown into them. Walls, floors and ceiling shall not be defaced in any way and no one shall be permitted to mark, drive nails, screws or drill into, paint or in any way mar any Building surface, except that pictures, certificates, licenses and similar items normally used in Tenant's business may be carefully attached to the walls by Tenant in a manner to be prescribed by Landlord. Upon removal of such items by Tenant any damage to the walls or other surfaces, except minor nail holes, shall be repaired by Tenant.

3. No awning, shade, sign, advertisement or notice shall be inscribed, painted, displayed or affixed on, in or to any window, door or any other part of the outside or inside of the Building or the demised premises. No window displays or other public displays shall be permitted without the prior written consent of Landlord.

4. The cost of any special electrical circuits for items such as copying machines, computers, microwaves, etc., shall be borne by Tenant unless the same are part of the building standard improvements. Prior to installation of equipment Tenant must receive written approval from Landlord.

5. No improper noises, vibrations or odors will be permitted in the Building, nor shall any person be permitted to interfere in any way with tenants or those having business with them. No person will be permitted to bring or keep within the Building any animal, bird or any toxic or flammable substances without Landlord's prior permission. No person shall throw trash, refuse, cigarettes or other substances of any kind any place within or out of the Building except in refuse containers.

6. All re-keying of office doors after occupancy will be at the expense of Tenant.

7. Tenant will not install or use any window coverings except those provided by Landlord, nor shall Tenant use the leased premises for storage, drying of laundry or any other activity which would detract from the appearance of the Building or interfere in any way with the use of the Building by other tenants.

8. At Landlord's option, Tenant shall provide and cause all Tenant's employees to use protective floor mats under all desk chairs used in the Premises.

9. If Tenant requires telegraphic, telephonic, burglar, or of similar services, it shall first obtain, and comply with, Landlord's instructions in their installation.

10. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building elsewhere. Tenant shall not install, maintain or operate upon the Premises any vending machine without the written consent of Landlord. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building are prohibited, and each tenant shall cooperate to prevent same. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building.

11. Tenant shall not park its vehicles in any parking areas designated by Landlord as areas for parking by visitors to the Building. Tenant shall not park any vehicles in the Building parking areas overnight. Tenant shall not park vehicles in the Building parking areas larger than full size passenger automobiles or pickup trucks. Landlord may, in its sole discretion, designate separate areas for bicycles and motorcycles. Tenant shall not leave any bicycles or motorcycles in the Building parking areas overnight.

12. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

13. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

INITIALS

Landlord_________

Tenant_________

Exhibit 10.45

FIRST AMENDMENT
TO THE
EMPLOYMENT AGREEMENT

This First Amendment to the First Amended and Restated Employment Agreement (the "Agreement") is entered into as of April 12, 2024 (the "Effective Date"), by and between Dragonfly Energy Holdings Corp. (the "Company"), and Denis Phares, an individual (such individual, the "Employee" and such Agreement, the "Amendment"). The Company and the Employee are sometimes referred to herein as the "Parties".

INTRODUCTION

WHEREAS, the Parties are subject to an Employment Agreement dated as of October 11, 2022 (the "Employment Agreement");

WHEREAS, pursuant to Section 9 of the Employment Agreement, the Employment Agreement can be amended or modified by a written instrument signed by the Company's Lead Independent Director of the Company's Board of Directors and the Employee; and

WHEREAS, the Parties have agreed to amend the Employment Agreement, as set forth herein, as of the Effective Date.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. Effective for fiscal years beginning on and after January 1, 2023, Section 4.3 of the Amended and Restated Employment Agreement is hereby deleted in its entirety and replaced with the following:

   4.3. Long-Term Incentive Awards. With respect to each fiscal year of the Company ending during the Employment Term, the Executive shall be eligible to receive, subject to such performance, service and other conditions as the Compensation Committee deems appropriate each fiscal year, a long-term incentive award (each an "LTI Award") payable in the form of cash and/or equity awards, as determined in the sole discretion of the Compensation Committee. The target grant date value of each such LTI Award shall be $1,532,000, but such LTI Awards shall be subject to adjustment, upward or downward, in the sole discretion of the Compensation Committee. To the extent that an LTI Award is paid in the form of an equity award (which may include stock options, restricted stock, restricted stock units or any other form of equity-based award authorized under the Company's 2022 Equity Incentive Plan (or any successor plan) (the "Company Equity Plan"), such equity awards shall be subject to the terms and conditions of such Company Equity Plan and such other terms and conditions as the Compensation Committee in its sole discretion may establish. Notwithstanding anything contained herein to the contrary, to be eligible for an LTI Award for a fiscal year, the Executive must be employed by the Company on the date the LTI Award is paid (if paid in cash) or the date an equity award is granted (to the extent the LTI Award is payable in the form of an equity award).

2. This Amendment shall only serve to amend and modify the Employment Agreement to the extent specifically provided herein. All terms, conditions, provisions and references of and to the Employment Agreement which are not specifically modified, amended and/or waived herein shall remain in full force and effect and shall not be altered by any provisions herein contained.

3. This Amendment constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written agreements, understandings, negotiations, and discussions relating to the subject matter hereof. Any supplement, modification, waiver, or termination of this Amendment and the terms and conditions hereof is valid only if it is set forth in a writing signed by both parties hereto, or in the case of a waiver, by the party waiving compliance. The waiver of any provision of this Amendment shall not constitute a waiver of any other provisions and, unless otherwise stated, shall not constitute a continuing waiver.

4. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their personal or legal representatives, executors, administrators, heirs, distributes, devisees, legatees, and permitted successors and assigns. The Employee may not assign or delegate his rights and duties under this Amendment.

5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Execution and delivery of this Amendment by facsimile transmission (including the delivery of documents in Adobe PDF format) shall constitute execution and delivery of this Amendment for all purposes, with the same force and effect as execution and delivery of an original manually signed copy hereof.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

DRAGONFLY ENERGY HOLDINGS CORP.

By: */s/ Luisa Ingargiola*
Name: Luisa Ingargiola
Title: Lead Independent Director

EMPLOYEE

By: */s/ Denis Phares*
Denis Phares

Exhibit 10.46

FIRST AMENDMENT
TO THE
EMPLOYMENT AGREEMENT

This First Amendment to the First Amended and Restated Employment Agreement (the "Agreement") is entered into as of April 12, 2024 (the "Effective Date"), by and between Dragonfly Energy Holdings Corp. (the "Company"), and Wade Seaburg, an individual (such individual, the "Employee" and such Agreement, the "Amendment"). The Company and the Employee are sometimes referred to herein as the "Parties".

INTRODUCTION

WHEREAS, the Parties are subject to an Employment Agreement dated as of November 7, 2022 (the "Employment Agreement");

WHEREAS, pursuant to Section 9 of the Employment Agreement, the Employment Agreement can be amended or modified by a written instrument signed by the Company's Lead Independent Director of the Company's Board of Directors and the Employee; and

WHEREAS, the Parties have agreed to amend the Employment Agreement, as set forth herein, as of the Effective Date.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. Effective for fiscal years beginning on and after January 1, 2023, Section 4.3 of the Amended and Restated Employment Agreement is hereby deleted in its entirety and replaced with the following:

   4.3. Long-Term Incentive Awards. With respect to each fiscal year of the Company ending during the Employment Term, the Executive shall be eligible to receive, subject to such performance, service and other conditions as the Compensation Committee deems appropriate each fiscal year, a long-term incentive award (each an "LTI Award") payable in the form of cash and/or equity awards, as determined in the sole discretion of the Compensation Committee. The target grant date value of each such LTI Award shall be $490,000, but such LTI Awards shall be subject to adjustment, upward or downward, in the sole discretion of the Compensation Committee. To the extent that an LTI Award is paid in the form of an equity award (which may include stock options, restricted stock, restricted stock units or any other form of equity-based award authorized under the Company's 2022 Equity Incentive Plan (or any successor plan) (the "Company Equity Plan"), such equity awards shall be subject to the terms and conditions of such Company Equity Plan and such other terms and conditions as the Compensation Committee in its sole discretion may establish. Notwithstanding anything contained herein to the contrary, to be eligible for an LTI Award for a fiscal year, the Executive must be employed by the Company on the date the LTI Award is paid (if paid in cash) or the date an equity award is granted (to the extent the LTI Award is payable in the form of an equity award).

2. This Amendment shall only serve to amend and modify the Employment Agreement to the extent specifically provided herein. All terms, conditions, provisions and references of and to the Employment Agreement which are not specifically modified, amended and/or waived herein shall remain in full force and effect and shall not be altered by any provisions herein contained.

3. This Amendment constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written agreements, understandings, negotiations, and discussions relating to the subject matter hereof. Any supplement, modification, waiver, or termination of this Amendment and the terms and conditions hereof is valid only if it is set forth in a writing signed by both parties hereto, or in the case of a waiver, by the party waiving compliance. The waiver of any provision of this Amendment shall not constitute a waiver of any other provisions and, unless otherwise stated, shall not constitute a continuing waiver.

4. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their personal or legal representatives, executors, administrators, heirs, distributes, devisees, legatees, and permitted successors and assigns. The Employee may not assign or delegate his rights and duties under this Amendment.

5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Execution and delivery of this Amendment by facsimile transmission (including the delivery of documents in Adobe PDF format) shall constitute execution and delivery of this Amendment for all purposes, with the same force and effect as execution and delivery of an original manually signed copy hereof.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

DRAGONFLY ENERGY HOLDINGS CORP.

By: */s/ Luisa Ingargiola*
Name: Luisa Ingargiola
Title: Lead Independent Director

EMPLOYEE

By: */s/ Wade Seaburg*
Wade Seaburg

Exhibit 10.47

FIRST AMENDMENT
TO THE
EMPLOYMENT AGREEMENT

This First Amendment to the First Amended and Restated Employment Agreement (the "Agreement") is entered into as of April 12, 2024 (the "Effective Date"), by and between Dragonfly Energy Holdings Corp. (the "Company"), and Tyler Bourns, an individual (such individual, the "Employee" and such Agreement, the "Amendment"). The Company and the Employee are sometimes referred to herein as the "Parties".

INTRODUCTION

WHEREAS, the Parties are subject to an Employment Agreement dated as of November 7, 2022 (the "Employment Agreement");

WHEREAS, pursuant to Section 9 of the Employment Agreement, the Employment Agreement can be amended or modified by a written instrument signed by the Company's Lead Independent Director of the Company's Board of Directors and the Employee; and

WHEREAS, the Parties have agreed to amend the Employment Agreement, as set forth herein, as of the Effective Date.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. Effective for fiscal years beginning on and after January 1, 2023, Section 4.3 of the Amended and Restated Employment Agreement is hereby deleted in its entirety and replaced with the following:

    4.3. Long-Term Incentive Awards. With respect to each fiscal year of the Company ending during the Employment Term, the Executive shall be eligible to receive, subject to such performance, service and other conditions as the Compensation Committee deems appropriate each fiscal year, a long-term incentive award (each an "LTI Award") payable in the form of cash and/or equity awards, as determined in the sole discretion of the Compensation Committee. The target grant date value of each such LTI Award shall be $236,000, but such LTI Awards shall be subject to adjustment, upward or downward, in the sole discretion of the Compensation Committee. To the extent that an LTI Award is paid in the form of an equity award (which may include stock options, restricted stock, restricted stock units or any other form of equity-based award authorized under the Company's 2022 Equity Incentive Plan (or any successor plan) (the "Company Equity Plan"), such equity awards shall be subject to the terms and conditions of such Company Equity Plan and such other terms and conditions as the Compensation Committee in its sole discretion may establish. Notwithstanding anything contained herein to the contrary, to be eligible for an LTI Award for a fiscal year, the Executive must be employed by the Company on the date the LTI Award is paid (if paid in cash) or the date an equity award is granted (to the extent the LTI Award is payable in the form of an equity award).

2. This Amendment shall only serve to amend and modify the Employment Agreement to the extent specifically provided herein. All terms, conditions, provisions and references of and to the Employment Agreement which are not specifically modified, amended and/or waived herein shall remain in full force and effect and shall not be altered by any provisions herein contained.

3. This Amendment constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written agreements, understandings, negotiations, and discussions relating to the subject matter hereof. Any supplement, modification, waiver, or termination of this Amendment and the terms and conditions hereof is valid only if it is set forth in a writing signed by both parties hereto, or in the case of a waiver, by the party waiving compliance. The waiver of any provision of this Amendment shall not constitute a waiver of any other provisions and, unless otherwise stated, shall not constitute a continuing waiver.

4. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their personal or legal representatives, executors, administrators, heirs, distributes, devisees, legatees, and permitted successors and assigns. The Employee may not assign or delegate his rights and duties under this Amendment.

5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Execution and delivery of this Amendment by facsimile transmission (including the delivery of documents in Adobe PDF format) shall constitute execution and delivery of this Amendment for all purposes, with the same force and effect as execution and delivery of an original manually signed copy hereof.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

DRAGONFLY ENERGY HOLDINGS CORP.

By: */s/ Luisa Ingargiola*
Name: Luisa Ingargiola
Title: Lead Independent Director

EMPLOYEE

By: */s/ Tyler Bourns*
Tyler Bourns

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

Dragonfly Energy Holdings Corp.
Reno, Nevada

We consent to the incorporation by reference in the Registration Statement of Dragonfly Energy Holdings Corp. on Forms S-8 (No. 333-268784 and 333-274277) and on Form S-3 (No. 333-275559) of our report dated April 16, 2024, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audit of the consolidated financial statements of Dragonfly Energy Holdings Corp. as of December 31, 2023 and for the year ended December 31, 2023, which report is included in this Annual Report on Form 10-K of Dragonfly Energy Holdings Corp for the year ended December 31, 2023.

Our report on the consolidated financial statements contains an explanatory paragraph regarding adjustments described in Note 15 to the consolidated financial statements that were applied to restate the 2022 financial statements to correct an error. We were not engaged to audit, review, or apply any procedures to the 2022 financial statements of the Company other than with respect to the adjustments and, accordingly, we do not express an opinion or any other form of assurance on the 2022 financial statements taken as a whole.

/s/ Marcum LLP

Marcum LLP
New York, NY
April 16, 2024

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-268784 and 333-274277) and on Form S-3 (No. 333-275559) of Dragonfly Energy Holdings Corp. (the “Company”) of our report dated April 17, 2023, relating to the consolidated financial statements which appears in this Annual Report on Form 10-K. Our report contains an explanatory paragraph regarding the Company’s ability to continue as a going concern.

/s/ BDO USA, P.C.
Spokane, Washington

April 16, 2024

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Denis Phares, certify that:

1. I have reviewed this annual report on Form 10-K for the period ended December 31, 2023 of Dragonfly Energy Holdings Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

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

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in the Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 16, 2024

/s/ Denis Phares
Denis Phares
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Denis Phares, certify that:

1. I have reviewed this annual report on Form 10-K for the period ended December 31, 2023 of Dragonfly Energy Holdings Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

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

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in the Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 16, 2024

/s/ Denis Phares

Denis Phares
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

This Certification is being filed pursuant to 18 U.S.C. Section 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002. This Certification is included solely for the purposes of complying with the provisions of Section 906 of the Sarbanes-Oxley Act and is not intended to be used for any other purpose. In connection with the accompanying Annual Report on Form 10-K of Dragonfly Energy Holdings Corp. (the “Company”) for the year ended December 31, 2023 (the “Annual Report”), Denis Phares, as Chief Executive Officer and as Interim Chief Financial Officer, certifies in his capacity as such officer of the Company, that to his knowledge:

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

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

Dated: April 16, 2024

By: */s/ Denis Phares*
Denis Phares
Chief Executive Officer and Interim Chief Financial Officer
(Principal Executive Office and Principal Financial and Accounting Officer)

This certification shall not be deemed “filed” for any purpose, nor shall it be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act.

Exhibit 97.1

DRAGONFLY ENERGY HOLDINGS CORP

COMPENSATION RECOVERY POLICY

1. Purpose

Dragonfly Energy Holdings Corp. (collectively with its subsidiaries, the "**Company**") is committed to promoting high standards of honest and ethical business conduct and compliance with applicable laws, rules and regulations. As part of this commitment, the Company has adopted this Compensation Recovery Policy (this "**Policy**"). This Policy is designed to comply with the requirements of Section 10D of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), Rule 10D-1 promulgated thereunder and the rules of the national securities exchange on which the Company's securities are traded and explains when the Company will pursue recovery of Incentive Compensation awarded or paid to a Covered Person. Please refer to Exhibit A attached hereto (the "**Definitions Exhibit**") for the definitions of capitalized terms used throughout this Policy.

2. Recovery of Recoverable Incentive Compensation

In the event of a Restatement, the Company will pursue, reasonably promptly, recovery of all Recoverable Incentive Compensation from a Covered Person without regard to such Covered Person's individual knowledge or responsibility related to the Restatement. Notwithstanding the foregoing, if the Company is otherwise required by this Policy to undertake a Restatement, the Company will not be required to recover the Recoverable Incentive Compensation if the Compensation Committee determines, after exercising a normal due process review of all the relevant facts and circumstances, that (a) a Recovery Exception exists and (b) it would be impracticable to seek such recovery under such facts and circumstances.

If such Recoverable Incentive Compensation was not awarded or paid on a formulaic basis, the Company will pursue recovery of the amount that the Compensation Committee determines in good faith should be recovered.

3. Other Actions

The Compensation Committee may, subject to applicable law, pursue recovery of Recoverable Incentive Compensation in the manner it chooses, including by pursuing reimbursement from the Covered Person of all or part of the compensation awarded or paid, by electing to withhold unpaid compensation, by set-off, or by rescinding or canceling unvested stock or option awards.

In the reasonable exercise of its business judgment under this Policy, the Compensation Committee may in its sole discretion determine whether and to what extent additional action is appropriate to address the circumstances surrounding a Restatement to minimize the likelihood of any recurrence and to impose such other discipline as it deems appropriate.

4. No Indemnification or Reimbursement

As required by applicable law, notwithstanding the terms of any other policy, program, agreement or arrangement, in no event will the Company or any of its affiliates indemnify or reimburse a Covered Person for any loss of Recoverable Incentive Compensation under this Policy and, to the extent prohibited by law, neither the Company nor any of its affiliates will pay premiums on any insurance policy that would cover a Covered Person's potential obligations with respect to Recoverable Incentive Compensation under this Policy.

5. Administration of Policy

The Compensation Committee will have full authority to administer this Policy. The Compensation Committee will, subject to the provisions of this Policy and Rule 10D-1 of the Exchange Act, and the Company's applicable exchange listing standards, make such determinations and interpretations and take such actions in connection with this Policy as it deems necessary, appropriate or advisable. It is intended that this Policy be interpreted in a manner that is consistent with the requirements of Section 10D of the Exchange Act, Rule 10D-1 thereunder and any applicable rules or standards adopted by the Securities and Exchange Commission or any national securities exchange on which the Company's securities are listed. All determinations and interpretations made by the Compensation Committee will be final, binding and conclusive.

6. Other Claims and Rights

The requirements of this Policy are in addition to, and not in lieu of, any legal and equitable claims the Company or any of its affiliates may have or any actions that may be imposed by law enforcement agencies, regulators, administrative bodies, or other authorities. Further, the exercise by the Compensation Committee of any rights pursuant to this Policy will not impact any other rights that the Company or any of its affiliates may have with respect to any Covered Person subject to this Policy.

7. Acknowledgement by Covered Persons; Condition to Eligibility for Incentive Compensation

The Company will provide notice and seek acknowledgement of this Policy from each Covered Person, provided that the failure to provide such notice or obtain such acknowledgement will have no impact on the applicability or enforceability of this Policy. After the Effective Date (and also with respect to any Incentive Compensation Received on or after October 2, 2023 pursuant to a preexisting contract or arrangement), any grant of Incentive Compensation to a Covered Person will be deemed to have been made subject to the terms of this Policy, whether or not such Policy is specifically referenced in the documentation relating to such grant and this Policy shall be deemed to constitute an integral part of the terms of any such grant. All Incentive Compensation subject to this Policy will remain subject to this policy, even if already paid, until the Policy ceases to apply to such Incentive Compensation and any other vesting conditions applicable to such Incentive Compensation are satisfied.

8. Amendment; Termination

The Board or the Compensation Committee may amend or terminate this Policy at any time. In the event that Section 10D of the Exchange Act, Rule 10D-1 thereunder or the rules of the national securities exchange on which the Company's securities are traded are modified or supplemented, whether by law, regulation or legal interpretation, such modification or supplement shall be deemed to modify or supplement this Policy to the maximum extent permitted by applicable law.

9. Effectiveness

Except as otherwise determined in writing by the Compensation Committee, this Policy will apply to any Incentive Compensation that is Received by a Covered Person on or after the Effective Date. This Policy will survive and continue notwithstanding any termination of a Covered Person's employment with the Company and its affiliates.

10. Successors

This Policy shall be binding and enforceable against all Covered Persons and their successors, beneficiaries, heirs, executors, administrators, or other legal representatives.

COMPENSATION RECOVERY POLICY

Exhibit A

DEFINITIONS EXHIBIT

"**Applicable Period**" means the three completed fiscal years of the Company immediately preceding the earlier of (i) the date the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes (or reasonably should have concluded) that a Restatement is required or (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare a Restatement. The "Applicable Period" also includes any transition period (that results from a change in the Company's fiscal year) within or immediately following the three completed fiscal years identified in the preceding sentence.

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

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

"**Covered Person**" means any person who is, or was at any time, during the Applicable Period, an Executive Officer of the Company. For the avoidance of doubt, a Covered Person may include a former Executive Officer that left the Company, retired, or transitioned to an employee role (including after serving as an Executive Officer in an interim capacity) during the Applicable Period.

"**Effective Date**" means December 1, 2023.

"**Executive Officer**" means the Company's president, principal executive officer, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person (including an officer of the Company's parent(s) or subsidiaries) who performs similar policy-making functions for the Company.

"**Financial Reporting Measure**" means a measure that is determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measure that is derived wholly or in part from such measure (including but not limited to, "non-GAAP" financial measures, such as those appearing in the Company's earnings releases or Management Discussion and Analysis). Stock price and total shareholder return (and any measures derived wholly or in part therefrom) shall be considered Financial Reporting Measures.

"**Recovery Exception:**" A recovery of Recoverable Incentive Compensation shall be subject to a "Recovery Exception" if the Compensation Committee determines in good faith that: (i) pursuing such recovery would violate home country law of the jurisdiction of incorporation of the Company where that law was adopted prior to November 28, 2022 and the Company provides an opinion of home country counsel to that effect acceptable to the Company's applicable listing exchange; (ii) the direct expense paid to a third party to assist in enforcing this Policy would exceed the Recoverable Incentive Compensation and the Company has (A) made a reasonable attempt to recover such amounts and (B) provided documentation of such attempts to recover to the Company's applicable listing exchange; or (iii) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of Section 401(a)(13) or Section 411(a) of the Internal Revenue Code of 1986, as amended, and regulations thereunder.

“**Incentive Compensation**” means any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a Financial Reporting Measure. Incentive Compensation does not include any base salaries (except with respect to any salary increases earned wholly or in part based on the attainment of a Financial Reporting Measure performance goal); bonuses paid solely at the discretion of the Compensation Committee or Board that are not paid from a “bonus pool” that is determined by satisfying a Financial Reporting Measure performance goal; bonuses paid solely upon satisfying one or more subjective standards and/or completion of a specified employment period; non-equity incentive plan awards earned solely upon satisfying one or more strategic measures or operational measures; and equity awards that vest solely based on the passage of time and/or attaining one or more non-Financial Reporting Measures. Incentive Compensation includes any Incentive Compensation Received on or after October 2, 2023 pursuant to a preexisting contract or arrangement.

“**Received:**” Incentive Compensation is deemed “Received” in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive Compensation award is attained, even if the payment or grant of the Incentive Compensation occurs after the end of that period.

“**Recoverable Incentive Compensation**” means the amount of any Incentive Compensation (calculated on a pre-tax basis) Received by a Covered Person during the Applicable Period that is in excess of the amount that otherwise would have been Received if the calculation were based on the Restatement. For Incentive Compensation based on (or derived from) stock price or total shareholder return where the amount of Recoverable Incentive Compensation is not subject to mathematical recalculation directly from the information in the applicable Restatement, the amount will be determined by the Compensation Committee based on a reasonable estimate of the effect of the Restatement on the stock price or total shareholder return upon which the Incentive Compensation was Received (in which case, the Company will maintain documentation of such determination of that reasonable estimate and provide such documentation to the Company’s applicable listing exchange).

“**Restatement**” means an accounting restatement of any of the Company’s financial statements filed with the Securities and Exchange Commission under the Exchange Act, or the Securities Act of 1933, as amended, due to the Company’s material noncompliance with any financial reporting requirement under U.S. securities laws, regardless of whether the Company or Covered Person misconduct was the cause for such restatement. “Restatement” includes any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements (commonly referred to as “Big R” restatements), or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (commonly referred to as “little r” restatements).