

**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 001-39525



**ESS Tech, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**26440 SW Parkway Ave., Bldg. 83**

**Wilsonville, Oregon**

(Address of Principal Executive Offices)

**98-1550150**

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

**97070**

(Zip Code)

**(855) 423-9920**

Registrant's telephone number, including area code

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	GWH	New York Stock Exchange
Warrants, each whole warrant exercisable for one share of common stock at an exercise price of \$11.50	GWH.W	New York Stock Exchange

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 (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

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

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

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

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

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

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

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant as of the last business day of the registrant’s most recently completed second fiscal quarter, June 30, 2023, was approximately \$111.9 million based on the closing sales price of our common stock on the New York Stock Exchange on June 30, 2023 of \$1.47. Shares of the registrant’s common stock held by each executive officer, director, and holder of 10% or more of the outstanding common stock have been excluded because such persons may be deemed affiliates. This calculation does not reflect a determination that certain persons are affiliates of the registrant for any other purpose.

As of March 8, 2024, 174,898,086 shares of common stock, par value \$0.0001 per share, were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant’s definitive proxy statement relating to the 2024 Annual Meeting of Stockholders are incorporated herein by reference in Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant’s fiscal year ended December 31, 2023.

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K, including, without limitation, statements in “*Part II—Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations*,” includes forward-looking statements within the meaning of 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 (the “Exchange Act”). These forward-looking statements can be identified by the use of forward-looking terminology, including the words “believes,” “estimates,” “anticipates,” “expects,” “intends,” “plans,” “possible,” “may,” “might,” “will,” “potential,” “projects,” “predicts,” “continue,” “could,” “would” or “should,” or, in each case, their negative or other variations or comparable terminology. These words and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. These forward-looking statements, which are subject to risks, uncertainties and assumptions about us, may include projections of our future financial performance, our anticipated growth strategies and anticipated trends in our business.

These statements are based on management’s current expectations, but actual results may differ materially due to various factors, risks, and uncertainties, including, but not limited to:

- our financial and business performance, including financial projections and business metrics;
- changes in our strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects and plans;
- the implementation, market acceptance and success of our technology implementation and business model;
- our ability to scale in a cost-effective manner;
- developments and projections relating to our competitors and industry;
- the impact of the Russia-Ukraine conflict, geopolitical tensions involving China, an escalation of conflict in the Middle East, and similar macroeconomic events, including global supply chain challenges, foreign currency fluctuations, instability in the financial markets, elevated inflation and interest rates and monetary policy changes, upon our and our customers’, contractors’, suppliers’ and partners’ respective businesses;
- our expectations regarding our ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- our future capital requirements and sources and uses of cash;
- our ability to obtain funding for our operations;
- our business, expansion plans and opportunities;
- our relationships with third parties, including our customers, contractors, and suppliers;
- issues related to the shipment, installation, and operation of our products;
- issues related to contract execution, including customer acceptance of our products;
- our ability to recognize the benefits of strategic partnerships;
- the outcome of any known and unknown litigation and regulatory proceedings;
- our ability to successfully deploy the proceeds from the Business Combination and the investment in us by Honeywell (each as defined herein);
- expectations regarding the time during which we will be an emerging growth company under the Jumpstart Our Business Startups Act (“JOBS Act”); and
- other risks and uncertainties discussed in “*Part I—Item 1A. Risk Factors*” and elsewhere in this Annual Report on Form 10-K.

The forward-looking statements contained in this Annual Report on Form 10-K are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements are made as of the date of this Annual Report on Form 10-K and involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in “*Part I—Item 1A. Risk Factors*” and elsewhere in this Annual Report on Form 10-K. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in

material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described in “*Part I—Item 1A. Risk Factors*” may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this Annual Report on Form 10-K. In addition, even if our results or operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this Annual Report on Form 10-K, those results or developments may not be indicative of results or developments in subsequent periods.

## PART I

### ITEM 1. BUSINESS

Unless the context otherwise requires, all references in this Annual Report on Form 10-K to “ESS,” “we,” “us,” “our,” or the “Company” refer to ESS Tech, Inc. and its subsidiaries.

#### Business Combination

On October 8, 2021 (the “Closing Date”), ACON S2 Acquisition Corp. (“STWO”), a publicly traded special purpose acquisition company, consummated a merger pursuant to the Agreement and Plan of Merger, dated May 6, 2021 (the “Merger Agreement”), by and among STWO, SCharge Merger Sub, Inc., a Delaware corporation and wholly owned direct subsidiary of STWO (“Merger Sub”), and ESS Tech, Inc., a Delaware corporation (“Legacy ESS”) following the approval at a special meeting of the stockholders of STWO held on October 5, 2021.

Pursuant to the terms of the Merger Agreement, STWO deregistered by way of continuation under the Cayman Islands Companies Act (2021 Revision) and registered as a corporation in the State of Delaware under Part XII of the Delaware General Corporation Law, and a business combination between STWO and Legacy ESS was effected through the merger of Merger Sub with and into Legacy ESS, with Legacy ESS surviving as a wholly owned subsidiary of STWO (together with the other transactions described in the Merger Agreement, the “Business Combination”). On the Closing Date, STWO changed its name from “ACON S2 Acquisition Corp” to “ESS Tech, Inc.” (the “Company” or “ESS”), and our common stock and Public Warrants (as defined herein) began trading on the NYSE under the ticker symbols “GWH” and “GWH.W,” respectively.

#### Business Overview

ESS is a long-duration energy storage company specializing in iron flow battery technology. We design and produce long-duration batteries predominantly using earth-abundant materials that we believe can be cycled over 20,000 times without capacity fade. Because we designed our batteries to operate using an electrolyte of primarily salt, iron and water, they are environmentally sustainable and substantially recyclable. Our batteries provide flexibility to grid operators and energy assurance for commercial and industrial customers. Our technology addresses energy delivery, duration and cycle life in a single battery platform that compares favorably to lithium ion batteries, the most widely deployed alternative technology. Using our second-generation S200 iron flow battery technology, we are developing several products, the Energy Warehouse and the Energy Center, each of which is able to provide reliable, safe, long-duration energy storage, and a productized form of the core technology components used therein. As of December 31, 2023, we had a limited number of second-generation products fully deployed. With each battery deployed, we will further our mission to accelerate the transition to a zero-carbon energy future with increased grid reliability.

Our batteries are non-flammable, do not have explosion risk and can operate in temperatures ranging from -5°C to 50°C without requiring heating or cooling systems. This allows our energy storage products to be located in sites where lithium-ion batteries cannot be placed due to fire, chemical or explosion risks. In addition, our batteries are environmentally sustainable, predominantly utilizing easily sourced materials and recyclable components.

Our batteries and technology can be purchased with an extended ten-year warranty which is backed by investment-grade, warranty and project insurance policies from Munich Re, a leading provider of reinsurance, primary insurance and insurance-related risk solutions, which stands behind the performance of our energy storage products. To our knowledge, we are the first long-duration energy storage company to receive this type of insurance, which provides a warranty backstop for our proprietary flow battery technology, supporting our performance obligations regardless of project size or location and de-risking the technology for our customers. We have also collaborated with Munich Re to develop separate project coverage for our customers. This project coverage provides warranty continuity insurance in the event of our insolvency, providing long-term assurance of project performance to our customers and their investors and lenders. Bonding and surety capital is provided through OneBeacon Insurance Group (“OneBeacon”) as well as qualification from the U.S. Export-Import Bank, which provides additional product assurance. We believe each of these elements allows us to increase our total addressable market, as potential customers have reduced technology risk, financing risk and importing risk.

We believe that as we scale up our production, our battery technology will be priced competitively. When comparing products on a lifetime levelized cost of storage (“LCOS”) basis, which is the total cost of the investment in an electricity storage technology divided by its cumulative delivered electricity, we expect our batteries to be less expensive on a LCOS basis than lithium-ion alternatives for storage durations greater than four hours, which we believe is the operational maximum for lithium-ion technologies. Our cost advantage increases as the storage duration extends beyond four hours because of the scalable nature of our technology.

Energy storage solutions of various sizes and durations must be installed throughout global electrical grids to enable decarbonization in line with global climate objectives. Our energy storage products are intended to supply long-duration power across this expanding spectrum of use cases. As described below in the subsection entitled “—Our Technology and Products,” we believe our energy storage products will be capable of addressing customer needs across multiple use cases and markets. We are an early mover in long-duration energy storage and we believe we will enable more rapid implementation of renewable energy while also improving grid stability. The safety, flexibility and durability of our energy storage products enable customers to use them in nearly any location globally. Examples of use cases range from localized energy storage at commercial and industrial sites to grid-scale use cases, such as peaker plant replacement and grid stabilization.

### **Our Technology and Products**

Our long-duration iron flow batteries are the product of nearly 50 years of scientific advancement. In the 1970s, researchers first developed the concept of iron flow batteries. Despite realizing the battery’s promising ability to store energy, these researchers found that the reaction between the positive and negative sides created hydroxide formations that clogged the electrodes and reduced the activity of the electrolytes. Hydroxide formation caused rapid degradation in early iron flow batteries after only a few cycles. Unable to prevent the hydroxide from forming, these scientists were forced to abandon their work.

After years of neglect, our founders, Craig Evans and Dr. Julia Song, began advancing this technology in 2011 and formed Legacy ESS. Building upon this promising concept, our team has significantly enhanced the technology, improved round-trip efficiency and developed an innovative and patented solution to the hydroxide build-up problem. Our proprietary solution to eliminate the hydroxide formation is known as the Proton Pump, and it works by utilizing hydrogen generated by side reactions on the negative electrode. The Proton Pump converts the hydrogen back into protons in the positive electrolyte. This process eliminates the hydroxide and stabilizes the pH level of the system. The Proton Pump allows the electrolyte to be used for the 20,000 cycle-design without capacity fade.

Our iron flow batteries store energy by converting electrical energy into chemical energy. Each battery module is made up of one or more cells and each of these cells is made up of a negative electrode and a positive electrode, and these two electrodes are separated by a porous separator. On the positive side (positive electrode) of the battery during charge, ferrous iron ( $\text{Fe}^{+2}$ ) is oxidized into ferric iron ( $\text{Fe}^{+3}$ ) and on the negative side (negative electrode) of the battery, ferrous iron is reduced to iron metal. The porous separator is used to minimize the positive and the negative electrolyte from mixing, which helps improve the coulombic efficiency of the battery. The positive and negative electrolytes are stored separately in tanks outside of the battery and this electrolyte is constantly pumped in and out of the battery while in operation. To convert the chemical energy back to electrical energy, the reaction is reversed; on the positive side of the battery, ferric iron is reduced to ferrous iron and on the negative side, metallic iron is oxidized into ferrous iron. During these charge and discharge cycles the pH of the positive and negative electrolyte can change dramatically. The Proton Pump ensures that the electrolyte pH remains stable and clear of any hydroxides.

Our iron flow batteries store energy by charging positive and negative electrolyte tanks that are separated by a membrane. In order to release energy, we generate a reaction between the tanks via the membrane. The power generated is a factor of the membrane size, while the duration of storage we can offer is a factor of the tank sizes and the addition of electrolytes to the tank, which can be accomplished at a relatively low cost. The duration of stored energy can be independently varied from the power. This allows for low marginal costs of energy, making our technology attractive for long-duration energy storage.

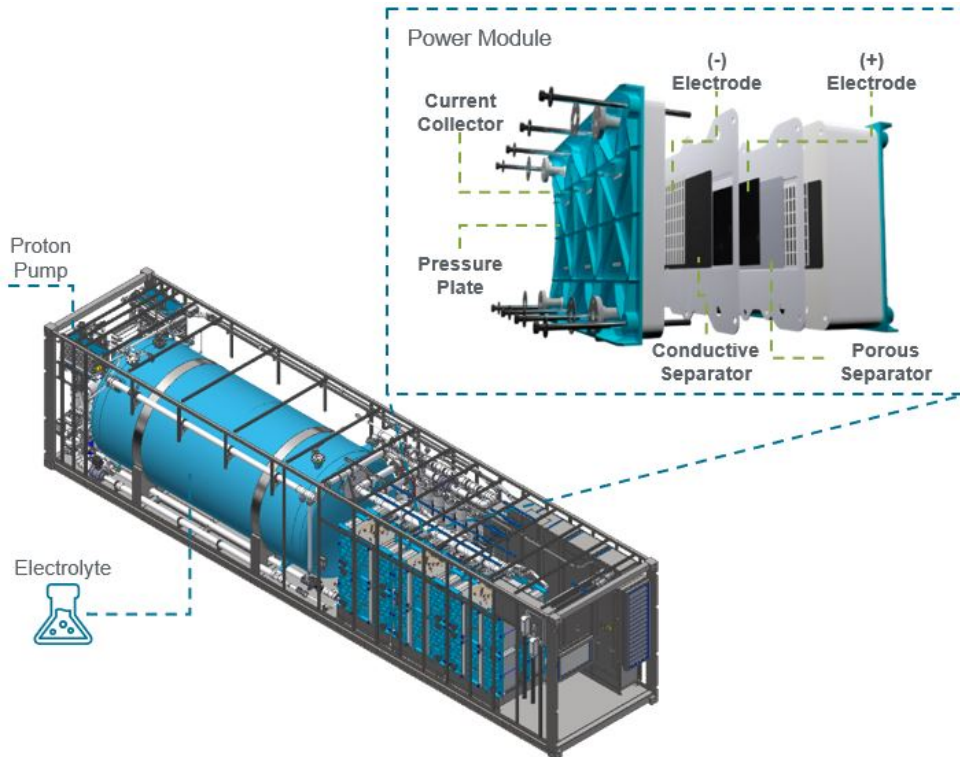
Using our iron flow battery technology, we are developing several products, each of which is able to provide reliable, safe, long-duration energy storage. Our first energy storage product, the Energy Warehouse, is our “behind-the-meter” solution (referring to solutions that are located on the customers’ premise, behind the service demarcation with the utility) that offers energy storage of 420 kilowatt hours (“kWh”) for over five hours at a rated power level of 75 kilowatt (“kW”). When seeking just 50 kW, the system can realize eight hours of power; the equivalent of 20 homes with a total output of 500 kWh. Energy Warehouses are deployed in shipping container units, allowing for a fully turnkey system that can be installed easily at nearly any customer’s site. Potential use cases for Energy Warehouses include microgrids, peaker plant replacement on a small-scale and commercial and industrial (“C&I”) demand. For customers who require additional energy storage capacity, multiple units can be added to the same system. The first generation of our Energy Warehouse was deployed in 2015. Since then, all of our first-generation units have been returned to us except for one. We commenced shipping our second-generation Energy Warehouses in 2021 and began recognizing revenue for fully deployed Energy Warehouses in 2022.

Our second, larger scale energy storage product, the Energy Center, is a “front-of-the-meter” solution, meaning that it is designed for use in front of the service demarcation with the utility. Energy Center solutions are designed specifically for utilities, independent power producers (“IPPs”) and large C&I consumers. The Energy Center’s modular design allows the

product to scale to meet IPP and utility-scale applications, including large renewable-plus-storage projects and standalone energy storage projects. The modular design of the Energy Center also allows for it to be flexibly configured to meet varying power and energy capacity needs for deployment in a variety of settings.

For both of our energy storage products, the intellectual property and points of differentiation are contained within the core technology components, the Proton Pump, power module and electrolyte. These components are protected by trade secrets, patents (both granted and in process) and years of research. The remainder of the Energy Warehouse and the Energy Center are intentionally designed to be easily produced. By using standard pumps and equipment and easily fabricated enclosures, our energy storage products can be assembled almost anywhere and produced at an efficient cost.

### ***ESS' Critical Technology***



### **Customers**

Our current and potential customers include utilities, IPPs and C&I end users. We intend to serve customers in both behind-the-meter and front-of-the-meter markets. In behind-the-meter applications, customers will use our energy storage products to reduce energy costs, integrate with renewable energy solutions to achieve corporate sustainability goals, and to enhance their energy resiliency. Behind-the-meter customers may include microgrids and small-scale C&I customers.

Front-of-the-meter customers, in contrast, are primarily utilities experiencing high rates of renewable energy penetration and requiring energy storage to help balance the grid, and IPPs who can leverage energy storage to improve the economics of renewable energy projects. These customers use our energy storage products to store energy on a utility scale that they can then utilize or sell to their customers when needed. Over time, we expect our front-of-the-meter customer base to expand to include additional types of energy suppliers.

We have designed the Energy Warehouse and Energy Center to address the needs of these two distinct markets. The Energy Warehouse is intended for behind-the-meter use owing to its small size and convenient turnkey packaging. The Energy Center can be used by larger customers in both the behind-the-meter and front-of-the-meter markets.

### **Suppliers**

Our batteries are made predominantly of earth-abundant, environmentally sustainable materials. These materials are considerably less expensive than rare earth metals that make up other batteries and as a result make up a low percentage of the total costs for our batteries. Because these materials are widely available, there are multiple suppliers for each input. In addition, we use limited high cost materials such as platinum in our manufacturing. While supply chain disruptions have



impacted the ability of some of our suppliers to deliver certain components of our batteries to us in a timely manner as described in the section entitled “*Part I—Item 1A. Risk Factors—Risks Related to Our Technology, Products and Manufacturing—We depend on third-party suppliers for the development and supply of key raw materials and components for our energy storage products. We also depend on vendors for the shipping of our energy storage products. Quality issues or delays in our supply or delivery chain and shipments could harm our ability to manufacture, supply and commercialize our energy storage products.*” the mechanical elements and control systems of our batteries are comprised of commercially available equipment that can be supplied by multiple manufacturers.

## Partnerships

- *Munich Re*: Our batteries and technology can be purchased with a ten-year warranty which is backed by investment-grade warranty and project insurance policies from Munich Re, a leading provider of reinsurance, primary insurance and insurance-related risk solutions, which stands behind the performance of our energy storage products. To our knowledge, we are the first long-duration energy storage company to receive this type of insurance, which provides a warranty backstop for our proprietary flow battery technology, supporting our performance obligations regardless of project size or location and de-risking the technology for our customers. We have also collaborated with Munich Re to develop separate project coverage for our customers. This project coverage provides warranty continuity insurance in the event of our insolvency, providing long-term assurance of project performance to our customers and their investors and lenders.
- *OneBeacon Insurance*: Through OneBeacon, we offer project surety capacity and corporate bonding options to our customers.
- *Export-Import Bank of the United States*: The Export-Import Bank of the United States (“EXIM”) is the official export credit agency of the United States. EXIM equips U.S. businesses with the financing tools necessary to compete for global sales when private sector lenders are unable or unwilling to provide financing. Our energy storage products are qualified by EXIM and can provide financing for qualified overseas buyers.

## Research & Development

Since January 1, 2019, we have invested approximately \$164.6 million on improving our technology and bringing our energy storage products to market. Our research and development efforts are conducted in Oregon and supported by our approximately 44 research and development employees.

We aim to be a leader in the long-duration energy storage market, and in order to do so, it is essential to continue our ongoing research and development activities. We have a research and development roadmap for additional breakthroughs to extend our technology advantages further. Expanding our technological capabilities to alternate chemistries and technologies is also a long-term goal of our research and development team.

## Intellectual Property

Intellectual property is an integral differentiator for our business, and we rely upon a combination of patents, copyrights and trade secrets to protect our proprietary technology. We believe that we have enforceable intellectual property protection over all critical design elements as well as the key enabling technologies for iron flow batteries. We have developed a significant patent portfolio. We have over 250 patents that are granted or in the pipeline and an undisclosed number of trade secrets and identified patents. Without taking into account any possible patent term adjustments or extensions, the earliest our current, issued patents will begin to expire is 2028. We continually review our efforts to assess the existence and patentability of new proprietary technology. We intend to leverage our iron flow expertise to drive innovation and are pursuing additional technological advancements.

## Competition

The energy storage industry is highly competitive. The declining cost of renewable energy, the decrease in battery costs, improving battery technologies, and public financial support in the form of grants and tax incentives are shifting customer demands causing the industry to evolve and expand. The main competitive factors in the energy storage market include, but are not limited to, safety and reliability, duration, performance and uptime, operational flexibility, asset life length and cyclability, ease of integration, operability in extreme temperatures, environmental sustainability, historical track record, and field-proven technology.

With the rising demand for clean electric power solutions with lower greenhouse gas emissions, there has been a transition to renewable energy sources and increasing penetration of distributed energy infrastructure. The proliferation of intermittent generating resources has created new challenges to electric grid stability, and thus an opportunity for an increased role for long-duration energy storage solutions. Climate change will also result in more unpredictable weather events including extreme temperatures, hurricanes and wildfires. Our technology can operate efficiently and effectively in

these extreme weather conditions. Our key competitors include different energy storage technologies such as lithium-ion batteries, lithium metal batteries, vanadium or zinc bromine batteries, sodium sulfur batteries, compressed air, hydrogen, fuel cell and pumped-storage hydropower. Key competitors in the traditional lithium-ion space include Contemporary Amperex Technology Co. Limited, Energy Vault, LG Chem, Ltd., Samsung Electronics Co., Ltd., Sungrow Power Supply Co., Ltd., and Tesla, Inc. Key competitors in the non-lithium-ion space include CellCube, CMBlu Energy AG, Enerox GmbH, Eos Energy Enterprises, Inc., Highview Power PTY Ltd., Hydrostor, Lockheed Martin, Malta Inc., Redflow, Energy Dome, and VoltStorage GmbH. Many of our competitors have substantially greater financial, marketing, personnel and other resources than we do. Although we may be small compared to some of our competitors, we believe we are well-positioned to compete with them in the market supported by our innovative iron flow battery technology, strategic partnerships and premier leadership team with a proven track record of success.

New technologies may enter the market that may have additional or superior advantages to our offerings. We believe there is significant government support available for energy storage technologies, and a variety of newer and emerging companies have announced plans to develop energy storage products using a variety of technologies, including compressed air, thermal energy, and solid-state batteries among others. Although many of these companies are not in commercial production today, they may in the future offer solutions that become competitive with our offerings. We intend to continuously improve our product offerings and maintain robust research and development efforts in order to stay ahead of existing and emerging competitors.

### **Government Regulations and Compliance**

We operate in the heavily regulated energy sector. As such, there are a variety of federal, state and local regulations and agencies that impact our operations. As a participant in the renewable energy sector specifically, there are additional regulations, tax incentives and support mechanisms in place to promote growth. Renewable energy is a priority for both the Biden administration and for many state and local governments across the country.

On the federal level, tax credits are currently in place that incentivize the deployment of renewable energy and battery storage. Battery storage projects storing energy from renewable energy sources are eligible for investment tax credits that allow project developers to monetize and sell the tax credits they receive from the creation of their projects. Additionally, battery storage is eligible for accelerated depreciation via the federal government's Modified Accelerated Cost Recovery System. Both policies provide tax and financing advantages for battery storage projects, lower the capital requirements for renewable energy projects to be developed and open a new source of funding for these projects.

State incentives have also driven growth in the deployment of renewable energy and energy storage. States with high Renewable Portfolio Standards ("RPS"), for example, have seen greater deployment of renewables than states with similar renewable resources that lack such requirements. In many states, including Texas, Oklahoma and California, the RPS-driven deployment of intermittent renewables is straining the electric grid and thus driving demand for energy storage.

Incentives for renewable energy and grid upgrades in Australia may drive growth for battery and energy storage as well. The Australian Government's Powering Australia plan includes an investment of AU\$20 billion by 2030 for upgrades to the electricity grid to support more renewable power. At the state level, the government of Victoria has pledged to legislate Australia's largest renewable energy storage targets: 2.6 gigawatts of renewable energy storage capacity by 2030 and 6.3 gigawatts of storage by 2035. New South Wales has also recognized the critical need for energy storage, calling for the procurement of 2 gigawatts of long-duration energy storage in its Electricity Infrastructure Roadmap.

All of these governmental programs supporting demand for our products are complex and political in nature, and therefore are subject to repeal, amendment, and interpretation in ways less supportive of our growth.

In addition to benefiting from governmental laws and regulations supporting energy storage, we are subject to federal, state and local requirements on the environment, health, safety and employment. Our manufacturing process is subject to environmental regulations, and our products are subject to regulations addressing safety and reliability. We are also subject to the requirements of the Occupational Safety and Health Act, local wage regulations and rigorous health and safety regulations in the State of Oregon.

### **Human Capital Management**

We pride ourselves on our clean, innovative technology and our employees are dedicated to our strategic mission to deliver reliable, resilient and safe renewable energy storage solutions to communities worldwide. Approximately half of our employees are involved in product manufacturing in order to refine and grow our operations. As of December 31, 2023, we employed 231 full-time employees, based primarily in our headquarters in Wilsonville, Oregon.

In order to achieve our mission to create a reliable, resilient, and safe renewable energy future, we are committed to investing in our employees and building a respectful and diverse work environment. We provide equal employment opportunities to all persons regardless of race, age, color, gender, sexual orientation, national origin, physical or mental

disability, religion, or any other characteristic protected by federal, state, or local law. Our employees are key to our success as a company, and we are committed to attracting, developing and retaining the best talent. Many of our employees are highly skilled in technical areas related to energy storage, and our philosophy is to both develop talent from within as well as strategically hire qualified individuals with the skills, experience and industry knowledge necessary to contribute to the growth and success of ESS. We also supplement our workforce with consultants or independent contractors as necessary. In order to retain top talent, we have designed our compensation program to provide employees with competitive compensation and benefits consistent with positions, skill levels, experience, knowledge, and geographic location. We are also continuously working to improve our recruiting, retention and development processes as our operations grow.

Executive management assists our board of directors in its oversight of human capital management including with respect to corporate culture, diversity and inclusion, recruiting, retention, attrition, talent management, career development and progression, succession and employee relations.

The success of our business is connected to the well-being of our team members. Accordingly, we are committed to the health, safety and wellness of our team members worldwide.

To date, we have not experienced any work stoppages and we consider our relationship with our employees to be good. None of our employees are represented by a labor union or subject to a collective bargaining agreement.

#### **Available Information**

Our investor relations website is located at <https://investors.essinc.com/>, our Company X account is located at [https://twitter.com/ESS\\_info](https://twitter.com/ESS_info), and our corporate LinkedIn account is located at <https://www.linkedin.com/company/energy-storage-systems/>. The information on, or that can be accessed through, our website and the aforementioned X account and LinkedIn account is not incorporated by reference into this Annual Report and should not be considered to be part of this Annual Report on Form 10-K unless expressly noted. Further, our references to website URLs are intended to be inactive textual references only. We may use our investor relations website and the aforementioned X account and LinkedIn account to post important information for investors, including news releases, analyst presentations, and supplemental financial information, and as a means of disclosing material non-public information and for complying with our disclosure obligations under Regulation FD. Accordingly, investors should monitor our investor relations website and the aforementioned X account and LinkedIn account, in addition to following press releases, filings with the Securities and Exchange Commission (the “SEC”) and public conference calls and webcasts.

We will file or furnish periodic reports and amendments thereto, including our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K (and amendments to those reports), proxy and information statements and other information filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act with the SEC. The SEC maintains a website that contains reports, proxy and information statement, and other information regarding issuers that file electronically, which may be accessed through the SEC at <http://www.sec.gov>. Our reports, amendments thereto, proxy statements and other information are also made available, free of charge, on our investor relations website as soon as reasonably practicable after we electronically file or furnish such information with the SEC. All statements made in any of our securities filings, including all forward-looking statements or information, are made as of the date of the document in which the statement is included, and we do not assume or undertake any obligation to update any of those statements or documents unless we are required to do so by law.

#### **ITEM 1A. RISK FACTORS**

*Investing in our securities involves a high degree of risk. Before making an investment decision, you should consider carefully the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K, including our consolidated financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K and in our other filings with the SEC. Our business, operating results, financial condition or prospects could also be harmed by risks and uncertainties not currently known to us or that we currently do not believe are material. If any of the risks actually occur, our business, operating results, financial condition and prospects could be adversely affected. In that event, the market price of our common stock could decline, and you could lose part or all of your investment. References to “we,” “our,” or “us” generally refer to ESS, unless otherwise specified.*

##### **Summary Risk Factors**

Our business is subject to numerous risks and uncertainties. The following is a summary of the principal risks we face:

- We face significant barriers in our attempts to produce our energy storage products, certain of our energy storage products are still under development, and we may not be able to successfully develop our energy storage products at commercial scale. If we cannot successfully overcome those barriers, our business will be negatively impacted and could fail;

- We are in the early stage of commercialization. In addition, certain aspects of our technology have not been fully field tested. If we are unable to develop our business and effectively commercialize our energy storage products as anticipated, we may not be able to generate significant revenues or achieve profitability;
- We depend on third-party suppliers for the development and supply of key raw materials and components for our energy storage products. We also depend on vendors for the shipping of our energy storage products. Quality issues or delays in our supply or delivery chain and shipments could harm our ability to manufacture, supply and commercialize our energy storage products;
- We have experienced in the past, and may experience in the future, delays, disruptions, or quality control problems in our manufacturing operations;
- We may be unable to adequately control the costs associated with our operations and the components necessary to build our energy storage products, and if we are unable to reduce our cost structure and effectively scale our operations in the future, our ability to become profitable may be impaired;
- We rely on complex machinery for our operations and the production of our iron flow batteries involves a significant degree of risk and uncertainty in terms of operational performance and costs;
- Our future success depends in part on our ability to increase our production capacity, and we may not be able to do so in a cost-effective manner. If we elect to expand our production capacity by constructing one or more new manufacturing facilities, we may encounter challenges relating to the construction, management and operation of such facilities;
- If required maintenance is performed incorrectly or if maintenance requirements exceed our current expectations, this could adversely affect our reputation, prospects, business, financial condition and results of operations;
- Our relationship with related parties, SBE, an affiliate of SoftBank Group Corp., and Honeywell, is subject to various risks which could adversely affect our business and future prospects;
- We have a history of losses and have to deliver significant business growth to achieve sustained, long-term profitability and long-term commercial success;
- Our warranty insurance provided by Munich Re is important to many potential customers. Should we be unable to maintain our relationship with Munich Re and be unable to find a similar replacement, demand for our products may suffer;
- Failure to deliver the benefits offered by our technology, or the emergence of improvements to competing technologies, could reduce demand for our energy storage products and harm our business;
- Our plans are dependent on the development of market acceptance of our products;
- Our cost reduction strategy may not succeed or may be significantly delayed, which may result in our inability to achieve profitability;
- As deployment of our energy storage products increases, we will incur corresponding warranty obligations and our warranty obligations may be significant. If our energy storage products do not operate successfully in the field or if we are unable to manage our warranty costs, our business and ability to generate revenue and achieve profitability could fail;
- We may face regulatory challenges to or limitations on our ability to sell our products directly in certain markets. Expanding operations internationally could expose us to additional risks;
- If we fail to protect, or incur significant costs in defending, our intellectual property and other proprietary rights, then our business and results of operations could be materially harmed; and
- As we endeavor to expand our business, we will incur significant costs and expenses, which could outpace our cash reserves. Unfavorable conditions or disruptions in the capital and credit markets may adversely impact business conditions and the availability of credit.

The following risk factors apply to our business and operations. These risk factors are not exhaustive, and investors are encouraged to perform their own investigation with respect to our business, financial condition and prospects. We may face additional risks and uncertainties that are not presently known to us, or that we currently deem immaterial, which may also impair our business. The following discussion should be read in conjunction with the consolidated financial statements and notes to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

## Risks Related to Our Technology, Products and Manufacturing

***We face significant barriers in our attempts to produce our energy storage products, certain of our energy storage products are still under development, and we may not be able to successfully develop our energy storage products at commercial scale. If we cannot successfully overcome those barriers, our business will be negatively impacted and could fail.***

Producing long-duration iron flow batteries that meet the requirements for wide adoption by commercial and utility-scale energy storage applications is a difficult undertaking. We are still in the early stage of commercialization and have faced and may yet face significant challenges in completing the development of our containerized energy storage products and in producing our energy storage products in commercial volumes. Some of the challenges that could prevent the successful scaling of our iron flow batteries include difficulties with (i) increasing manufacturing capacity to produce the volume of cells needed for our energy storage products, (ii) installing and optimizing higher volume manufacturing equipment, (iii) packaging our batteries to ensure adequate cycle life, (iv) cost reduction, (v) qualifying new vendors and subcomponents, (vi) expanding supply chain capacity, (vii) the completion of rigorous and challenging battery safety testing required by our customers or partners, including but not limited to, performance, life and abuse testing and (viii) the development of the final manufacturing processes and specifications.

As of December 31, 2023, we have limited deployment of second-generation energy storage products (“S200 batteries”) and there may be significant yield, cost, performance and manufacturing process challenges to be solved as we ramp up commercial production and use. Our core technology components in the Energy Warehouse and the Energy Center are also still under development for integration into third-party systems. We are likely to encounter further engineering challenges as we increase the capacity and efficiency of our batteries. If we are not able to overcome these barriers in developing and producing our iron flow batteries, our business could fail.

We have commissioned a new, more sophisticated, automation line and have started commercial operations; however any technical issues or delays in ramping up its use may impact our production costs and product quality. If we experience delivery or installation delays under our customer contracts, we could experience order cancellations and lose business as well as face lawsuits seeking damages.

Even if we complete development and achieve volume production of our iron flow batteries, if the cost, performance characteristics or other specifications of the batteries fall short of our targets, our sales, product pricing and margins would likely be adversely affected.

***We are in the early stage of commercialization. In addition, certain aspects of our technology have not been fully field tested. If we are unable to develop our business and effectively commercialize our energy storage products as anticipated, we may not be able to generate significant revenues or achieve profitability.***

The growth and development of our operations will depend on the successful commercialization and market acceptance of our energy storage products and our ability to manufacture products at scale while timely meeting customers’ demands. There is no certainty that, once shipped, our products will operate over the long term as expected, and we may not be able to generate sufficient customer confidence in our latest designs and ongoing product improvements or to perform under our contracts with customers. There are inherent uncertainties in our ability to predict future demand for our energy storage products and, as a consequence, we may have inadequate production capacity to meet demand, or alternatively, have excess available capacity. Our inability to predict the extent of customer adoption of our proprietary technologies in the already-established traditional energy storage market makes it difficult to evaluate our future prospects.

As of December 31, 2023, we have limited second-generation products fully deployed. We began shipping our second-generation Energy Warehouses in the third quarter of 2021 and we received final customer acceptance for the initial units shipped and began recognizing revenue in 2022. We have experienced various quality and performance issues with units that have been installed and although we have worked to repair or replace any known issues, our inability to address these or potential new issues effectively may have cost and warranty implications and may affect the acceptance of our products in the market. In addition, although we believe our iron flow battery technology is field tested and ready for sale, there are no assurances that our proprietary technologies, such as our Proton Pump, will operate as expected and with consistency over time. We have also experienced grid compatibility and other site integration issues that are not within our control, which has required and will continue to require an adjustment of our power electronics on a site-by-site basis. Our Energy Center product is still being developed and has not been completely designed or produced. If our batteries are damaged during shipment, we may be required to repair or replace such units. Certain operational characteristics have never been witnessed in the field and as we deploy our Energy Warehouse or Energy Center products with S200 batteries, we may discover further aspects of our technology that require improvement. Any of these issues could delay existing contracts and new sales, result in order cancellations, result in significant warranty obligations, and negatively impact the market’s acceptance of our technology. If we experience significant delays, order cancellations or warranty claims, or if we fail to develop and install our energy storage products in accordance with contract specifications, then our operating results and

financial condition could be adversely affected. In addition, there is no assurance that if we alter or change our energy storage products in the future, that the demand for these new products will develop, which could adversely affect our business and revenues. If our energy storage products are not deemed desirable and suitable for purchase and we are unable to establish a customer base, we may not be able to generate significant revenues or attain profitability.

***We depend on third-party suppliers for the development and supply of key raw materials and components for our energy storage products. We also depend on vendors for the shipping of our energy storage products. Quality issues or delays in our supply or delivery chain and shipments could harm our ability to manufacture, supply and commercialize our energy storage products.***

We depend on third-party suppliers for the development and supply of key raw materials and components for our energy storage products, including power module components (e.g., bipolar plates, frames, end plates and separators), shipping containers, chemicals and electronic components. We will need to maintain and significantly grow our access to key raw materials and control our related costs. We use various raw materials and components to construct our energy storage products, including polypropylene, iron and potassium chloride, that are critical to our manufacturing process. We also rely on third-party suppliers for injected molded parts and power electronics which undergo a qualification process that takes four to 12 months.

The cost of components for our iron flow batteries, whether manufactured by our suppliers or by us, depends in part upon the prices and availability of raw materials. In recent periods, we have seen an increase in costs for a wide range of materials and components and such increases may continue, particularly if the high rates of inflation seen in 2022 and 2023 persist. Additionally, supply chain disruptions and access to materials have impacted and continue to impact our vendors and suppliers' ability to deliver materials and components to us in a timely manner. We have experienced significant disruptions to key supply chains, shipping times, shipping availability, manufacturing times, and increases in associated costs, both with respect to the sourcing of supplies and the delivery of our products. We have experienced and may continue to experience supply chain issues, delays to deliveries, vendor quality issues, as well as increases in our supply costs of many of our key components, including polypropylene, resin, power electronics, circuit board components and shipping containers. Such issues have also affected the ramping up of our automated production line. If we experience similar issues in the future, including any delays of deliveries of additional manufacturing automation equipment that we require, they may further delay our ability to produce our products and to recognize additional revenue, particularly for our larger scale Energy Center products (see also "Part II. Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Components of Results of Operations—Revenue").

We expect prices for materials to fluctuate over time. Available supply for materials may also be unstable, depending on market conditions and global demand for these materials, including as a result of increased global production of batteries and energy storage products. For example, our Proton Pump is manufactured with certain raw materials, which not only include precious and non-precious metals but also carbon, graphite and thermoplastics, the prices of which have historically fluctuated on a cyclical basis and depend on a variety of factors over which we have no control. We have also experienced increased prices and/or inconsistent quality and supply of other electrical components and power module components including frames, end plates and separators. Any reduced availability of these materials may impact our access to cells and any further increases in their prices may reduce our profitability if we cannot recoup the increased costs through increased prices for our products. In addition, we utilize shipping containers to house our iron flow batteries within our Energy Warehouses and Energy Centers. Shipping delays caused by various economic, weather and COVID-19 pandemic effects created a shortage in shipping containers and other supply chain delays in the past and may again in the future. We have limited visibility into these supply chain disruptions and increased shipping container costs. Given that our Energy Warehouse product relies on the availability of shipping containers, such shortages may reduce our profitability if we are not able to pass the increased costs to our customers. Moreover, any such attempts to increase product prices may be difficult to achieve and even if achieved, may harm our brand, prospects and operating results.

In addition, the conflicts in Ukraine and the Middle East have led to disruption, instability and volatility in the global markets and certain industries and may also lead to further disruptions, particularly if the conflicts were to escalate further, that could negatively impact our operations and our supply chain. The U.S. government and other governments have already imposed severe sanctions and export controls against Russia and Russian interests and may yet impose additional sanctions and controls. The impact of these measures, as well as potential responses to them by Russia, is currently unknown and they could adversely affect our business, supply chain, partners or customers.

We depend on third-party vendors for the shipping of our energy storage products. We have in the past faced and may yet again face disruptions in the logistics sector making it more challenging to find trucks to ship our products. The shipping of our products to customers internationally in a timely, cost-effective, and secure manner that does not damage our products has proved and may again prove to be challenging. The failure to deliver our products in a timely fashion or within budget may also harm our brand, prospects and operating results.



***We do not know whether we will be able to maintain long-term supply relationships with our critical suppliers, or, if required, secure new long-term supply relationships on terms that will allow us to achieve our objectives.***

We continually evaluate new suppliers, and we are currently qualifying several new suppliers. However, there are a limited number of suppliers for some of the key components of our products and we have, to date, fully qualified only a very limited number of such suppliers. Therefore, we have limited flexibility in changing suppliers. In addition, we have had issues with inconsistent quality and supply of certain key power module components. We do not know whether we will be able to maintain long-term supply relationships with our critical suppliers, or, if required, secure new long-term supply relationships on terms that will allow us to achieve our objectives. A supplier's failure to develop and supply components in a timely manner, to supply components that meet our quality, quantity or cost requirements or our technical specifications, to support our warranty claims, or our inability to obtain alternative sources of these components on a timely basis or on terms acceptable to us, could each harm our ability to manufacture and commercialize our energy storage products. In addition, to the extent the processes that our suppliers use to manufacture components are proprietary, we may be unable to obtain comparable components from alternative suppliers, all of which could harm our business, financial condition and results of operations.

In the long term, we intend to supplement certain components from our suppliers by manufacturing them ourselves, which we believe will be more efficient and manufacturable at greater volumes and cost-effective than currently available components. However, our efforts to develop and manufacture such components have required and may require significant investments, and there can be no assurance that we will be able to accomplish this in the timeframes that we have planned or at all. If we are unable to do so, we may have to curtail our iron flow battery and energy storage product production or procure additional raw materials and components from suppliers at potentially greater costs, either of which may harm our business and operating results.

***We have experienced in the past, and may experience in the future, delays, disruptions, or quality control problems in our manufacturing operations.***

Our manufacturing and testing processes require significant technological and production process expertise and modification to support our projected business objectives. We have already experienced various issues related to the scaling up of the manufacturing process and while we seek to prevent the reoccurrence of such issues, there can be no assurance that such issues will not reoccur in the future. In addition, any change in our processes could cause one or more production errors, requiring a temporary suspension or delay in our production line until the errors can be researched, identified, and properly addressed and rectified. This may occur particularly as we introduce new products, modify our engineering and production techniques, and/or expand our capacity. In addition, our failure to maintain appropriate quality assurance processes could result in increased product failures, loss of customers, increased warranty reserves, increased production, and logistical costs and delays. Any of these developments could lead to current and potential customers cancelling or postponing their purchases of our products, which could have a material adverse effect on our business, financial condition and results of operations.

***We may be unable to adequately control the costs associated with our operations and the components necessary to build our energy storage products, and if we are unable to reduce our cost structure and effectively scale our operations in the future, our ability to become profitable may be impaired.***

Our ability to become profitable in the future will not only depend on our ability to successfully market our products but also to control our manufacturing costs. If we are unsuccessful in our cost-reduction plans or if we experience design or manufacturing defects or other failures of our S200 battery as a result of these design changes, we could incur significant manufacturing and re-engineering costs. In addition, we will require significant capital to further develop and grow our business and expect to incur significant expenses, including those relating to research and development, raw material procurement, leases, sales and distribution as we build our brand and market our products, and general and administrative costs as we scale our operations. If we are unable to cost-efficiently design, manufacture, market, sell and distribute our energy storage products, our margins, profitability and prospects would be materially and adversely affected.

In addition, our Proton Pump is manufactured with certain raw materials, such as platinum, the prices of which have historically fluctuated on a cyclical basis and depend on a variety of factors over which we have no control. Substantial increases in the prices of raw materials would increase our operating costs and could adversely affect our profitability. The price of oil likewise fluctuates on a cyclical basis and any increase in price may affect the cost of manufacturing, distributing and transporting our products. If we are unable to pass any such increased costs to our customers, this could have a material adverse effect on our business, financial condition and results of operations.

In order to achieve our business plan and reach profitability, we must continue to increase the number of units sold and reduce the manufacturing and development costs for our iron flow batteries as at current volumes, production costs for our units significantly exceed their selling price. Additionally, certain of our existing customer contracts were entered into

based on projections regarding cost reductions that assume continued advances in our manufacturing and services processes that we may be unable to realize. The cost of components and raw materials, for example, has been increasing and could continue to increase in the future, offsetting any successes in reducing our manufacturing costs. Any such increases could slow our growth and cause our financial results and operational metrics to suffer. In addition, we may face increases in our other expenses including increases in wages or other labor costs as well as installation, marketing, sales or related costs. In order to expand into new markets (especially markets in which the price of electricity from the grid is lower), we will need to continue to reduce our costs. Increases in any of these costs or our failure to achieve projected cost reductions could adversely affect our results of operations and financial condition and harm our business and prospects. If we are unable to reduce our cost structure in the future, we may not be able to achieve profitability, which could have a material adverse effect on our business and our prospects.

Further, we have not yet produced iron flow batteries at volume and our expected cost advantage for the production of these products at scale, compared to conventional lithium-ion cells, will require us to achieve rates of throughput, use of electricity and consumables, yield, and rates of automation demonstrated for mature battery, battery material, and manufacturing processes, that we have not yet achieved. If we are unable to achieve these targeted rates, our business will be adversely impacted.

In addition, customers may also have specific site requirements and interface technology or experience delays in preparing their site for equipment installation, which has caused, and in the future may continue to cause, delays with respect to delivery and installation and potentially our ability to recognize revenue.

***We rely on complex machinery for our operations and the production of our iron flow batteries involves a significant degree of risk and uncertainty in terms of operational performance and costs.***

We rely heavily on complex machinery for our operations and the production of our iron flow batteries, and this equipment has not yet been used before for the large-scale manufacturing of iron flow batteries. The work required to integrate this equipment into the production of our iron flow batteries is time intensive and requires us to work closely with the equipment provider to ensure that it works properly for our unique iron flow battery technology. This integration work will involve a significant degree of uncertainty and risk and may result in a delay in the scaling up of production or result in additional cost to our iron flow batteries.

Our manufacturing facility utilizes large-scale machinery, particularly for the automated production line. 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 of our production equipment may significantly affect the intended operational efficiency or yield. Some examples would be inadequate bonding of the battery cells resulting in overboard or internal leakage, damage to the separator, or cracked bipolar or monopolar plates. In addition, because this equipment has never been used to build iron flow batteries, the operational performance and costs associated with this equipment can be difficult to predict and may be influenced by factors outside of our control, such as, but not limited to, failures by suppliers to deliver necessary components of our energy storage products in a timely manner and at prices and volumes acceptable to us, environmental hazards and remediation, difficulty or delays in obtaining governmental permits, damages or defects in systems, industrial accidents, fires, seismic activity and other natural disasters.

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

***Our future success depends in part on our ability to increase our production capacity, and we may not be able to do so in a cost-effective manner. If we elect to expand our production capacity by constructing one or more new manufacturing facilities, we may encounter challenges relating to the construction, management and operation of such facilities.***

In order to grow our business, we will need to increase our production capacity. For example, our current manufacturing capacity may not be sufficient to meet our planned production targets and we are currently seeking to expand our capacity. Our ability to plan, construct and equip additional manufacturing facilities is subject to significant risks and uncertainties, including but not limited to the following:

- The expansion or construction of any manufacturing facilities will be subject to the risks inherent in the development and construction of new facilities, including risks of delays and cost overruns as a result of factors outside our control, which may include delays in government approvals, burdensome permitting conditions, and delays in the delivery or installation of manufacturing equipment and subsystems that we manufacture or obtain from suppliers, similar to or more severe than what we have experienced recently.



- In order for us to expand internationally, we anticipate entering into strategic partnerships, joint ventures and licensing agreements that allow us to add manufacturing capability outside of the United States. Adding manufacturing capacity in any international location will subject us to new laws and regulations including those pertaining to labor and employment, environmental and export/import. In addition, any such expansion brings with it the risk of managing larger scale foreign operations.
- We may be unable to achieve the production throughput necessary to achieve our target annualized production run rate at our current and future manufacturing facilities.
- Manufacturing equipment may take longer and cost more to engineer and build than expected and may not operate as required to meet our production plans.
- We may depend on third-party relationships in the development and operation of additional production capacity, which may subject us to the risk that such third parties do not fulfill their obligations to us under our arrangements with them.
- We may be unable to attract or retain qualified personnel.

If we are unable to expand our manufacturing facilities, we may be unable to further scale our business, which would negatively affect our results of operations and financial condition. We cannot provide any assurances that we would be able to successfully establish or operate an additional manufacturing facility in a timely or profitable manner, or at all, or within any expected budget for such a project. The construction of any such facility would require significant capital expenditure and result in significantly increased fixed costs. If we are unable to transition manufacturing operations to any such new facility in a cost-efficient and timely manner, then we may experience disruptions in operations, which could negatively impact our business and financial results. Further, if the demand for our products decreases or if we do not produce the expected output after any such new facility is operational, we may not be able to spread a significant amount of our fixed costs over the production volume, thereby increasing our per product fixed cost, which would have a negative impact on our business, financial condition and results of operations.

In addition, if any of our partners suffer from capacity constraints, deployment delays, work stoppages or any other reduction in output, we may be unable to meet our delivery schedule, which could result in lost revenue, damages, and deployment delays that could harm our business and customer relationships. If the demand for our iron flow batteries or our production output decreases or does not rise as expected, we may not be able to spread a significant amount of our fixed costs over the production volume, resulting in a greater than expected per unit fixed cost, which would have a negative impact on our financial condition and our results of operations.

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

***We have in the past and may be compelled in the future to undertake product recalls or take other actions, which could adversely affect our business, prospects, operating results, reputation and financial condition.***

We have in the past and may be compelled in the future to undertake product recalls. For example, in the past, we had to recall our Gen I battery modules due to vendors not properly manufacturing the parts to our specifications and we have also had to replace, and may again be required to replace, certain components of our Gen I battery modules delivered to customers to date. Any quality issues can result in single module failures or can result in a cascade of numerous failures. Failures in the field can result in a single module replacement or may result in a total recall depending on the severity or contamination to the remainder of the system.

Any product recall in the future may result in adverse publicity, damage our reputation and adversely affect our business, financial condition and results of operations. In the future, we may, voluntarily or involuntarily, initiate a recall if any of our Energy Warehouses, Energy Centers, iron flow batteries, Proton Pump or other components prove to be defective or noncompliant with applicable safety standards. Such recalls, whether caused by systems or components engineered or manufactured by us or our suppliers, would involve significant expense, damages and diversion of management's attention and other resources, which could adversely affect our brand image in our target market and our business, financial condition and results of operations.

***If required maintenance is performed incorrectly or if maintenance requirements exceed our current expectations, this could adversely affect our reputation, prospects, business, financial condition and results of operations.***

Our energy storage products require periodic maintenance, such as the cleaning or replacement of air filters, inspection and re-torquing of electrical or mechanical fasteners, and the replenishment of hydrogen. These maintenance items are typically

scheduled on a quarterly basis but may vary depending on how the customer uses the product. We currently rely on our customers that do not have service agreements with us or that perform maintenance that is not covered by such agreements to follow our product operations and maintenance manuals. If our customers or third parties retained by our customers fail to maintain or perform any required maintenance incorrectly, this may damage or adversely affect the performance of our energy storage products, which could adversely affect our reputation, prospects, business, financial condition and results of operations. Furthermore, there is risk of harm to persons or property if individuals performing maintenance do not follow applicable maintenance or safety protocols. Any such injury would likely lead to adverse publicity and potentially a safety recall. Any such adverse publicity could adversely affect our reputation, prospects, business, financial condition and results of operations.

In addition, for customers that have purchased maintenance services from us, unforeseen issues may arise that may require maintenance beyond what we currently expect. We have no experience providing maintenance on a large scale and since our existing and potential customers are geographically dispersed, if any recurring or significant one-off maintenance is required, this could increase our costs.

***Our relationship with related parties, SBE, an affiliate of SoftBank Group Corp., and Honeywell, is subject to various risks which could adversely affect our business and future prospects. There are no assurances that we will be able to commercialize iron flow batteries from our joint development relationship with such parties. In addition, neither SBE nor Honeywell has any obligation to order any energy storage products from us under the agreements with such business partners, including at any price point.***

In April 2021, we signed a framework agreement with SBE to supply our energy storage products to SBE in support of its market activities. Under this agreement, we have made various commitments to meet SBE's potential need for our energy storage products and are obligated to reserve a certain percentage of our manufacturing capacity to meet SBE's future needs, subject to periodic reviews of its firm and anticipated orders, which may negate those capacity reservations if no firm demand is realized. However, SBE is under no obligation to place any firm orders with us at any price point, and any future orders may be subject to future pricing or other commercial or technical negotiations, which we may not be able to satisfy, resulting in a diminished potential value of this relationship to us. To date, no orders have been placed under the framework agreement.

On September 21, 2023, we signed a Supply Agreement with UOP LLC ("UOP"), an affiliate of Honeywell International Inc. ("Honeywell"), pursuant to which UOP may purchase equipment supplied by us, and we agreed to issue additional warrants to purchase common stock to UOP, consisting of (i) an initial Performance Warrant to issue up to 775,760 shares of common stock, issued on September 21, 2023 in exchange for a prepayment of equipment by UOP in the amount of \$15 million, and (ii) additional Performance Warrants (not to exceed an aggregate value of \$15 million based on target purchase amounts of up to \$300 million by 2030) to be issued on an annual basis for the five-year period beginning in 2026, based on UOP's purchase of additional equipment after execution of the Supply Agreement. On September 21, 2023, we and UOP also entered into a Joint Development Agreement, pursuant to which we and UOP have agreed to work together to collaborate and engage in certain research and development activities generally related to flow battery technology, and a Patent License Agreement, pursuant to which UOP will license certain patent rights to us. However, Honeywell is under no obligation to place any additional firm orders with us at any price point, and any future orders may be subject to future pricing or other commercial or technical negotiations, which we may not be able to satisfy, resulting in a diminished potential value of this relationship to us. In addition, we and Honeywell may not be able to agree on activities and endeavors to pursue under the Joint Development Agreement, activities under the Joint Development may not be successful, or the Patent License Agreement may have limited value to us.

SBE, Honeywell, and any other business partners in the future, may have economic, business or legal interests or goals that are inconsistent with our goals. Any disagreements with our current or other future business partners may impede our ability to maximize the benefits of these partnerships and slow the commercialization of our iron-flow batteries. Future commercial or strategic counterparties may require us, among other things, to pay certain costs or to make certain capital investments or to seek their consent to take certain actions. In addition, if our business partners are unable or unwilling to meet sourcing, development, or other obligations under our partnership arrangements, we may be required to fulfill those obligations alone. These factors could result in a material adverse effect on our business and financial results.

***The execution of our strategy to expand into new markets through strategic partnerships, joint ventures and licensing arrangements is in a very early stage and is also subject to various risks which could adversely affect our business and future prospects.***

We may enter into strategic partnerships, joint ventures and licensing arrangements to expand our business and enter into new markets. However, there is no assurance that we will be able to consummate any such arrangements as contemplated to commercialize our energy storage products. There is also no assurance that we will be able to realize the benefits of any such arrangements even if we do enter into such strategic partnerships, joint ventures and licensing arrangements and there

is always a risk that either party may be unable to comply with its delivery, payment, or other obligations under any such arrangement. The occurrence of any such risks may result in diminished potential value of these types of relationships to us. For example, we entered into a strategic partnership with Energy Storage Industries Asia Pacific (“ESI”) in August 2022 and into a framework agreement with Sacramento Municipal Utility District (“SMUD”) in September 2022. Under the terms of our agreement with ESI, we commenced delivery of Energy Warehouse systems to ESI in 2022 and early 2023 and expect to continue deliveries in 2024 to fulfill their orders. ESI is expected to construct a manufacturing facility in Queensland, Australia, equipped to conduct final assembly of our systems from 2025 onward; however, ESI may be delayed or unable to complete construction of the manufacturing facility or may cancel or decline to place future orders of our product, whether due to funding constraints or other reasons, which may require ESS to find alternative arrangements to addressing the market, such as supplying products directly or identifying alternative in-country facilities. We made the first delivery of our systems to SMUD during the second quarter of 2023, but SMUD is under no obligation to place additional orders with us.

Any future strategic partnerships, joint ventures or licensing arrangements may require us, among other things, to pay certain costs, make certain capital investments or to seek the partner’s consent to take certain actions. In addition, if a partner is unable or unwilling to meet its economic or other obligations under the respective arrangements, we may be required to either fulfill those obligations alone to ensure the ongoing success of, or to dissolve and liquidate, the partnership, joint venture or licensing arrangement. These factors could result in a material adverse effect on our business, prospects and financial results.

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

***Our expectations for future operating and financial results and market growth rely in large part upon assumptions and analyses developed by us. If these assumptions or analyses prove to be incorrect, our actual operating results may be materially different from our anticipated results.***

We operate in rapidly changing and competitive markets and our expectations for future performance are subject to the risks and assumptions made by management with respect to our industry. Operating results are difficult to predict because they generally depend on our assessment of the timing of adoption of our technology and energy storage products, which is uncertain. Expectations for future performance are also subject to significant economic, competitive, industry and other uncertainties and contingencies, all of which are difficult or impossible to predict and many of which are beyond our control, and subsequent developments may affect such expectations. As discussed elsewhere in this Annual Report on Form 10-K, any future sales and related future cash flows may not be realized in full or at all. Furthermore, our planned expansion into new revenue streams such as franchising opportunities for our energy storage products may never be realized or achieve commercial success, whether because of lack of market adoption of our energy storage products, competition or otherwise. Important factors that may affect the actual results and cause our operating and financial results and market growth expectations to not be achieved include risks and uncertainties relating to our business, industry performance, the regulatory environment, general business and economic conditions and other factors described under the section entitled “*Cautionary Note Regarding Forward-Looking Statements*” in this Annual Report on Form 10-K.

In addition, expectations for future performance also reflect assumptions that are subject to change and do not reflect revised prospects for our business, changes in general business or economic conditions or any other transaction or event that has occurred or that may occur and that was not previously anticipated. In addition, long-term expectations by their nature become less predictive with each successive year. There can be no assurance that our future financial condition or results of operations will be consistent with our expectations or with the expectations of investors or securities research analysts, which may cause the market price of our common stock to decline. If actual results differ materially from our expectations, we may be required to make adjustments in our business operations that may have a material adverse effect on our financial condition and results of operations.

***We have a history of losses and have to deliver significant business growth to achieve sustained, long-term profitability and long-term commercial success.***

We have had net losses on a U.S. GAAP basis in each fiscal year since our inception. For the years ended December 31, 2023 and 2022, we had \$77.6 million and \$78.0 million in net losses, respectively, and as of December 31, 2023 we had \$696.2 million in accumulated deficit. In order to achieve profitability as well as long-term commercial success, we must continue to execute our plan to expand our business, which will require us to deliver on our existing global sales pipeline in a timely manner, increase our production capacity, reduce our manufacturing and warranty costs, competitively price and grow demand for our products, and seize new market opportunities by leveraging our proprietary technology and our manufacturing processes for novel solutions and new products. Failure to do one or more of these things could prevent us from achieving sustained, long-term profitability.

We expect, based on our sales pipeline, to grow revenues. However, our revenue may not grow as expected for a number of reasons, many of which are outside of our control, including a decline in global demand for iron flow battery storage products, increased competition, or our failure to continue to capitalize on growth opportunities. If we are not able to generate and grow revenue and raise the capital necessary to support our operations, we may be unable to continue as a going concern.

***There is no assurance nonbinding pre-orders or framework agreements will be converted into binding orders or that orders will be completed.***

Our business model is focused on building relationships with large customers. To date, we have engaged in limited marketing activities and we have only a limited number of contracts with customers. Certain of our energy storage products are still subject to further design evolution and until the time that the design and development of our energy storage products stabilizes, and until we are able to scale up our marketing function to support sales, there will be uncertainty as to customer demand for our energy storage products. Demand for our energy storage products by independent energy developers may depend upon a bankability determination by institutional sources of project finance capital and that determination may be difficult to obtain. The potentially long wait from the time an order is made until the time our energy storage products are delivered, and any delays beyond expected wait times, could also impact user decisions on whether to ultimately make a purchase. There is no assurance that nonbinding pre-orders or framework agreements will be converted into binding orders or sales. Even if we are able to obtain binding orders, customers may limit their volume of purchases initially as they assess our products and whether to make a broader transition to our energy storage products. This may be a long process and will depend on the safety, reliability, efficiency and quality of our energy storage products, as well as the support and service that we offer. It will also depend on factors outside of our control, such as general market conditions and site capacity, that could impact customer buying decisions. As a result, there is significant uncertainty regarding demand for our energy storage products and the pace and levels of growth that we will be able to achieve.

In addition, some of the Energy Warehouse units we have shipped to date have not met the specifications set forth in the purchase contracts for such units, resulting in additional installation time and costs in order to receive customer acceptance of such units. If we are unable to meet contractual performance specifications of our units, customers may bring claims against us or choose to cancel or postpone orders, which would adversely affect our business, financial condition and results of operations.

***Our warranty insurance provided by Munich Re is important to many potential customers. Should we be unable to maintain our relationship with Munich Re and be unable to find a similar replacement, demand for our products may suffer.***

Our business is substantially dependent on our relationship with Munich Re. Our warranty insurance provided by Munich Re is important to many potential customers, and such warranty insurance is a bespoke product not widely offered by multiple insurers. There is no assurance that we will be able to maintain our relationship with Munich Re. If Munich Re terminates or significantly alters its relationship with us in a manner that is adverse to the Company, our business would be materially adversely affected. Similarly, if we are unable to maintain our relationship with Munich Re, or if our arrangement with Munich Re is modified so that the economic terms become less favorable to us, we may be unable to find a similar replacement warranty insurance and our business would be materially adversely affected.

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

We believe that, compared to lithium-ion batteries, our energy storage solutions offer significant benefits, including using widely available, low-cost materials with no rare mineral components, being substantially recyclable at end-of-life, having an approximately 25-year product design life, and having a wide thermal operating range that reduces the need for fire suppression and heating (except where otherwise required by applicable law), ventilation and air conditioning equipment, which would otherwise be required for use with lithium-ion batteries.

However, if our manufacturing costs increase, or if our or our customers' expectations regarding the operation, performance, maintenance and disposal of our energy storage products are not realized, then we could have difficulty marketing our energy storage products as a superior alternative to already-established technologies. This would also impact the market reputation and adoptability of our energy storage products.

We also currently market our energy storage products as having superior design cyclability to other energy storage solutions on the market. However, in general, flow batteries have suffered challenges running multiple cycles over their lifetime without experiencing degradation in storage capacity and, in particular, earlier iterations of our iron flow batteries, specifically our first-generation units, have failed at cycling reliably in the past. All of our first-generation units (except for one) have been returned to us and so the continuing risk of product failure on our first-generation units is limited. However, there is no assurance that our second-generation units will not fail or have issues cycling in the future if our technology

does not operate as expected. If our technology is inadequate or our energy storage solutions fail to operate as expected or designed, our warranty costs may be significant and current and potential customers may choose to cancel or postpone orders or seek alternative solutions for their energy storage needs, which would adversely affect our business, financial condition and results of operations.

In addition, developments of existing and new technologies could improve the cost and usability profile of such alternative technologies, reducing any relative benefits currently offered by our energy storage products, which would negatively impact the likelihood of our energy storage products gaining market acceptance.

***Our plans are dependent on the development of market acceptance of our products.***

Our plans are dependent upon market acceptance of our products. Iron flow batteries represent an emerging market, and we cannot be sure that potential customers will accept iron flow batteries as a replacement for traditional power sources. In particular, traditional lithium-ion batteries, which are already produced on a large global scale and have widespread market acceptance, offer higher power density and round-trip efficiency than our iron flow batteries. If customers were to place greater value on power density and round-trip efficiency over what we believe to be the numerous other advantages of our technology, then we could have difficulty positioning our iron flow batteries as a viable alternative to traditional lithium-ion batteries and our business would suffer.

As is typical in a rapidly evolving industry, demand and market acceptance for recently introduced products and services are subject to a high level of uncertainty and risk. It is difficult to predict with certainty the size of the energy storage market and its growth rate. The development of a market for our products may be affected by many factors that are out of our control, including:

- the cost competitiveness of our products including availability and output expectations and total cost of ownership;
- the future costs associated with renewable energies;
- perceived complexity and novelty of our technology and customer reluctance to try a new product;
- the market for energy storage solutions and government policies that affect those markets;
- government incentives, mandates or other programs favoring zero carbon energy sources;
- local permitting and environmental requirements;
- customer preference for lithium-ion based technologies, including but not limited to the power density offered by lithium-ion batteries; and
- the emergence of newer, more competitive technologies and products.

If a sufficient market fails to develop or develops more slowly than we anticipate, we may be unable to recover the losses we will have incurred in the development of our products, and we may never achieve profitability.

***Our future growth and success depend on our ability to sell effectively to large customers.***

Many of our potential customers are electric utilities and C&I businesses that tend to be large enterprises. Therefore, our future success will depend on our ability to effectively sell and deliver our products to such large customers. Sales to these end-customers involve risks that may not be present (or that are present to a lesser extent) with sales to smaller customers. These risks include, but are not limited to, (i) increased purchasing power and leverage held by large customers in negotiating contractual arrangements with us and (ii) longer sales cycles and the associated risk that substantial time and resources may be spent on a potential end customer that elects not to purchase our solutions.

Large organizations often undertake a significant evaluation process that results in a lengthy sales cycle. In addition, product purchases by large organizations are frequently subject to budget constraints, multiple approvals and unanticipated administrative, processing and other delays. Finally, large organizations typically have longer implementation cycles, require greater product functionality and scalability, require a broader range of services, demand that vendors take on a larger share of risks, and expect greater payment flexibility. All of these factors can add further risk to business conducted with these potential customers.

***We operate in highly competitive energy industries and there is increasing competition. Many of our competitors and potential competitors have substantially greater financial, marketing, personnel and other resources than we do and if we do not compete effectively, our competitive positioning and our operating results will be harmed.***

The energy storage markets continue to evolve and are highly competitive. Many of our current and potential competitors are large entities at a more advanced stage in development and commercialization than we are and, in some cases, have

substantially greater financial, marketing, personnel and other resources, to increase their market share. Our key competitors include different energy storage technologies such as lithium-ion batteries, lithium metal batteries, vanadium or zinc bromine batteries, sodium sulfur batteries, compressed air, hydrogen, fuel cell and pumped-storage hydropower. If our competitors continue to penetrate the energy storage market, our prospects for gaining market share will be diminished.

We expect competition in energy storage technology to intensify due to a regulatory push for lower-carbon energy sources, including intermittent sources such as wind and solar, continuing globalization, and consolidation in the energy industry. Developments in alternative technologies or improvements in energy storage technology made by competitors may materially adversely affect the sales, pricing and gross margins of our products.

Some of our current and potential competitors have longer operating histories and greater financial, technical, marketing and other resources than we do. These factors may allow our competitors to respond more quickly or efficiently than we can to new or emerging technologies. These competitors may engage in more extensive research and development efforts, undertake more far-reaching marketing campaigns and adopt more aggressive pricing policies, which may allow them to more effectively compete for new energy storage projects and customers.

***Our project awards and sales pipeline may not convert to contracts, which may have a material adverse effect on our revenue and cash flows.***

We expect a significant portion of the business that we will seek in the foreseeable future will be awarded through competitive bidding against other energy storage technologies and other forms of power generation. The competitive bidding process involves substantial costs and a number of risks, including the significant cost and managerial time to prepare bids and proposals for contracts that may not be awarded to us and our failure to accurately estimate the resources and costs that will be required to fulfill any contract we win. In addition, following a contract award, we may encounter significant expense, delay or contract modifications or award revocation as a result of our competitors protesting or challenging contracts awarded to us in competitive bidding. Our failure to compete effectively in this procurement environment could adversely affect our revenue and/or profitability.

Some of the project awards we receive and orders we accept from customers require certain conditions or contingencies (such as permitting, interconnection, financing or regulatory approval) to be satisfied, some of which are outside of our control. Certain awards are cancellable or revocable at any time prior to contract execution. The time periods from receipt of an award to execution of a contract, or receipt of a contract to installation may vary widely and are determined by a number of factors, including the terms of the award, governmental policies or regulations that go into effect after the award, the terms of the customer contract and the customer's site requirements. These same or similar conditions and contingencies may be required by financiers in order to draw on financing to complete a project. If these conditions or contingencies are not satisfied, or changes in laws affecting project awards occur, or awards are revoked or cancelled, project awards may not convert to contracts, and installations may be delayed or canceled. This could have an adverse impact on our revenue and cash flow and our ability to complete construction of a project.

We also bear the risk of non-payment or late payments by our customers. In the near term, we will depend on a relatively small number of customers for a significant portion of our revenue. If these customers fail to pay us, cash flow from operations are impacted and our operating results and financial condition could be harmed. If a contract is cancelled due to the customer's inability to pay, the redeployment of our product(s) could be expensive, and it may take time to find a replacement customer to whom our product(s) could be redeployed in a cost-effective manner.

***Our contracted sales are subject to the risk of termination by the contracting party.***

The majority of our commercial contracts contain provisions which allow the customer to terminate an agreement if certain conditions are not met, including the failure to meet performance specifications or for other defaults, or for extended force majeure. Our customers are also subject to force majeure events and may issue such notices to us. In addition, certain of our contracts can be terminated by the customer simply for convenience. Our older contracts in particular may contain terms or performance obligations with which we are not able to comply, in addition to reflecting site and solution needs that are not optimal for our technology. We have experienced in the past, and may experience in the future, order cancellations or contract terminations, which could have an adverse impact on our revenues, longer term potential and market reputation, which would have an even greater impact on our ability to achieve future sales.

***We may not be able to accurately estimate the future supply and demand for our products and services, which could result in a variety of inefficiencies in our business and hinder our ability to generate revenue. If we fail to accurately predict our manufacturing requirements, we could incur additional costs or experience delays.***

We are a company with a limited operating history. Having only recently transitioned from research and development activities to commencing commercial production and sales, it is difficult to predict our future revenues and appropriately budget for our expenses, and we may have limited insight into trends that may emerge and affect our business. We



anticipate being required to provide expectations of our demand to our current and future suppliers prior to the scheduled delivery of products to potential customers. Currently, there is limited historical basis for making judgments on the demand for our products and services or our ability to develop, manufacture, and deliver iron flow batteries, or our profitability in the future. If we overestimate our requirements, our suppliers may have excess inventory, which indirectly would increase our costs. If we underestimate our manufacturing requirements, our suppliers may have inadequate inventory or capacity, which could interrupt manufacturing of our products and result in delays in shipments and revenues. In addition, 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 batteries to our potential customers could be delayed, which would harm our business, financial condition and results of operations.

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

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

***We have signed product sales contracts and have entered into service agreements with customers. If we do not meet the obligations under these agreements or if our estimates of the projected useful life of our energy storage products are inaccurate, our business and financial results could be adversely affected.***

We have entered into service agreements with certain customers for our energy storage products with terms of up to 25 years. Under the provisions of these contracts, we will provide services to maintain, monitor, and repair our energy storage products to meet minimum operating levels. While we have conducted tests to determine the overall life of our energy storage products, we have not run certain of our energy storage products over their projected useful life or in all potential conditions prior to large scale commercialization. As a result, we cannot be sure that these energy storage products will last to their expected useful life or perform as anticipated in all conditions, which could result in warranty claims, performance penalties, maintenance, on-going servicing and battery module replacement costs and/or a negative perception of our energy storage products.

Further, the occurrence of chronic defects or other chronic performance problems with respect to our deployed energy storage products could result in loss of customers, legal claims, including warranty and service agreement claims, or diversion of our resources, including through increased service and warranty expenses or financial concessions, and increased insurance costs. The costs incurred in correcting any material defects in our deployed energy storage products may be substantial and could adversely affect our business, financial condition, and results of operations.

Our customers also depend on our support organization to resolve performance issues relating to our energy storage products. Any failure to maintain high-quality support services, or a market perception that we do not maintain high-quality and highly responsive customer support, could adversely affect our reputation, our ability to sell our energy storage products to existing and prospective customers, and our business, financial condition and results of operations.

***Our ability to proceed with projects under development and complete construction of projects on schedule and within budget are subject to contractual, technology, operating and commodity risks as well as market conditions that may affect our operating results.***

Our ability to proceed with projects under development and complete construction of projects on schedule and within budget may be adversely affected by escalating costs and lead times for materials and components, tariffs, labor and regulatory compliance, inability to obtain necessary permits, interconnections or other approvals on acceptable terms or on schedule and by other factors. If any development project or construction is not completed, is delayed or is subject to cost

overruns, we could become obligated to make delay or termination payments or become obligated for other damages under contracts, experience diminished returns or write off all or a portion of our capitalized costs in the project. Each of these events could have an adverse effect on our business, financial condition and results of operations. We currently face and will continue to face significant competition, including from products using other energy sources that may be lower priced or have preferred environmental characteristics.

We compete on the basis of our energy storage products' reliability, efficiency, environmental sustainability and cost. Technological advances in alternative energy products, improvements in the electric grid or other sources of power generation, or new battery technologies or market entrants may negatively affect the development or sale of some or all of our energy storage products or make our energy storage products less economically attractive, non-competitive or obsolete prior to or after commercialization. Significant decreases in the price of alternative technologies, or significant increases in the price of the materials we use to build our energy storage products could have a material adverse effect on our business because other generation sources could be more economically attractive to consumers than our energy storage products.

***We invest significantly in research and development, and to the extent our research and development investments are not directed efficiently or do not result in material enhancements to our products and technologies, our business and results of operations would be harmed.***

A key element of our strategy is to invest significantly in our research and development efforts to enhance the features, functionality, performance and ease of use of our products and technologies to address additional applications that will broaden the appeal of our products and technologies and facilitate their broad use. Research and development projects can be technically challenging and expensive. As a result of the nature of research and development cycles, there will be delays between the time we incur expenses associated with research and development activities and the time we are able to offer compelling enhancements to our products and technologies and generate revenue, if any, from those activities. If we expend a significant amount of resources on research and development efforts that do not lead to the successful introduction of new products, functionality or improvements that are competitive in our current or future markets, our business and results of operations will suffer.

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

We depend on the continued services of our senior management team and other key personnel, each of whom would be difficult to replace. The loss of any such personnel, or the inability to effectively transition to their successors, could have a material adverse effect on our business and our ability to implement our business strategy. All of our employees, including our senior management, are free to terminate their employment relationships with us at any time. Any changes to our senior management team, including hires or departures, could cause disruption to our business and have a negative impact on operating performance, while these operational areas are in transition.

Additionally, our ability to attract qualified personnel, including senior management and key technical personnel, is critical to the execution of our growth strategy. Competition in the labor market, including for qualified senior management personnel and highly skilled individuals with technical expertise, is intense. We face and are likely to continue to face challenges identifying, hiring, and retaining qualified personnel in all areas of our business, and we can provide no assurance that we will find suitable successors as transitions occur. In addition, integrating new employees into our team, and key personnel in particular, could prove disruptive to our operations, require substantial resources and management attention, and ultimately prove unsuccessful. Our failure to attract and retain qualified personnel in all areas of our business, including senior management and other key technical personnel, could limit or delay our strategic efforts, which could have a material adverse effect on our business, financial condition and results of operations.

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

Our products take many months to manufacture and prepare for delivery and any revenue in future periods may fluctuate based on underlying customer arrangements. Further, we expect our arrangements may have multiple deliverables and performance obligations and the amount and timing of recognizing revenue for those different performance obligations may vary which could cause our revenue to fluctuate. Our revenues also depend on a number of other factors, some of which are beyond our control, including the impact of supply chain issues (see also “—Risks Related to Our Technology, Products and Manufacturing—We depend on third-party suppliers for the development and supply of key raw materials and components for our energy storage products. We also depend on vendors for the shipping of our energy storage products. Quality issues or delays in our supply or delivery chain and shipments could harm our ability to manufacture, supply and commercialize our energy storage products.”). As a result, our quarterly results of operations are difficult to predict and may fluctuate significantly in the future.



***We currently are and in the foreseeable future will be significantly dependent on a limited number of products.***

We currently are and in the foreseeable future will continue to be significantly dependent on revenue generated from our Energy Warehouses and Energy Centers and the servicing thereof. Given that for the foreseeable future our business will depend on a limited number of products to the extent our products are not well-received by the market, our sales volume, business, financial condition and results of operations would be materially and adversely affected.

***Our cost reduction strategy may not succeed or may be significantly delayed, which may result in our inability to achieve profitability.***

Our ability to successfully implement our overall business strategy relies on our ability to reduce development and manufacturing costs in the future. Our cost reduction strategy is based on the assumption that increases in production will result in economies of scale. In addition, our cost reduction strategy relies on advancements in our manufacturing process, global competitive sourcing, engineering design, reducing the cost of capital and technology improvements (including stack life and projected power output). Its successful implementation also depends on a number of factors, some of which are beyond our control, including the impact of inflation and the timely delivery of key supplies at reasonable prices. For example, our current supply imbalance may result in additional costs that exceed our current expectations. There is no assurance that our cost reduction strategy will be successful and failure to achieve our cost reduction targets could have a material adverse effect on our business, financial condition and results of operations.

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

We have entered into contracts and other agreements to sell our products in a number of different geographic markets, including the United States, Europe (European Union (“EU”) and non-EU), and Australia. We have in the past, and may in the future, evaluate opportunities to expand into new geographic markets and introduce new product offerings and services that are a natural extension of our existing business. We also may from time to time engage in acquisitions of businesses or product lines with the potential to strengthen our market position, enable us to enter attractive markets, expand our technological capabilities, or provide synergy opportunities.

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

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

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

***Our business and operations may be adversely affected by outbreaks of contagious diseases and other adverse public health developments.***

Any outbreaks of contagious diseases and other adverse public health developments in countries where we and our suppliers operate, could have a material and adverse effect on our business, financial condition and results of operations. The worldwide COVID-19 pandemic resulted in, and any future pandemic or adverse public health development may again result in, disruptions to or restrictions on our workforce and facilities or those of our customers, suppliers, or other vendors in our supply chain.

The extent to which such a pandemic would impact our business and our financial results would depend on a variety of factors, which are highly uncertain and cannot be predicted. Such factors may include the geographic spread of the pandemic, the severity of the disease, the duration of the outbreak, the speed at which vaccines or other effective treatment methods are developed, the actions that may be taken by various governmental authorities in response to the outbreak, such

as mandatory quarantine or “shelter-in-place” orders and business closures, and the impact on the U.S. or global economy. These and other factors could have a material adverse effect on our business, results of operations and financial position.

***We have identified material weaknesses in our internal control over financial reporting in the past, and may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. If we fail to remediate any material weaknesses or if we otherwise fail to establish and maintain effective control over financial reporting, our ability to accurately and timely report our financial results could be adversely affected.***

As a public company, we are required to comply with the SEC’s rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), which requires management to certify financial and other information in our quarterly and annual reports and to provide an annual management report on the effectiveness of controls over financial reporting (see “Part II—Item 9A. Controls and Procedures”). When evaluating our internal control over financial reporting, we may identify material weaknesses that we may not be able to remediate in time to meet the applicable deadline for compliance with the requirements of Section 404. If we are unable to identify and remediate material weaknesses, it could result in material misstatements to our annual or interim financial statements that might not be prevented or detected on a timely basis or result in delayed filings of required periodic reports. If we are unable to assert that our internal control over financial reporting is effective, investors may lose confidence in the accuracy and completeness of our financial reports, the market price of our common stock could be adversely affected and we could become subject to litigation or investigations by the NYSE, the SEC, or other regulatory authorities, which could require additional financial and management resources.

We have in the past identified and remediated material weaknesses in our internal control over financial reporting. Although we review and evaluate our internal control systems on a regular basis, we cannot provide any assurances that the measures that we have taken will be sufficient to prevent future material weaknesses and control deficiencies from occurring. We also cannot assure you that we have identified all of our existing material weaknesses. If further remediation measures are required, they may be time consuming, costly, and might place significant demands on our financial and operational resources.

***As deployment of our energy storage products increases, we will undertake corresponding warranty obligations and our warranty obligations may be significant. If our energy storage products do not operate successfully in the field or if we are unable to manage our warranty costs, our business and ability to generate revenue and achieve profitability could fail.***

We have experienced quality issues in the field and our products may contain undetected errors or defects, especially when first introduced or when new generations of products are released. Errors, defects, or poor performance can arise due to design flaws, defects in raw materials or components or manufacturing difficulties, which can affect the quality of our products. Any actual or perceived errors, defects, or poor performance in our products could result in the replacement or recall of our products, shipment delays, rejection of our products, damage to our reputation, lost revenue, diversion of our engineering personnel from our product development efforts, and increases in customer service and support costs, all of which could have a material adverse effect on our business, financial condition, and results of operations.

Furthermore, defective components may give rise to warranty, indemnity, or product liability claims against us that exceed any revenue or profit we receive from the affected products. Our product generally comes with an initial one-year manufacturing warranty. We also offer customers an extended performance warranty at an additional cost to the customer. For extended warranties, this may require system augmentation or battery replacements, which would be provided at no additional charge beyond the price of the extended warranty paid by such customer.

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

***We may offer product warranties for our energy storage products. Our products are complex and could contain defects and may not operate at expected performance levels, which could impact sales and market adoption of our energy storage products, affect our operating results or result in claims against us.***

We develop complex and evolving energy storage products and we continue to advance the capabilities of our battery technology, product design and associated manufacturing processes. Our energy storage products are designed primarily to

serve the behind-the-meter and front-of-the-meter markets. Our core technology components are incorporated into energy storage products that serve both types of customers.

We currently provide an insurance-backed warranty on our energy storage products. We also currently provide certain warranties with respect to the energy storage systems we sell, including on their installation, operations and maintenance, and for components not manufactured by us, we generally pass through to our customers the applicable manufacturers' warranties. As part of our energy storage system contracts, we may provide the customer with performance guarantees that warrant that the underlying system will meet or exceed the minimum energy storage requirements specified in the contract. Under these performance guarantees, we bear the risk of electricity production or other performance shortfalls, even if they result from failures in components from third-party manufacturers. These risks are exacerbated in the event such manufacturers cease operations or fail to honor their warranties.

We are still gaining field operating experience with respect to our energy storage products, and despite experience gained from trials, pilot testing, and initial deployments performed by us, our partners and our suppliers, issues may continue to be found in existing or new energy storage products. The occurrence of such issues or other defects could also cause us to incur significant warranty, support and repair costs in excess of our estimates, could divert the attention of our engineering personnel from our product development efforts, and could harm our relationships with our customers. Our customers could also seek and obtain damages from us for their losses.

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

We may become subject to product liability claims, even those without merit due to product tampering or operation and maintenance in violation of operating manuals, which could harm our business, financial condition and results of operations. We face inherent risk of exposure to claims in the event our batteries do not perform as expected or malfunction resulting in personal injury or death. Our risks in this area are particularly pronounced given our S200 batteries have not yet been commercially tested at scale or mass produced. Although we seek to limit our liability, a product liability claim brought against us, even if unsuccessful, would likely be time consuming, costly to defend, and may hurt our reputation in the marketplace. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product liability claim could generate substantial negative publicity about our batteries and business and inhibit or prevent commercialization of other future battery candidates, which would have a material adverse effect on our brand, business, prospects and operating results. Any insurance coverage might not be sufficient to cover all potential product liability claims. Any lawsuit seeking significant monetary damages either in excess of our coverage, or outside of our coverage, may have a material adverse effect on our reputation, business and financial condition. We may not be able to secure additional product liability insurance coverage on commercially acceptable terms or at reasonable costs when needed, particularly if we do face liability for our products and are forced to make a claim under our policy.

In addition, as we grow our manufacturing volume, the chance of manufacturing defects could increase. We may be unable to correct manufacturing defects or other failures of our battery modules and the products in which they are incorporated in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance and our business reputation.

***Third parties might attempt to gain unauthorized access to our network or seek to compromise our products and services.***

Our business is dependent on the security and efficacy of our networks and computer and data management systems. For example, our Energy Warehouses are connected to and controlled and monitored by our centralized remote monitoring service, and we rely on our internal computer networks for many of the systems we use to operate our business generally. From time to time, we may face attempts by others to gain unauthorized access through the Internet or otherwise or to introduce malicious software to our IT systems. We or our products may be a target of computer hackers, organizations or malicious attackers who attempt to:

- gain access to our network or Energy Warehouses or networks of our customers;
- steal proprietary information related to our business, products, employees, and customers; or
- interrupt our systems or those of our customers.

From time to time, we encounter attempts at gaining unauthorized access to our network and we routinely run security checks. While we seek to detect and investigate unauthorized attempts and attacks against our network and products of which we become aware, and to prevent their recurrence where practicable through changes to our internal processes and tools and/or changes to our products, we remain potentially vulnerable to additional known or unknown threats. In addition to intentional security breaches, the integrity and confidentiality of company and customer data and our intellectual property may be compromised as a result of human error, product defects, or technological failures. Different geographic

markets may have different regulations regarding data protection, raising potential compliance risks. We utilize third-party contractors to perform certain functions for us, and they face security risks similar to us. Further, retaliatory acts by Russia in response to Western sanctions could include cyber attacks that could disrupt the economy more generally or that could also impact our operations directly or indirectly.

Any failure or perceived failure by us or our service providers to prevent information security breaches or other incidents or system disruptions, or any compromise of security that results in or is perceived or reported to result in unauthorized access to, or loss, theft, alteration, release or transfer of, our information, or any personal information, confidential information, or other data could result in loss or theft of proprietary or sensitive data and intellectual property, could harm our reputation and competitive position and could expose us to legal claims, regulatory investigations and proceedings, and fines, penalties, and other liability. Any such actual or perceived security breach, incident or system disruption could also divert the efforts of our personnel, and could require us to incur significant costs and operational consequences in connection with investigating, remediating, eliminating and putting in place additional tools, devices, policies, and other measures designed to prevent actual or perceived security breaches and other incidents and system disruptions, and in, for example, rebuilding internal systems, reduced inventory value, providing modifications to our products and services, defending against claims and litigation, responding to regulatory inquiries or actions, paying damages, or taking other remedial steps with respect to third parties. Moreover, we could be required or otherwise find it appropriate to expend significant capital and other resources to respond to, notify third parties of, and otherwise address the incident or breach and its root cause, and to notify individuals, regulatory authorities and others of security breaches involving certain types of data.

Further, we cannot assure that any limitations of liability provisions in our current or future contracts that may be applicable would be enforceable or adequate or would otherwise protect us from any liabilities or damages with respect to any particular claim relating to a security breach or other security-related matter. We also cannot be sure that our existing insurance coverage will continue to be available on acceptable terms or will be available in sufficient amounts to cover claims related to a security breach or incident, or that the insurer will not deny coverage as to any future claim. The successful assertion of claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, including our financial condition, operating results, and reputation.

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

The availability and effectiveness of our energy storage products and our ability to conduct our business and operations, depend on the continued operation of IT and communications systems, some of which we have yet to develop or otherwise obtain the ability to use. Systems used in our business 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. We expect to face significant challenges with respect to information security and maintaining the security and integrity of our systems and other systems used in our business, as well as with respect to the data stored on or processed by these systems. We also anticipate storing and otherwise processing confidential business information of ourselves and third parties, as well as personal information and other data. Advances in technology, an increased level of sophistication and expertise of hackers, and new discoveries in the field of cryptography can result in a compromise or breach of the systems used in our business or of security measures used in our business to protect confidential information, personal information, and other data. We may be a target for attacks by state-sponsored actors and others designed to disrupt our operations or to attempt to gain access to our systems or to data that is processed or maintained in our business.

We use outsourced service providers to help provide certain services. For example, we utilize email and collaboration tools, and other third-party services and service providers that store or otherwise process information, including personal information and confidential business information, on our behalf. Any such outsourced service providers face similar security and system disruption risks as us. We are at risk for interruptions, outages and breaches of our and our outsourced vendors' and service providers' operational systems and security systems, our products' and services' integrated software and technology, and customer data that we or our third-party service providers process. These may be caused by, among other causes, physical theft, viruses or other malicious code, denial or degradation of service attacks, ransomware, social engineering schemes, and insider theft or misuse. While we take steps to review security protections of services provided to us, there can be no guarantee that a failure or breach of such systems will not occur or be perceived to occur. If such failures were to occur, we may not be able to sufficiently recover to avoid the loss of data or any adverse impact on our operations that are dependent on such IT systems. This could result in lost sales as we may not be able to meet the demands for our product, and other harm to our business and results of operations. Further, some of the systems used in our business will not be fully redundant, and our disaster recovery planning cannot account for all eventualities. Any security breaches or incidents or other damage to or disruptions to any data centers or other systems used in our business could result in

lengthy interruptions in our service and may adversely affect our business, prospects, financial condition and operating results.

Furthermore, because our IT systems are essential for the exchange of information both internally and in communicating with third parties, including our suppliers and manufacturers, security breaches or incidents could lead to unauthorized acquisition or unauthorized release of sensitive, confidential or personal data or information, improper use of our systems, or unauthorized access, use, disclosure, modification or destruction of information or defective products. Our IT systems also help us produce financial information. We have not, to date, been materially impacted by a cybersecurity incident or cybersecurity risk. However, any disruption, security breach, or other incident could impact our ability to produce timely and accurate financial information needed for compliance, audit, and reporting purposes. If any such security breaches or incidents were to continue, our operations and ability to communicate both internally and with third parties may be negatively impacted.

Significant capital and other resources may be required in efforts to protect against security breaches, incidents, and system disruptions, or to alleviate problems caused by actual or suspected security breaches and other incidents and system disruptions. The resources required may increase over time as the methods used by hackers and others engaged in online criminal activities and otherwise seeking to obtain unauthorized access to systems or data, and to disrupt systems, are increasingly sophisticated and constantly evolving. In addition, laws, regulations, government guidance, and industry standards and practices in the United States and elsewhere are rapidly evolving to combat these threats. We may face increased compliance burdens regarding such requirements with regulators and customers regarding our products and services and also incur additional costs for oversight and monitoring of our supply chain. We also cannot be certain that these systems, networks, and other infrastructure or technology upon which we rely, including those of our third-party suppliers or service providers, will be effectively implemented, maintained or expanded as planned, or will be free from bugs, defects, errors, vulnerabilities, viruses, or malicious code. We may be required to expend significant resources to make corrections or to remediate issues that are identified or to find alternative sources. Any of these circumstances potentially could have a negative impact on our business, prospects, financial condition and operating results.

***We may not be able to identify or complete transactions with attractive acquisition candidates. Future acquisitions may result in significant transaction expenses and we may incur significant costs.***

We may from time to time selectively pursue on an opportunistic basis acquisitions of additional businesses that complement our existing business and footprint. The success of any such growth strategy would depend, in part, on selecting strategic acquisition candidates at attractive prices and effectively integrating their businesses into our own, including with respect to financial reporting and regulatory matters. There can be no assurance that we will be able to identify attractive acquisition candidates or complete the acquisition of any identified candidates at favorable prices and upon advantageous terms and conditions, including financing alternatives. In addition, general economic conditions or unfavorable capital and credit markets could affect the timing and extent to which we can successfully acquire new businesses, which could limit our revenues and profitability.

***Our facilities or operations could be damaged or adversely affected as a result of natural disasters and other catastrophic events.***

Our facilities or operations could be adversely affected by events outside of our control, such as natural disasters, wars, health epidemics and other calamities. We cannot assure you that any backup systems will be adequate to protect our facilities or operations from the effects of fire, floods, typhoons, earthquakes, power loss, telecommunications failures, break-ins, war, riots, terrorist attacks or similar events. Any of the foregoing events may give rise to interruptions, breakdowns, system failures, technology platform failures or internet failures, which could cause the loss or corruption of data or malfunctions of software or hardware as well as adversely affect our ability to provide services.

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

A sustained or repeated interruption in the manufacturing of our products due to labor shortage, fire, flood, war, pandemic, natural disasters, regulatory requirements, and similar unforeseen events beyond our control may interfere with our ability to manufacture our products and fulfil customers' demands in a timely manner, and make it difficult, or in certain cases, impossible for us to continue our business for a substantial period of time. Failure to manufacture our products and meet customer demands would impair our ability to generate revenues which would adversely affect our financial results. We currently do not have a formal disaster recovery or business continuity plan in place and any disaster recovery and business continuity plans that we may put in place may prove inadequate in the event of a serious disaster or similar event. As part of our risk management, we maintain insurance coverage for our business. However, we cannot assure you that the amount of insurance will be sufficient to satisfy any damages or losses we may incur. If our insurance coverage is not sufficient, we may incur substantial expenses, which could have a material adverse effect on our business.

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

Our current supply chain includes Chinese sources for various parts. Escalating trade tensions, particularly between the United States and China have led to increased tariffs and trade restrictions, including tariffs applicable to certain electronic materials and components of our products.

Tariffs and the possibility of additional tariffs in the future have created uncertainty, particularly if we are not able to second source parts from alternative vendors. There can be no guaranty that these developments will not negatively impact the price of the positive electrode used in our products. Additionally, existing or future tariffs may negatively affect key customers and suppliers, and other supply chain partners. Such outcomes could adversely affect the amount or timing of our revenues, results of operations or cash flows, and continuing uncertainty could cause sales volatility, price fluctuations or supply shortages or cause our customers to advance or delay their purchase of our products.

We are in the process of qualifying alternative sources but anticipate it will take time before alternate sources are qualified for every component. In addition, such sources may charge a higher cost than our current suppliers, which would negatively impact our results of operations. There is no guaranty that we will be able to identify alternate suppliers that meet our quality, volume and price requirements. Failure to meet these requirements could result in supply disruptions and increased costs. It is difficult to predict what further trade-related actions governments may take, which may include additional or increased tariffs and trade restrictions, and we may be unable to react to such actions quickly and effectively, which could result in supply shortages and increased costs.

***We could be subject to foreign exchange risk.***

Our international sales are typically denominated in U.S. dollars. As a result, we will not have significant direct exposure to currency valuation exchange rate fluctuations. However, because our products are sold internationally, our products may be at a price disadvantage as compared with other non-U.S. suppliers if the U.S. dollar appreciates relative to other major foreign currencies. This could lead to our having to lower prices or our struggling to compete for international customers. Consequently, currency fluctuations, in particular, a strengthening of the U.S. dollar, could adversely affect the competitiveness of our products in international markets.

***We may be required to take write-downs or write-offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and stock price, which could cause you to lose some or all of your investment.***

Unexpected risks may arise that cause us to write-down or write-off assets, restructure our operations, or incur impairment or other charges that could result in losses. Even though these charges may be non-cash items and not have an immediate impact on our liquidity, the fact that we report charges of this nature could contribute to negative market perceptions about us or our securities. In addition, charges of this nature may cause us to violate net worth or other covenants to which we may be subject. Accordingly, our stockholders could suffer a reduction in the value of their shares.

***Our results of operations could vary as a result of changes to our accounting policies or the methods, estimates and judgments we use in applying our accounting policies.***

The estimates and judgments we use in applying our accounting policies have a significant impact on our results of operations. Such methods, estimates and judgments are, by their nature, subject to substantial risks, uncertainties and assumptions, and factors may arise over time that could lead us to reevaluate our methods, estimates and judgments.

Management regularly evaluates its estimates such as for service agreements, loss accruals, warranty, performance guarantees, liquidated damages and inventory valuation allowances. Changes in those estimates and judgments could significantly affect our financial condition and results of operations. We will also adopt changes required by the Financial Accounting Standards Board and the SEC.

***The requirements of being a public company may strain our resources and divert management's attention.***

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as well as rules adopted, and to be adopted, by the SEC and the NYSE. Compliance with such public company requirements is costly, time-consuming and complex. We expect management and other personnel to continue to devote a substantial amount of time and resources to these compliance initiatives. We cannot predict or estimate the amount or timing of additional costs we may incur to respond to these requirements as they continue to evolve over time. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers.

In addition, we may not have adequate personnel with the appropriate level of knowledge, experience and training in the accounting policies, practices or internal controls over financial reporting required of public companies in the United



States. The development and implementation of the standards and controls necessary for us to achieve the level of accounting standards required of a public company in the United States may require costs greater than expected. It is possible that we will be required to further expand our employee base and hire additional employees to support our operations as a public company, which will increase our operating costs in future periods.

Moreover, our efforts to comply with new and changing laws and regulations related to public disclosure and corporate governance have resulted in increased general and administrative expenses and a diversion of management time and attention. Because these laws, regulations and standards are subject to varying interpretations, their application in practice may evolve over time as new guidance becomes available. This evolution may result in continuing uncertainty regarding compliance matters and additional costs necessitated by ongoing revisions to our disclosure and governance practices. If we fail to address and comply with these regulations and any subsequent changes, we may be subject to penalties and our business may be harmed.

***We may engage in transactions with related parties and such transactions present possible conflicts of interest that could have an adverse effect on us.***

We may enter into transactions with related parties. Related-party transactions create the possibility of conflicts of interest with regard to management, including that:

- we may enter into contracts between us, on the one hand, and related parties, on the other, that are not as a result of arm's-length transactions;
- our executive officers and directors that hold positions of responsibility with related parties may be aware of certain business opportunities that are appropriate for presentation to us as well as to such other related parties and may present such business opportunities to such other parties; and
- our executive officers and directors that hold positions of responsibility with related parties may have significant duties with, and spend significant time serving, other entities and may have conflicts of interest in allocating time.

Such conflicts could cause such executive officer or director to seek to advance his or her economic interests or the economic interests of certain related parties above ours. Further, the appearance of conflicts of interest created by related-party transactions could impair the confidence of our investors. Our audit committee and our board of directors regularly reviews these transactions. Notwithstanding this, it is possible that a conflict of interest could have a material adverse effect on our business, financial condition and results of operations.

#### **Risks Related to Regulatory, Environmental and Legal Issues**

***We may face regulatory challenges to or limitations on our ability to sell our products directly in certain markets. Expanding operations internationally could expose us to additional risks.***

While we intend to continue to sell our products across the United States both directly and through third parties, our ability to continue such sales may be affected by future limitations, either directly to the ability to sell energy storage or by broader regulation related to the sales and operation of distributed energy resources, which could have an impact on our ability to sell our products to the market.

Although we currently primarily operate in the United States, we continue to expand our business internationally. Any expansion internationally could subject our business to risks associated with international operations, including legal and regulatory requirements, political uncertainty and social, environmental and economic conditions in numerous jurisdictions, over which we have little control and which are inherently unpredictable. Our operations in such jurisdictions, particularly as a company based in the United States, create risks relating to conforming our products to regulatory and safety requirements and charging and other electric infrastructures; organizing local operating entities; establishing, staffing and managing foreign business locations; attracting local customers; navigating foreign government taxes, regulations and permit requirements; enforceability of our contractual rights; trade restrictions, foreign direct investment review regimes, customs regulations, tariffs and price or exchange controls; and preferences in foreign nations for domestically manufactured products. Such conditions may increase our costs and tax liabilities, impact our ability to sell our products and require significant management attention, and may harm our business if we are unable to manage them effectively.

In addition, there may be laws in international jurisdictions we have not yet entered or laws we are unaware of in jurisdictions we have entered that may restrict our sales or other business practices. Even for those jurisdictions we have analyzed, the laws in this area can be complex, difficult to interpret and may change over time. Continued regulatory limitations and other obstacles interfering with our ability to sell our energy storage products may harm our business, financial condition and results of operations. Additionally, any regulation that affects the sale or operations of distributed energy resources could diminish the real or perceived value of our energy storage solutions in those markets. As a result of these risks, any potential future international expansion efforts that we may undertake may not be successful.

***Our customers may be required to obtain environmental, health and safety or other certifications in order to install our products. If our customers are unable to obtain the necessary certifications, we will not be able to install our products, which would negatively impact our revenues.***

While our engineering team has worked closely with the CSA Group, Intertek, UL and Technischer Überwachungsverein certification agencies to obtain certifications of our flow battery products under all applicable safety standards, there is no guarantee that such certifications will continue to be obtained. From our prior certifications, we have expanded our flow battery product certification to the European Conformity marking in the European Union and intend to expand to other international standards such as the International Electrotechnical Commission (“IEC”). Failure to comply with IEC standards may have impact on our revenues, as compliance is required by some of our customers.

***We are subject to multiple U.S. federal, state, local and other applicable regulations. Changes in applicable law, regulations or requirements, or our material failure to comply with any of them, can increase our costs and have other negative impacts on our business.***

Applicable laws and requirements address multiple aspects of our operations, such as worker safety, consumer rights, privacy, cybersecurity, employee benefits and more, and can often have different requirements in different jurisdictions. Changes in these requirements, or any material failure to comply with them, could increase our costs, affect our reputation, result in claims, litigation, and regulatory investigations or other proceedings, which may result in fines, penalties, and other liabilities, and which may limit our business, drain management’s time and attention or otherwise, and generally impact our operations in adverse ways.

***We are subject to requirements relating to environmental and safety regulations and environmental remediation matters which could adversely affect our business, results of operation and reputation.***

We are subject to numerous federal, state and local environmental laws and regulations governing, among other things, solid and hazardous waste storage, treatment and disposal, and remediation of releases of hazardous materials. There are significant capital, operating and other costs associated with compliance with these environmental laws and regulations. Environmental laws and regulations may become more stringent in the future, which could increase costs of compliance or require us to manufacture with alternative technologies and materials.

Federal, state and local authorities also regulate a variety of matters, including, but not limited to, health, safety and permitting in addition to the environmental matters discussed above. New legislation and regulations may require us to make material changes to our operations, resulting in significant increases to the cost of production.

Our manufacturing process involves hazards such as but not limited to hazardous materials, machines with moving parts, and high voltage and/or high current electrical systems typical of large manufacturing equipment and related safety incidents. There may be environmental or safety incidents that damage machinery or product, slow or stop production, or harm employees. Consequences may include litigation, regulation, fines, increased insurance premiums, mandates to temporarily halt production, workers’ compensation claims, or other actions that impact our brand, finances, or ability to operate.

***We may be exposed to delays, limitations and risks related to the environmental permits and other operating permits required to operate our products.***

Operation of our manufacturing facilities requires land use and environmental permits and other operating permits from federal, state and local government entities. While we have all permits necessary to carry out and perform our current plans and operations at our existing facility, we may require additional environmental, wastewater and land use permits for the commercial operation of any future manufacturing facilities. Delays, denials or restrictions on any of the applications for or assignment of the permits to operate our manufacturing facilities could adversely affect our ability to execute on our business plans and objectives.

***We may collect and process certain information about our customers and about individuals and will be subject to various laws and regulations relating to privacy, data protection and cybersecurity.***

We may collect and process certain battery data required for performance monitoring, safety and serviceability. This information is transmitted to our control center and stored. Such data currently is limited to battery operational and safety parameters. Additionally, we collect and otherwise process other data relating to individuals, including business partners, prospects, employees, vendors, and contractors. Our handling of data relating to individuals is subject to a variety of laws and regulations relating to privacy, data protection and cybersecurity, and we may become subject to additional obligations, including contractual obligations, relating to our maintenance and other processing of this data, and new or modified laws or regulations. Laws, regulations, and other actual and potential obligations relating to privacy, data protection, and cybersecurity are evolving rapidly, and we expect to potentially be subject to new laws and regulations, or new interpretations of laws and regulations, in the future in various jurisdictions. These laws, regulations, and other obligations,



and changes in their interpretation, could require us to modify our operations and practices, restrict our activities, and increase our costs. Further, these laws, regulations, and other obligations are complex and compliance with them can be difficult. It is possible that these laws, regulations, and other obligations may be inconsistent with one another or be interpreted or asserted to be inconsistent with our business or practices. We anticipate needing to dedicate substantial resources in order to comply with laws, regulations, and other obligations relating to privacy and cybersecurity. Any actual or alleged failure by us to comply with our privacy policy or any federal, state or international privacy, data protection or cybersecurity laws or regulations or other obligations could result in claims and litigation against us, regulatory investigations and other proceedings, legal liability, fines, damages and other costs. Any actual or alleged failure by any of our vendors or business partners to comply with contractual or legal obligations regarding the protection of information about our customers could carry similar consequences. Should we become subject to additional laws, regulations, or other obligations relating to privacy, data protection or cybersecurity, we may need to undertake compliance efforts that could carry a large cost and could entail substantial time and other resources.

Further, although we take steps to protect the security of our customers' personal information and other personal information within our control, we may face actual or perceived security breaches, incidents, or other misuses of this information, and many jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities and others of security breaches involving certain types of data. We may be required to expend significant resources to comply with security breach and incident notification requirements if a third party accesses or acquires such personal information without authorization, if we otherwise experience a security breach or incident or loss or damage of personal information, or if this is perceived to have occurred. Any actual or perceived breach of our network or systems, or those of our vendors or service providers, could result in claims, litigation, and proceedings against us by governmental entities or others, have negative effects on our business and future prospects, including possible fines, penalties and damages, and could result in reduced demand for our energy storage products and harm to our reputation and brand, resulting in negative impacts to our business, prospects, and financial results.

***We could be subject to penalties and other adverse consequences for any violations of the FCPA, and other foreign anti-bribery and anti-corruption laws.***

We are subject to the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the United Kingdom Bribery Act 2010, and possibly other anti-bribery and anti-corruption laws in countries outside of the United States in which we conduct our activities. We may have business dealings with customers in certain countries that are high risk for corruption. Anti-corruption and anti-bribery laws have been enforced aggressively in recent years and are interpreted broadly to generally prohibit companies and their employees, agents, representatives, business partners, and third-party intermediaries from authorizing, offering, or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector.

We sometimes leverage third parties to sell our products and conduct our business abroad. We, our employees, agents, representatives, business partners or third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities and may be held liable for the corrupt or other illegal activities of these employees, agents, representatives, business partners or third-party intermediaries even if we do not explicitly authorize such activities. We cannot assure you that all of our employees and agents will not take actions in violation of applicable law, for which we may be ultimately held responsible. We currently have contracts and may potentially operate in parts of the world that have experienced higher levels of governmental corruption and as we increase our international sales and business, our risks under these laws may increase. In addition, due to the level of regulation in our industry and related energy industries, our entry into certain jurisdictions may require substantial government contact where norms can differ from U.S. standards.

These laws also require that we keep accurate books and records and maintain internal controls and compliance procedures designed to prevent any such actions. While we have policies and procedures to address and to mandate compliance with such laws, we cannot assure you that none of our employees, agents, representatives, business partners or third-party intermediaries will take actions in violation of our policies and applicable law, for which we may be ultimately held responsible.

In the event that we believe, have reason to believe, or are notified that our employees, agents, representatives, business partners, or third-party intermediaries have or may have violated applicable laws, including anti-bribery and anti-corruption laws, we may be required to investigate or have outside counsel investigate the relevant facts and circumstances, and detecting, investigating and resolving actual or alleged violations can be expensive and require significant time and attention from senior management. Any allegation or violation of U.S. federal and state and non-U.S. laws, regulations and policies regarding anti-bribery and anti-corruption could result in substantial fines, sanctions, civil and/or criminal penalties, whistleblower complaints, sanctions, settlements, prosecution, enforcement actions, damages, adverse media coverage, investigations, loss of export privileges, suspension or debarment from government contracts, or other

curtailment of operations in the United States or other applicable jurisdictions. In addition, actual or alleged violations could damage our reputation and ability to do business. Any of the foregoing could materially adversely affect our reputation, business, financial condition, prospects and results of operations.

***We are subject to governmental export and import controls and economic sanctions programs that could impair our ability to compete in international markets or subject us to liability if we violate these controls.***

Our products and services are, or may in the future be, subject to U.S. export control laws and regulations including the Export Administration Regulations (“EAR”) and trade and economic sanctions maintained by the Office of Foreign Assets Control (“OFAC”) and to similar laws and regulations in all other jurisdictions in which we operate. As such, an export license may be required to export, re-export or transfer our products and services to certain countries or end-users or for certain end-uses. If we were to fail to comply with such export control laws and regulations or trade and economic sanctions, we could be subject to both civil and criminal penalties, including substantial fines, possible incarceration for employees and managers for willful violations, and the possible loss of our export and/or import privileges. Compliance with the EAR, OFAC sanctions, and other applicable regulatory requirements regarding the import and export of our products or the performance of services, may create delays in the introduction of our products and services in non-U.S. markets, prevent our customers with non-U.S. operations from deploying these products and services throughout their global systems or, in some cases, prevent the export of the products and services to some countries or users altogether. We may enter into agreements with customers and counterparties located in countries subject to list-based OFAC sanctions.

Obtaining the necessary export license for a particular sale or offering may not be possible, may be time-consuming, and may result in the delay or loss of sales opportunities. Further, U.S. export control laws and trade and economic sanctions as well as similar laws and regulations in other jurisdictions prohibit the export of products and services to certain U.S. embargoed or sanctioned countries, governments, and persons, as well as for prohibited end-uses. Even though we have taken precautions to ensure that we and our partners comply with all relevant import and export control laws and regulations and sanctions, monitoring and ensuring compliance with these complex laws and regulations is particularly challenging, and any failure by us or our partners to comply with such laws and regulations could have negative consequences for us, including reputational harm, government investigations and penalties.

Any change in domestic or international export or import laws or regulations, economic sanctions, or related legislation, shift in the enforcement or scope of existing export, import, or sanctions laws or regulations, or change in the countries, governments, persons, or technologies targeted by such export, import, or sanctions laws or regulations, could result in decreased use of our products and/or services by, or in our decreased ability to export or sell our products and/or services to, end-customers with international operations.

***We may be exposed to various risks related to legal proceedings or claims that could adversely affect our operating results. The nature of our business exposes us to various liability claims, which may exceed the level of our insurance coverage resulting in our not being fully protected.***

We have been and may continue to be party to lawsuits in the normal course of our business. Litigation can be expensive, lengthy and disruptive to normal business operations even if the grounds are meritless. Moreover, the results of complex legal proceedings are difficult to predict. Responding to lawsuits brought against us, or legal actions that we may initiate, can be expensive and time-consuming. Unfavorable outcomes from these claims and/or lawsuits could adversely affect our business, financial condition or results of operations, and we could incur substantial monetary liability and/or be required to change our business practices.

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

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

***We are subject to certain restrictions and obligations on our business as a result of grants and/or loans received under certain governmental programs and we may be subject to similar or other restrictions to the extent we utilize governmental grants in the future.***

Some of our research has been funded by grants from U.S. government agencies. In conjunction with the Advanced Research Projects Agency-Energy grant we received from the Department of Energy, we granted to the United States a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States inventions related to iron flow technology made within the scope of the grant. When new technologies are developed with U.S. government funding, the government obtains certain rights in any resulting patents and technical data, generally including, at a minimum, a nonexclusive license authorizing the government to use the invention or technical data for noncommercial purposes. U.S. government funding must be disclosed in any resulting patent applications, and our rights in such inventions will normally be subject to government license rights, periodic progress reporting, foreign manufacturing restrictions and march-in rights. Therefore, if we failed to disclose to the Department of Energy an invention made with grant funds that we disclosed to patent counsel or for publication, or if we elect not to retain title to the invention, the United States may request that title to the subject invention be transferred to it.

March-in rights refer to the right of the U.S. government, under certain limited circumstances, to require us to grant a license to technology developed under a government grant to a responsible applicant or, if we refuse, to grant such a license itself. March-in rights can be triggered if the government determines that we have failed to work sufficiently towards achieving practical application of a technology or if action is necessary to alleviate health or safety needs, to meet requirements of federal regulations or to give preference to U.S. industry. If we breach the terms of our grants, the government may gain rights to the intellectual property developed in our related research. The government's rights in our intellectual property may lessen its commercial value, which could adversely affect our performance.

To the extent we utilize governmental grants in the future, the governmental entities involved may retain certain rights in technology that we develop using such grant money. These rights could restrict our ability to fully capitalize upon the value of this research by reducing total revenues that might otherwise be available since such governmental rights may give the government the right to practice the invention without payment of royalties if we do not comply with applicable requirements. Such grants and other forms of government incentives may also subject us to additional disclosure or reporting requirements.

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

The U.S. federal government and some state and local governments provide incentives to end users and potential purchasers of our energy storage products in the form of rebates, tax credits and other financial incentives, such as system performance payments and payments for renewable energy credits associated with renewable energy generation. We will rely on these governmental rebates, tax credits and other financial incentives to significantly lower the effective price of the energy storage products to our customers in the United States. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or be reduced or terminated as a matter of regulatory or legislative policy.

Our energy storage products have qualified for tax exemptions, incentives or other customer incentives in many states including California. Some states have utility procurement programs and/or renewable portfolio standards for which our technology is eligible. There is no guarantee that these policies will continue to exist in their current form, or at all. Such state programs may face increased opposition on the U.S. federal, state and local levels in the future. Changes in federal or state programs could reduce demand for our energy storage products, impair sales financing and adversely impact our business results.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022 (the "IRA"), which extends the availability of investment tax credits ("ITCs") and production tax credits ("PTCs") and makes significant changes to the tax credit regime that applies to solar and energy storage products. As a result of changes made by the IRA, the ITC for solar generation projects is extended until at least 2033, and has been expanded to include stand-alone battery storage projects. This expansion provides significant certainty on the tax incentives that will be available to stand-alone battery storage projects in the future. We believe the IRA will increase demand for our products and services due to the extensions and expansions of various tax credits that are critical for our customers' economic returns, while also providing more certainty in and visibility into the supply chain for materials and components for energy storage systems. However, the full impact of the IRA cannot be known, and many of the IRA's provisions, including with respect to battery storage projects and domestic content requirements, are not self-executing and require further guidance from the Internal Revenue Services ("IRS") and Treasury Department ("Treasury"), which has and will continue to be issued and interpreted in the coming months and years. Further, although these provisions generally subsidize battery storage both in front of and behind the meter, they may benefit other companies in unexpected ways and thus weaken our competitive position. For example, the

IRA may enable companies producing shorter duration lithium ion batteries to compete with us through added volume of cells at lower cost.

***Changes in tax laws or in their implementation or interpretation may adversely affect our business and financial condition.***

We are or may become subject to income- and non-income-based taxes in the United States under federal, state and local jurisdictions and in certain foreign jurisdictions in which we operate. Tax laws, regulations and administrative practices in these jurisdictions may be subject to significant change, with or without advance notice. For example, beginning in January 2022, the Tax Cuts and Jobs Act of 2017 eliminated the right to deduct research and development expenditures for tax purposes in the period such expenses were incurred and instead requires all U.S. and foreign research and development expenditures to be amortized over five and fifteen tax years, respectively, and as a result, we recognized a deferred tax asset for the future tax benefit of the amortization deductions of these capitalized research and development expenditures.

Also, the IRA introduced a new non-deductible excise tax of 1% on certain share repurchases by corporations. This 1% excise tax will generally apply to any repurchase of stock (including transactions deemed to be repurchases for U.S. income tax purposes) we undertake, which will generally increase the costs to us of any share repurchases.

Changes in tax laws, as well as other factors, could cause us to experience fluctuations in our tax obligations and effective tax rates and otherwise adversely affect our tax positions and/or our tax liabilities. Such changes may adversely affect our effective tax rates, cash flows and general business condition.

***Our ability to utilize our net operating loss carryforwards and certain other tax attributes may be limited.***

As of December 31, 2023, we had U.S. federal and state net operating loss carryforwards of \$166.3 million and \$202.4 million, respectively. U.S. federal net operating loss carryforwards (“NOLs”) generated after December 31, 2017 do not expire, but for taxable years beginning after December 31, 2020, the deductibility of such U.S. federal NOLs is limited to 80% of our current year taxable income. Our remaining U.S. federal NOLs will expire beginning in 2032. Our state NOLs may also be subject to certain limitations. It is possible that we will not generate taxable income in time to use our NOLs before their expiration (if applicable) or at all.

Under Sections 382 and 383 of the Internal Revenue Code (the “Code”), if a corporation undergoes an “ownership change” (generally defined as a greater than 50 percentage points change (by value) in the ownership of its equity by certain stockholders over a rolling three-year period), the corporation’s ability to use its pre-change NOLs and certain other pre-change tax attributes to offset its post-change income and taxes may be limited. Similar provisions of state tax law may also apply to limit our use of accumulated state tax attributes. We may have experienced such ownership changes in the past, and we may experience ownership changes in the future as a result of shifts in our stock ownership, some of which are outside our control. Accordingly, our ability to utilize our NOLs and certain other tax attributes could be limited by an “ownership change” as described above, which could result in increased tax liability to the Company.

***We are an emerging growth company and a smaller reporting company within the meaning of the Securities Act, and if we take advantage of certain exemptions from disclosure requirements available to “emerging growth companies” or “smaller reporting companies,” this could make our securities less attractive to investors and may make it more difficult to compare our performance with other public companies.***

We are an “emerging growth company” within the meaning of the Securities Act, as modified by the JOBS Act, and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies” including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. As a result, our stockholders may not have access to certain information they may deem important. We will remain an emerging growth company until the earliest of (i) the last day of the fiscal year in which the market value of our common stock that are held by non-affiliates exceeds \$700,000,000 as of June 30 of that fiscal year, (ii) the last day of the fiscal year in which we have total annual gross revenue of \$1.235 billion or more during such fiscal year (as indexed for inflation), (iii) the date on which we have issued more than \$1.0 billion in non-convertible debt in the prior three-year period or (iv) December 31, 2025. In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the exemption from complying with new or revised accounting standards provided in Section 7(a)(2)(B) of the Securities Act as long as we are an emerging growth company. An emerging growth company can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected not to opt out of such extended transition period and, therefore, we may not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. 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. We cannot predict whether investors will find our securities less attractive because we expect to rely on these exemptions. If some investors find our common stock less attractive as a result of our reliance on these exemptions, the trading price of our common stock may be lower than it otherwise would be, there may be a less active trading market for our common stock and the trading price of our common stock may be more volatile.

Additionally, we are currently a “smaller reporting company” as defined in Item 10(f)(1) of Regulation S-K. Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited financial statements. We will remain a smaller reporting company only until the last day of the fiscal year in which (i) the market value of the common stock held by non-affiliates exceeds \$250,000,000 as of the prior June 30, or (ii) our annual revenues exceeded \$100,000,000 during such completed fiscal year and the market value of the common stock held by non-affiliates exceeds \$700,000,000 as of the prior June 30. To the extent we take advantage of such reduced disclosure obligations, it may also make comparison of our financial statements with other public companies difficult or impossible.

### **Risks Related to Our Intellectual Property**

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

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

We have applied for patents in multiple jurisdictions, including the United States, Europe, Australia, Japan and China, and under the Patent Cooperation Treaty, some of which have been issued. We cannot guarantee that any of our pending applications will be approved or that our existing and future intellectual property rights will be sufficiently broad to protect our proprietary technology, and any failure to obtain such approvals or finding that our intellectual property rights are invalid or unenforceable could force us to, among other things, rebrand or re-design our affected products. In countries where we have not applied for patent protection or where effective intellectual property protection is not available to the same extent as in the United States, we may be at greater risk that our proprietary rights will be misappropriated, infringed, or otherwise violated or may be unprotectable. Government actions may also undermine our intellectual property rights.

Our intellectual property may be stolen or infringed. In the event of such theft or infringement, we may be required to initiate lawsuits to protect our significant investment in our intellectual property. So far, we have been neither the subject of any lawsuits challenging the ownership or validity of our intellectual property, nor have we been required to initiate any lawsuits to protect our intellectual property. However, any such lawsuits may consume management and financial resources for long periods of time and may not result in outcomes that are favorable or readily enforceable, which may adversely affect our business, financial condition or results of operations.

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

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

sales of our offerings and may be unable to effectively compete and subject to termination and indemnification obligations under our contracts. Any of these results would adversely affect our business, financial condition and results of operations.

***Our 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 interfering with the commercialization of our products.***

Our 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 similar to ours. The status of patents involves complex legal and factual questions and the breadth of claims 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 patents and any patents that may be issued to us will afford protection against competitors with similar technology. Numerous patents and pending patent applications owned by others exist in the fields in which we have developed and are developing our technology. In addition, there are numerous academic papers and other publications in our field of technology. As a result, our existing or pending patents may be subject to challenge on the basis of prior art. 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 patent applications succeed and we are issued patents in accordance with them, we are still uncertain whether these 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 in the United States. In addition, the claims under any patents that issue from our patent applications 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 any patents that issue from our pending applications. In addition, patents issued to us may be infringed 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, financial condition and results of operations.

#### **Risks Related to Raising Capital**

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

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

Disruptions in the global capital and credit markets as a result of an economic downturn, economic uncertainty, changing or increased regulation, or failures of significant financial institutions, as well as any negative perceptions about our long-term business prospects or the renewable energy sector as a whole, even if exaggerated or unfounded, could adversely affect our customers' ability to access capital and could adversely affect our access to liquidity needed for business in the future. Our business could be harmed if we are unable to obtain additional capital as required, resulting in a decrease in our revenues and profitability.

***We expect to raise additional capital in the future, and it may not be available on acceptable terms, if at all.***

As discussed in “Part II—Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources”, we expect to access the debt and equity capital markets in the future. However, these sources of financing may not be available on acceptable terms, or at all. Our ability to obtain additional financing will be subject to a number of factors, including market conditions, our operating performance, the price of our common stock, investor sentiment generally or about the renewable energy sector specifically and our ability to incur additional debt in compliance with agreements governing our then-outstanding debt. These factors may make the timing, amount, terms or conditions of additional financings unattractive to us. If we raise additional funds by issuing equity, equity-linked or debt securities, those securities may have rights, preferences or privileges senior to the rights of our currently issued and outstanding equity or debt, and our existing stockholders may experience dilution. If we are unable to generate sufficient funds from operations or raise additional capital, our successful operation and growth could be impeded.

#### **Risks Related to Our Common Stock and Warrants**



***The price of our common stock may be volatile.***

The price of our common stock may fluctuate due to a variety of factors, including:

- changes in the industries in which we and our customers operate;
- variations in our operating performance and the performance of our competitors in general;
- actual or anticipated fluctuations in our quarterly or annual operating results;
- the public's reaction to our press releases, our other public announcements and our filings with the SEC;
- our failure or the failure of our competitors to meet analysts' projections or guidance that we or our competitors may give to the market;
- additions and departures of key personnel;
- 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;
- publication of research reports by securities analysts about us or our competitors or our industry;
- sales of shares of our common stock by our existing stockholders;
- short selling activities;
- the volume of shares of our common stock available for public sale; and
- general economic and political conditions such as recessions, interest rates, fuel prices, inflation, instability in the banking sector and financial markets, foreign currency fluctuations, international tariffs, social, political and economic risks, hostilities or the perception that hostilities may be imminent, terrorism, military conflict and acts of war, including an escalation of the situation in Ukraine or the Middle East and the related responses, including sanctions or other restrictive actions, by the United States and/or other countries.

These market and industry factors may materially reduce the market price of our common stock regardless of our operating performance.

In addition, we have been and in the future may again be the subject of a report issued by activist short sellers. Any such report, even if it contains false and misleading statements about the Company, may cause our stock price to experience volatility.

***A sale of a significant portion of our total outstanding shares into the market may cause the market price of our common stock to drop significantly, even if our business is doing well.***

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

We have filed registration statements with the SEC to register shares of our common stock for certain stockholders who have rights, subject to certain conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. We have also filed registration statements with the SEC to register shares reserved for future issuance under our equity compensation plans. Registration of these shares under the Securities Act results in the shares becoming freely tradable in the public market, subject to the restrictions of Rule 144 in the case of our affiliates.

Any sales of securities by these stockholders could have a material adverse effect on the market price for our common stock. Sales of our common stock pursuant to the exercise of registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause the trading price of our common stock to fall and make it more difficult for you to sell shares of our common stock at a time and price that you deem appropriate.

***The issuance by us of additional shares of common stock or equity-linked securities may cause existing stockholders to experience dilution and could adversely affect our stock price.***

From time to time in the future, we may issue additional shares of our common stock or equity-linked securities to raise additional capital or pursuant to a variety of transactions, including issuances in connection with financings, acquisitions, investments, our equity compensation plans or otherwise. Any such issuances of additional common stock or equity-linked

securities may cause stockholders to experience significant dilution of their ownership interests and could adversely affect prevailing market prices of our common stock.

***We have warrants outstanding that are exercisable for our common stock, which, if exercised, would increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders.***

As of December 31, 2023, we had outstanding Public Warrants to purchase an aggregate of 11,461,227 shares of our common stock. The exercise price of each of the Public Warrants is \$11.50 per share.

In addition, on September 16, 2022, we entered into a warrant agreement with SMUD, whereby we agreed to issue a warrant for up to 500,000 shares of our common stock at an exercise price of \$4.296 per share. The vesting of the shares underlying the warrant will be subject to the achievement of certain commercial milestones through December 31, 2030 pursuant to a related commercial agreement.

On September 21, 2023, we issued to Honeywell Ventures the Investment Warrant exercisable for up to 10,631,633 shares of common stock, and to UOP the IP Warrant exercisable for up to 6,269,955 shares of common stock, and the initial Performance Warrant exercisable for up to 775,760 shares of common stock. The Investment Warrant has an exercise price of \$1.89, the IP Warrant has an exercise price of \$2.90 and the initial Performance Warrant has an exercise price of \$1.45. We may issue additional Performance Warrants to UOP (not to exceed an aggregate value of \$15 million based on target purchase amounts of up to \$300 million by 2030) on an annual basis for the five-year period beginning in 2026, based on UOP's purchase of additional equipment pursuant to the Supply Agreement. The additional Performance Warrants will have an exercise price equal to the volume-weighted average price of the Company's common stock for the last fifteen (15) trading days of the relevant calendar year for which such additional Performance Warrant is being issued.

To the extent such warrants are exercised, additional shares of our common stock will be issued, which will result in dilution to the holders of our common stock and increase the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market or the fact that such warrants may be exercised could adversely affect the prevailing market prices of our common stock. For further information, see Note 12, *Common Stock Warrants*, to our consolidated financial statements for the year ended December 31, 2023 included elsewhere in this Annual Report on Form 10-K.

***The Public Warrants may be amended in a manner adverse to a holder if holders of 65% of the then outstanding Public Warrants approve of such amendment.***

Our warrants were issued in registered form under a warrant agreement between Continental Stock Transfer & Trust Company, as warrant agent, and STWO. The warrant agreement provides that the terms of the warrants may be amended without the consent of any holder to cure any ambiguity or correct any defective provision or correct any mistake, but requires the approval by the holders of 65% of the then-outstanding Public Warrants to make any change that adversely affects the interests of the registered holders of Public Warrants. Accordingly, we may amend the terms of the Public Warrants in a manner adverse to a holder if holders of 65% of the then-outstanding Public Warrants approve of such amendment. Although our ability to amend the terms of the Public Warrants with the consent of 65% of the then-outstanding Public Warrants is unlimited, examples of such amendments could be amendments to, among other things, increase the exercise price of the warrants, convert the warrants into cash, shorten the exercise period or decrease the number of shares of our common stock purchasable upon exercise of a warrant.

***We may redeem your unexpired warrants prior to their exercise at a time that is disadvantageous to you, thereby making your warrants worthless.***

We have the ability to redeem the outstanding Public Warrants at any time after they become exercisable and prior to their expiration, at a price of \$0.01 per warrant, provided that the closing price of our common stock equals or exceeds \$18.00 per share (as adjusted for share subdivisions, share dividends, rights issuances, subdivisions, reorganizations, recapitalizations and the like) for any 20 trading days within a 30 trading-day period ending on the third trading day prior to proper notice of such redemption and provided that certain other conditions are met. If and when the warrants become redeemable by us, we may exercise our redemption right even if we are unable to register or qualify the underlying securities for sale under all applicable state securities laws. As a result, we may redeem the warrants as set forth above even if the holders are otherwise unable to exercise the warrants. Redemption of the outstanding warrants could force you to (i) exercise your warrants and pay the exercise price therefor at a time when it may be disadvantageous for you to do so, (ii) sell your warrants at the then-current market price when you might otherwise wish to hold your warrants or (iii) accept the nominal redemption price which, at the time the outstanding warrants are called for redemption, we expect would be substantially less than the market value of your warrants.

In addition, we have the ability to redeem the outstanding Public Warrants at any time after they become exercisable and prior to their expiration, at a price of \$0.10 per warrant upon a minimum of 30 days' prior written notice of redemption



provided that the closing price of our common stock equals or exceeds \$10.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant) for any 20 trading days within a 30 trading-day period ending on the third trading day prior to proper notice of such redemption and provided that certain other conditions are met, including that holders will be able to exercise their warrants prior to redemption for a number of shares of common stock determined based on the redemption date and the fair market value of our common stock. The value received upon exercise of the warrants (1) may be less than the value the holders would have received if they had exercised their warrants at a later time where the underlying share price is higher and (2) may not compensate the holders for the value of the warrants, including because the number of ordinary shares received is capped at 0.361 shares of common stock per warrant (subject to adjustment) irrespective of the remaining life of the warrants.

***We do not expect to declare any dividends in the foreseeable future.***

We do not anticipate declaring any cash dividends to holders of our common stock in the foreseeable future. Consequently, investors may need to rely on sales of their shares after price appreciation, which may not occur for some time or not at all, as the only way to realize any future gains on their investment.

***There can be no assurance that we will be able to comply with the continued listing standards of the NYSE.***

Our common stock and our Public Warrants are listed on the NYSE under the symbols “GWH” and “GWH.W”, respectively. If the NYSE delists our securities from trading on its exchange for failure to meet the listing standards and we are not able to list such securities on another national securities exchange, we expect such securities could be quoted on an over-the-counter market. If this were to occur, we and our stockholders could face significant material adverse consequences including:

- a limited availability of market quotations for our securities;
- reduced liquidity for our securities;
- a limited amount of news and analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

***Reports published by analysts, including projections in those reports that differ from our actual results, could adversely affect the price and trading volume of our common stock.***

Securities research analysts may establish and publish their own periodic projections for us. These projections may vary widely and may not accurately predict the results we actually achieve. Our share price may decline if our actual results do not match the projections of these securities research analysts. Similarly, if one or more of the analysts who write reports on us downgrades our stock or publishes inaccurate or unfavorable research about our business, our share price could decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, our share price or trading volume could decline.

***We may be subject to short selling strategies that may drive down the market price of our common stock.***

Short selling occurs when an investor borrows a security and sells it on the open market, with the intention of buying identical securities at a later date to return to the lender. A short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares. Because it is in the short seller’s best interests for the price of the stock to decline, some short sellers publish, or arrange for the publication of, opinions or characterizations regarding the relevant issuer, its business prospects, and similar matters calculated to or which may create negative market momentum. Short sellers can publicly attack a company’s reputation and business on a broader scale via online postings. In the past, the publication of such commentary about us by a self-described short seller has precipitated a decline in the market price of our common stock, and future similar efforts by other short sellers may have similar effects. Companies that are subject to unfavorable allegations promoted by short sellers, even if untrue, may have to expend a significant amount of resources to investigate such allegations and defend themselves.

***Provisions in our amended and restated certificate of incorporation and amended and restated bylaws and Delaware law might discourage, delay or prevent a change in control of the Company or changes in management and, therefore, depress the market price of our common stock.***

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could delay or prevent a change of control of the Company or changes in our board of directors that our stockholders might consider favorable. These provisions, among other things:

- establish a classified board of directors so that not all members of our board are elected at one time;
- permit only the board of directors to establish the number of directors and fill vacancies on the board;

- provide that directors may only be removed “for cause” and only with the approval of a majority of the voting power of the issued and outstanding capital stock of the Company entitled to vote in the election of directors;
- authorize the issuance of “blank check” preferred stock that our board could use to implement a stockholder rights plan (also known as a “poison pill”);
- eliminate the ability of our stockholders to call special meetings of stockholders;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- prohibit cumulative voting by stockholders at any election of directors;
- authorize our board of directors to amend the bylaws;
- establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at annual stockholder meetings; and
- require a super-majority vote of stockholders to amend some of the provisions described above.

In addition, Section 203 of the Delaware General Corporation Law (the “DGCL”), prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying or preventing a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our capital stock and could also affect the price that some investors are willing to pay for our common stock.

***Our amended and restated bylaws provide that the Court of Chancery of the State of Delaware and the federal district courts of the United States of America will be the exclusive forums for certain stockholder litigation matters, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.***

Our amended and restated bylaws provide that the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) is the exclusive forum for the following (except for any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within 10 days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court or for which such court does not have subject matter jurisdiction):

- any derivative action or proceeding brought on our behalf;
- any action asserting a claim of breach of fiduciary duty owed by any director, stockholder, officer or other employee of the Company to the Company or to the Company’s stockholders;
- any action arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws; and
- any action asserting a claim against us that is governed by the internal affairs doctrine.

This provision would not apply to suits brought to enforce a duty or liability created by the Securities Act, the Exchange Act or any other claim for which the U.S. federal courts have exclusive jurisdiction.

Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated bylaws further provide that, unless the Company consents in writing to the selection of an alternative forum, the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act against any person in connection with any offering of the Company’s securities, including any auditor, underwriter, expert, control person, or other defendant. We note that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

These exclusive forum provisions 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 lawsuits against us and

our directors, officers and other employees. Any person or entity purchasing, holding or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to these provisions. There is uncertainty as to whether a court would enforce such provisions, and the enforceability of similar choice of forum provisions in other companies' charter documents has been challenged in legal proceedings. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions, and there can be no assurance that such provisions will be enforced by a court in those other jurisdictions. If a court were to find these types of provisions to be inapplicable or unenforceable, and if a court were to find the exclusive forum provision in our amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could materially adversely affect our business.

*Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.*

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law.

In addition, as permitted by Section 145 of the DGCL, our amended and restated bylaws and our indemnification agreements that we have entered into with our directors and officers provide that:

- we indemnify our directors and officers for serving us in those capacities or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful;
- we may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law;
- we are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification;
- we are not obligated, pursuant to our amended and restated bylaws, to indemnify a person with respect to proceedings initiated by that person against us or our other indemnitees, except with respect to proceedings authorized by our board of directors or brought to enforce a right to indemnification;
- the rights conferred in our amended and restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons; and
- we may not retroactively amend our amended and restated bylaw provisions to reduce our indemnification obligations to directors; officers, employees and agents.

While we maintain a directors' and officers' insurance policy to the fullest extent permitted by the DGCL, such insurance may not be adequate to cover all liabilities that we may incur, which may reduce our available funds to satisfy third-party claims and may materially adversely affect our cash position.

## **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## **ITEM 1C. CYBERSECURITY**

### **Risk Management and Strategy**

We have established policies and processes for assessing, identifying, and managing material risk from cybersecurity threats, and have integrated these processes into our overall risk management systems and processes. We routinely assess material risks from cybersecurity threats, including any potential unauthorized occurrence on or conducted through our information systems that may result in adverse effects on the confidentiality, integrity, or availability of our information systems or any information residing therein.

We conduct regular technical risk assessments to identify cybersecurity threats, as well as assessments in the event of a material change in our business practices that may affect information systems that are vulnerable to such cybersecurity threats. We also conduct periodic programmatic risk assessments including identification of reasonably foreseeable internal

and external risks, the likelihood and potential damage that could result from such risks, and the sufficiency of existing policies, procedures, systems, and safeguards in place to manage such risks.

Following these risk assessments, we evaluate whether and how to re-design, implement, and maintain reasonable safeguards to minimize identified risks; evaluate how to reasonably address any identified gaps in existing safeguards; and regularly monitor the effectiveness of our safeguards. We devote significant resources and designate high-level personnel, including our Vice President of Information and Business Systems who reports to our Chief Executive Officer, to manage the risk assessment and mitigation process.

As part of our overall risk management system, we monitor and test our safeguards and train our employees on these safeguards, in collaboration with human resources, IT, and management. Personnel at all levels and departments are made aware of our cybersecurity policies through trainings and annual policy acknowledgments.

We engage external cyber vendor consultants, auditors, and other third parties in connection with our risk assessment processes. These service providers assist us to assess, design and implement our cybersecurity policies and procedures, as well as to monitor and test our safeguards.

We review the ability of third-party service providers to implement and maintain appropriate security measures, consistent with all applicable laws, to implement and maintain reasonable security measures in connection with their work with us, and to promptly report any suspected breach of its security measures that may affect our Company.

For additional information regarding whether any risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect our Company, including our business strategy, results of operations, or financial condition, please refer to Item 1A, “Risk Factors,” in this Annual Report on Form 10-K, including the risk factors entitled “*Third parties might attempt to gain unauthorized access to our network or seek to compromise our products and services.*”

## **Governance**

One of the key functions of our board of directors is informed oversight of our risk management process, including risks from cybersecurity threats. Our board of directors is responsible for monitoring and assessing strategic risk exposure, and our executive officers are responsible for the day-to-day management of the material risks we face. Our board of directors administers its cybersecurity risk function in coordination with the oversight and periodic review of the audit committee.

Our Vice President of Information and Business Systems and members of our management team in accordance with our cybersecurity incident response plan, which includes the following members from the following function – legal, IT, finance, audit, operations, engineering, human resources, communications, and additional executives as applicable under the plan – and external cybersecurity support providers (collectively, “IRP stakeholders”), are primarily responsible to assess and manage our material risks from cybersecurity threats.

Our Vice President of Information and Business Systems and our IRP stakeholders oversee our cybersecurity policies and processes, including those described in “Risk Management and Strategy” above. Our Vice President of Information and Business Systems has an advanced degree in management information systems and has managed the Company’s IT processes and policies inclusive of cybersecurity matters throughout his tenure at the Company, in addition to many years of prior experience in various technology roles at a large U.S. public company. He is informed about and monitors the prevention, detection, mitigation, and remediation of cybersecurity incidents by working with the IT department and external vendors to implement our security risk management, including through the use of both automated and manual tools and reporting, in accordance with the Company’s incident response plan and Company cybersecurity policies.

Our Vice President of Information and Business Systems provides quarterly briefings to the audit committee and board of directors regarding our Company’s cybersecurity risks and activities, including any recent cybersecurity incidents and related responses, cybersecurity systems testing, activities of third parties, and the like.

## **ITEM 2. PROPERTIES**

Our corporate headquarters is located in Wilsonville, Oregon. The approximately 200,000 square foot facility contains both our corporate, engineering, and administrative functions as well as our automated and semi-automated battery manufacturing lines. During 2023, the facility had the capacity to manufacture approximately 800 MWh of batteries annually. We are currently in the process of procuring a new automated battery manufacturing line sized at 600 MWh and plan to retire our original semi-automated line (112 MWh), thus bringing our total battery manufacturing capacity to 1.288 GWh annually.

Over time, we plan to increase efficiency at the Wilsonville facility to scale manufacturing capacity up to 2,000 MWh. We also envision opening additional manufacturing facilities globally. This global expansion plan may include the following levers that are currently under consideration:

- Strategic investments in the supply chain to grow capacity;
- Rollout of redesigned automation cells, which we expect will increase efficiency in production;
- Energy Warehouse and Energy Center production expansion to Europe and/or Australia;
- Production of power modules in Europe; and
- Vertical integration of power module compartments.

### **ITEM 3. LEGAL PROCEEDINGS**

From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. We are not currently a party to any material legal proceedings, nor, to our knowledge, is any material legal proceeding threatened against us. In the future, we may become involved in legal proceedings that arise in the ordinary course of business, the outcome of which, if determined adversely to us, could individually or in the aggregate have a material adverse effect on our business, financial condition and results of operations.

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## PART II

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

#### Market Information and Holders

Our common stock is listed on the NYSE under the symbol "GWH" and our Public Warrants are listed on the NYSE under the symbol "GWH.W". As of March 8, 2024, there were 59 holders of record of our common stock and one holder of record of our Public Warrants. The actual number of stockholders of our common stock is greater than this number of record holders and includes stockholders who are beneficial owners but whose shares of common stock are held in street name by banks, brokers and other nominees.

#### Dividend Policy

We have not paid any cash dividends on the common stock to date. We have no current plans to pay cash dividends for the foreseeable future. Any decision to declare and pay dividends in the future will be made at the discretion of the board of directors and will depend on, among other things, our results of operations, financial condition, cash requirements, contractual restrictions and other factors that the board of directors may deem relevant. In addition, our ability to pay dividends may be limited by covenants of any existing and future outstanding indebtedness we or our subsidiaries incur. We do not anticipate declaring any cash dividends to holders of the common stock in the foreseeable future.

#### Issuer Purchases of Equity Securities

During the year ended December 31, 2023, we did not purchase any of our equity securities that are registered under Section 12(b) of the Exchange Act (other than shares that were repurchased pursuant to net settlement to satisfy tax withholding obligations of plan participants upon the vesting of restricted stock unit awards).

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

See "Part III—Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters."

#### Recent Sales of Unregistered Securities

The Company had no sales of unregistered equity securities during the period covered by this Annual Report on Form 10-K that were not previously reported in a Current Report on Form 8-K or Quarterly Report on Form 10-Q.

### ITEM 6. [RESERVED]

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

#### Overview

ESS is a long-duration energy storage company specializing in iron flow battery technology. We design and produce long-duration batteries predominantly using earth-abundant materials that we believe can be cycled over 20,000 times without capacity fade. Because we designed our batteries to operate using an electrolyte of primarily salt, iron and water, they are environmentally sustainable and substantially recyclable.

Our long-duration iron flow batteries are the product of nearly 50 years of scientific advancement. Our founders, Craig Evans and Dr. Julia Song, began advancing this technology in 2011 and formed Legacy ESS. Our team has significantly enhanced the technology, improved the round-trip efficiency and developed an innovative solution to the hydroxide build-up problem that plagued previous researchers developing iron flow batteries. Our proprietary solution to eliminate the hydroxide formation is known as the Proton Pump, which works by utilizing hydrogen generated by side reactions on the negative electrode. The Proton Pump converts the hydrogen back into protons in the positive electrolyte. This process eliminates the hydroxide and stabilizes the electrolytes' pH levels.

Our batteries provide flexibility to grid operators and energy assurance for commercial and industrial customers. Our technology addresses energy delivery, duration and cycle-life in a single battery platform that compares favorably to lithium-ion batteries, the most widely deployed alternative technology. Using our iron flow battery technology, we are developing several products, each of which is able to provide reliable, safe, long-duration energy storage. Our first energy storage product, the Energy Warehouse, is our "behind-the-meter" solution (referring to solutions that are located on the customer's premises, behind the service demarcation with the utility) that offers energy storage ranging from six to twelve-hour duration. Our second, larger scale energy storage product, the Energy Center, is currently being designed for "front-of-the-meter" (referring to solutions that are located outside the customer's premises, typically operated by the utility or by third-party providers who sell energy into the grid, often known as independent power producers) deployments specifically

for utility and large commercial and industrial consumers. Our core technology components in the Energy Warehouse and the Energy Center also are under development for integration into third-party systems.

## **Recent Developments**

### **Transition to Commercial Inventory Accounting**

We have historically been in the research and development phase for accounting purposes. On a quarterly basis we had evaluated a combination of evidence including production quality metrics, field functionality to date, revenue trends, and existing contracts with customers. Based on the evaluation performed during the third quarter of 2023, we transitioned out of the research and development phase and into commercial inventory accounting as of July 1, 2023 (the “Transition Date”). As a result of the transition, all inventoriable costs incurred are capitalized, net of any lower of cost or net realizable value (“LCNRV”) charges, which are recognized as cost of revenue. Further, unfulfilled noncancellable purchase commitments are recognized as expense for estimated losses in cost of revenue and warranty and fulfillment costs are recorded as a component of cost of revenue rather than research and development expense beginning on the Transition Date.

### **Honeywell Agreements**

On September 21, 2023, we entered into a Common Stock and Warrant Purchase Agreement (the “Purchase Agreement”) with Honeywell ACS Ventures LLC (“Honeywell Ventures”), an affiliate of Honeywell, which became a related party as a result. Pursuant to the Purchase Agreement, Honeywell invested \$27.5 million in the Company and we issued 16,491,754 shares of common stock and a warrant to issue up to 10,631,633 shares of common stock (the “Investment Warrant”) to Honeywell Ventures. Pursuant to the Purchase Agreement and also as further consideration for the licensing by UOP, an affiliate of Honeywell, of certain intellectual property to us, we issued a warrant to issue up to 6,269,955 shares of common stock (the “IP Warrant”) to UOP.

On September 21, 2023, the Company and UOP also entered into a Master Supply Agreement (the “Supply Agreement”), pursuant to which UOP may purchase equipment supplied by the Company. Pursuant to the Supply Agreement, the Company agreed to issue additional warrants to purchase common stock to UOP, consisting of (i) an initial performance warrant to issue up to 775,760 shares of common stock, issued on September 21, 2023 in exchange for a prepayment of equipment by UOP in the amount of \$15 million, and (ii) additional performance warrants (not to exceed an aggregate value of \$15 million based on target purchase amounts of up to \$300 million by 2030) to be issued on an annual basis for the five-year period beginning in 2026, based on UOP’s purchase of additional equipment after execution of the Supply Agreement (the “Performance Warrants”).

### **Key Factors and Trends Affecting Our Business**

We believe that our performance and future success depends on several factors that present significant opportunities for us but also pose risks and challenges, including those discussed below and in the section “*Part I—Item 1A. Risk Factors*” included elsewhere in this Annual Report on Form 10-K.

We believe we have the opportunity to establish attractive margin unit economics if we are able to continue to reduce production costs and scale our operations. Our future financial performance will depend on our ability to deliver on these economies of scale with lower product costs. We believe our business model is positioned for scalability due to the ability to leverage the same product platform across our customer base. Significant improvements in manufacturing scale are expected to decrease the cost of materials and direct labor. Compared to 2023, we expect our indirect cost of goods and operating expenses to increase as we ramp up our manufacturing and sales activities. We further expect an increase in expenses related to the implementation of cost reduction projects and initiatives in our supply chain, manufacturing engineering and research and development functions. We also anticipate some higher general and administrative expenses related to operating as a public company. Achievement of margin targets and cash flow generation is dependent on finalizing development and manufacturing of Energy Centers.

Our near-term and medium-term revenue is expected to be generated from our Energy Centers, second-generation Energy Warehouses, and core technology component productization. We believe our unique technology provides a compelling value proposition and an opportunity for favorable margins and unit economics in the energy storage industry in the future.

### ***Impact of Macroeconomic Developments***

We are closely monitoring macroeconomic developments, including global supply chain challenges, foreign currency fluctuations, elevated inflation and interest rates and monetary policy changes, as well as global events, such as the Russia-Ukraine conflict, the conflict in the Middle East, and other areas of geopolitical tension around the world, and how they may adversely impact our and our customers’, contractors’, suppliers’ and partners’ respective businesses. In particular, weak economic conditions or significant uncertainty regarding the stability of financial markets related to stock market



volatility, inflation, recession or governmental fiscal, monetary and tax policies, among others, could adversely impact our and our customers' business, financial condition and operating results. In addition, general and ongoing tightening in the credit market, lower levels of liquidity, increases in rates of default and bankruptcy, and significant volatility in equity and fixed-income markets could all negatively impact our customers, contractors, suppliers and partners. Potentially as a result of these macroeconomic forces, during the 2023 we have experienced supply constraints, increased shipping delays for certain customer contracts, and delays in timing of payments from some of our customers. We believe some or all of these negative trends may continue in 2024.

To the extent that challenging macroeconomic conditions persist, we may experience an extension and worsening of these effects as well as additional adverse effects on our business, financial condition, or results of operations in future periods. These effects could include, among others, slower purchasing decisions by existing and potential new customers, additional delays in timing of payments under our existing customer contracts, further reduction or delays in purchasing decisions by our customers, potential losses of customers as a result of economic distress or bankruptcy, and increased costs for raw materials and freight resulting from continued inflationary cost pressures.

For further discussion of the challenges and risks we confront related to macroeconomic conditions and geopolitical tension around the world, please refer to "Part I—Item 1A. Risk Factors" of this Annual Report on Form 10-K.

#### ***Inflation Reduction Act of 2022***

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, which extends the availability of investment tax credits and production tax credits and makes significant changes to the tax credit regime that applies to solar and energy storage products. As a result of changes made by the IRA, the ITC for solar generation projects is extended until at least 2033 and has been expanded to include stand-alone battery storage projects. This expansion provides significant certainty on the tax incentives that will be available to stand-alone battery storage projects in the future. We believe the IRA will increase demand for our services due to the extensions and expansions of various tax credits that are critical for our customers' economic returns, while also providing more certainty in and visibility into the supply chain for materials and components for energy storage systems. We are continuing to evaluate the overall impact and applicability of the IRA as implementing regulations are issued, and the passage of comparable legislation in other jurisdictions, to our results of operations going forward.

As discussed in Note 14, *Government Grants*, to our consolidated financial statements, starting in 2023, there are PTCs that can be claimed on battery components manufactured in the U.S. and sold to U.S. or foreign customers. The tax credits available to manufacturers include a credit for ten percent of the cost incurred to make electrode active materials in addition to credits of \$35 per kWh of capacity of battery cells and \$10 per kWh of capacity of battery modules. The credits are cumulative, meaning that companies will be able to claim each of the available tax credits based on the battery components produced and sold through 2029, after which the PTC will begin to gradually phase down through 2032. We expect these credits will have positive impact on our gross margins in the future.

#### **Components of Results of Operations**

##### ***Revenue and Cost of revenue***

We earn revenue from the sale of our energy storage products and from service contracts. Revenue from service contracts includes extended warranty and maintenance services for our energy storage products. We invoice our customers based upon contractual terms, and accordingly, we have deferred revenues and contract assets depending upon whether we can invoice in advance of satisfying the performance obligations under the respective customer contract or in arrears, respectively.

As discussed above, commencing with the third quarter of 2023 we reached commercial viability and transitioned out of the research and development phase and into commercial inventory accounting. Following the Transition Date, cost of revenue is primarily driven by direct material, labor, freight and overhead expenses. Cost of revenue also includes LCNRV charges, warranty costs, losses on unfulfilled noncancellable purchase commitments, obsolescence charges, and fulfillment costs. Cost of revenue does not include inventory previously expensed during the research and development phase prior to the Transition Date. We expect revenue and cost of revenue to increase as we scale the business and deliver our energy storage products to customers.

##### ***Operating expenses***

###### ***Research and development expenses***

Following the Transition Date, research and development expenses consist of materials, supplies, personnel-related expenses, allocated facilities costs, consulting services and other direct expenses. Personnel-related expenses consist of salaries, bonuses, benefits and stock-based compensation. Prior to the Transition Date, research and development expenses

also included direct product development material costs, including freight charges, and warranty-related costs. Our research and development costs have decreased following the transition to commercial inventory accounting in the third quarter of 2023; however, we continue to perform research and development activities to further expand our product roadmap.

*Sales and marketing expenses*

Sales and marketing expenses consist primarily of salaries, bonuses, benefits and stock-based compensation for marketing and sales personnel and related support teams. To a lesser extent, sales and marketing expenses also include professional services costs, travel costs, and trade show sponsorships. We expect that our sales and marketing expenses will increase over time as we continue to hire additional personnel to scale our business.

*General and administrative expenses*

General and administrative expenses consist of personnel-related expenses for our corporate, executive, finance, legal, and other administrative functions, as well as expenses for outside professional services and insurance costs. Personnel-related expenses consist of salaries, bonuses, benefits and stock-based compensation. To a lesser extent, general and administrative expenses include depreciation and other allocated costs, such as facility-related expenses, and supplies. We expect some of our general and administrative expenses to increase as we expand our operations and manufacturing capacity to support the growth of our business, and as a result of operating as a public company, including compliance with the rules and regulations of the SEC, legal, audit, additional insurance expenses, investor relations activities, and other administrative and professional services.

*Other income (expenses), net*

*Interest income, net*

Interest income, net consists primarily of earned income on our cash equivalents, restricted cash, and short-term investments. These amounts will vary based on our cash, cash equivalents, restricted cash and short-term investment balances, and on market rates. Interest income is partially offset by interest expense on our notes payable.

*Gain on revaluation of common stock warrant liabilities*

Gain on revaluation of common stock warrant liabilities consists of periodic fair value adjustments related to our common stock warrants.

*Other income (expense), net*

Other income (expense), net consists primarily of various gains and losses associated with our short-term investments and other income and expense items.

**Results of Operations**

In this section, we discuss the results of our operations for the year ended December 31, 2023 compared to the year ended December 31, 2022.

### Comparison of Year Ended December 31, 2023 to Year Ended December 31, 2022

The following table sets forth ESS' operating results for the periods indicated:

(\$ in thousands)	Year Ended December 31,		\$ Change	% Change
	2023	2022		
Revenue	\$ 7,540	\$ 894	\$ 6,646	743%
Cost of revenue	20,495	—	20,495	100
Gross profit (loss)	(12,955)	894	(13,849)	NM
Operating expenses:				
Research and development	42,632	71,979	(29,347)	(41)
Sales and marketing	7,744	6,938	806	12
General and administrative	22,574	27,469	(4,895)	(18)
Total operating expenses	72,950	106,386	(33,436)	(31)
Loss from operations	(85,905)	(105,492)	19,587	(19)
Other income (expenses), net:				
Interest income, net	5,262	2,187	3,075	141
Gain on revaluation of common stock warrant liabilities	2,292	25,788	(23,496)	(91)
Other income (expense), net	773	(452)	1,225	N/M
Total other income, net	8,327	27,523	(19,196)	N/M
Net loss and comprehensive loss to common stockholders	\$ (77,578)	\$ (77,969)	\$ 391	(0.5)%

N/M = Not meaningful

#### Revenue

Revenue for the year ended December 31, 2023 was \$7.5 million compared to \$0.9 million for the year ended December 31, 2022. We commenced shipping of our second-generation Energy Warehouses in the third quarter of 2021 and we received final customer acceptance for the initial units shipped and began recognizing revenue in 2022. Revenue increased as we ramped up production and commercialization of our products following acceptance of the initial units in 2022. During 2023 other revenue also included engineering services the Company performed in support of a customer project site and revenue earned for services performed to date under project contracts that were ultimately terminated.

#### Cost of revenue

Cost of revenue for the year ended December 31, 2023 was \$20.5 million. During the third quarter of 2023 we reached commercial viability and transitioned out of the research and development phase and into commercial inventory accounting. As such, we began recording cost of revenue as of the Transition Date. Cost of revenue for units associated with the revenue recognized prior to the Transition Date is zero as these costs were recognized as research and development expenses in the respective periods incurred. As the production costs for our units significantly exceed their selling price, after the transition to commercial inventory accounting, we began recognizing LCNRV charges. Additionally, losses on purchase commitments and inventory write-downs are recorded as cost of revenue. Refer to Note 2, *Significant Accounting Policies*, to our consolidated financial statements for further details on the accounting impact of this transition.

#### Operating expenses

##### Research and development expenses

Research and development expenses decreased by \$29.3 million, or 41%, from \$72.0 million for the year ended December 31, 2022 to \$42.6 million for the year ended December 31, 2023. The decrease resulted from the transition out of research and development accounting in the third quarter of 2023 into commercial inventory accounting as of the Transition Date.

##### Sales and marketing expenses

Sales and marketing expenses increased by \$0.8 million, or 12%, from \$6.9 million for the year ended December 31, 2022 to \$7.7 million for the year ended December 31, 2023. The increase is driven by an increase in personnel-related expenses due to expanded sales headcount and an increase in external marketing costs.

##### General and administrative expenses

General and administrative expenses decreased by \$4.9 million, or 18%, from \$27.5 million for the year ended December 31, 2022 to \$22.6 million for the year ended December 31, 2023. The decrease is due primarily to reduced board

member and executive stock-based compensation expense, decreased insurance costs, and decreased professional and outside services costs, partially offset by increased payroll related expenses.

***Other (expense) income, net***

***Interest income, net***

Interest income, net increased by \$3.1 million from \$2.2 million of interest income, net for the year ended December 31, 2022 to \$5.3 million of interest income, net for the year ended December 31, 2023. The change resulted from a decrease in interest expense resulting primarily from a decrease in outstanding notes payable for 2023 compared to 2022 and an increase in interest income driven by interest earned on our short-term investment portfolio during 2023.

***Gain on revaluation of common stock warrant liabilities***

The change in fair value of common stock warrant liabilities resulted in a gain of \$2.3 million for the year ended December 31, 2023 and a gain of \$25.8 million for the year ended December 31, 2022. The changes in fair value of common stock warrant liabilities was driven by changes in the market price of our common stock over the respective period.

***Other income (expense), net***

Other income (expense), net for the year ended December 31, 2023 was \$773 thousand of income and \$452 thousand of expense for the year ended December 31, 2022. The change is a result of an increase in funding received from federal agencies for our research and development activities in 2023 as well the increase in unrealized gains rather than unrealized losses reported on trading securities.

**Liquidity and Capital Resources**

Since our inception, we have financed our operations primarily through the issuance and sale of equity and debt securities and loan agreements. We have incurred significant losses and have negative cash flows from operations. As of December 31, 2023, we had an accumulated deficit of \$696.2 million. Management expects to continue to incur additional substantial losses in the foreseeable future as we scale our operations to achieve positive unit economics. As of December 31, 2023, we had unrestricted cash and cash equivalents of \$20.2 million, which is available to fund future operations, and short-term investments of \$87.9 million. We believe that our unrestricted cash and cash equivalents and short-term investments as of December 31, 2023 will enable us to maintain our operations and satisfy our financial obligations for a period of at least 12 months following the filing date of this Annual Report on Form 10-K. Beyond 12 months, we may need additional cash resources to the extent our current resources are insufficient to satisfy our cash requirements. Therefore, we may seek additional equity or debt financing. If such financing is not available, or if the financing terms are less desirable than we expect, we may be forced to decrease our level of investment in product development or scale back our operations, which could have an adverse impact on our business and financial prospects.

In March 2020, we borrowed \$4.0 million through a note payable with Silicon Valley Bank (“SVB”) that was secured by significantly all of our property, except for intellectual property. The note bore interest at 0.50% below the bank’s prime rate. On July 7, 2023, we elected to repay the note payable in full with a payment of \$1.0 million covering the outstanding principal balance, interest and a final payment due of \$200 thousand. As of December 31, 2023 there was no outstanding principal balance related to this note. See Note 10, *Borrowings* to our consolidated financial statements for the year ended December 31, 2023 included elsewhere in this Annual Report on Form 10-K.

As of December 31, 2022, we had a standby letter of credit with First Republic Bank totaling \$725 thousand as security for an operating lease of office and manufacturing space in Wilsonville, Oregon. As of December 31, 2023, the letter of credit was reduced to \$75 thousand. As of December 31, 2023, the letter of credit was secured by a restricted certificate of deposit account totaling \$75 thousand. There were no draws against the letter of credit during the years ended December 31, 2023 and 2022.

On September 1, 2022, we executed a standby letter of credit with CitiBank, N.A. for \$600 thousand as security for the performance and payment of the Company’s obligations under a customer agreement. The letter of credit is in effect until the date on which the warranty period under the agreement expires, which is anticipated to be more than a year from the balance sheet date. As of December 31, 2023, \$600 thousand was pledged as collateral for the letter of credit and recorded as restricted cash, non-current. There were no draws against the letter of credit during the years ended December 31, 2023 and 2022.

On March 9, 2023, we executed a standby letter of credit with SVB for \$200 thousand in support of our customs and duties due on imported materials. In June 2023, the letter of credit was transferred to Bank of America. The letter of credit is in effect until March 9, 2024. As of December 31, 2023, \$200 thousand was pledged as collateral for the letter of credit and

recorded as restricted cash, current. There were no draws against the letter of credit during the year ended December 31, 2023.

On September 21, 2023 we entered into a Common Stock and Warrant Purchase Agreement with Honeywell Ventures pursuant to which Honeywell Ventures invested \$27.5 million in the Company and the Company issued 16,491,754 shares of common stock and the Investment Warrant exercisable for up to 10,631,633 shares of Common Stock.

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

	Years Ended December 31,	
	2023	2022
Net cash used in operating activities	\$ (54,896)	\$ (81,620)
Net cash provided by (used in) investing activities	15,071	(117,884)
Net cash provided by (used in) financing activities	25,653	(4,073)

***Cash flows from operating activities:***

Cash flows used in operating activities to date have primarily consisted of costs related to research and development of our energy storage systems, building awareness of our products' capabilities and other general and administrative activities. Beginning in the third quarter of 2023, following the transition to commercial inventory accounting, cash flows used in operating activities also consisted of inventory and cost of revenue.

Net cash used in operating activities was \$54.9 million for the year ended December 31, 2023, which is comprised of net loss of \$77.6 million, adjusted for noncash interest income of \$3.6 million and changes in the fair value of warrant liabilities of \$2.3 million, partially offset by inventory write-downs and losses on noncancellable purchase commitments of \$11.9 million, stock-based compensation of \$10.6 million, and depreciation expense of \$6.5 million. Net changes in operating assets and liabilities used \$1.6 million of cash driven by cash collections on accounts receivable, an increase in prepaid expenses and other current assets, accrued product warranties and deferred revenue, partially offset by inventory purchases and decreases in accrued and other current liabilities, accounts payable and operating lease liabilities.

Net cash used in operating activities was \$81.6 million for the year ended December 31, 2022, which is comprised of net loss of \$78.0 million and noncash changes in the fair value of warrant liabilities of \$25.8 million, partially offset by stock-based compensation of \$11.9 million. Net changes in operating assets and liabilities provided \$8.5 million of cash driven by increases in accounts payable, accrued and other current liabilities, accrued product warranties, and deferred revenue, partially offset by increases in accounts receivable, prepaid expenses and other assets, and a decrease in operating lease liabilities.

***Cash flows from investing activities:***

Our cash flows from investing activities have been comprised primarily of purchases and sales of short-term investments and purchases of property and equipment.

Net cash provided by investing activities was \$15.1 million for the year ended December 31, 2023, which related to maturities of short-term investments partially offset by purchases of property and equipment.

Net cash used in investing activities was \$117.9 million thousand for the year ended December 31, 2022, which related to purchases of short-term investments and purchases of property and equipment, primarily for our investment in automating production.

***Cash flows from financing activities:***

Cash flows from financing activities to date have consisted of the Business Combination, the Honeywell agreements, and the issuance of debt and equity securities and loan agreements.

Net cash provided by financing activities was \$25.7 million for the year ended December 31, 2023 and consisted of \$27.1 million of proceeds from the issuance of common stock and common stock warrants, net of issuance costs, proceeds from contributions to our ESPP of \$541 thousand and stock options exercised of \$237 thousand, partially offset by principal payments on notes payable of \$1.7 million and repurchases of shares from employees for income tax withholding purposes of \$310 thousand.

Net cash used in financing activities was \$4.1 million for the year ended December 31, 2022 and consisted of repurchases of shares from employees for income tax withholding purposes of \$2.8 million and payments on notes payable of \$1.9 million, partially offset by proceeds from contributions to our ESPP of \$492 thousand.

Further commercialization, development, and expansion of our business will require a significant amount of cash for expenditures. Our ability to successfully manage this growth will depend on many factors, including our working capital needs, the availability of equity or debt financing and, over time, our ability to generate cash flows from operations.

### **Contractual Obligations and Commitments**

Our contractual obligations and other commitments as of December 31, 2023 consist of lease commitments and three standby letters of credit. The letters of credit serve as security for certain operating leases for office and manufacturing space, for our performance and payment obligations under a customer agreement, and in support of our customs and duties due on imported materials. The letter of credit related to operating leases is fully secured by restricted certificate of deposit accounts. The letters of credit related to a customer contract and to support customs and duties due on imported materials are secured by a total of \$800 thousand pledged as collateral. There were no draws against the letters of credit during the years ended December 31, 2023 and 2022. Additionally, we are committed to non-cancellable purchase commitments of \$0.6 million as of December 31, 2023 and to reimburse UOP a minimum of \$8.0 million for research and development expenses incurred through December 31, 2028 under the JDA (as defined herein).

### **Off-Balance Sheet Arrangements**

We are not a party to any off-balance sheet arrangements, including guarantee contracts, retained or contingent interests, or unconsolidated variable interest entities that either have, or are reasonably likely to have, a current or future material effect on our financial statements.

### **Critical Accounting Policies and Estimates**

The preparation of consolidated financial statements in conformity with U.S. GAAP requires that management apply accounting policies and make estimates and assumptions that affect amounts reported in the statements. The following accounting policies represent those that management believes are particularly important to the consolidated financial statements and that require the use of estimates, assumptions, and judgments to determine matters that are inherently uncertain.

As discussed in Note 1, *Description of Business and Basis of Presentation*, to our consolidated financial statements for the year ended December 31, 2023 included elsewhere in this Annual Report on Form 10-K, we reached commercial viability and transitioned out of the research and development phase and into commercial inventory accounting commencing with the third quarter of 2023. Refer to Note 2, *Significant Accounting Policies*, to our consolidated financial statements for the year ended December 31, 2023 included elsewhere in this Annual Report on Form 10-K, for full details on the accounting impacts of the transition.

#### ***Inventory Valuation***

As of the Transition Date, inventory is stated on a first-in, first-out basis at the lower of cost or net realizable value. Net realizable value is the estimated selling price of inventory in the ordinary course of business, less estimated costs of completion, disposal, and transportation. We periodically make judgments and estimates regarding the future utility and carrying value of inventory. When inventory is adjusted to its net realizable value, a new cost basis is established and such cost is not adjusted for any potential recovery or increase in cost. Obsolete inventories are written off to cost of revenue. Should our estimates of future selling prices or production costs change, additional and potentially material write-downs may be required. A small change in our estimates may result in a material charge to our reported financial results.

#### ***Revenue Recognition***

Revenue is earned from the sales of energy storage systems and related services and is derived from customer contracts. Revenue is recognized in an amount that reflects the consideration to which we expect to be entitled in exchange for transferring the promised goods and/or services to the customer, when or as our performance obligations are satisfied which includes estimates for variable consideration (e.g., liquidated damages). For sales of energy storage systems, our performance obligations are satisfied at the point in time when the customer obtains control of the system. Payment terms generally include advance payments to reserve capacity and/or upon issuance of the customer's purchase order with the remainder due upon the achievement of various milestones including shipment readiness, delivery, commissioning of the system, and completion of final site testing.

The transaction price of the underlying customer agreement is allocated to each performance obligation based on its relative standalone selling price. When the standalone selling price is not directly observable, revenue is determined based on an estimate of selling price using the observable market price that the good or service sells for separately in similar circumstances and to similar customers, and/or an expected cost plus margin approach when the observable selling price of a good or services is not known and is either highly variable or uncertain.

#### ***Product Warranties***

We generally provide a standard warranty for a period of one year and an optional extended warranty. The standard warranty is accounted for as an assurance-type warranty, which provides customers with assurance that the product complies with agreed-upon specifications and does not represent a separate performance obligation. The extended warranty is considered a distinct service and is accounted for as a performance obligation where a portion of the transaction price is allocated to that performance obligation.

We accrue an estimate of warranty costs at the time of recording the revenue for a unit. Warranty accruals include management's best estimate of the projected costs to repair or replace any items under warranty, which is based on various factors including actual claim data to date.

Initial warranty data is limited at the early stage in the commercialization of our products. Thus, it is likely that as we sell additional energy storage systems, we will acquire additional information on the components requiring repair or replacement as well as the projected costs to repair or replace items under warranty which may result in a material difference between our estimated costs and our actual costs. We review our warranty accrual at least quarterly and adjust our estimates as needed to ensure our accruals are adequate to meet expected future warranty obligations. Adjustments to warranty accruals were recorded to research and development expenses when the Company was in the research and development phase and are now recorded to cost of revenue following the transition to commercial inventory as of the Transition Date.

#### ***Recently Issued Accounting Standards***

See Note 2, *Significant Accounting Policies* to our consolidated financial statements for the year ended December 31, 2023 included elsewhere in this Annual Report on Form 10-K.

#### **Emerging Growth Company Status**

We are an "emerging growth company" as defined in Section 2(a) of the Securities Act and have elected to take advantage of the benefits of the extended transition period for new or revised financial accounting standards. We expect to continue to take advantage of the benefits of the extended transition period for as long as we remain an emerging growth company, although we may decide to early adopt new or revised accounting standards to the extent permitted by such standards. This may make it difficult or impossible to compare our financial results with the financial results of another public company that is either not an emerging growth company or is an emerging growth company that has chosen not to take advantage of the extended transition period exemptions because of the potential differences in accounting standards used.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise reported under this Item.



**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The following financial statements and report are included in Item 8:

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**REPORT OF KPMG LLP  
INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Stockholders and the Board of Directors

ESS Tech, Inc.:

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheet of ESS Tech, Inc. and subsidiary (the Company) as of December 31, 2023, the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for the year ended December 31, 2023, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated 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 U.S. generally accepted accounting principles.

**Basis for Opinion**

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these 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. 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/ KPMG LLP

We have served as the Company's auditor since 2023.

Portland, Oregon

March 13, 2024

**REPORT OF ERNST & YOUNG LLP  
INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Stockholders and the Board of Directors of ESS Tech, Inc

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheet of ESS Tech, Inc. (the Company) as of December 31, 2022, the related consolidated statement of operations and comprehensive loss, stockholders' equity, and cash flows for the year ended December 31, 2022, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and the results of its operations and its cash flows for the year ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

**Basis for Opinion**

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

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

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

/s/ Ernst & Young LLP

We have served as the Company's auditor from 2020 to 2023.

Portland, Oregon

March 1, 2023

**ESS Tech, Inc.**  
**Consolidated Balance Sheets**  
(in thousands, except share data)

	December 31, 2023	December 31, 2022
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 20,165	\$ 34,767
Restricted cash, current	1,373	1,213
Accounts receivable, net	1,990	4,952
Short-term investments	87,899	105,047
Inventory	3,366	—
Prepaid expenses and other current assets	3,305	5,657
<b>Total current assets</b>	<b>118,098</b>	<b>151,636</b>
Property and equipment, net	16,266	17,570
Intangible assets, net	4,923	—
Operating lease right-of-use assets	2,167	3,401
Restricted cash, non-current	945	675
Other non-current assets	833	271
<b>Total assets</b>	<b>\$ 143,232</b>	<b>\$ 173,553</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 2,755	\$ 3,036
Accrued and other current liabilities	10,755	14,125
Accrued product warranties	2,129	1,643
Operating lease liabilities, current	1,581	1,421
Deferred revenue, current	2,546	6,168
Notes payable, current	—	1,600
<b>Total current liabilities</b>	<b>19,766</b>	<b>27,993</b>
Notes payable, non-current	—	315
Operating lease liabilities, non-current	957	2,535
Deferred revenue, non-current	3,835	2,442
Deferred revenue, non-current - related parties	14,400	—
Common stock warrant liabilities	917	3,209
Other non-current liabilities	—	85
<b>Total liabilities</b>	<b>39,875</b>	<b>36,579</b>
<b>Commitments and contingencies (Note 11)</b>		
<b>Stockholders' equity:</b>		
Preferred stock (\$0.0001 par value, 200,000,000 shares authorized, none issued and outstanding as of December 31, 2023 and 2022)	—	—
Common stock (\$0.0001 par value; 2,000,000,000 shares authorized, 174,211,911 and 153,821,339 shares issued and outstanding as of December 31, 2023 and 2022, respectively)	18	16
Additional paid-in capital	799,496	755,537
Accumulated deficit	(696,157)	(618,579)
<b>Total stockholders' equity</b>	<b>103,357</b>	<b>136,974</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 143,232</b>	<b>\$ 173,553</b>

*See accompanying notes to consolidated financial statements*

**ESS Tech, Inc.**  
**Consolidated Statements of Operations and Comprehensive Loss**  
(in thousands, except share and per share data)

	<b>Years Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>Revenue:</b>		
Revenue	\$ 7,537	\$ 610
Revenue - related parties	3	284
Total revenue	7,540	894
<b>Cost of revenue</b>	20,495	—
<b>Gross profit (loss)</b>	(12,955)	894
<b>Operating expenses:</b>		
Research and development	42,632	71,979
Sales and marketing	7,744	6,938
General and administrative	22,574	27,469
Total operating expenses	72,950	106,386
Loss from operations	(85,905)	(105,492)
<b>Other income (expenses), net:</b>		
Interest income, net	5,262	2,187
Gain on revaluation of common stock warrant liabilities	2,292	25,788
Other income (expense), net	773	(452)
Total other income, net	8,327	27,523
<b>Net loss and comprehensive loss to common stockholders</b>	<u>\$ (77,578)</u>	<u>\$ (77,969)</u>
<b>Net loss per share - basic and diluted</b>	<u>\$ (0.48)</u>	<u>\$ (0.51)</u>
<b>Weighted average shares used in per share calculation - basic and diluted</b>	<u>159,958,645</u>	<u>152,676,155</u>

*See accompanying notes to consolidated financial statements*

**ESS Tech, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
(in thousands, except share data)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
<b>Balance as of December 31, 2021</b>	151,839,058	\$ 16	\$ 745,753	\$ (540,610)	\$ 205,159
Issuance of common stock under stock-based compensation plans, net of stock withheld for taxes	2,226,463	—	657	—	657
Cancellation of shares used to settle payroll tax withholding	(244,202)	—	(2,808)	—	(2,808)
Warrants issued	—	—	46	—	46
Warrants exercised	20	—	—	—	—
Stock-based compensation expense	—	—	11,889	—	11,889
Net loss	—	—	—	(77,969)	(77,969)
<b>Balance as of December 31, 2022</b>	153,821,339	\$ 16	\$ 755,537	\$ (618,579)	\$ 136,974
Issuance of common stock under stock-based compensation plans, net of stock withheld for taxes	3,898,818	—	468	—	468
Stock-based compensation expense	—	—	10,635	—	10,635
Issuance of common stock and common stock warrants, net of issuance costs of \$368 thousand	16,491,754	2	32,856	—	32,858
Net loss	—	—	—	(77,578)	(77,578)
<b>Balance as of December 31, 2023</b>	174,211,911	\$ 18	\$ 799,496	\$ (696,157)	\$ 103,357

*See accompanying notes to consolidated financial statements*



**ESS Tech, Inc.**  
**Consolidated Statements of Cash Flows**  
(in thousands)

	<b>Years Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (77,578)	\$ (77,969)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	6,513	1,523
Non-cash interest income	(3,635)	(1,349)
Non-cash lease expense	1,234	1,134
Stock-based compensation expense	10,635	11,889
Inventory write-down and losses on noncancellable purchase commitments	11,932	—
Change in fair value of common stock warrant liabilities	(2,292)	(25,788)
Other non-cash income and expenses, net	(60)	483
Changes in operating assets and liabilities:		
Accounts receivable, net	3,633	(1,886)
Inventory	(14,661)	—
Prepaid expenses and other current assets	2,422	(311)
Accounts payable	(229)	1,464
Accrued and other current liabilities	(3,378)	6,789
Accrued product warranties	486	1,643
Deferred revenue	11,500	1,881
Operating lease liabilities	(1,418)	(1,123)
Net cash used in operating activities	(54,896)	(81,620)
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(5,790)	(14,180)
Maturities and purchases of short-term investments, net	20,861	(103,704)
Net cash provided by (used in) investing activities	15,071	(117,884)
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock and common stock warrants, net of issuance costs	27,132	—
Payments on notes payable	(1,733)	(1,900)
Proceeds from stock options exercised	237	—
Repurchase of shares from employees for income tax withholding purposes	(310)	(2,808)
Proceeds from contributions to Employee Stock Purchase Plan	541	492
Proceeds from warrants exercised	—	165
Other, net	(214)	(22)
Net cash provided by (used in) financing activities	25,653	(4,073)
Net change in cash, cash equivalents and restricted cash	(14,172)	(203,577)
Cash, cash equivalents and restricted cash, beginning of period	36,655	240,232
Cash, cash equivalents and restricted cash, end of period	\$ 22,483	\$ 36,655

*See accompanying notes to consolidated financial statements*

**ESS Tech, Inc.**  
**Statements of Cash Flows (continued)**  
**(in thousands)**

	<b>Years Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid for operating leases included in cash used in operating activities	\$ 1,670	\$ 1,625
Cash paid for interest	—	154
Non-cash investing and financing transactions:		
Common stock warrants issued for the acquisition of intangible assets	4,990	—
Purchase of property and equipment included in accounts payable and accrued and other current liabilities	704	1,358
Right-of-use operating lease assets obtained in exchange for lease obligations	—	4,534
Right-of-use finance lease assets obtained in exchange for lease obligations	—	123
Warrant vested under contracts with customers	—	46
Cash and cash equivalents	\$ 20,165	\$ 34,767
Restricted cash, current	1,373	1,213
Restricted cash, non-current	945	675
Total cash, cash equivalents and restricted cash shown in the statements of cash flows	<u>\$ 22,483</u>	<u>\$ 36,655</u>

*See accompanying notes to consolidated financial statements*

## ESS TECH, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### 1. DESCRIPTION OF BUSINESS, BASIS OF PRESENTATION AND RISKS AND UNCERTAINTIES

**Description of Business**—ESS Tech, Inc. is a long-duration energy storage company specializing in iron flow battery technology. ESS develops long-duration iron flow batteries for commercial and utility-scale energy storage applications requiring four or more hours of flexible energy capacity predominantly using earth-abundant materials. The Company has historically been in the research and development phase. On a quarterly basis the Company had evaluated a combination of evidence including production quality metrics, field functionality to date, revenue trends, and existing contracts with customers. Based on the evaluation performed during the third quarter of 2023, the Company transitioned out of the research and development phase and into commercial inventory accounting as of July 1, 2023.

The Company was originally incorporated as a Cayman Islands exempted company on July 21, 2020 as a publicly traded special purpose acquisition company under the name ACON S2 Acquisition Corp. for the purpose of effecting a business combination. On October 8, 2021, the Company consummated a business combination pursuant to the merger agreement, dated May 6, 2021, by and among STWO, SCharge Merger Sub, Inc., a Delaware corporation and wholly owned direct subsidiary of STWO, and ESS Tech, Inc., a Delaware corporation, wherein Merger Sub merged with and into Legacy ESS, with Legacy ESS surviving as a wholly owned subsidiary of STWO. On the Closing Date, STWO changed its name from “ACON S2 Acquisition Corp.” to “ESS Tech, Inc.”, and its shares of common stock and warrants for shares of common stock commenced trading on the New York Stock Exchange under the ticker symbols “GWH” and “GWH.W,” respectively.

**Basis of Presentation**—The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiary and have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

**Risks and Uncertainties**—The Company is subject to a number of risks associated with companies of similar size in its industry, including, but not limited to, the need for successful development of products, the need for additional capital and financing to fund operations, competition from substitute products and services from larger companies, legal protection of proprietary technology, patent litigation, dependence on key individuals, and risks associated with changes in information technology.

**Concentration of Credit Risk**—Financial instruments that potentially subject the Company to concentration of credit risk consist of cash and cash equivalents and restricted cash. The Company’s cash and cash equivalents include cash in bank accounts, money market funds, and investments with a maturity of three months or less at the date of purchase. The Company’s restricted cash includes a certificate of deposit, collateral associated with a standby letter of credit, and a performance and payment bond. Deposits held with banks may exceed the amount of insurance provided on such deposits.

#### 2. SIGNIFICANT ACCOUNTING POLICIES

As discussed in Note 1, *Description of Business and Basis of Presentation*, during the third quarter of 2023 the Company reached commercial viability and transitioned out of the research and development phase and into commercial inventory accounting on the Transition Date. As a result of the transition, all inventoriable costs incurred are capitalized, net of any LCNRV charges, which are recognized as cost of revenue. Further, unfulfilled noncancellable purchase commitments are recognized as expense for estimated losses in cost of revenue and warranty and fulfillment costs are recorded as a component of cost of revenue rather than research and development expense beginning on the Transition Date.

**Segment Information**—The Company has determined that its Chief Executive Officer (“CEO”) is its chief operating decision maker. The CEO reviews financial information for purposes of assessing performance and making decisions on how to allocate resources. The Company has determined that it operates in a single reportable segment.

Substantially all of the Company’s operations and long-lived assets were attributable to operations in the United States as of December 31, 2023 and 2022.

**Use of Estimates**—The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities and disclosure of commitments and contingencies as of the date of the financial statements and the reported amounts of expenses during the reporting periods. Such estimates relate to, but are not limited to, inventory valuation, product warranty liabilities, standalone selling prices, the fair value of the Company’s investments and warrant liabilities, the

useful lives and assessment of recoverability of property and equipment, deferred tax assets valuation, as well as other accruals. These estimates are based on historical trends, market pricing, current events and other relevant assumptions and data points. Actual results could differ from those estimates and such differences may be material to the financial statements.

**Reclassifications**—Certain prior year amounts have been reclassified to conform with current year presentation. These reclassifications had no effect on the reported results of operations.

**Cash and Cash Equivalents**—Cash and cash equivalents include cash in bank accounts, money market funds, and investments with a maturity of three months or less at the date of purchase. Cash equivalents are recorded at carrying value, which approximates fair value.

**Restricted Cash**—Restricted cash is required as collateral for certain of the Company's lease agreements and contractual supply and service arrangements. Restricted cash includes a certificate of deposit for the Company's lease agreements, collateral associated with a standby letter of credit issued to a customer, and a performance and payment bond for the Company's supply and service arrangements. The certificate of deposit and bond are recorded at carrying value, which approximates fair value. Restricted cash amounts are reported in the consolidated balance sheets as current or non-current depending on when the cash will be contractually released.

**Accounts Receivable, Net**—The Company evaluates the creditworthiness of its customers. If the collection of any specific receivable is doubtful, an allowance is recorded in the allowance for expected credit losses which is included in accounts receivable, net in the consolidated balance sheets. The Company had no allowance for expected credit losses recorded at either December 31, 2023 or 2022.

**Inventory**—As of the Transition Date, inventory consists of raw materials, work in progress, and finished goods, and is stated on a first-in, first-out basis at the lower of cost or net realizable value. Net realizable value is the estimated selling price of inventory in the ordinary course of business, less estimated costs of completion, disposal, and transportation. The Company periodically makes judgments and estimates regarding the future utility and carrying value of inventory. When inventory is adjusted to its net realizable value, a new cost basis is established and such cost is not adjusted for any potential recovery. Obsolete inventories are written off to cost of revenue. Should the Company's estimates of future selling prices or production costs change, additional and potentially material write-downs may be required. A small change in the Company's estimates may result in a material charge to its reported financial results.

**Property and Equipment, Net**—Property and equipment are stated at cost, net of depreciation. Depreciation is provided using the straight-line method over the estimated useful lives of the assets, which range from three to seven years. Leasehold improvements are amortized over the lesser of the estimated useful lives of the assets or the remaining lease term. Expenditures for maintenance and repairs are expensed in the consolidated statements of operations and comprehensive loss as incurred. Expenditures which materially change capacities, or extend useful lives are capitalized. When assets are retired or disposed of, the cost and accumulated depreciation are removed from the accounts, and any resulting gains or losses are recognized in other income (expense), net in the consolidated statements of operations and comprehensive loss.

The Company evaluates the recoverability of property and equipment for possible impairment whenever events or circumstances indicate that the carrying amount of such assets may not be recoverable. The Company assesses the alternative use of an asset, the condition of the asset and the current market demand to determine if an asset is impaired. No impairment loss was recognized during the years ended December 31, 2023 and 2022.

**Intangible Assets, Net**—Intangible assets are stated at cost, net of accumulated amortization. Intangible assets are amortized on a straight-line basis over their expected useful lives.

**Investments**—Investments consist primarily of U.S. Treasury securities, U.S. agency securities, and commercial paper and are classified as trading securities as they are bought and held principally for the purpose of selling them in the near term. Trading securities are carried on the consolidated balance sheets at fair value. Unrealized gains and losses on trading securities are included in other income (expense), net in the consolidated statements of operations and comprehensive loss.

**Revenue Recognition**—Revenue is primarily earned from the sale, installation and commissioning of energy storage systems and is derived from customer contracts. Revenue is recognized in an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring the promised goods and/or services to the customer, when or as the Company's performance obligations are satisfied, which includes estimates for variable consideration (e.g., liquidated damages). For product sales of energy storage systems, the Company's performance obligations are satisfied at the point in time when the customer obtains control of the system, based primarily on

shipping terms within individual customer contracts, unless specific customer acceptance criteria must be met, in which case revenue is deferred until customer acceptance has been received. No right of return exists on sales of energy storage systems.

Performance obligations for services, including the optional extended warranty and ongoing operations and maintenance program provided to customers, are satisfied over time as the respective services are performed.

The transaction price of the underlying customer agreement is allocated to each performance obligation based on its relative standalone selling price. When the standalone selling price is not directly observable, revenue is determined based on an estimate of selling price using the observable market price that the good or service sells for separately in similar circumstances and to similar customers, and/or an expected cost plus margin approach when the observable selling price of a good or services is not known and is either highly variable or uncertain.

The Company invoices customers in accordance with customer agreements, which in certain circumstances may be in advance of recognizing revenue if the Company has not satisfied the associated performance obligations. Payment terms generally include advance payments to reserve capacity and/or upon issuance of the customer's purchase order with the remainder due upon the achievement of various milestones including but not limited to shipment readiness, delivery, commissioning of the system, and completion of final site testing. Advanced customer payments and unsatisfied performance obligations are recognized as deferred revenue in the consolidated balance sheets.

Sales tax collected from customers is recorded on a net basis and therefore, not included in revenue. Sales tax is recorded as a liability until remitted to governmental authorities. Shipping and handling, freight costs and other reimbursable costs are accounted for as fulfillment activities and included in revenue.

**Cost of Revenue**—As of the Transition Date, cost of revenue includes the cost of the energy storage systems delivered, installed and commissioned during the year. It includes direct and indirect materials, labor costs, manufacturing overhead, including depreciation costs of tooling and machinery, adjustments to warranty expense, LCNRV charges, unfulfilled noncancellable purchase commitment expense, shipping and logistics costs, and provisions for excess and obsolete inventory. Additionally, cost of revenue benefits from production credits earned.

**Product Warranties**—Warranty obligations are incurred in connection with the sale of the Company's products. The Company generally provides a standard warranty for a period of one year and an optional extended warranty. The standard warranty is accounted for as an assurance-type warranty, which provides customers with assurance that the product complies with agreed-upon specifications and does not represent a separate performance obligation. The extended warranty is considered a service-type warranty which is a distinct service and a portion of the transaction price is allocated to that performance obligation.

Costs to provide for standard warranty obligations are estimated and recorded as a liability at the time revenue is recognized on the sale of the energy storage system. Warranty reserves include management's best estimate of the projected costs to repair or to replace any items under warranty, which is based on various factors, including the use of actual claim data to date. Initial accruals and adjustments to warranty reserves were recorded to research and development expenses when the Company was in the research and development phase and are now recorded to cost of revenue following the transition to commercial inventory accounting as of the Transition Date.

**Sales and Marketing**—Sales and marketing expenses consist primarily of salaries, benefits and stock-based compensation for marketing and sales personnel and related support teams. To a lesser extent, sales and marketing expenses also include professional services costs, travel costs, and trade show sponsorships and participation. Advertising costs are expensed as incurred.

**Research and Development**—Research and development costs are expensed as incurred and, as of the Transition Date, consist of materials, supplies, personnel-related expenses, allocated facilities costs, consulting services and other direct expenses. Personnel-related expenses consist of salaries, benefits and stock-based compensation. Substantially all of the Company's research and development expenses are related to improving existing products and developing new products and related technologies. Prior to the Transition Date, research and development costs also included direct product development material costs, including freight charges, and product development personnel-related expenses, warranty-related costs, depreciation charges, overhead related costs, consulting services, and other direct expenses.

The Company receives funding from federal agencies for research and development activities related to its products. Under certain circumstances, up to the entire amount of funding may need to be repaid to the grantor in the form of a success fee in future periods if the Company monetized the results of the activities funded by the grantor. The portion of such funding the Company may be required to pay in certain circumstances is recorded in accrued and other current liabilities in the consolidated balance sheets and was \$452 thousand as of December 31, 2022.

**General and Administrative**—General and administrative expenses consist of personnel-related expenses for the Company’s corporate, executive, finance, legal, and other administrative functions, as well as expenses for outside professional services and insurance costs. Personnel-related expenses consist of salaries, benefits and stock-based compensation. To a lesser extent, general and administrative expenses include depreciation and other allocated costs, such as facility-related expenses and supplies.

**Stock-Based Compensation**—The Company measures and recognizes compensation expense for all stock-based awards based on estimated fair values on the date of the grant, recognized over the requisite service period. For awards that vest solely based on a service condition, the Company recognizes stock-based compensation expense on a straight-line basis over the requisite service period. The compensation expense related to stock-based awards with performance conditions is recognized over the requisite service period when achievement of the performance conditions is probable. The compensation expense related to stock-based awards with market conditions is recognized on an accelerated attribution basis over the requisite service period identified as the derived service period over which the market conditions are expected to be achieved, and is not reversed if the market condition is not satisfied. The Company accounts for forfeitures as they occur. Stock-based awards granted to employees are primarily stock options and RSUs.

The fair value of each stock option granted is estimated using the Black-Scholes Merton option-pricing model using the single-option award approach. The following assumptions are used in the Black-Scholes Merton option-pricing model:

*Risk-Free Interest Rate*—The risk-free interest rate is based on the implied yield available on the date of grant on U.S. Treasury zero-coupon bonds issued with a term that is equal to the option’s expected term at the grant date.

*Expected Volatility*—The Company estimates the volatility for option grants by evaluating the average historical volatility of a peer group of companies for the period immediately preceding the option grant for a term that is approximately equal to the option’s expected term.

*Expected Term*—The expected term for employees represents the period over which options granted are expected to be outstanding using the simplified method, as the Company’s historical share option exercise experience does not provide a reasonable basis upon which to estimate the expected term. The simplified method deems the term to be the average of the time-to-vesting and contractual life of the stock-based awards.

*Dividend Yield*—The Company has not declared or paid dividends to date and does not anticipate declaring dividends. As such, the dividend yield has been estimated to be zero.

**Income Taxes**—The Company accounts for income taxes under the asset and liability method. Under this method, deferred taxes are determined based on the temporary differences between the financial statement and tax bases of assets and liabilities using tax rates expected to be in effect during the years in which the bases differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the consolidated statement of operations and comprehensive loss in the period that includes the enactment date.

ASC 740, *Accounting for Income Taxes* (“ASC 740”), requires that the tax benefit of net operating losses, temporary differences and credit carryforwards be recorded as an asset to the extent that management assesses that realization is “more likely than not.” Realization of the future tax benefits is dependent on the Company’s ability to generate sufficient taxable income within the carryforward period. Because of the Company’s history of operating losses, management believes that recognition of the deferred tax assets arising from the above-mentioned future tax benefits is currently not likely and, accordingly, has provided a full valuation allowance for these tax benefits for the years ended December 31, 2023 and 2022.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits as a component of income tax expense. No amounts were accrued for the payment of interest and penalties as of December 31, 2023 and 2022. The Company is currently not aware of any issues under review that could result in significant payments, accruals, or material deviation from its position.

**Net Loss Per Share**—The Company will use the two-class method when computing net loss per common share when shares are issued that meet the definition of participating securities. Under this method, net earnings are reduced by the amount of dividends declared in the current period for common stockholders and participating security holders. The remaining earnings or “undistributed earnings” are allocated between common stock and participating securities to the extent that each security may share in earnings as if all the earnings for the period had been distributed. Once calculated, the earnings per common share is computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding during each year presented. Diluted loss attributable to common stockholders per common share has been computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding plus the dilutive effect of outstanding



options, warrants, and restricted stock units (“RSUs”) during the respective periods. In cases where the Company has a net loss, no dilutive effect is shown as options, warrants, and RSUs become anti-dilutive.

**Fair Value**—The Company follows ASC 820, *Fair Value Measurements* (“ASC 820”), which establishes a common definition of fair value to be applied when U.S. GAAP requires the use of fair value, establishes a framework for measuring fair value, and requires certain disclosures about such fair value measurements.

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

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

*Level 2:* Observable inputs other than Level 1 quoted prices that are observable for the asset or liability, either directly or indirectly; these include quoted prices for similar assets or liabilities in an active market, quoted prices for identical assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3:* Unobservable inputs for which little or no market data exists and for which the Company must develop its own assumptions regarding the assumptions that market participants would use in pricing the asset or liability, including assumptions regarding risk.

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

**Emerging Growth Company**—Pursuant to the JOBS Act of 2012, Section 102(b)(1), an emerging growth company is provided the option to adopt new or revised accounting standards that may be issued by the FASB or the SEC either (i) within the same periods as those otherwise applicable to non-emerging growth companies or (ii) within the same time periods as private companies. The Company has elected to use the extended transition period for complying with any new or revised financial accounting standards. As a result, the Company’s consolidated financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective date for new or revised accounting standards that are applicable to public companies. The Company also intends to continue to take advantage of some of the reduced regulatory and reporting requirements of emerging growth companies pursuant to the JOBS Act so long as the Company qualifies as an emerging growth company.

**Recent Accounting Pronouncements**—In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*. This ASU updates reportable segment disclosure requirements, primarily through enhanced disclosures about significant expenses. The ASU requires disclosures to include significant segment expenses that are regularly provided to the chief operating decision maker, a description of other segment items by reportable segment, and any additional measures of a segment’s profit or loss used by the chief operating decision maker when deciding how to allocate resources. The ASU also requires all annual disclosures currently required by Topic 280 to be included in interim periods. The update is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted and requires retrospective application to all prior periods presented in the financial statements. The Company is currently evaluating the effect that the adoption of this ASU may have on the Company’s disclosures.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*. The ASU requires greater disaggregation of income tax disclosures primarily on the income tax rate reconciliation and income taxes paid. This authoritative guidance will be effective for the Company starting in fiscal year ending December 31, 2025, with early adoption permitted. The Company is currently evaluating the effect of this new standard on the Company’s disclosures.

**Recently Adopted Accounting Pronouncements**—On January 1, 2023, the Company adopted ASU 2016-13, *Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (“ASU 2016-13”), which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost. ASU 2016-13 replaces the existing incurred loss impairment model with a forward-looking expected credit loss model, which will result in earlier recognition of credit losses. The adoption did not result in a material impact to the Company’s consolidated financial statements or related disclosures. In future periods, as

revenue and accounts receivable increase, ASU 2016-13 could have a material impact on its consolidated financial statements.

### 3. INVENTORY

Inventory consists of the following (in thousands):

	December 31, 2023	December 31, 2022
Raw materials	\$ 7,740	\$ —
Work in process	1,236	—
Finished goods	5,685	—
Inventory, gross	\$ 14,661	\$ —
Net realizable value adjustment	(11,295)	—
Inventory	\$ 3,366	\$ —

The Company recorded a \$11.3 million charge to reflect the LCNRV of inventory during the year ended December 31, 2023 and none in the prior year within cost of revenue in the Company's consolidated statements of operations and comprehensive loss. The Company has firm purchase commitments and recorded LCNRV losses of \$637 thousand related to these firm purchase commitments as of December 31, 2023 to cost of revenue in the Company's consolidated statements of operation and comprehensive loss. These LCNRV losses related to firm purchase commitments are reflected in the materials and related purchases component of accrued and other liabilities on the consolidated balance sheets as of the Transition Date. For further details, refer to Note 11, *Commitments and Contingencies*.

### 4. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets consist of the following (in thousands):

	December 31, 2023	December 31, 2022
Insurance	\$ 521	\$ 2,033
Vendor advances	936	3,147
Grants receivable	824	—
IT related	401	390
Contract assets	253	—
Other	370	87
Total prepaid expenses and other current assets	\$ 3,305	\$ 5,657

### 5. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consist of the following (in thousands):

	December 31, 2023	December 31, 2022
Machinery and equipment	\$ 17,669	\$ 13,699
Furniture and fixtures	184	184
Leasehold improvements	3,232	3,115
Software	183	183
Construction in process	4,279	3,230
Total property and equipment	25,547	20,411
Less: accumulated depreciation	(9,281)	(2,841)
Total property and equipment, net	\$ 16,266	\$ 17,570

Depreciation expense was \$6.4 million and \$1.5 million for the years ended December 31, 2023 and 2022, respectively.

### 6. INTANGIBLE ASSETS, NET

In September 2023, the Company acquired patents valued at \$5.0 million under a Patent License Agreement with UOP, an affiliate of Honeywell, a related party. These patents were recorded at fair value based on the value of the IP Warrants issued, as defined in Note 12, *Common Stock Warrants*, and are amortized over an average useful life of 19

years based on the remaining useful lives of the patents acquired. Amortization expense for the year ended December 31, 2023 was \$67 thousand.

Intangible assets, net, consisted of the following (in thousands):

	December 31, 2023	December 31, 2022
Patents	\$ 4,990	\$ —
Less: accumulated depreciation	(67)	—
Intangible assets, net	<u>\$ 4,923</u>	<u>\$ —</u>

Estimated future amortization expense of intangible assets as of December 31, 2023 are as follows (in thousands):

2024	\$ 267
2025	267
2026	267
2027	267
2028	267
Thereafter	3,588
Total future amortization	<u>\$ 4,923</u>

## 7. ACCRUED AND OTHER CURRENT LIABILITIES

Accrued and other current liabilities consist of the following (in thousands):

	December 31, 2023	December 31, 2022
Payroll and related benefits	\$ 5,681	\$ 2,948
Materials and related purchases	2,083	6,892
Professional and consulting fees	802	1,011
Amounts due to customers	545	770
Accrued capital purchases	327	1,093
Noncancellable purchase commitments	637	—
Other	680	1,411
Total accrued and other current liabilities	<u>\$ 10,755</u>	<u>\$ 14,125</u>

## 8. ACCRUED PRODUCT WARRANTIES

The following table summarizes product warranty activity (in thousands):

	Year Ended December 31,	
	2023	2022
Accrued product warranties - beginning of period	\$ 1,643	\$ —
Accruals for warranties issued	3,412	2,612
Repairs and replacements	(1,416)	(969)
Adjustments to existing accruals	(1,510)	—
Accrued product warranties - end of period	<u>\$ 2,129</u>	<u>\$ 1,643</u>

## 9. LEASES

The Company leases office and manufacturing space in Wilsonville, Oregon under operating leases. Each of the operating leases provides the Company an option to renew the lease for an additional 60 months which have not been included in the operating lease obligations.

The Company determines if an arrangement is a lease at inception and whether the arrangement is classified as an operating or finance lease. At commencement of the lease, the Company records a right-of-use ("ROU") asset and lease liability in the consolidated balance sheets based on the present value of lease payments over the term of the arrangement. ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. As the Company's leases do not provide an

implicit rate, it uses its incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The Company determines its incremental borrowing rate based on publicly available data for instruments with similar characteristics, including recently issued debt, as well as other factors. Contract terms may include options to extend or terminate the lease, and when the Company deems it reasonably certain that ESS will exercise that option it is included in the ROU asset and lease liability. Operating leases will reflect lease expense on a straight-line basis, while finance leases will result in the separate presentation of interest expense on the lease liability and amortization expense of the ROU asset.

ROU assets related to the Company's operating leases are included in operating lease ROU assets, while the corresponding lease liabilities are included in current and non-current operating lease liabilities on the Company's consolidated balance sheets. ROU assets related to the Company's finance leases are included in other non-current assets, while the corresponding lease liabilities are included in accrued and other current liabilities and other non-current liabilities on the Company's consolidated balance sheets.

The Company does not record leases with a term of 12-months or less in the consolidated balance sheets. Short-term lease costs were immaterial for the year ended December 31, 2023.

Operating lease expense for the years ended December 31, 2023 and 2022 was \$1.5 million. Finance lease costs for the years ended December 31, 2023 and 2022 were immaterial.

As of December 31, 2023, future maturities of lease liabilities are as follows (in thousands):

	<b>Operating Leases</b>
2024	\$ 1,720
2025	983
Thereafter	—
Total minimum lease payments	\$ 2,703
Less: imputed interest	(165)
Present value of lease liabilities	\$ 2,538

Weighted-average remaining lease term and discount rate are as follows:

	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Weighted-average remaining lease term (in years)	1.7	2.6
Weighted-average discount rate	7.5 %	7.5 %

## 10. BORROWINGS

Borrowings consist of the following (in thousands):

	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Total notes payable	\$ —	\$ 1,915
Less current portion of notes payable	—	1,600
Notes payable, non-current	\$ —	\$ 315

### *Notes Payable*

As of December 31, 2022, the Company had \$1.9 million of outstanding notes payable to a bank which were secured by all property of the Company, except for its intellectual property. The notes payable bore interest at 0.50% below the bank's prime rate. The Company made monthly interest and principal payments on the notes payable based on the schedule defined in the agreement. On July 7, 2023, the Company elected to repay all outstanding notes payable with a payment of \$1.0 million to First Citizens Bank. The transaction amount repaid the outstanding principal balance, interest and a final payment due of \$200 thousand.

## 11. COMMITMENTS AND CONTINGENCIES

### *Legal Proceedings*

The Company, from time to time, is a party to various claims, legal actions, and complaints arising in the ordinary course of business. The Company is not aware of any material legal proceedings or other claims, legal actions, or complaints through the date of issuance of these consolidated financial statements.

### ***Letters of Credit***

As of December 31, 2022, the Company had a standby letter of credit with First Republic Bank totaling \$725 thousand as security for an operating lease of office and manufacturing space in Wilsonville, Oregon. As of December 31, 2023 the letter of credit was reduced to \$75 thousand and was secured by a restricted certificate of deposit account totaling \$75 thousand recorded as restricted cash, non-current. There were no draws against the letter of credit during the years ended December 31, 2023 and 2022.

On September 1, 2022, the Company executed a standby letter of credit with CitiBank, N.A., for \$600 thousand as security for the performance and payment of the Company's obligations under a customer agreement. The letter of credit is in effect until the date on which the warranty period under the agreement expires, which is anticipated to be more than a year from the balance sheet date. In June 2023, the letter of credit was transferred to Bank of America. As of December 31, 2023, \$600 thousand was pledged as collateral for the letter of credit and recorded as restricted cash, non-current. There were no draws against the letter of credit during the year ended December 31, 2023.

On March 9, 2023, the Company executed a standby letter of credit with SVB for \$200 thousand in support of the Company's customs and duties due on imported materials. In June 2023, the letter of credit was transferred to Bank of America. The letter of credit is in effect until May 19, 2024. As of December 31, 2023, \$200 thousand was pledged as collateral for the letter of credit and recorded as restricted cash, current. There were no draws against the letter of credit during the year ended December 31, 2023.

### ***Purchase Commitments***

The Company purchases materials from several suppliers and has entered into agreements with various contract manufacturers, which include cancellable and noncancellable purchase commitments. As of December 31, 2023 and 2022, total unfulfilled noncancellable purchase commitments were \$637 thousand and \$1.6 million, respectively. In addition, total unfulfilled cancellable purchase commitments amounted to \$7.7 million and \$14.9 million as of December 31, 2023, and 2022, respectively.

As discussed in Note 2, *Significant Accounting Policies*, during the third quarter of 2023 the Company exited the research and development phase and entered the commercial inventory phase and began recording unfulfilled noncancellable purchase commitments as losses within cost of revenue in the consolidated statements of operations and comprehensive loss. Prior to the Transition Date, these purchase commitments were not recorded in the consolidated financial statements as they related to the Company's research and development activities and not the production of commercial inventory.

### ***Joint Development Agreement***

In September 2023, the Company entered into a Joint Development Agreement ("JDA") with UOP, an affiliate of Honeywell, a related party, under which the parties would work collaboratively to engage in certain research and development activities generally related to flow battery technology. Pursuant to the JDA, the Company agreed to reimburse UOP a minimum of \$8.0 million for research and development expenses incurred through December 31, 2028. No expenses were incurred under the JDA during the year ended December 31, 2023.

## **12. COMMON STOCK WARRANTS**

Common stock warrant balances consist of the following:

	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Public Warrants outstanding	11,461,227	7,377,893
Private Warrants outstanding:		
Other Private Warrants outstanding	—	3,500,000
Earnout Warrants outstanding	—	583,334
SMUD Warrant outstanding	12,500	12,500
Honeywell Warrants outstanding:		
Investment Warrant outstanding	10,631,633	—
IP Warrant outstanding	6,269,955	—
Performance Warrants outstanding	775,760	—
Total common stock warrants	<u>29,151,075</u>	<u>11,473,727</u>

As part of STWO's initial public offering, 8,333,287 warrants to purchase common stock (the "Public Warrants") were sold. The Public Warrants are listed on the New York Stock Exchange ("NYSE") under the ticker symbol "GWH.W." The Public Warrants entitle the holder thereof to purchase one share of common stock at a price of \$11.50 per share, subject to adjustments. The Public Warrants may be exercised only for a whole number of shares of common stock. No fractional shares will be issued upon exercise of the warrants. The Public Warrants expire on October 8, 2026, five years after completion of the Business Combination, or earlier upon redemption or liquidation.

The Company may call the Public Warrants for redemption starting any time, in whole and not in part, at a price of \$0.01 per warrant, so long as the Company provides no less than 30 days prior written notice of redemption to each warrant holder, and if, and only if, the reported last sale price of common stock equals or exceeds \$18.00 per share for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date the Company sends the notice of redemption to the warrant holders provided there is an effective registration statement covering the shares of common stock issuable upon exercise of the warrants.

The Company may call the Public Warrants for redemption starting any time, in whole and not in part, at a price of \$0.10 per warrant, so long as the Company provides no less than 30 days prior written notice of redemption to each warrant holder; provided that holders will be able to exercise their warrants on a cashless basis prior to redemption and receive a number of shares determined based on the redemption date fair market value of the shares, and if, and only if, the reported last sale price of common stock equals or exceeds \$10.00 per share for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date the Company sends the notice of redemption to the warrant holders provided there is an effective registration statement covering the shares of common stock issuable upon exercise of the warrants.

Simultaneously with STWO's initial public offering, STWO issued in a private placement 4,666,667 warrants to purchase common stock (the "Private Warrants") to STWO's sponsor. In connection with the Business Combination, STWO's sponsor agreed to forfeit 583,333 Private Warrants. Of the remaining 4,083,334 Private Warrants, 3,500,000 were immediately vested and 583,334 warrants (the "Earnout Warrants") were vested upon meeting certain earnout milestone events on November 9, 2021. The Private Warrants, including the Earnout Warrants, automatically converted on a 1:1 basis into Public Warrants upon the transfer of such warrants by the initial holder to a third party during the fourth quarter of 2023.

The table below shows the common stock warrant activities during the year ended December 31, 2023:

	December 31, 2022	Issued	Exercised	Converted <sup>(1)</sup>	December 31, 2023
Earnout Warrants	583,334	—	—	(583,334)	—
Private Warrants (excluding Earnout Warrants)	3,500,000	—	—	(3,500,000)	—
Public Warrants	7,377,893	—	—	4,083,334	11,461,227
SMUD Warrant	12,500	—	—	—	12,500
Investment Warrant	—	10,631,633	—	—	10,631,633
IP Warrant	—	6,269,955	—	—	6,269,955
Performance Warrants	—	775,760	—	—	775,760
Total common stock warrants	11,473,727	17,677,348	—	—	29,151,075

- (1) In accordance with the terms of the Warrant Agreement, dated September 16, 2020, by and between STWO and Continental Stock Transfer & Trust Company ("Continental"), as amended by the Assignment, Assumption and Agreement, dated October 8, 2021, by and among the Company, STWO, Continental and Computershare Trust Company, N.A. (as amended, the "Warrant Agreement"), the Private Warrants, including the Earnout Warrants, automatically converted on a 1:1 basis into Public Warrants upon the transfer of such warrants by the initial holder to a third party during the fourth quarter of 2023.

The table below shows the common stock warrant activities during the year ended December 31, 2022:

	December 31, 2021	Issued	Exercised	December 31, 2022
Earnout Warrants	583,334	—	—	583,334
Private Warrants (excluding Earnout Warrants)	3,500,000	—	—	3,500,000
Public Warrants	7,377,913	—	20	7,377,893
SMUD Warrant	—	12,500	—	12,500
Total common stock warrants	11,461,247	12,500	20	11,473,727

The Company's common stock warrants were initially recorded at fair value upon completion of the Business Combination and are adjusted to fair value at each reporting date based on the market price of the Public Warrants, with the change in fair value recorded as a component of other income (expense), net in the consolidated statements of operations and comprehensive loss. For the year ended December 31, 2023, the Company recorded a net decrease to the liabilities for Public Warrants of \$2.3 million. For the year ended December 31, 2022, the Company recorded a net decrease to the liabilities for Earnout Warrants, Public Warrants and Private Warrants (Excluding Earnout Warrants) of \$25.8 million.

#### **SMUD Warrant**

On September 16, 2022, the Company entered into a warrant agreement with SMUD, whereby the Company agreed to issue a warrant for up to 500,000 shares of the Company's common stock at an exercise price of \$4.296 per share. The vesting of the shares underlying the warrant will be subject to the achievement of certain commercial milestones through December 31, 2030 pursuant to a related commercial agreement. As of December 31, 2023 and 2022, 12,500 shares underlying the warrant were vested.

#### **Honeywell Warrants**

On September 21, 2023, the Company entered into the Purchase Agreement with Honeywell Ventures, an affiliate of Honeywell, a related party. Pursuant to the Purchase Agreement, Honeywell invested \$27.5 million in the Company and the Company issued 16,491,754 shares of common stock and a warrant to issue up to 10,631,633 shares of common stock to Honeywell Ventures. Pursuant to the Purchase Agreement and also as further consideration for the licensing by UOP, an affiliate of Honeywell, of certain intellectual property to the Company, the Company issued a warrant to issue up to 6,269,955 shares of common stock to UOP. The Investment Warrant has an exercise price of \$1.89, and the IP Warrant has an exercise price of \$2.90. Each warrant will expire on September 21, 2028.

On September 21, 2023, the Company and UOP also entered into the Supply Agreement, pursuant to which UOP may purchase equipment supplied by the Company. Pursuant to the Supply Agreement, the Company agreed to issue additional warrants to purchase common stock to UOP, consisting of (i) an initial performance warrant to issue up to 775,760 shares of common stock, issued on September 21, 2023 in exchange for a prepayment of equipment by UOP in the amount of \$15 million, and (ii) additional performance warrants (not to exceed an aggregate value of \$15 million based on target purchase amounts of up to \$300 million by 2030) to be issued on an annual basis for the five-year period beginning in 2026, based on UOP's purchase of additional equipment after execution of the Supply Agreement. The initial Performance Warrant has an exercise price of \$1.45 and the additional Performance Warrants will have an exercise price equal to the volume-weighted average price of the Company's common stock for the last fifteen (15) trading days of the relevant calendar year for which such Performance Warrant is being issued. The initial Performance Warrant expires on September 21, 2028 and each additional Performance Warrant will have a five-year term from its respective date of issuance.

### **13. STOCK-BASED COMPENSATION**

Stock-based compensation expense is allocated on a departmental basis based on the classification of the award holder. The following table presents the amount of stock-based compensation related to stock-based awards issued to employees on the Company's consolidated statements of operations and comprehensive loss during the years ended December 31, 2023 and 2022 (in thousands):

	2023	2022
Cost of revenue	\$ 1,753	\$ —
Research and development	2,696	2,856
Sales and marketing	816	456
General and administrative	5,370	8,577
Total stock-based compensation	\$ 10,635	\$ 11,889



## 2021 Equity Incentive Plan

In October 2021, the Board of Directors of the Company adopted the ESS Tech, Inc. 2021 Equity Incentive Plan (the “2021 Plan”). The 2021 Plan became effective upon consummation of the Business Combination. Stock awards under the plan may be issued as Incentive Stock Options (“ISO”), Non-statutory Stock Options (“NSO”), Stock Appreciation Rights, and RSUs. Only employees are eligible to receive ISO awards. Employees, directors, and consultants who provide continuous service to the Company are eligible to receive stock awards other than ISOs. The number of shares available for issuance under the 2021 Plan will be increased on the first day of each fiscal year beginning with the 2022 fiscal year and ending with the 2031 fiscal year, in an amount equal to the lesser of (i) 15,260,000 shares, (ii) five percent (5%) of the outstanding shares on the last day of the immediately preceding fiscal year, or (iii) such number of shares determined by the Company no later than the last day of the immediately preceding fiscal year. As of January 1, 2024, the number of shares available for issuance under the 2021 Plan was increased by 8,700,000 shares in accordance with the plan and as approved by the Board. Under the 2021 Plan, the Company is authorized to issue 26,310,000 shares of common stock as of December 31, 2023.

Option prices for incentive stock options are set at the fair market value of the Company’s common stock at the date of grant. The fair market value of RSUs is set at the closing sales price of the Company’s common stock at the date of grant. Employee new hire grants generally cliff vest 1/4th at the end of the first year and then vest 1/16<sup>th</sup> each quarter over the remaining three years. Grants expire 10 years from the date of grant. All other grants vest quarterly over four years.

As of December 31, 2023, there were 5,645,585 shares available for future grant under the 2021 Plan.

## Stock Options and Restricted Stock Units

Stock option and RSU activity, prices, and values during the years ended December 31, 2023 and 2022 are as follows (in thousands, except for share, per share, and contractual term data):

	Options Outstanding				RSUs	
	Number of shares	Weighted average exercise price	Weighted average remaining contractual term (years)	Aggregate intrinsic values (\$'000s)	Number of plan shares outstanding	Weighted average grant date fair value per Share
Balances as of December 31, 2022	3,223,109	\$ 1.01	7.39	\$ 4,583	6,346,955	\$ 6.10
Options and RSUs granted	378,110	1.51			11,581,684	1.21
Options exercised and RSUs released	(703,550)	0.34			(2,892,339)	3.42
Options and RSUs forfeited	(299,287)	0.46			(1,873,932)	3.31
Balances as of December 31, 2023	2,598,382	\$ 1.33	6.25	\$ 1,422	13,162,368	\$ 2.79
Options vested and exercisable - December 31, 2022	1,947,123	\$ 0.76	7.06	\$ 3,244		
Options vested and exercisable - December 31, 2023	1,775,256	\$ 1.10	5.62	\$ 1,198		

The aggregate intrinsic value is the fair market value on the reporting date less the exercise price for each option. The aggregate intrinsic value of the options exercised was \$0.9 million and \$2.1 million during the years ended December 31, 2023 and 2022, respectively.

The fair value of each stock option award is estimated on the date of the grant using the Black-Scholes Merton option-pricing model. For options granted during the years ended December 31, 2023 and 2022, respectively, the weighted average estimated fair value using the Black-Scholes Merton option pricing model was \$1.13 and \$5.23 per option, respectively.

In accordance with ASC 718, the fair value of each option grant has been estimated as of the date of grant using the following weighted average assumptions:

	2023	2022
Risk-free rate	4.38 %	1.64 %

Expected volatility	87.08 %	73.95 %
Expected term	6 years	6 years
Expected dividends	—	—

As of December 31, 2023, there was approximately \$26.0 million of unamortized stock-based compensation expense related to unvested stock options and RSUs, which is expected to be recognized over a weighted average period of 2.76 years.

#### ***Employee Stock Purchase Plan***

In May 2022, the Company commenced its first offering period under the ESS Tech, Inc. Employee Stock Purchase Plan (the “ESPP”), which assists employees in acquiring a stock ownership interest in the Company. The ESPP permits eligible employees to purchase common stock at a discount through payroll deductions during specified offering periods. No employee may purchase more than \$25,000 worth of stock in any calendar year. The price of shares purchased under the ESPP is equal to 85% of the fair market value of the common stock on the first or last day of the offering period, whichever is lower. Total ESPP expense for the years ended December 31, 2023 and 2022 was \$324 thousand and \$270 thousand, respectively.

## **14. FAIR VALUE MEASUREMENTS**

The following tables present the Company’s fair value hierarchy for its financial assets measured at fair value on a recurring basis (in thousands):

<b>December 31, 2023</b>			
	<b>Cash Equivalents and Restricted Cash</b>	<b>Short-Term Investments</b>	<b>Total Assets at Fair Value</b>
<b>Level 1:</b>			
Money market funds	\$ 10,126	\$ —	\$ 10,126
U.S. Treasury securities	—	54,681	54,681
Total Level 1	10,126	54,681	64,807
<b>Level 2:</b>			
Certificate of deposit	77	—	77
U.S. agency securities	—	12,447	12,447
Commercial paper	9,353	20,771	30,124
Total Level 2	9,430	33,218	42,648
Total assets measured at fair value	<u>\$ 19,556</u>	<u>\$ 87,899</u>	<u>\$ 107,455</u>
<b>December 31, 2022</b>			
	<b>Cash Equivalents and Restricted Cash</b>	<b>Short-Term Investments</b>	<b>Total Assets at Fair Value</b>
<b>Level 1:</b>			
Money market funds	\$ 27,993	\$ —	\$ 27,993
U.S. Treasury securities	—	19,944	19,944
Total Level 1	27,993	19,944	47,937
<b>Level 2:</b>			
Certificate of deposit	75	—	75
U.S. agency securities	—	55,319	55,319
Commercial paper	5,972	29,784	35,756
Total Level 2	6,047	85,103	91,150
Total assets measured at fair value	<u>\$ 34,040</u>	<u>\$ 105,047</u>	<u>\$ 139,087</u>

The following tables present the Company's fair value hierarchy for its financial liabilities measured at fair value on a recurring basis (in thousands):

	December 31, 2023			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Public common stock warrants	917	—	—	917
Total liabilities measured at fair value	\$ 917	\$ —	\$ —	\$ 917

	December 31, 2022			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Earnout warrant liabilities	\$ —	\$ 163	\$ —	\$ 163
Public common stock warrants	2,066	—	—	2,066
Private common stock warrants	—	980	—	980
Total liabilities measured at fair value	\$ 2,066	\$ 1,143	\$ —	\$ 3,209

There were no transfers among Level 1, Level 2, or Level 3 categories during the periods presented. The carrying amounts of the Company's notes payable and accounts payable approximate their fair values due to their short maturities.

*Level 1 Assets:* The Company invests in money market funds and U.S. Treasury securities. These assets are valued using observable inputs that reflect quoted prices for securities with identical characteristics.

*Level 2 Assets:* The Company invests in a certificate of deposit, U.S. agency securities, and commercial paper. These assets are valued using observable inputs that reflect quoted prices for securities with similar characteristics and other observable inputs (such as interest rates that are observable at commonly quoted intervals).

*Level 1 Liabilities:* The Company values its public common stock warrants based on the market price of the warrants.

*Level 2 Liabilities:* The Company values its earnout warrant liabilities and private common stock warrants based on the market price of the Company's public common stock warrants.

For trading securities held at the reporting date, net losses recorded during the year ended December 31, 2023 and 2022 were immaterial.

## 15. INCOME TAXES

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The significant components of deferred tax assets and liabilities are as follows (in thousands):

	As of December 31,	
	2023	2022
Deferred tax assets:		
Net operating losses	\$ 46,616	\$ 34,454
Tax credit carryforward	1,454	909
Equity compensation	1,560	737
Capitalized research and development expenses	19,644	16,946
Inventory reserve	3,159	—
Deferred revenue	1,002	—
Other	2,761	2,153
Total deferred tax assets	76,196	55,199
Valuation allowance	(75,590)	(54,261)
Deferred tax assets, net of valuation allowance	606	938
Deferred tax liabilities:		
Right-of-use assets	(606)	(938)
Net deferred tax	\$ —	\$ —

The Tax Cuts and Jobs Act (the “Act”) was enacted on December 22, 2017. Included in the Act is the requirement to capitalize and amortize research and development expenditures beginning in 2022. Prior to 2022, the Company had been expensing these costs as incurred for tax purposes. The capitalization of the research and development expenditures resulted in a new deferred tax asset of \$16.9 million in 2022, and which was offset by a valuation allowance, resulting in no significant impact to income tax expense for the year ended December 31, 2022.

ASC 740 requires that the tax benefit of net operating losses, temporary differences and credit carryforwards be recorded as an asset to the extent that management assesses that realization is “more likely than not.” Realization of the future tax benefits is dependent on the Company’s ability to generate sufficient taxable income within the carryforward period. Because of the Company’s history of operating losses, management believes that recognition of the deferred tax assets arising from the above-mentioned future tax benefits is currently not likely and, accordingly, has provided a valuation allowance for fiscal years 2023 and 2022. The valuation allowance increased by \$21.3 million during the year ended December 31, 2023.

As of December 31, 2023, the Company has federal and state net operating loss carryforwards of \$166.3 million and \$202.4 million, respectively. Federal net operating losses generated prior to 2018 will start to expire in 2032. Federal net operating losses generated after 2017 do not expire. The state net operating losses will begin to expire in 2027. The Company also has federal and state research and development tax credit carryforwards totaling \$2.9 million and \$28 thousand, respectively. The federal research and development credit carryforwards begin to expire in 2039, unless previously utilized. The state research and development credit carryforwards do not expire.

The effective tax rate of the Company's provision for income taxes differs from the federal statutory rate as follows:

	Years Ended December 31,	
	2023	2022
Federal statutory tax rate	21.0 %	21.0 %
State tax, net of federal tax benefit	6.8	7.2
Stock compensation	(1.9)	(0.2)
Non-deductible officer compensation	0.8	(1.4)
Warrant liabilities revaluation	0.6	6.6
Earnout Shares liabilities revaluation	—	0.4
Permanent differences	(0.1)	0.1
Research and development tax credits	0.5	0.8
Other	(0.1)	0.1
Valuation allowance	(27.6)	(34.6)
Effective tax rate	— %	— %

The changes in the Company's uncertain tax positions are summarized as follows (in thousands):

Balance as of December 31, 2021	\$ 292
Additions related to prior year	—
Additions related to current year	613
Balance as of December 31, 2022	905
Additions related to prior year	170
Additions related to current year	382
Balance as of December 31, 2023	\$ 1,457

During the years ended December 31, 2023 and 2022, the Company recognized uncertain tax positions of \$382 thousand and \$613 thousand, respectively, related to a reduction of the research and development credit deferred tax asset. Unrecognized tax benefits may change during the next twelve months for items that arise in the ordinary course of business. The Company does not expect a material change to its unrecognized tax benefits over the next twelve months that would have an adverse effect on its operating results.

The Company recognizes interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. The Company had no accrued interest or penalties related to uncertain tax positions as of 2023 and 2022.

The Company files federal and certain state income tax returns, which provide varying statutes of limitations on assessments. However, because of net operating loss carryforwards, substantially all tax years since inception remain open to federal and state tax examination.

Utilization of net operating losses and research and development credit carryforwards may be subject to annual limitations due to ownership changes that have occurred or that could occur in the future, as required by Sections 382 and 383 of the Code, as well as similar state provisions. These ownership changes may limit the amount of net operating losses and research and development credit carryforwards that can be utilized annually to offset future taxable income and tax, respectively. In general, an "ownership change" as defined by Section 382 of the Code results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50 percentage points of outstanding stock of a company by certain stockholders. Due to the existence of the valuation allowance, limitations created by past ownership changes, if any, will not impact its effective tax rate.

## 16. GOVERNMENT GRANTS

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

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 into law. The IRA has significant economic incentives for both energy storage customers and manufacturers for projects placed in service after December 31, 2022. Starting in 2023, there are Production Tax Credits under Internal Revenue Code 45X, that can be claimed on battery components manufactured in the U.S. and sold to U.S. or foreign customers. The tax credits available to manufacturers include a credit for ten percent of the cost incurred to make electrode active materials in addition to credits of \$35 per kWh of capacity of battery cells and \$10 per kWh of capacity of battery modules. The credits are cumulative, meaning that companies will be able to claim each of the available tax credits based on the

battery components produced and sold through 2029, after which the PTC will begin to gradually phase down through 2032.

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

The PTC is recorded as the applicable items are produced and sold. For the year ended December 31, 2023, the Company recognized PTC of \$824 thousand as a reduction of cost of revenue on the consolidated statements of operations and comprehensive loss. As of December 31, 2023, grant receivable related to the PTC in the amount of \$824 thousand is recorded in prepaid expenses and other current assets on the consolidated balance sheets.

## 17. REVENUE

### Disaggregated Revenue

The following table presents the Company’s revenue, disaggregated by source (in thousands):

	Year Ended December 31,	
	2023	2022
Product revenue	\$ 5,103	\$ 803
Service revenue	183	91
Other revenue	2,254	—
Total revenue	<u>\$ 7,540</u>	<u>\$ 894</u>

The majority of the Company’s revenue is derived from the product sales of energy storage systems. During 2023 other revenue included engineering services the Company performed in support of a customer project site and revenue earned for services performed to date under project contracts that were ultimately terminated. See Note 2, *Significant Accounting Policies* for further information regarding revenue recognition.

### Contract Balances

Contract assets relate to unbilled amounts resulting from contract arrangements in which the related revenue recognition performance obligations have been satisfied, however invoicing to the customer has not yet occurred. Deferred revenue (or contract liabilities) relates to consideration received from customers in advance of the Company satisfying the revenue recognition performance obligations under the related contractual arrangements. Contract balances are reported in a net contract asset or deferred revenue liability position on a contract-by-contract basis at the end of each reporting period. Contract assets are included in prepaid expenses and other current assets and deferred revenue is presented separately on the consolidated balance sheets.

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

	December 31, 2023	December 31, 2022
Contract assets	\$ 253	11
Deferred revenue	20,781	8,610

Contract assets increased by \$242 thousand during the year ended December 31, 2023 due to the recognition of revenues for which invoicing had not yet occurred. Deferred revenue increased by \$12.2 million during the year ended December 31, 2023, reflecting \$19.0 million in customer advance payments, offset by the recognition of \$6.3 million of revenue that was included in the deferred revenue balance at the beginning of the period, \$506 thousand of deposits returned to customers, and \$244 thousand of reclassifications to accrued and other current liabilities due to changes in the estimation of variable consideration.

Deferred revenue of \$2.5 million is expected to be recognized within the next 12 months and non-current deferred revenue of \$18.2 million is expected to be recognized thereafter.

## 18. DEFINED CONTRIBUTION PLAN

The Company has a 401(k) plan to provide defined contribution retirement benefits for all employees who have completed six months of service. Employees may elect to contribute a portion of their pretax compensation to the 401(k) plan, subject to annual limitations. The Company may make profit-sharing contributions at the discretion of the Board of Directors. Employee contributions are always fully vested. For the years ended December 31, 2023 and 2022, the Company contributed \$853 thousand and \$674 thousand, respectively.

## 19. RELATED PARTY TRANSACTIONS

During the year ended December 31, 2023, the Company recognized revenue of \$33 thousand for the sale of extended warranty services and reimbursable shipping and freight costs to related parties. During the year ended December 31, 2022, the Company recognized recorded revenue of \$284 thousand for sales of energy storage systems and extended warranty services to related parties.

As of December 31, 2023, the Company had recorded deferred revenue of \$1 thousand for sales of extended warranty services to related parties and \$29 thousand of outstanding accounts receivable from related parties. As of December 31, 2022, the Company had recorded deferred revenue of \$5 thousand for sales of energy storage systems to related parties.

Effective September 21, 2023, Honeywell became a related party as a result of the common stock and common stock warrants issued as described in Note 12, *Common Stock Warrants*. As of December 31, 2023, the Company recorded a non-refundable deposit for future equipment purchases by Honeywell of \$15.0 million in deferred revenue, with \$600 thousand in current deferred revenue and \$14.4 million in non-current deferred revenue, and an asset of \$736 thousand for the value of the initial Performance Warrant issued to Honeywell within other non-current assets on the consolidated balance sheets. The value of the initial Performance Warrant will be recognized as an offset to revenue in the period in which revenue is earned.

## 20. NET LOSS PER SHARE

The following table presents the calculation of basic and diluted net loss per share attributable to common stockholders for the years ended December 31, 2023 and 2022 (in thousands, except share and per share data):

	2023	2022
Numerator:		
Net loss attributable to common stockholders	\$ (77,578)	\$ (77,969)
Denominator:		
Weighted-average shares outstanding – basic and diluted	159,958,645	152,676,155
Net loss per share – basic and diluted	\$ (0.48)	\$ (0.51)

Due to the net losses for the years ended December 31, 2023 and 2022, basic and diluted net loss per common share were the same, as the effect of potentially dilutive securities would have been anti-dilutive.

The following outstanding balances of common share equivalent securities have been excluded from the calculation of diluted weighted-average common shares outstanding because the effect is anti-dilutive for the periods presented:

	2023	2022
Stock options	2,598,382	3,223,109
RSUs	13,162,368	6,346,955
Warrants	29,151,075	11,473,727
Total	44,911,825	21,043,791



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

As previously disclosed in the Company's Form 8-K dated April 10, 2023, Ernst & Young LLP ("EY"), the Company's predecessor auditor, informed the Company that it had declined to stand for re-election as the Company's registered public accounting firm for the audit of the fiscal year ended December 31, 2023. There was no dispute between the Company and EY and EY continued to perform services for the Company in connection with the Company's fiscal quarter ended March 31, 2023.

EY's reports on the Company's financial statements for the fiscal years ended December 31, 2022 and 2021 did not contain an adverse opinion or a disclaimer of opinion, and were not qualified or modified as to uncertainty, audit scope or accounting principles.

During the Company's fiscal years ended December 31, 2022 and 2021, and in the subsequent interim period through April 10, 2023, (i) there were no "disagreements" as that term is defined in Item 304(a)(1)(iv) of Regulation S-K promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as amended, between the Company and EY on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of EY, would have caused EY to make reference to the subject matter of the disagreement in their reports on the financial statements for such years, and (ii) there were no "reportable events" as that term is defined in Item 304(a)(1)(v) of Regulation S-K, except for (A) the material weakness in the Company's internal controls over financial reporting disclosed in Part II, Item 9A of the Company's Form 10-K for the fiscal year ended December 31, 2022, relating to the operating effectiveness of internal controls over the review and analysis of certain transactions within the Company's financial statement close process, and (B) the material weaknesses in the Company's internal controls over financial reporting disclosed in Part II, Item 9A of the Company's Form 10-K for the fiscal year ended December 31, 2021, relating to (1) the identification and review of technical issues associated with research and development, raw materials purchase commitments and equity processes which resulted in adjustments to restate the 2019 financial statements and correct the 2020 financial statements; and (2) the review and analysis of certain transactions within the Company's financial statement close process.

The Company determined that it remediated the material weakness related to the identification and review of technical issues associated with research and development, raw materials purchase commitments and equity processes as of December 31, 2021. The Company determined that it remediated the material weakness relating to the operating effectiveness of internal controls over the review and analysis of certain transactions within the Company's financial statement close process as of December 31, 2023.

As previously disclosed in the Company's Form 8-K dated May 3, 2023, on May 2, 2023, upon the completion of a Request for Proposal, the Audit Committee of the Board of Directors of the Company appointed KPMG LLP ("KPMG") as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2023, effective immediately.

During the Company's two most recent fiscal years ended December 31, 2022 and 2021, and the subsequent interim period from January 1, 2023 to May 2, 2023, neither the Company, nor anyone on the Company's behalf, consulted with KPMG regarding either (i) the application of accounting principles to a specific transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company's consolidated financial statements, and neither a written report nor oral advice was provided to the Company that KPMG concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing or financial reporting issue or (ii) any matter that was either the subject of a disagreement (within the meaning of Item 304(a)(1)(iv) of Regulation S-K and the related instructions) or a reportable event (as described in Item 304(a)(1)(v) of Regulation S-K).

### **ITEM 9A. CONTROLS AND PROCEDURES**

#### *Disclosure Controls and Procedures*

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

Under the supervision and with the participation of management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures as required under Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of the end of the period covered by this Annual Report on

Form 10-K. Based on that evaluation, our principal executive officer and principal financial officer have concluded that the Company's disclosure controls and procedures were effective as of December 31, 2023.

*Management's Report on Internal Controls over Financial Reporting*

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of management, including our principal executive officer and principal 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 (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, management concluded that our internal control over financial reporting was effective as of December 31, 2023 following remediation of the material weakness described below.

*Attestation Report of the Registered Public Accounting Firm*

Our independent registered accounting firm is not required to issue an attestation report on our internal control over financial reporting for so long as we qualify as an "emerging growth company," as defined under the JOBS Act.

*Changes in Internal Control over Financial Reporting*

Other than the actions taken as described in "Remediation of a Material Weakness in Internal Control over Financial Reporting" below to improve the Company's internal control over financial reporting, there have been no changes in our internal control over financial reporting during the fiscal year ended December 31, 2023 that materially affected, or which are reasonably likely to materially affect, our internal control over financial reporting.

*Remediation of a Material Weakness in Internal Control over Financial Reporting*

We designed and implemented remediation measures to address the material weakness previously identified in the 2022 Annual Report on Form 10-K, including hiring additional personnel and formalizing our internal control framework over the review and analysis of certain transactions within our financial statement close process. These actions were completed as of December 31, 2023, and the material weakness was remediated.

*Inherent Limitations on Effectiveness of Controls*

Our system of internal control over financial reporting was designed to provide reasonable assurance regarding the preparation and fair presentation of published financial statements in accordance with generally accepted accounting principles. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance and may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

**ITEM 9B. OTHER INFORMATION**

*Securities Trading Plans of Directors and Executive Officers*

During the three months ended December 31, 2023, no director or officer, as defined in Rule 16a-1(f) under the Securities Exchange Act of 1934, adopted or terminated a "Rule 10b5-1 trading arrangement" or a "non-Rule 10b5-1 trading arrangement," each as defined in Regulation S-K Item 408.

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

Not applicable.

**PART III**

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

The information required by this item is incorporated by reference in our proxy statement relating to our 2024 Annual Meeting of Stockholders. The proxy statement will be filed with the SEC within 120 days of the fiscal year ended December 31, 2023.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item is incorporated by reference in our proxy statement relating to our 2024 Annual Meeting of Stockholders. The proxy statement will be filed with the SEC within 120 days of the fiscal year ended December 31, 2023.

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

The information required by this item is incorporated by reference in our proxy statement relating to our 2024 Annual Meeting of Stockholders. The proxy statement will be filed with the SEC within 120 days of the fiscal year ended December 31, 2023.

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

The information required by this item is incorporated by reference in our proxy statement relating to our 2024 Annual Meeting of Stockholders. The proxy statement will be filed with the SEC within 120 days of the fiscal year ended December 31, 2023.

## ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Our independent registered public accounting firm is KPMG, LLP; Portland, Oregon; Auditor Firm ID: 185.

The information required by this item is incorporated by reference in our proxy statement relating to our 2024 Annual Meeting of Stockholders. The proxy statement will be filed with the SEC within 120 days of the fiscal year ended December 31, 2023.

## PART IV

## ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

### (a) Financial Statements and Schedules

The financial statements are set forth under Item 8 of this Annual Report on Form 10-K. Financial statement schedules have been omitted since they are either not required, not applicable, or the information is otherwise included.

### (b) Exhibit Listing

Exhibit	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit No.	Filing Date	
2.1#	<a href="#">Merger Agreement, dated as of May 6, 2021, by and among STWO, SCharge Merger Sub, Inc. and ESS Tech, Inc.</a>	8-K	001-39525	2.1	May 7, 2021	
3.1	<a href="#">Certificate of Incorporation of ESS</a>	8-K	001-39525	3.1	October 15, 2021	
3.2	<a href="#">Certificate of Amendment to the Certificate of Incorporation</a>	8-K	001-39525	3.1	May 22, 2023	
3.3	<a href="#">Amended and Restated Bylaws of ESS</a>	10-Q	001-39525	3.2	November 3, 2022	
4.1	<a href="#">Warrant Agreement, dated September 16, 2020, by and between STWO and Continental Stock Transfer &amp; Trust Company</a>	S-4	333-257232	4.1	June 21, 2021	
4.2	<a href="#">Description of securities</a>					X
4.3	<a href="#">Assignment, Assumption and Amendment Agreement to the Warrant Agreement, dated October 8, 2021, by and among ESS, STWO, Continental Stock Transfer &amp; Trust Company, Computershare Trust Company, N.A. and Computershare, Inc.</a>	8-K	001-39525	4.2	October 15, 2021	
4.4	<a href="#">Warrant to Purchase Stock, dated September 16, 2022, by and between the Company and Sacramento Municipal Utility District</a>	10-Q	001-39525	4.3	November 3, 2022	

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4.5	<a href="#">Investment Warrant, dated September 21, 2023</a>	10-Q	001-39525	4.4	November 14, 2023
4.6	<a href="#">IP Warrant, dated September 21, 2023</a>	10-Q	001-39525	4.5	November 14, 2023
4.7	<a href="#">Performance Warrant, dated September 21, 2023</a>	10-Q	001-39525	4.6	November 14, 2023
4.8	<a href="#">Registration Rights Agreement, dated September 21, 2023, by and between the Company and Honeywell ACS Ventures LLC</a>	10-Q	001-39525	4.7	November 14, 2023
10.1	<a href="#">Form of Registration Rights Agreement</a>	8-K	001-39525	10.4	May 7, 2021
10.2	<a href="#">Form of Subscription Agreement</a>	8-K	001-39525	10.1	May 7, 2021
10.3	<a href="#">Stockholders' Agreement, dated as of May 6, 2021, by and among ESS, SBE and BEV</a>	8-K	001-39525	10.5	October 15, 2021
10.4#	<a href="#">Framework Agreement, dated as of March 31, 2021, by and between SBE US Holdings One, Inc. and ESS Tech, Inc.</a>	S-4	333-257232	10.13	June 21, 2021
10.6	<a href="#">Office Lease Agreement, dated July 24, 2017, by and between ESS Tech, Inc. and Parkway Woods Business Park, LLC</a>	S-4	333-257232	10.8	June 21, 2021
10.7†	<a href="#">Energy Storage Systems, Inc. 2014 Equity Incentive Plan</a>	S-4	333-257232	10.6	June 21, 2021
10.8†	<a href="#">Amendment to ESS Tech, Inc. 2014 Equity Incentive Plan</a>	S-4	333-257232	10.7	June 21, 2021
10.9†	<a href="#">2021 Equity Incentive Plan and form of award agreements thereunder</a>	10-K	001-39525	10.9	March 2, 2023
10.10†	<a href="#">2021 Employee Stock Purchase Plan</a>	10-K	001-39525	10.1	March 2, 2023
10.11†	<a href="#">Amended and Restated Outside Director Compensation Policy</a>				X
10.12	<a href="#">Form of Indemnification Agreement</a>	8-K	001-39525	10.2	October 15, 2021
10.13†	<a href="#">Employment Agreement, dated April 1, 2021, by and between ESS Tech, Inc. and Eric Dresselhuys</a>	S-4	333-257232	10.10	June 21, 2021
10.14†	<a href="#">Employment Agreement, dated November 1, 2022, by and between ESS Tech, Inc. and Anthony Rabb</a>	10-K	001-39525	10.14	March 2, 2023
10.15†	<a href="#">Employment Agreement, dated May 23, 2021, by and between ESS Tech, Inc. and Craig Evans</a>	S-4	333-257232	10.11	June 21, 2021
10.16†	<a href="#">Common Stock and Warrant Purchase Agreement, dated September 21, 2023, by and between the Company and Honeywell ACS Ventures LLC</a>	10-Q	001-39525	10.1	November 14, 2023
10.17†	<a href="#">Executive Incentive Compensation Plan</a>				X
16.1	<a href="#">Letter from Ernst &amp; Young LLP</a>	8-K	001-39525	16.1	April 14, 2023
16.2	<a href="#">Letter from Ernst &amp; Young LLP</a>	8-K	001-39525	16.1	May 3, 2023
21.1	<a href="#">List of Subsidiaries</a>	S-1	333-260693	21.1	November 2, 2021

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23.1	<a href="#">Consent of KPMG LLP, Independent Registered Public Accounting Firm</a>	X
23.2	<a href="#">Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm</a>	X
24.1	Power of Attorney (contained in the signature page to this Annual Report on Form 10-K)	X
31.1	<a href="#">Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended, with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2022</a>	X
31.2	<a href="#">Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended, with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2022</a>	X
32.1*	<a href="#">Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2022</a>	X
32.2*	<a href="#">Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2022</a>	X
97.1	Compensation Recovery Policy	X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101)	X

† Indicates management contract or compensatory plan or arrangement.

# Portions of this exhibit have been omitted in accordance with Item 601 of Regulation S-K.

\* These exhibits are furnished with this Annual Report on Form 10-K and are not deemed filed with the Securities and Exchange Commission and are not incorporated by reference in any filing of ESS Tech, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filings.

#### **ITEM 16. FORM 10-K SUMMARY**

Not applicable.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

March 13, 2024

### ESS TECH, INC.

By: /s/ Eric P. Dresselhuys

Name: Eric P. Dresselhuys

Title: Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Eric Dresselhuys and Anthony Rabb, jointly and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming that all said attorneys-in-fact and agents, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the registrant and in the capacities indicated on March 13, 2024.

<u>Signature</u>	<u>Title</u>
<u>/s/ Eric P. Dresselhuys</u>	<i>Chief Executive Officer and Director</i>
<b>Eric P. Dresselhuys</b>	(Principal Executive Officer)
<u>/s/ Anthony Rabb</u>	<i>Chief Financial Officer</i>
<b>Anthony Rabb</b>	(Principal Financial and Accounting Officer)
<u>/s/ Harry Quarls</u>	<i>Chairman of the Board and Director</i>
<b>Harry Quarls</b>	
<u>/s/ Michael Niggli</u>	<i>Founding Chairman and Director</i>
<b>Michael Niggli</b>	
<u>/s/ Raffi Garabedian</u>	<i>Director</i>
<b>Raffi Garabedian</b>	
<u>/s/ Rich Hossfeld</u>	<i>Director</i>
<b>Rich Hossfeld</b>	
<u>/s/ Sandeep Nijhawan</u>	<i>Director</i>
<b>Sandeep Nijhawan</b>	
<u>/s/ Kyle Teamey</u>	<i>Director</i>
<b>Kyle Teamey</b>	
<u>/s/ Alexi Wellman</u>	<i>Director</i>
<b>Alexi Wellman</b>	



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

The following descriptions of the capital stock of ESS Tech, Inc. (“us,” “our,” “we,” “ESS” or the “Company”) and certain provisions of our certificate of incorporation (as amended by the certificate of amendment to the certificate of incorporation, the “certificate of incorporation”) and amended and restated bylaws are summaries and are qualified by reference to the certificate of incorporation and the amended and restated bylaws, each previously filed with the Securities and Exchange Commission and incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit 4.2 is a part, as well as to the relevant provisions of the general corporation law of the state of Delaware (the “DGCL”). We encourage you to read our certificate of incorporation, our amended and restated bylaws and the applicable provisions of the DGCL carefully.

**Authorized Capital Stock**

Our authorized capital stock consists of 2,200,000,000 shares of capital stock, of which:

- 2,000,000,000 shares are designated as common stock, par value \$0.0001 per share; and
- 200,000,000 shares are designated as preferred stock, par value \$0.0001 per share.

Our board of directors is authorized, without stockholder approval, except as required by the listing standards of the New York Stock Exchange, to issue additional shares of capital stock.

**Common Stock**

The holders of our common stock are entitled to one vote per share on all matters submitted to a vote of the stockholders and do not have cumulative voting rights. Accordingly, subject to the rights of holders of any preferred stock outstanding at the time, where a quorum is present at a meeting of stockholders, directors are elected by plurality vote. Subject to preferences that may be applicable to any preferred stock outstanding at the time, the holders of outstanding shares of our common stock are entitled to receive ratably any dividends declared by the board of directors out of assets legally available. Upon the liquidation, dissolution or winding up, holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preference of any then outstanding shares of preferred stock. Holders of our common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to our common stock.

**Preferred Stock**

Our board of directors is authorized, subject to limitations prescribed by the DGCL, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences, and rights of the shares of each series and any of its qualifications, limitations, or restrictions, in each case without further vote or action by the stockholders. The board of directors is empowered to increase, but not above the total number of authorized shares of preferred stock, or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding, without any further vote or action by the stockholders. Our board of directors is able to authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring, or preventing a change in control of ESS and might adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. There are currently no plans to issue any shares of preferred stock.

**Warrants**

***Public Warrants***

Each whole warrant entitles the registered holder to purchase one share of common stock at a price of \$11.50 per share, subject to adjustment as discussed below. Pursuant to the Warrant Agreement, dated September 16, 2020, as amended by the Assignment, Assumption and Amendment Agreement, dated October 8, 2021 (together, the “Warrant Agreement”), a warrant holder may exercise its warrants only for a whole number of shares of common stock. This means only a whole warrant may be exercised at a given time by a warrant holder. No fractional warrants were issued upon separation of the units and only whole warrants may trade. The warrants expire on October 8, 2026, at 5:00 p.m., New York City time, or earlier upon redemption or liquidation.

*Redemption of Warrants when the price per share of our common stock equals or exceeds \$18.00.* We may redeem the outstanding warrants:

- in whole and not in part;
- at a price of \$0.01 per public warrant;
- upon a minimum of 30 days' prior written notice of redemption to each warrant holder; and
- if, and only if, the closing price of our common stock equals or exceeds \$18.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading "*—Anti-dilution Adjustments*") for any 20 trading days within a 30-trading day period ending three trading days before we send the notice of redemption to the warrant holders.

We will not redeem the warrants as described above unless a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the issuance of our common stock issuable upon exercise of the warrants is then effective and a current prospectus relating to those shares of our common stock is available throughout the 30-day Redemption Period (as defined below). If and when the warrants become redeemable, we may exercise our redemption right even if we are unable to register or qualify the underlying securities for sale under all applicable state securities laws.

We have established the last of the redemption criteria discussed above to prevent a redemption call unless there is at the time of the call a significant premium to the warrant exercise price. If the foregoing conditions are satisfied and we issue a notice of redemption of the warrants, each warrant holder will be entitled to exercise his, her or its warrant prior to the scheduled redemption date. However, the price of our common stock may fall below the \$18.00 redemption trigger price (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading "*—Anti-dilution Adjustments*") as well as the \$11.50 (for whole shares) warrant exercise price after the redemption notice is issued.

*Redemption of warrants when the price per share of our common stock equals or exceeds \$10.00.* We may redeem the outstanding warrants:

- in whole and not in part;
- at \$0.10 per warrant upon a minimum of 30 days' prior written notice of redemption provided that holders will be able to exercise their warrants on a cashless basis prior to redemption and receive that number of shares determined by reference to the table below, based on the redemption date and the "fair market value" of our common stock (as defined below) except as otherwise described below; and
- if, and only if, the closing price of our common stock equals or exceeds \$10.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading "*—Anti-Dilution Adjustments*") for any 20 trading days within the 30-trading day period ending three trading days before we send the notice of redemption to the warrant holders.

In accordance with the Warrant Agreement, in the event that we elect to redeem the outstanding warrants as set forth under the headings "*—Redemption of Warrants when the price per share of our common stock equals or exceeds \$18.00*" and "*—Redemption of Warrants when the price per share of our common stock equals or exceeds \$10.00*," we will fix a date for the redemption (the "Redemption Date"). Notice of redemption will be mailed by first class mail, postage prepaid, by us to all shareholders, including beneficial owners, not less than 30 days prior to the Redemption Date (the "30-day Redemption Period") to the registered holders of the warrants to be redeemed at their last addresses as they appear on the registration books. Any notice mailed in the manner provided above will be conclusively presumed to have been duly given whether or not the registered holder of the warrants received such notice. We are not contractually obligated to notify investors when the warrants become eligible for redemption, and we do not intend to so notify investors upon eligibility of the warrants for redemption.

Beginning on the date the notice of redemption is given until the warrants are redeemed or exercised, holders may elect to exercise their warrants on a cashless basis. The numbers in the table below represent the number of shares of our common stock that a warrant holder will receive upon such cashless exercise in connection with a redemption by us pursuant to this redemption feature, based on the "fair market value" of our common stock on the corresponding redemption date (assuming holders elect to exercise their warrants and such warrants are not redeemed for \$0.10 per warrant), determined for these purposes based on volume weighted average price of our common stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of warrants, and the number of months that the corresponding redemption date precedes the expiration date of the warrants, each as set forth

in the table below. We will provide warrant holders with the final fair market value no later than one business day after the 10-trading day period described above ends.

The share prices set forth in the column headings of the table below will be adjusted as of any date on which the number of shares issuable upon exercise of a warrant or the exercise price of a warrant is adjusted as set forth under the heading “—*Anti-dilution Adjustments*” below. If the number of shares issuable upon exercise of a warrant is adjusted, the adjusted share prices in the column headings will equal the share prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the number of shares deliverable upon exercise of a warrant immediately prior to such adjustment and the denominator of which is the number of shares deliverable upon exercise of a warrant as so adjusted. The number of shares in the table below shall be adjusted in the same manner and at the same time as the number of shares issuable upon exercise of a warrant. If the exercise price of a warrant is adjusted, (a) in the case of an adjustment pursuant to the fifth paragraph under the heading “—*Anti-dilution Adjustments*” below, the adjusted share prices in the column headings will equal the unadjusted share price multiplied by a fraction, the numerator of which is the higher of the Market Value and the Newly Issued Price as set forth under the heading “—*Anti-dilution Adjustments*” and the denominator of which is \$10.00 and (b) in the case of an adjustment pursuant to the second paragraph under the heading “—*Anti-dilution Adjustments*” below, the adjusted share prices in the column headings will equal the unadjusted share price less the decrease in the exercise price of a warrant pursuant to such exercise price adjustment.

Redemption Date (period to expiration of warrants)	Fair Market Value of Common Stock								
	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$17.00	\$18.00
60 months	0.261	0.281	0.297	0.311	0.324	0.337	0.348	0.358	0.361
57 months	0.257	0.277	0.294	0.310	0.324	0.337	0.348	0.358	0.361
54 months	0.252	0.272	0.291	0.307	0.322	0.335	0.347	0.357	0.361
51 months	0.246	0.268	0.287	0.304	0.320	0.333	0.346	0.357	0.361
48 months	0.241	0.263	0.283	0.301	0.317	0.332	0.344	0.356	0.361
45 months	0.235	0.258	0.279	0.298	0.315	0.330	0.343	0.356	0.361
42 months	0.228	0.252	0.274	0.294	0.312	0.328	0.342	0.355	0.361
39 months	0.221	0.246	0.269	0.290	0.309	0.325	0.340	0.354	0.361
36 months	0.213	0.239	0.263	0.285	0.305	0.323	0.339	0.353	0.361
33 months	0.205	0.232	0.257	0.280	0.301	0.320	0.337	0.352	0.361
30 months	0.196	0.224	0.250	0.274	0.297	0.316	0.335	0.351	0.361
27 months	0.185	0.214	0.242	0.268	0.291	0.313	0.332	0.350	0.361
24 months	0.173	0.204	0.233	0.260	0.285	0.308	0.329	0.348	0.361
21 months	0.161	0.193	0.223	0.252	0.279	0.304	0.326	0.347	0.361
18 months	0.146	0.179	0.211	0.242	0.271	0.298	0.322	0.345	0.361
15 months	0.130	0.164	0.197	0.230	0.262	0.291	0.317	0.342	0.361
12 months	0.111	0.146	0.181	0.216	0.250	0.282	0.312	0.339	0.361
9 months	0.090	0.125	0.162	0.199	0.237	0.272	0.305	0.336	0.361
6 months	0.065	0.099	0.137	0.178	0.219	0.259	0.296	0.331	0.361
3 months	0.034	0.065	0.104	0.150	0.197	0.243	0.286	0.326	0.361
0 months	—	—	0.042	0.115	0.179	0.233	0.281	0.323	0.361

The exact fair market value and redemption date may not be set forth in the table above, in which case, if the fair market value is between two values in the table or the redemption date is between two redemption dates in the table, the number of shares of common stock to be issued for each warrant exercised will be determined by a straight-line interpolation between the number of shares set forth for the higher and lower fair market values and the earlier and later redemption dates, as applicable, based on a 365 or 366-day year, as applicable. For example, if the volume weighted average price of our common stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of the warrants is \$11.00 per share, and at such time there are 57 months until the expiration of the warrants, holders may choose to, in connection with this redemption feature, exercise their warrants for 0.277 shares of common stock for each whole warrant. For an example where the exact fair market value and redemption

date are not as set forth in the table above, if the volume weighted average price of our common stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of the warrants is \$13.50 per share, and at such time there are 38 months until the expiration of the warrants, holders may choose to, in connection with this redemption feature, exercise their warrants for 0.298 shares of common stock for each whole warrant. In no event will the warrants be exercisable on a cashless basis in connection with this redemption feature for more than 0.361 shares of common stock per warrant (subject to adjustment). Finally, as reflected in the table above, if the warrants are out of the money and about to expire, they cannot be exercised on a cashless basis in connection with a redemption by us pursuant to this redemption feature, since they will not be exercisable for any shares of common stock.

This redemption feature differs from the typical warrant redemption features used in some other blank check offerings, which only provide for a redemption of warrants for cash when the trading price of our common stock exceeds \$18.00 per share for a specified period of time. This redemption feature is structured to allow for all of the outstanding warrants to be redeemed when our common stock is trading at or above \$10.00 per share, which may be at a time when the trading price of our common stock is below the exercise price of the warrants. We have established this redemption feature to provide it with the flexibility to redeem the warrants without the warrants having to reach the \$18.00 per share threshold set forth above under “—*Redemption of warrants when the price per share of our common stock equals or exceeds \$18.00.*” Holders choosing to exercise their warrants in connection with a redemption pursuant to this feature will, in effect, receive a number of shares for their warrants based on an option pricing model with a fixed volatility input. This redemption right provides us with an additional mechanism by which to redeem all of the outstanding warrants, and therefore have certainty as to our capital structure as the warrants would no longer be outstanding and would have been exercised or redeemed. We will be required to pay the applicable redemption price to warrant holders if we choose to exercise this redemption right and it will allow us to quickly proceed with a redemption of the warrants if we determine it is in our best interest to do so. As such, we would redeem the warrants in this manner when we believe it is in our best interest to update our capital structure to remove the warrants and pay the redemption price to the warrant holders.

As stated above, we can redeem the warrants when our common stock is trading at a price starting at \$10.00, which is below the exercise price of \$11.50, because it will provide certainty with respect to our capital structure and cash position while providing warrant holders with the opportunity to exercise their warrants on a cashless basis for the applicable number of shares. If we choose to redeem the warrants when our common stock is trading at a price below the exercise price of the warrants, this could result in the warrant holders receiving fewer shares of Common Stock than they would have received if they had chosen to wait to exercise their warrants for our common stock if and when such shares were trading at a price higher than the exercise price of \$11.50.

No fractional shares of common stock will be issued upon exercise. If, upon exercise, a holder would be entitled to receive a fractional interest in a share, we will round down to the nearest whole number of the number of shares of common stock to be issued to the holder.

*Redemption procedures.* A holder of a 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 9.8% (or such other amount as a holder may specify) of our common stock issued and outstanding immediately after giving effect to such exercise.

*Anti-dilution Adjustments.* If the number of outstanding shares of common stock is increased by a capitalization or share dividend payable in shares of common stock, or by a split-up of shares or other similar event, then, on the effective date of such capitalization or share dividend, split-up or similar event, the number of shares of common stock issuable on exercise of each warrant will be increased in proportion to such increase in the outstanding shares. A rights offering made to all or substantially all holders of shares of common stock entitling holders to purchase shares of common stock at a price less than the “historical fair market value” (as defined below) will be deemed a share dividend of a number of shares of common stock equal to the product of (i) the number of shares of common stock actually sold in such rights offering (or issuable under any other equity securities sold in such rights offering that are convertible into or exercisable for shares of common stock) and (ii) one minus the quotient of (x) the price per share of common stock paid in such rights offering and (y) the historical fair market value. For these purposes, (i) if the rights offering is for securities convertible into or exercisable for shares of common stock, in determining the price payable for shares of common stock there will be taken into account any consideration received for such rights, as well as any additional amount payable upon exercise or conversion and (ii) “historical fair market value” means the volume weighted average price of our common stock as reported during the 10-trading day period ending on the trading day prior to the first date on which the shares of common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such rights.

In addition, if we, at any time while the warrants are outstanding and unexpired, pays a dividend or make a distribution in cash, securities or other assets to all or substantially all of the holders of shares of common stock on

account of such shares (or other securities into which the warrants are convertible), other than (a) as described above, or (b) any cash dividends or cash distributions which, when combined on a per share basis with all other cash dividends and cash distributions paid on the shares of common stock during the 365-day period ending on the date of declaration of such dividend or distribution does not exceed \$0.50 (as adjusted to appropriately reflect any other adjustments and excluding cash dividends or cash distributions that resulted in an adjustment to the exercise price or to the number of the shares of common stock issuable on exercise of each warrant) but only with respect to the amount of the aggregate cash dividends or cash distributions equal to or less than \$0.50 per share.

If the number of outstanding shares of common stock is decreased by a consolidation, combination, reverse share split or reclassification of shares of common stock or other similar event, then, on the effective date of such consolidation, combination, reverse share split, reclassification or similar event, the number of shares of common stock issuable on exercise of each warrant will be decreased in proportion to such decrease in outstanding shares of common stock.

Whenever the number of shares of common stock purchasable upon the exercise of the warrants is adjusted, as described above, the warrant exercise price will be adjusted by multiplying the warrant exercise price immediately prior to such adjustment by a fraction (x) the numerator of which will be the number of shares of common stock purchasable upon the exercise of the warrants immediately prior to such adjustment and (y) the denominator of which will be the number of shares of common stock so purchasable immediately thereafter.

In case of any reclassification or reorganization of the outstanding shares of common stock (other than those described above or that solely affects the par value of such shares of common stock), or in the case of any merger or consolidation of us with or into another corporation (other than a consolidation or merger in which we are the continuing corporation and that does not result in any reclassification or reorganization of outstanding shares of common stock), or in the case of any sale or conveyance to another corporation or entity of our assets or other property as an entirety or substantially as an entirety in connection with which we are dissolved, the holders of the warrants will thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in the warrants and in lieu of the shares of common stock immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares or stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the holder of the warrants would have received if such holder had exercised their warrants immediately prior to such event (the "Alternative Issuance"). However, if the holders of common stock were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such consolidation or merger, then the kind and amount of securities, cash or other assets constituting the Alternative Issuance for which each warrant will become exercisable will be deemed to be the weighted average of the kind and amount received per share by the holders of common stock in such consolidation or merger that affirmatively make such election, and if a tender, exchange or redemption offer has been made to and accepted by the holders of the common stock under circumstances in which, upon completion of such tender or exchange offer, the maker thereof, together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of which such maker is a part, and together with any affiliate or associate of such maker (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, own beneficially (within the meaning of Rule 13d-3 under the Exchange Act) more than 50% of the issued and outstanding shares of common stock, the holder of a warrant will be entitled to receive as the Alternative Issuance, the highest amount of cash, securities or other property to which such holder would actually have been entitled as a shareholder if such warrant holder had exercised the warrant prior to the expiration of such tender or exchange offer, accepted such offer and all of the shares of common stock held by such holder had been purchased pursuant to such tender or exchange offer, subject to adjustments (from and after the consummation of such tender or exchange offer) as nearly equivalent as possible to the adjustments provided for in the Warrant Agreement. If less than 70% of the consideration receivable by the holders of shares of common stock in such a transaction is payable in the form of shares in the successor entity that is listed for trading on a national securities exchange or is quoted in an established over-the-counter market, or is to be so listed for trading or quoted immediately following such event, and if the registered holder of the warrant properly exercises the warrant within thirty days following the public disclosure of such transaction, the warrant exercise price will be reduced as specified in the Warrant Agreement based on the Black-Scholes Warrant Value (as defined in the Warrant Agreement).

The warrant holders do not have the rights or privileges of holders of shares of common stock and any voting rights until they exercise their warrants and receive shares of common stock. After the issuance of shares of common stock upon exercise of the warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by shareholders.

No fractional warrants were issued upon separation of the units and only whole warrants may trade. If, upon exercise of the warrants, a holder would be entitled to receive a fractional interest in a share, we will, upon exercise, round down to the nearest whole number the number of shares of common stock to be issued to the warrant holder.

We have agreed that, subject to applicable law, any action, proceeding or claim against it arising out of or relating in any way to the Warrant Agreement will be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and we irrevocably submit to such jurisdiction, which jurisdiction will be the exclusive forum for any such action, proceeding or claim. This provision applies to claims under the Securities Act but does not apply to claims under the Exchange Act or any claim for which the federal district courts of the United States of America are the sole and exclusive forum.

### **Registration Rights of Certain Stockholders**

Certain of our stockholders have registration rights under our Registration Rights Agreement (the “Registration Rights Agreement”), dated October 8, 2021, between us and such stockholders. These stockholders (and certain of their permitted transferees), may request that we file registration statements under the Securities Act and, upon such request and subject to minimum size and other conditions, we will be required to effect any such registration. We are generally obligated to bear the expenses, other than underwriting discounts and sales commissions, of all of these registrations. This summary does not purport to be complete and is qualified in its entirety by the provisions of the Registration Rights Agreement, a copy of which has been filed as an exhibit to the Annual Report on Form 10-K of which this Exhibit 4.2 forms a part.

### **Description of Certain Terms in the Charter Documents and Delaware Law**

The certificate of incorporation and amended and restated bylaws contain provisions that could have the effect of delaying, deferring or discouraging another party from acquiring control of ESS. These provisions and certain provisions of Delaware law, which are summarized below, could discourage takeovers, coercive or otherwise. These provisions are also designed, in part, to encourage persons seeking to acquire control of ESS to negotiate first with our board of directors. ESS believes that the benefits of increased protection of the potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire the Company.

*Issuance of Undesignated Preferred Stock.* As discussed above under “—Preferred Stock,” our board of directors has the ability to designate and issue preferred stock with voting or other rights or preferences that could deter hostile takeovers or delay changes in control or management.

*Limits on Ability of Stockholders to Act by Written Consent or Call a Special Meeting.* The certificate of incorporation provides that the stockholders may not act by written consent. This limit on the ability of stockholders to act by written consent may lengthen the amount of time required to take stockholder actions. As a result, the holders of a majority of our capital stock may not be able to amend the amended and restated bylaws or remove directors without holding a meeting of stockholders called in accordance with the amended and restated bylaws.

In addition, the amended and restated bylaws provide that special meetings of the stockholders may be called only by the chairperson of the board of directors, the chief executive officer, the president, or a majority of our board of directors (measured based on the total authorized directorships, including any vacancies or unfilled seats). A stockholder may not call a special meeting, which may delay the ability of the stockholders to force consideration of a proposal or for holders controlling a majority of our capital stock to take any action, including the removal of directors.

*Requirements for Advance Notification of Stockholder Nominations and Proposals.* The amended and restated bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee of our board of directors. These advance notice procedures may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed and may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempt to obtain control of ESS.

*Board Classification.* The certificate of incorporation provides that our board of directors is divided into three classes, one class of which is elected each year by the stockholders. The directors in each class will serve for a three-year term. The classified board of directors may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of ESS because it generally makes it more difficult for stockholders to replace a majority of the directors.

*Election and Removal of Directors.* The certificate of incorporation contains provisions that establish specific procedures for appointing and removing members of our board of directors. Under the certificate of incorporation and amended and restated bylaws, vacancies and newly created directorships on our board of directors may be filled only by a majority of the directors then serving on our board of directors. Under the certificate of incorporation, directors may be removed only for cause by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding capital stock of the Company entitled to vote in the election of directors.

*No Cumulative Voting.* The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. The certificate of incorporation and amended and restated bylaws do not expressly provide for cumulative voting. Without cumulative voting, a minority stockholder may not be able to gain as many seats on the board of directors as the stockholder would be able to gain if cumulative voting were permitted. The absence of cumulative voting makes it more difficult for a minority stockholder to gain a seat on the board of directors to, among other things, influence the board of directors' decision regarding a takeover.

*Amendment of Charter Provision.* Any amendment of the above provisions in the certificate of incorporation or amended and restated bylaws requires approval by holders of at least 66 2/3% of the then outstanding capital stock entitled to vote, voting together as a single class.

*Delaware Anti-Takeover Statute.* ESS is subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. In general, Section 203 prohibits a publicly held Delaware corporation from engaging, under certain circumstances, in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder unless:

- prior to the date of the transaction, the board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is generally defined under Section 203 to be a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting stock. ESS expects the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. We also anticipate that Section 203 may discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

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

*Choice of Forum.* The amended and restated bylaws provides that the Court of Chancery of the State of Delaware will be the exclusive forum for: (i) any derivative action or proceeding brought on ESS' behalf; (ii) actions asserting a breach of fiduciary duty; (iii) any action arising under the DGCL, the certificate of incorporation or amended and restated bylaws; and (iv) any action asserting a claim against ESS that is governed by the internal-affairs doctrine. The amended and restated bylaws further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act.

## **Exchange Listing**

Our common stock and public warrants are listed on the New York Stock Exchange under the ticker symbols "GWH" and "GWH.WT," respectively.

## **Transfer Agent and Warrant Agent**

The transfer agent and warrant agent for the common stock and warrants, respectively, is Computershare Inc. The address of the transfer agent and warrant agent is 150 Royall Street, Canton, MA 02021 and its telephone number is (206) 406-5789.



## ESS TECH, INC.

### OUTSIDE DIRECTOR COMPENSATION POLICY

ESS Tech, Inc. (the “**Company**”) believes that providing cash and equity compensation to its members of the Board of Directors (the “**Board**,” and members of the Board, the “**Directors**”) represents an effective tool to attract, retain and reward Directors who are not employees of the Company (the “**Outside Directors**”). This Outside Director Compensation Policy (the “**Policy**”) is intended to formalize the Company’s policy regarding the compensation to its Outside Directors. Unless otherwise defined herein, capitalized terms used in this Policy will have the meaning given to such terms in the Company’s 2021 Equity Incentive Plan (the “**Plan**”), or if the Plan is no longer in place, the meaning given to such terms or any similar terms in the equity plan then in place. Each Outside Director will be solely responsible for any tax obligations incurred by such Outside Director as a result of the equity and cash payments such Outside Director receives under this Policy.

This Policy was first effective on October 8, 2021 (the “**Effective Date**”) and was amended and restated effective August 28, 2023 (the “**Restatement Date**”).

#### 1. Cash Compensation

##### *Annual Cash Retainer*

Each Outside Director will be paid an annual cash retainer of \$50,000. There are no per-meeting attendance fees for attending Board meetings. This cash compensation will be paid quarterly in arrears on a prorated basis.

##### *Committee Annual Cash Retainer*

Effective as of the Effective Date, each Outside Director who serves as the chair of the Board, lead independent director, or the chair or a member of a committee of the Board listed below will be eligible to earn additional annual cash fees (paid quarterly in arrears on a prorated basis) as follows:

Chair of the Board/Lead Independent Director: \$25,000

Chair of Audit Committee: \$20,000

Member of Audit Committee: \$10,000

Chair of Compensation Committee: \$15,000

Member of Compensation Committee: \$7,500

Chair of Nominating and Governance Committee: \$10,000

Member of Nominating and Governance Committee: \$5,000

For clarity, each Outside Director who serves as the chair of a committee shall receive only the additional annual cash fee as the chair of the committee, and not the additional annual cash fee as a member of the committee.

#### 2. Equity Compensation

Outside Directors will be eligible to receive all types of Awards (except Incentive Stock Options) under the Plan (or the applicable equity plan in place at the time of grant), including

discretionary Awards not covered under this Policy. All grants of Awards to Outside Directors pursuant to Section 2 of this Policy will be automatic and nondiscretionary, except as otherwise provided herein, and will be made in accordance with the following provisions:

(a) No Discretion. No person will have any discretion to select which Outside Directors will be granted any Awards under this Policy or to determine the number of Shares to be covered by such Awards.

(b) Initial Award. Subject to Section 4 of this Policy, each individual who first becomes an Outside Director following the Effective Date automatically will be granted an award of restricted stock units (an “Initial Award”). The Initial Award will be made on the first trading date on or after the date on which such individual first becomes an Outside Director (such date the Initial Award is granted, the “Grant Date”), whether through election by the stockholders of the Company or appointment by the Board to fill a vacancy. The Initial Award will cover a number of Shares having a Value (as defined below) equal to \$200,000, rounded down to the nearest whole Share. If an individual was a member of the Board and also an employee, becoming an Outside Director due to termination of employment will not entitle the Outside Director to an Initial Award.

For purposes of this Policy, the “Value” of a Share is the average of the closing price for the 30-trading days ending on the trading day immediately prior to the Grant Date.

Subject to Section 3 of this Policy, the Initial Award will vest in equal 1/3 installments on each anniversary following the Grant Date, subject to the Outside Director continuing to be a Service Provider through the applicable vesting date.

(c) Annual Award. Subject to Section 4 of this Policy, on the date of each annual meeting of the Company’s stockholders (an “Annual Meeting”) following the Effective Date, each Outside Director automatically will be granted an award of restricted stock units (an “Annual Award”) covering a number of Shares having a Value of \$150,000, rounded down to the nearest whole Share.

Subject to Section 3 of this Policy, each Annual Award will vest on the earlier of (i) the one-year anniversary of the date the Annual Award is granted or (ii) the day prior to the date of the Annual Meeting next following the date the Annual Award is granted, in each case, subject to the Outside Director continuing to be a Service Provider through the applicable vesting date.

(d) Special 2023 Non-Executive Chairman Awards. Notwithstanding anything in the foregoing Section 2(b) and (c), the first person appointed as the non-executive chair of the Board (a “New Non-Executive Chair”) on or after the Restatement Date will be eligible for the following modified Award terms:

(i) The New Non-Executive Chair automatically also will be granted an award of Options (the “Supplemental Initial Award”) to purchase a number of Shares equal to the number of Shares subject to the Initial Award multiplied by 1.5. The grant date of the Supplemental Initial Award will be the Grant Date of the Initial Award. The Supplemental Initial Award will be a nonstatutory stock option for U.S. tax purposes. The term of the Supplemental Initial Award will be ten (10) years, subject to earlier termination as provided in the Plan. The exercise price per Share of the Supplemental Initial Award will be equal to 100% of the Fair Market Value per Share on its grant date. The Supplemental Initial Award will be granted under and subject to the terms and conditions of the Plan and the form of option agreement previously approved by the Board or its Compensation Committee, as applicable, for use thereunder. Subject to Section 3 of this Policy, the Supplemental Initial Award will vest in equal 1/3 installments on each anniversary following the Grant Date, subject to the Outside Director continuing to be a Service Provider through the applicable vesting date.

(ii) The New Non-Executive Chair will be eligible to receive an Annual Award beginning with respect to the first annual meeting of the Company's stockholders following his or her appointment, and each Annual Award granted to the New Non-Executive Chair through the course of his or her service as the non-executive chair will cover a number of Shares having a Value of \$300,000, rounded down to the nearest whole Share. For the avoidance of doubt, the Value of such Annual Award indicated in this subsection replaces and is not in addition to the Value of the Annual Award set forth in Section 2(c) of this Policy.

### **3. Change in Control**

In the event of a Change in Control, each Outside Director's outstanding Company equity awards will accelerate and vest.

### **4. Annual Compensation Limit**

No Outside Director may be granted, in any Fiscal Year, Awards with values (based on their grant date fair value determined in accordance with U.S. generally accepted accounting principles), and be provided any other compensation (including without limitation any cash retainers or fees) in amounts that, in any Fiscal Year, in the aggregate, exceed \$750,000 (increased to \$1,000,000 in his or her initial year of service as an Outside Director), with the value of each equity compensation award based on its grant value for purposes of the limitation under this Section 4. Any Awards or other compensation provided to an individual (a) for his or her services as an Employee, or for his or her services as a Consultant other than as an Outside Director, or (b) prior to the Effective Date, will be excluded for purposes of this Section 4.

### **5. Travel Expenses**

Each Outside Director's reasonable, customary and documented travel expenses to Board or Board committee meetings will be reimbursed by the Company.

### **6. Additional Provisions**

All provisions of the Plan not inconsistent with this Policy will apply to Awards granted to Outside Directors.

### **7. Equity Ownership.**

Each Outside Director is expected to comply with the minimum equity ownership guidelines as set forth on Exhibit A.

### **8. Section 409A**

In no event will cash compensation or expense reimbursement payments under this Policy be paid after the later of (i) the 15th day of the 3rd month following the end of the Fiscal Year in which the compensation is earned or expenses are incurred, as applicable, or (ii) the 15th day of the 3rd month following the end of the calendar year in which the compensation is earned or expenses are incurred, as applicable, in compliance with the "short-term deferral" exception under Section 409A of the Internal Revenue Code of 1986, as amended, and the final regulations and guidance thereunder, as may be amended from time to time (together, "**Section 409A**"). It is the intent of this Policy that this Policy and all payments hereunder be exempt from or otherwise comply with the requirements of Section 409A so that none of the compensation to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to be so exempt

or comply. In no event will the Company reimburse an Outside Director for any taxes imposed or other costs incurred as a result of Section 409A.

## **9. Revisions**

The Board may amend, alter, suspend or terminate this Policy at any time and for any reason. No amendment, alteration, suspension or termination of this Policy will materially impair the rights of an Outside Director with respect to compensation that already has been paid or awarded, unless otherwise mutually agreed between the Outside Director and the Company. Termination of this Policy will not affect the Board's or the Compensation Committee's ability to exercise the powers granted to it under the Plan with respect to Awards granted under the Plan pursuant to this Policy prior to the date of such termination.

## Exhibit A

### Equity Ownership Guidelines (the “Guidelines”)

Each Outside Director (a “**Covered Person**”) must comply with the following minimum ownership guidelines:

Minimum Ownership Level	Timing of Compliance
Equity Interests (as defined below) of at least 3 times the Annual Cash Retainer.	By the third anniversary of the later of (i) the Effective Date or (ii) the date such individual becomes an Outside Director, and thereafter at all times during which the individual remains an Outside Director.

“**Equity Interests**” means Shares: (1) directly owned by a Covered Person or his or her immediate family members residing in the same household; (2) beneficially owned by a Covered Person, but held in trust, limited partnerships, or similar entities for the sole benefit of the Outside Directors or his or her immediate family members residing in the same household; (3) held in retirement or deferred compensation accounts for the benefit of a Covered Person or his or her immediate family members residing in the same household; and (4) held by affiliates of the Outside Director (e.g., investment funds that employ an Outside Director or the Outside Director is a partner of). For clarity, “Equity Interests” includes unvested or restricted Shares and unvested or unsettled Company equity awards (other than Company options) but excludes any Company options (whether vested or unvested) covering Shares.

**Exceptions:** The Compensation Committee may waive, at its discretion, these Guidelines for Directors joining the Board from government, academia, or similar professions. The Compensation Committee may also temporarily suspend, at its discretion, these Guidelines for one or more Outside Directors if compliance would create severe hardship or prevent such Outside Director from complying with a court order.

**Amendments:** The Board may further amend these Guidelines from time to time.

## ESS TECH, INC.

### EXECUTIVE INCENTIVE COMPENSATION PLAN

1. Purposes of the Plan. The Plan is intended to increase stockholder value and the success of the Company by motivating Employees to (i) perform to the best of their abilities and (ii) achieve the Company's objectives.

2. Definitions.

(a) "Actual Award" means as to any Performance Period, the actual award (if any) payable to a Participant for the Performance Period, subject to the Committee's authority under Section 3(d) to modify the award.

(b) "Affiliate" means any corporation or other entity (including, but not limited to, partnerships and joint ventures) controlled by the Company.

(c) "Board" means the Board of Directors of the Company.

(d) "Bonus Pool" means the pool of funds available for distribution to Participants. Subject to the terms of the Plan, the Committee establishes the Bonus Pool for each Performance Period.

(e) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or regulation thereunder will include such section or regulation, any valid regulation promulgated thereunder, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

(f) "Committee" means the committee appointed by the Board (pursuant to Section 5) to administer the Plan. Unless and until the Board otherwise determines, the Board's Compensation Committee will administer the Plan.

(g) "Company" means ESS Tech, Inc., or any successor thereto, and "Company Group" means the Company and any Parents, Subsidiaries, and Affiliates.

(h) "Disability" means a permanent and total disability determined in accordance with uniform and nondiscriminatory standards adopted by the Committee from time to time.

(i) "Employee" means any executive, officer, or other employee of the Company or of an Affiliate, whether such individual is so employed at the time the Plan is adopted or becomes so employed subsequent to the adoption of the Plan.

(j) "Fiscal Year" means the fiscal year of the Company.

(k) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Code Section 424(e).

(l) "Participant" means as to any Performance Period, an Employee who has been selected by the Committee for participation in the Plan for that Performance Period.

(m) "Performance Period" means the period of time for the measurement of the performance criteria that must be met to receive an Actual Award, as determined by the Committee in its sole discretion. A Performance Period may be divided into one or more shorter periods if, for example, but not by way of limitation, the Committee desires to measure some performance criteria over 12 months and other criteria over 3 months.

(n) “Plan” means this Executive Incentive Compensation Plan, as set forth in this instrument (including any appendix attached hereto) and as hereafter amended from time to time.

(o) “Subsidiary” means a “subsidiary corporation,” whether now or hereafter existing, as defined in Code Section 424(f), in relation to the Company.

(p) “Target Award” means the target award, at 100% of target level performance achievement, payable under the Plan to a Participant for the Performance Period, as determined by the Committee in accordance with Section 3(b).

### 3. Selection of Participants and Determination of Awards.

(a) Selection of Participants. The Committee, in its sole discretion, will select the Employees who will be Participants for any Performance Period. Participation in the Plan is in the sole discretion of the Committee, on a Performance Period by Performance Period basis. Accordingly, an Employee who is a Participant for a given Performance Period in no way is guaranteed or assured of being selected for participation in any subsequent Performance Period or Performance Periods.

(b) Determination of Target Awards. The Committee, in its sole discretion, will establish a Target Award for each Participant (which may be expressed as a percentage of a Participant’s average annual base salary for the Performance Period or a fixed dollar amount or such other amount or based on such other formula as the Committee determines).

(c) Bonus Pool. Each Performance Period, the Committee, in its sole discretion, will establish a Bonus Pool, which pool may be established before, during or after the applicable Performance Period. Actual Awards will be paid from the Bonus Pool.

(d) Discretion to Modify Awards. Notwithstanding any contrary provision of the Plan, the Committee may, in its sole discretion and at any time, (i) increase, reduce or eliminate a Participant’s Actual Award, and/or (ii) increase, reduce or eliminate the amount allocated to the Bonus Pool. The Actual Award may be below, at or above the Target Award, in the Committee’s discretion. The Committee may determine the amount of any increase, reduction or elimination on the basis of such factors as it deems relevant, and will not be required to establish any allocation or weighting with respect to the factors it considers.

(e) Discretion to Determine Criteria. Notwithstanding any contrary provision of the Plan, the Committee, in its sole discretion, will determine the performance goals (if any) applicable to any Target Award (or portion thereof) which may include, without limitation, annual recurring revenue, attainment of research and development milestones, bookings, business divestitures and acquisitions, cash flow, cash flow from operations, cash position, contract awards or backlog, committed annual recurring revenue, current remaining performance obligation, customer renewals, customer retention rates from an acquired company, subsidiary, business unit or division, customer success (including by any customer success metric such as NPS), earnings (which may include earnings before interest and taxes, earnings before taxes, and net taxes), earnings per share, expenses, gross margin, growth in stockholder value relative to the moving average of the S&P 500 Index or another index, internal rate of return, market share, net income, net new annual contract value, net profit, net retention, net sales, new product development, new product invention or innovation, number of customers, operating cash flow, operating expenses, operating income, operating margin, overhead or other expense reduction, product release timelines, productivity, profit, remaining performance obligation, retained earnings, return on assets, return on capital, return on invested capital, return on equity, return on investment, return on sales, revenue, revenue growth, sales results, sales growth, stock price, time to market, total stockholder return, working capital, workplace diversity metrics, and individual objectives such as peer reviews or other subjective or objective criteria. As determined by the Committee, the performance goals may be based on generally accepted accounting principles (“GAAP”) or non-GAAP results and any actual



results may be adjusted by the Committee for one-time items or unbudgeted or unexpected items and/or payments of Actual Awards under the Plan when determining whether the performance goals have been met. The goals may be on the basis of any factors the Committee determines relevant, and may be on an individual, divisional, business unit, segment or Company-wide basis. Any criteria used may be measured on such basis as the Committee determines, including but not limited to, as applicable, (A) in absolute terms, (B) in combination with another performance goal or goals (for example, but not by way of limitation, as a ratio or matrix), (C) in relative terms (including, but not limited to, results for other periods, passage of time and/or against another company or companies or an index or indices), (D) on a per-share basis, (E) against the performance of the Company as a whole or a segment of the Company and/or (F) on a pre-tax or after-tax basis. The performance goals may differ from Participant to Participant and from award to award. Failure to meet the goals will result in a failure to earn the Target Award, except as provided in Section 3(d). The Committee also may determine that a Target Award (or portion thereof) will not have a performance goal associated with it but instead will be granted (if at all) at the sole discretion of the Committee.

4. Payment of Awards.

(a) Right to Receive Payment. Each Actual Award will be paid solely from the general assets of the Company. Nothing in this Plan will be construed to create a trust or to establish or evidence any Participant's claim of any right other than as an unsecured general creditor with respect to any payment to which he or she may be entitled.

(b) Timing of Payment. Payment of each Actual Award shall be made as soon as practicable after the end of the Performance Period to which the Actual Award relates and after the Actual Award is approved by the Committee, but in no event later than the later of (i) the 15th day of the third month of the Fiscal Year immediately following the Fiscal Year in which the Participant's Actual Award is first no longer subject to a substantial risk of forfeiture, and (ii) March 15 of the calendar year immediately following the calendar year in which the Participant's Actual Award is first no longer subject to a substantial risk of forfeiture. Unless otherwise determined by the Committee, to earn an Actual Award a Participant must be employed by the Company or any Affiliate on the date the Actual Award is paid.

It is the intent that this Plan be exempt from or comply with the requirements of Code Section 409A so that none of the payments to be provided hereunder will be subject to the additional tax imposed under Code Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. Each payment under this Plan is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

(c) Form of Payment. Each Actual Award generally will be paid in cash (or its equivalent) in a single lump sum. The Committee reserves the right, in its sole discretion, to settle an Actual Award with a grant of an equity award under the Company's then-current equity compensation plan, which equity award may have such terms and conditions, including vesting, as the Committee determines in its sole discretion.

(d) Payment in the Event of Death or Disability. If a Participant dies or is terminated due to his or her Disability prior to the payment of an Actual Award the Committee has determined will be paid for a prior Performance Period, the Actual Award will be paid to his or her estate or to the Participant, as the case may be, subject to the Committee's discretion to reduce or eliminate any Actual Award otherwise payable.

5. Plan Administration.

(a) Committee is the Administrator. The Plan will be administered by the Committee. The Committee will consist of not less than 2 members of the Board. The members of the Committee will be appointed from time to time by, and serve at the pleasure of, the Board.

(b) Committee Authority. It will be the duty of the Committee to administer the Plan in accordance with the Plan's provisions. The Committee will have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including, but not limited to, the power to (i) determine which Employees will be granted awards, (ii) prescribe the terms and conditions of awards, (iii) interpret the Plan and the awards, (iv) adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside of the United States, (v) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and (vi) interpret, amend or revoke any such rules.

(c) Decisions Binding. All determinations and decisions made by the Committee, the Board, and/or any delegate of the Committee pursuant to the provisions of the Plan will be final, conclusive, and binding on all persons, and will be given the maximum deference permitted by law.

(d) Delegation by Committee. The Committee, in its sole discretion and on such terms and conditions as it may provide, may delegate all or part of its authority and powers under the Plan to one or more directors and/or officers of the Company.

(e) Indemnification. Each person who is or will have been a member of the Committee will be indemnified and held harmless by the Company against and from (i) any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or any award, and (ii) from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit, or proceeding against him or her, provided he or she will give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification will not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any power that the Company may have to indemnify them or hold them harmless.

## 6. General Provisions.

(a) Tax Withholding. The Company (or the Affiliate employing the applicable Employee) will withhold all applicable taxes from any Actual Award, including any federal, state and local taxes (including, but not limited to, the Participant's FICA and SDI obligations).

(b) No Effect on Employment or Service. Nothing in the Plan will interfere with or limit in any way the right of the Company (or the Affiliate employing the applicable Employee) to terminate any Participant's employment or service at any time, with or without cause. For purposes of the Plan, transfer of employment of a Participant between the Company and any one of its Affiliates (or between Affiliates) will not be deemed a termination of employment. Employment with the Company and its Affiliates is on an at-will basis only. The Company expressly reserves the right, which may be exercised at any time and without regard to when during a Performance Period such exercise occurs, to terminate any individual's employment with or without cause, and to treat him or her without regard to the effect that such treatment might have upon him or her as a Participant.

(c) Forfeiture Events.

(i) Clawback Policy; Applicable Laws. All awards under the Plan will be subject to reduction, cancellation, forfeiture, or recoupment in accordance with any clawback policy that the Company Group is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable laws. In addition, the Committee may impose such other clawback, recovery or recoupment provisions with respect to an award under the Plan as the Committee determines necessary or appropriate, including without limitation a reacquisition right in respect of previously acquired cash, stock, or other property provided with respect to an award. Unless this Section 6(c) is specifically mentioned and waived in a written agreement between a Participant and a member of the Company Group or other document, no recovery of compensation under a clawback policy will give the Participant the right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with a member of the Company Group.

(ii) Additional Forfeiture Terms. The Committee may specify when providing for an award under the Plan that the Participant's rights, payments, and benefits with respect to the award will be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events, in addition to any otherwise applicable vesting or performance conditions of the award. Such events may include, without limitation, termination of the Participant's status as an Employee for "cause" or any act by a Participant, whether before or after the Participant's status as an Employee terminates, that would constitute "cause."

(iii) Accounting Restatements. If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, then any Participant who knowingly or through gross negligence engaged in the misconduct, or who knowingly or through gross negligence failed to prevent the misconduct, and any Participant who is one of the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002, will reimburse the Company Group the amount of any payment with respect to an award earned or accrued during the twelve (12) month period following the first public issuance or filing with the U.S. Securities and Exchange Commission (whichever first occurred) of the financial document embodying such financial reporting requirement.

(d) Participation. No Employee will have the right to be selected to receive an award under this Plan, or, having been so selected, to be selected to receive a future award.

(e) Successors. All obligations of the Company under the Plan, with respect to awards granted hereunder, will be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business or assets of the Company.

(f) Beneficiary Designations. If permitted by the Committee, a Participant under the Plan may name a beneficiary or beneficiaries to whom any vested but unpaid award will be paid in the event of the Participant's death. Each such designation will revoke all prior designations by the Participant and will be effective only if given in a form and manner acceptable to the Committee. In the absence of any such designation, any vested benefits remaining unpaid at the Participant's death will be paid to the Participant's estate.

(g) Nontransferability of Awards. No award granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution, or to the limited extent provided in Section 6(e). All rights with respect to an award granted to a Participant will be available during his or her lifetime only to the Participant.

7. Amendment, Termination, and Duration.

(a) Amendment, Suspension, or Termination. The Board or the Committee, in its sole discretion, may amend or terminate the Plan, or any part thereof, at any time and for any reason. The amendment, suspension or termination of the Plan will not, without the consent of the Participant, alter or impair any rights or obligations under any Actual Award theretofore earned by such Participant. No award may be granted during any period of suspension or after termination of the Plan.

(b) Duration of Plan. The Plan will commence on the date first adopted by the Board or the Committee, and subject to Section 7(a) (regarding the Board's and/or the Committee's right to amend or terminate the Plan), will remain in effect thereafter until terminated.

8. Legal Construction.

(a) Gender and Number. Except where otherwise indicated by the context, any masculine term used herein also will include the feminine; the plural will include the singular and the singular will include the plural.

(b) Severability. In the event any provision of the Plan will be held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan, and the Plan will be construed and enforced as if the illegal or invalid provision had not been included.

(c) Requirements of Law. The granting of awards under the Plan will be subject to all applicable laws, rules and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(d) Governing Law. The Plan and all awards will be construed in accordance with and governed by the laws of the State of California, but without regard to its conflict of law provisions.

(e) Bonus Plan. The Plan is intended to be a "bonus program" as defined under U.S. Department of Labor regulation 2510.3-2(c) and will be construed and administered in accordance with such intention.

(f) Captions. Captions are provided herein for convenience only, and will not serve as a basis for interpretation or construction of the Plan.

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (No. 333-275552, and No. 333-268138) on Form S-3, (No. 333-261649, No. 333-263281, No. 333-270211, and No. 333-276988) on Form S-8, (No. 333-263316) on Post Effective Amendment No. 2 to Form S-1 on Form S-3, and (No. 333-260693) on Post Effective Amendment No. 3 to Form S-1 on Form S-3 of our report dated March 13, 2024, with respect to the consolidated financial statements of ESS Tech, Inc.

/s/ KPMG LLP

Portland, Oregon  
March 13, 2024

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statement:

- (1) Post-Effective Amendment No. 2 to Registration Statement on Form S-1 on Form S-3 (No. 333-263316) and Post-Effective Amendment No. 3 to Registration Statement on Form S-1 on Form S-3 (No. 333-260693) of ESS Tech, Inc. pertaining to the registration of shares of its common stock,
- (2) Registration Statement on Form S-8 (No. 333-261649) of ESS Tech, Inc. pertaining to the ESS Tech, Inc. 2021 Equity Incentive Plan, ESS Tech, Inc. 2021 Employee Stock Purchase Plan and Amended Energy Storage Systems, Inc. 2014 Equity Incentive Plan
- (3) Registration Statements on Form S-8 (Nos. 333-263281, 333-270211 and 333-276988) of ESS Tech, Inc. pertaining to the ESS Tech, Inc. 2021 Equity Incentive Plan,
- (4) Registration Statement on Form S-3 (No. 333-275552) of ESS Tech, Inc. pertaining to the registration of shares of its common stock, warrants to purchase its common stock and shares of its common stock underlying the warrants, and
- (5) Registration Statement on Form S-3 (No. 333-268138) of ESS Tech, Inc. pertaining to the registration of shares of its common stock, preferred stock, debt securities, depositary shares, warrants, subscription rights, purchase contracts and units.

of our report dated March 1, 2023, with respect to the consolidated financial statements of ESS Tech, Inc. as of and for the year ended December 31, 2022, included in this Annual Report (Form 10-K) of ESS Tech, Inc. for the year ended December 31, 2023.

/s/ Ernst & Young LLP

Portland, Oregon  
March 13, 2023

**CERTIFICATION  
PURSUANT TO RULE 13a-14 AND 15d-14  
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED**

I, Eric P. Dresselhuys, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2023 of ESS Tech, Inc.;
  2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
  3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
  4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
    - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
    - d. Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
  5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.
-



March 13, 2024

By: /s/ Eric P. Dresselhuys  
Eric P. Dresselhuys  
Chief Executive Officer  
*(Principal Executive Officer)*

**CERTIFICATION  
PURSUANT TO RULE 13a-14 AND 15d-14  
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED**

I, Anthony Rabb, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2023 of ESS Tech, Inc.;
  2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
  3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
  4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
    - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
    - d. Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
  5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.
-

March 13, 2024

By: /s/ Anthony Rabb  
Anthony Rabb  
Chief Financial Officer  
*(Principal Financial Officer)*

**CERTIFICATION PURSUANT TO  
18 U.S.C. 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Annual Report of ESS Tech, Inc (the “Company”) on Form 10-K for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Eric P. Dresselhuys, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

1. the 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 Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 13, 2024

By: /s/ Eric P. Dresselhuys

Name: Eric P. Dresselhuys

Title: Chief Executive Officer

*(Principal Executive Officer)*

**CERTIFICATION PURSUANT TO  
18 U.S.C. 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Annual Report of ESS Tech, Inc (the “Company”) on Form 10-K for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Anthony Rabb, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

1. the 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 Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 13, 2024

By: /s/ Anthony Rabb

Name: Anthony Rabb

Title: Chief Financial Officer

*(Principal Financial Officer)*