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

FORM 10-Q

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

For the quarterly period ended October 1, 2023

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from__________to __________

Enovix Corporation

(Exact Name of Registrant as Specified in Charter)

(Successor to RODGERS SILICON VALLEY ACQUISITION CORP.)

Delaware	001-39753	85-3174357
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

3501 W Warren Avenue

Fremont, California 94538

(Address of Principal Executive Offices) (Zip Code)

(510) 695-2350

(Registrant’s Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	ENVX	The Nasdaq Global Select Market

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

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

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

As of November 6, 2023, 167,774,133 shares of common stock, par value $0.0001 per share, were issued and outstanding.

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FORWARD LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains 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"). The statements contained in this Quarterly Report on Form 10-Q that are not purely historical are forward-looking statements. Our forward-looking statements include, but are not limited to, statements regarding our or our management's expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words "anticipates," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements in this Quarterly Report on Form 10-Q may include, for example, statements about our:

- ability to build and scale our advanced silicon-anode lithium-ion battery, our production and commercialization timeline;
- ability to meet milestones and deliver on our objectives and expectations, the implementation and success of our products, technologies, business model and growth strategy, various addressable markets, market opportunity and the expansion of our customer base;
- ability to meet the expectations of new and current customers, our ability to achieve market acceptance for our products;
- financial performance, including revenue, expenses and projections thereof;
- placement of equipment orders for our next-generation manufacturing lines, the speed of and space requirements for our next-generation manufacturing lines;
- factory sites and related considerations, including site selection, location and timing of build-out, and benefits thereof;
- ability to attract and hire additional service providers, the strength of our brand, the build-out of additional production lines, our ability to optimize our manufacturing process, our future product development and roadmap and the future demand for our lithium-ion battery solutions;
- ability to timely and successfully complete the strategic realignment of the Company's first production line in Fremont and the corresponding restructuring;
- ability to deposit sufficient collateral for the foreign currency term loan from OCBC Bank (Malaysia) Berhad; and
- challenges that we may face as we integrate the business and operations of Routejade, a lithium-ion battery company that we acquired on October 31, 2023.

The forward-looking statements contained in this Quarterly Report on Form 10-Q 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 involve a number of risks, uncertainties (some of which are beyond our control) or 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 described in Part II, Item 1A. "Risk Factors" of this Quarterly Report on Form 10-Q. 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 required by law.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

ENOVIX CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and par value amounts)
(Unaudited)

	October 1, 2023	January 1, 2023
Assets		
Current assets:		
Cash and cash equivalents	$ 270,817	$ 322,851
Short-term investments	100,522	—
Accounts receivable, net	1	170
Inventory	215	634
Deferred contract costs	—	800
Prepaid expenses and other current assets	4,182	5,193
Total current assets	375,737	329,648
Property and equipment, net	136,713	103,868
Operating lease, right-of-use assets	5,912	6,133
Deferred contract costs, non-current	800	—
Other assets, non-current	780	937
Total assets	$ 519,942	$ 440,586
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 18,272	$ 7,077
Accrued expenses	15,784	7,089
Accrued compensation	9,126	8,097
Deferred revenue	—	50
Other liabilities	944	716
Total current liabilities	44,126	23,029
Long-term debt, net	167,080	—
Warrant liability	44,940	49,080
Operating lease liabilities, non-current	7,538	8,234
Deferred revenue, non-current	3,774	3,724
Other liabilities, non-current	9	92
Total liabilities	267,467	84,159
Commitments and Contingencies (Note 8)		
Stockholders' equity:		
Common stock, $0.0001 par value; authorized shares of 1,000,000,000; issued and outstanding shares of 161,665,677 and 157,461,802 as of October 1, 2023 and January 1, 2023, respectively	16	15
Preferred stock, $0.0001 par value; authorized shares of 10,000,000; no shares issued or outstanding as of October 1, 2023 and January 1, 2023, respectively	—	—
Additional paid-in-capital	791,340	741,186
Accumulated other comprehensive loss	(13)	—
Accumulated deficit	(538,868)	(384,774)
Total stockholders' equity	252,475	356,427
Total liabilities and stockholders' equity	$ 519,942	$ 440,586

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share amounts)
(Unaudited)

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Revenue	$ 200	$ 8	$ 263	$ 5,109
Cost of revenue	16,809	6,629	43,292	12,883
Gross margin	(16,609)	(6,621)	(43,029)	(7,774)
Operating expenses:				
Research and development	13,508	13,948	53,810	42,506
Selling, general and administrative	17,245	13,110	61,207	36,545
Impairment of equipment	—	—	4,411	—
Restructuring cost	3,021	—	3,021	—
Total operating expenses	33,774	27,058	122,449	79,051
Loss from operations	(50,383)	(33,679)	(165,478)	(86,825)
Other income (expense):				
Change in fair value of common stock warrants	31,320	(50,160)	4,140	44,040
Interest income	4,326	1,746	9,942	2,399
Interest expense	(1,557)	—	(2,827)	—
Other income (expense), net	109	80	129	(55)
Total other income (expense), net	34,198	(48,334)	11,384	46,384
Net loss	$ (16,185)	$ (82,013)	$ (154,094)	$ (40,441)
Net loss per share, basic	$ (0.10)	$ (0.53)	$ (0.98)	$ (0.27)
Weighted average number of common shares outstanding, basic	159,829,716	153,332,007	157,559,138	152,497,010
Net loss per share, diluted	$ (0.29)	$ (0.53)	$ (1.00)	$ (0.55)
Weighted average number of common shares outstanding, diluted	161,371,417	153,332,007	158,260,393	153,773,271

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands, except share and per share amounts)
(Unaudited)

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Net loss	$ (16,185)	$ (82,013)	$ (154,094)	$ (40,441)
Other comprehensive income (loss), net of tax				
Net unrealized gain (loss) on available-for-sale securities	11	—	(13)	—
Other comprehensive income (loss), net of tax	11	—	(13)	—
Total comprehensive loss	$ (16,174)	$ (82,013)	$ (154,107)	$ (40,441)

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance as of January 1, 2023	**157,461,802**	**$ 15**	**$ 741,186**	**$ —**	**$ (384,774)**	**$ 356,427**
Issuance of common stock upon exercise of stock options	86,654	—	328	—	—	328
Early exercised stock options vested	—	1	82	—	—	83
RSUs vested, net of shares withheld for taxes	679,606	—	(777)	—	—	(777)
Repurchase of unvested restricted common stock	(138,599)	—	—	—	—	—
Stock-based compensation	—	—	29,653	—	—	29,653
Net loss	—	—	—	—	(73,603)	(73,603)
Balance as of April 2, 2023	**158,089,463**	**16**	**770,472**	**—**	**(458,377)**	**312,111**
Issuance of common stock upon exercise of stock options	93,921	—	643	—	—	643
Issuance of common stock under employee stock purchase plan	146,278	—	1,170	—	—	1,170
Early exercised stock options vested	—	—	14	—	—	14
RSUs vested, net of shares withheld for taxes	650,202	—	(448)	—	—	(448)
Repurchase of unvested restricted common stock	(68,445)	—	—	—	—	—
Stock-based compensation	—	—	15,374	—	—	15,374
Purchase of Capped Calls	—	—	(17,250)	—	—	(17,250)
Change in net unrealized loss on available-for-sale securities, net of tax	—	—	—	(24)	—	(24)
Net loss	—	—	—	—	(64,306)	(64,306)
Balance as of July 2, 2023	**158,911,419**	**16**	**769,975**	**(24)**	**(522,683)**	**247,284**

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (Continued)
(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance as of July 2, 2023	**158,911,419**	**$ 16**	**$ 769,975**	**$ (24)**	**$ (522,683)**	**$ 247,284**
Issuance of common stock upon exercise of stock options	954,674	—	8,260	—	—	8,260
Issuance of common stock subject to return	1,304,954	—	—	—	—	—
Early exercised stock options vested	—	—	22	—	—	22
RSUs vested, net of shares withheld for taxes	656,367	—	(1,762)	—	—	(1,762)
Repurchase of unvested restricted common stock	(161,737)	—	—	—	—	—
Stock-based compensation	—	—	14,845	—	—	14,845
Change in net unrealized loss on available-for-sale securities, net of tax	—	—	—	11	—	11
Net loss	—	—	—	—	(16,185)	(16,185)
Balance as of October 1, 2023	**161,665,677**	**$ 16**	**$ 791,340**	**$ (13)**	**$ (538,868)**	**$ 252,475**

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS’ EQUITY (Continued)
(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance as of January 2, 2022	**152,272,287**	**$ 15**	**$ 659,254**	**$ (333,152)**	**$ 326,117**
Issuance of common stock upon exercise of stock options	91,910	—	200	—	200
Issuance of common stock upon exercise of common stock warrants	4,126,466	—	47,452	—	47,452
Early exercised stock option vested	—	—	42	—	42
RSUs vested	34,941	—	—	—	—
Repurchase of unvested restricted common stock	(105,886)	—	—	—	—
Stock-based compensation	—	—	4,536	—	4,536
Net income	—	—	—	42,707	42,707
Balance as of April 3, 2022	**156,419,718**	**15**	**711,484**	**(290,445)**	**421,054**
Issuance of common stock upon exercise of stock options	46,807	—	77	—	77
Issuance of common stock under employee stock purchase plan	126,574	—	1,113	—	1,113
Early exercised stock option vested	—	—	28	—	28
RSUs vested	115,990	—	—	—	—
Repurchase of unvested restricted common stock	(30,399)	—	—	—	—
Stock-based compensation	—	—	7,603	—	7,603
Net loss	—	—	—	(1,135)	(1,135)
Balance as of July 3, 2022	**156,678,690**	**15**	**720,305**	**(291,580)**	**428,740**
Issuance of common stock upon exercise of stock options	204,483	—	1,775	—	1,775
Early exercised stock option vested	—	—	28	—	28
RSUs vested	209,156	—	—	—	—
Repurchase of unvested restricted common stock	(14,730)	—	—	—	—
Stock-based compensation	—	—	9,753	—	9,753
Net loss	—	—	—	(82,013)	(82,013)
Balance as of October 2, 2022	**157,077,599**	**$ 15**	**$ 731,861**	**$ (373,593)**	**$ 358,283**

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022
Cash flows from operating activities:		
Net loss	$ (154,094)	$ (40,441)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation	10,566	4,388
Amortization of right-of-use assets	436	407
Accretion of discount on investments	(1,499)	—
Amortization of debt issuance costs	497	—
Stock-based compensation	57,832	22,117
Changes in fair value of common stock warrants	(4,140)	(44,040)
Impairment of equipment	4,411	—
Changes in operating assets and liabilities:		
Accounts receivable	169	(6)
Inventory	418	(452)
Prepaid expenses and other assets	546	(2,004)
Deferred contract costs	—	3,015
Accounts payable	4,338	(192)
Accrued expenses and compensation	3,113	(122)
Deferred revenue	—	(3,527)
Other liabilities	(1)	(46)
Net cash used in operating activities	(77,408)	(60,903)
Cash flows from investing activities:		
Purchase of property and equipment	(32,979)	(31,366)
Purchases of investments	(115,736)	—
Maturities of investments	16,700	—
Net cash used in investing activities	(132,015)	(31,366)
Cash flows from financing activities:		
Proceeds from exercise of common stock warrants, net	—	52,828
Proceeds from issuance of Convertible Senior Notes	172,500	—
Payments of debt issuance costs	(5,251)	—
Purchase of Capped Calls	(17,250)	—
Payroll tax payments for shares withheld upon vesting of RSUs	(2,988)	—
Proceeds from the exercise of stock options	9,232	2,052
Proceeds from issuance of common stock under employee stock purchase plan	1,169	1,112
Repurchase of unvested restricted common stock	(23)	(9)
Net cash provided by financing activities	157,389	55,983
Change in cash, cash equivalents, and restricted cash	(52,034)	(36,286)
Cash and cash equivalents and restricted cash, beginning of period	322,976	385,418
Cash and cash equivalents, and restricted cash, end of period	$ 270,942	$ 349,132

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
(In thousands)
(Unaudited)

	Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022
Supplemental cash flow data (Non-cash):		
Purchase of property and equipment included in liabilities	$ 19,324	$ 4,689
Accrued acquisition costs	1,115	—
Accrued debt issuance costs	666	794

The following presents the Company's cash, cash equivalents and restricted cash by category in the Company's Condensed Consolidated Balance Sheets:

	Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022
Cash and cash equivalents	$ 270,817	$ 349,007
Restricted cash included in prepaid expenses and other current assets	125	125
Total cash, cash equivalents, and restricted cash	$ 270,942	$ 349,132

See accompanying notes to these condensed consolidated financial statements.

ENOVIX CORPORATION
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. Organization and Basis of Presentation

Organization

Enovix Corporation ("Enovix" or the "Company") was incorporated in Delaware in 2006. The Company designs, develops, manufactures and commercializes next generation Lithium-ion, or Li-ion, battery cells that significantly increase the amount of energy density and storage capacity relative to conventional battery cells. Our batteries' mechanical design, or "architecture," allows us to use high performance chemistries while enabling safety and charge time advantages. The Company is headquartered in Fremont, California.

Prior to the second quarter of 2022, the Company was focused on the development and commercialization of its silicon-anode lithium-ion batteries. Beginning in the second quarter of 2022, the Company commenced its planned principal operations of commercial manufacturing and began its production of silicon-anode lithium-ion batteries or battery pack products, as well as generating product revenue in addition to service revenue from its engineering service contracts for the development of silicon-anode lithium-ion battery technology.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation and Consolidation

The accompanying condensed consolidated financial statements are presented in accordance with accounting principles generally accepted in the United States ("GAAP"). The condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation. The Company did not have any income tax expenses for the periods presented.

Liquidity and Capital Resources

The Company has incurred operating losses and negative cash flows from operations since its inception through October 1, 2023 and expects to incur operating losses for the foreseeable future. As of October 1, 2023, the Company had a working capital of $331.6 million and an accumulated deficit of $538.9 million. In April 2023, we closed private offerings of $172.5 million aggregate principal amount of 3.0% convertible senior notes due 2028 (the "Convertible Senior Notes"). The net proceeds from the Convertible Senior Notes were approximately $166.6 million. The Company used approximately $17.3 million of the net proceeds from the offerings of the Convertible Senior Notes to pay the cost of the capped call transactions entered on April 20, 2023 in connection with such offerings. The Company will use the remaining net proceeds to build out a second battery cell manufacturing facility ("Fab2") in Malaysia and fund the acquisition of production lines of the Company's second-generation ("Gen2") manufacturing equipment ("Gen2 Autolines"), and for working capital and other general corporate purposes. See Note 7 "Borrowings" for more information.

Based on the anticipated spending and timing of expenditures, the Company currently expects that its cash will be sufficient to meet its funding requirements over the next twelve months. Going forward, the Company may require additional financing for its future operations and expansion. The accompanying condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business.

Unaudited Interim Condensed Consolidated Financial Statements

The Condensed Consolidated Balance Sheet as of October 1, 2023, the Condensed Consolidated Statements of Operations, the Condensed Consolidated Statement of Comprehensive Income, the Condensed Consolidated Statements of Changes in Shareholders' Equity and the Condensed Consolidated Statements of Cash Flows for the quarters and fiscal years-to-date ended October 1, 2023 and October 2, 2022 are unaudited. These accompanying unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the SEC for interim financial reporting. In the opinion of management, these unaudited condensed consolidated financial statements reflect all adjustments, consisting of normal recurring items, considered necessary to present fairly the Company's financial condition, results of operations, stockholders' equity and cash flows for the periods presented above. The results of operations for the quarter and year-to-date ended October 1, 2023 are not necessarily indicative of the operating results for

the full year, and therefore should not be relied upon as an indicator of future results. The Condensed Consolidated Balance Sheet as of January 1, 2023 included herein was derived from the audited consolidated financial statements as of that date and the accompanying consolidated financial statements and related notes are included in the Company's Annual Report on Form 10-K.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities in the condensed consolidated financial statements and accompanying notes during the reporting periods. Estimates and assumptions include but are not limited to: depreciable lives for property and equipment, valuation for inventory, the valuation allowance on deferred tax assets, assumptions used in stock-based compensation, incremental borrowing rate for operating right-of-use assets and lease liabilities, and estimates to fair value common stock warrants. Management bases its estimates on historical experience and on various other market-specific and relevant assumptions that it believes to be reasonable under the circumstances.

Summary of Significant Accounting Policies

Beginning in May 2023, the Company invested in marketable securities from time to time. In addition, during the third quarter of 2023, the Company acquired variable interests in a legal entity, which is considered as a variable interest entity ("VIE"), in connection with building out the Fab2 operations in Malaysia. For the assessment of the Company's VIE, please refer to Note 13 "Variable Interest Entity" for more details. As a result of these activities, the Company made the following updates to the significant accounting policies disclosed in Note 2 "Summary of Significant Accounting Policies," of the notes to the consolidated financial statements for the fiscal year ended January 1, 2023, included in the Company's Annual Report on Form 10-K.

Investments

The Company's investments consist of highly liquid fixed-income securities. The Company determines the appropriate classification of its investments at the time of purchase and reevaluates such designation at each balance sheet date. The Company has classified and accounted for its investments as available-for-sale securities as the Company may sell these securities at any time for use in its current operations or for other purposes, including prior to maturity.

Investments with original maturities greater than 90 days and remaining maturities of less than one year are normally classified within current assets on the Condensed Consolidated Balance Sheets. In addition, investments with maturities beyond one year at the time of purchase that are highly liquid in nature and represent the investment of cash that is available for current operations are classified as current assets.

Unrealized gains and losses on these investments are reported as a separate component of Accumulated other comprehensive loss until the security is sold, the security has matured, or the security has realized. Realized gains and losses on these investments are calculated based on the specific identification method and would be reclassified from Accumulated other comprehensive loss to Other income (expense), net in the Condensed Consolidated Statements of Operations.

The Company has designated all investments as available-for-sale and, therefore, the investments are subject to periodic impairment under the available-for-sale debt security impairment model. Available-for-sale debt securities in an unrealized loss position are written down to fair value through a charge to Other income (expense), net in the Condensed Consolidated Statements of Operations if the Company intends to sell the security or it is more likely than not the Company will be required to sell the security before recovery of its amortized cost basis. The Company evaluates the remaining securities to determine what amount of the excess, if any, is caused by expected credit losses. A decline in fair value attributable to expected credit losses is recorded to Other income (expense), net, while any portion of the loss related to non-credit factors is recorded in accumulated other comprehensive income (loss). For securities sold prior to maturity, the cost of the securities sold is based on the specific identification method. Realized gains and losses on the sale of investments are recorded in Other income (expense), net in the Condensed Consolidated Statements of Operations.

Variable Interest Entity

The Company determines at the inception of each arrangement whether an entity in which the Company holds an investment or in which the Company has other variable interests is considered a VIE. The Company consolidates the VIE's

balance sheet and results of operations into its condensed consolidated financials when the Company deems to be the primary beneficiary that meets both of the following criteria: (1) the Company has the power to direct activities that most significantly affect the VIE's economic performance and (2) the Company has the obligation to absorb losses or the right to receive benefits of the VIE that in either case could potentially be significant to the VIE.

The Company continually reassesses whether the Company is the primary beneficiary of a VIE for the consolidation analysis. If the Company is not the primary beneficiary in a VIE, the Company accounts for the investment or other variable interest in accordance with applicable GAAP. Please refer to Note 13 "Variable Interest Entity" for more details.

The Company will reconsider whether the entity is still a VIE if certain reconsideration events occur as defined in the Accounting Standards Codification ("ASC") 810, *Consolidation,* issued by the Financial Accounting Standards Board ("FASB").

Foreign Currency Transactions

The functional currency of the Company's international subsidiaries is the U.S. dollar. Monetary assets and liabilities of the Company's international subsidiaries that are denominated in foreign currency are remeasured into U.S. dollars at period-end exchange rates. Non-monetary assets and liabilities that are denominated in the foreign currency are remeasured into U.S. dollars at the historical rates. Foreign transaction gains and losses resulting from the conversion of the transaction currency to functional currency and remeasurement of foreign currency accounts are reflected in Other income (expense), net of the Condensed Consolidated Statements of Operations. For the quarter and fiscal year-to-date ended October 1, 2023, the Company recorded an immaterial amount of net foreign transaction gains in Other income (expense), net of the Condensed Consolidated Statements of Operations.

Note 3. Fair Value Measurement

The fair value of the Company's financial assets and liabilities are determined in accordance with the fair value hierarchy established in ASC 820*Fair Value Measurements,* issued by the FASB. The fair value hierarchy of ASC 820 requires an entity to maximize the use of observable inputs when measuring fair value and classifies those inputs into three levels:

Level 1: Observable inputs, such as quoted prices (unadjusted) in active markets for identical assets or liabilities at the measurement date.

Level 2: Observable inputs, other than Level 1 prices, such as quoted prices in active markets for similar assets and liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The Company's financial instruments consist primarily of cash and cash equivalents, short-term investments, accounts receivable, accounts payable and warrant liabilities. Cash and cash equivalents are reported at their respective fair values on the Company's Condensed Consolidated Balance Sheets. The following table details the fair value measurements of assets and liabilities that were measured at fair value on a recurring basis based on the following three-tiered fair value hierarchy per ASC 820, *Fair Value Measurement*, as of October 1, 2023 and January 1, 2023 (in thousands).

ENOVIX CORPORATION
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)
(Unaudited)

	Fair Value Measurement using			
	Level 1	Level 2	Level 3	Total Fair Value
As of October 1, 2023				
Assets:				
Cash equivalents:				
Money Market Funds	$ 29,259	$ —	$ —	$ 29,259
Short-term investments:				
U.S. Treasuries	—	100,522	—	100,522
Liabilities:				
Private Placement Warrants	$ —	$ —	$ 44,940	$ 44,940
As of January 1, 2023				
Assets:				
Cash equivalents:				
Money Market Funds	$ 319,946	$ —	$ —	$ 319,946
Liabilities:				
Private Placement Warrants	$ —	$ —	$ 49,080	$ 49,080

Cash Equivalents and Short-term Investments:

The following is a summary of cash equivalents and short-term investments (in thousands).

					Reported as	
	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value	Cash Equivalents	Short-term Investments
As of October 1, 2023						
Money Market Funds	$ 29,259	$ —	$ —	$ 29,259	$ 29,259	$ —
U.S. Treasuries	100,535	2	(15)	100,522	—	100,522
Total	$ 129,794	$ 2	$ (15)	$ 129,781	$ 29,259	$ 100,522
As of January 1, 2023						
Money Market Funds	$ 319,946	$ —	$ —	$ 319,946	$ 319,946	$ —

As of October 1, 2023, the short-term investments have contractual maturity due within one year.

Private Placement Warrants

The Company's liabilities are measured at fair value on a recurring basis, including6,000,000 warrants that were held by Rodgers Capital, LLC (the "Sponsor") and certain of its members (the "Private Placement Warrants"). The fair value of the Private Placement Warrants is considered a Level 3 valuation and is determined using the Black-Scholes valuation model. As of October 1, 2023, the fair value of the Private Placement Warrants was $ 7.49 per share with an exercise price of $11.50 per share. The following tables summarize the changes for Level 3 items measured at fair value on a recurring basis using significant unobservable inputs (in thousands).

	Private Placement Warrants
Fair value as of January 1, 2023	$ 49,080
Change in fair value	(4,140)
Fair value as of October 1, 2023	$ 44,940

	Private Placement Warrants
Fair value as of January 2, 2022	$ 124,260
Change in fair value	(44,040)
Fair value as of October 2, 2022	$ 80,220

The following table summarizes the key assumptions used for determining the fair value of the Private Placement warrants.

	Private Placement Warrants Outstanding as of October 1, 2023	Private Placement Warrants Outstanding as of January 1, 2023
Expected term (in years)	2.8	3.5
Expected volatility	90.0%	92.5%
Risk-free interest rate	4.8%	4.2%
Expected dividend rate	0.0%	0.0%

Convertible Senior Notes

The Company considers the fair value of the Convertible Senior Notes to be a Level 2 measurement as they are not actively traded in the market. As of October 1, 2023, the fair value of the Convertible Senior Notes was $183.3 million.

Note 4. Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed on a straight-line basis over the estimated useful lives of the assets. Property and equipment as of October 1, 2023 and January 1, 2023, consisted of the following (in thousands).

	October 1, 2023	January 1, 2023
Machinery and equipment	$ 74,565	$ 55,694
Office equipment and software	2,412	1,586
Furniture and fixtures	829	771
Leasehold improvements	30,012	24,565
Construction in process	49,956	33,268
Total property and equipment	157,774	115,884
Less: accumulated depreciation	(21,061)	(12,016)
Property and equipment, net	$ 136,713	$ 103,868

The following table summarizes the depreciation and amortization expenses related to property and equipment, which are recorded within cost of revenue, research and development expense and selling, general and administrative expense in the Condensed Consolidated Statements of Operations (in thousands).

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Depreciation expense	$ 3,588	$ 2,857	$ 10,566	$ 4,388

Equipment Impairment

During the second quarter of 2023, the Company disposed a group of machinery and equipment and recorded an impairment charge of $4.4 million. There was no impairment charge recorded in the quarter ended October 1, 2023 and the impairment charge for the fiscal year-to-date ended October 1, 2023 was $4.4 million. As of October 1, 2023 and January 1, 2023, $0.6 million and $1.7 million of the impairment charges, respectively, were recorded as accrued expenses on the Condensed Consolidated Balance Sheet. These impaired assets were previously capitalized as “Machinery and equipment” category of property and equipment, net on the Condensed Consolidated Balance Sheets. No impairment of equipment was recorded for the corresponding periods in the prior year.

Note 5. Inventory

Inventory is stated at the lower of cost or net realizable value (“NRV”) on a first-in and first-out basis. Cost includes materials, labor, and normal manufacturing overhead related to the purchase and production of inventories. The Company values its inventory periodically to the lower of cost or NRV and records the difference to cost of revenue. Inventory consists of the following components (in thousands).

	October 1, 2023	January 1, 2023
Raw materials	$ —	$ 481
Work-in-process	15	106
Finished goods	200	47
Total inventory	$ 215	$ 634

In connection with the restructuring plan as described in the Note 15 “Restructuring Costs,” the Company wrote off $0.6 million of raw materials as Restructuring cost in the Condensed Consolidated Statements of Operations for the quarter and fiscal year-to-day ended October 1, 2023. There was no write-off of inventory recorded for the corresponding periods in the prior year.

Note 6. Leases

The Company leases its headquarters, engineering and manufacturing space in Fremont, California under a single non-cancellable operating lease with an expiration date of August 31, 2030. In March 2021, the Company entered into a new agreement to lease office space in Fremont, California under a non-cancellable operating lease that expires in April 2026 with an option to extend for five years.

The components of lease costs were as follows (in thousands):

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Operating lease cost	$ 478	$ 453	$ 1,428	$ 1,292

Supplemental lease information:

	As of	
Operating leases	October 1, 2023	January 1, 2023
Weighted-average remaining lease term	6.9 years	7.7 years
Weighted-average discount rate	6.8%	6.8%

Supplemental cash flow information related to leases are as follows (in thousands):

	Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 1,053	$ 1,022

Maturities of Lease Liabilities

The following is a schedule of maturities of lease liabilities as of October 1, 2023 (in thousands).

	Operating lease
2023 (remaining six months)	$ 353
2024	1,449
2025	1,492
2026	1,491
2027	1,513
Thereafter	4,262
Total	10,560
Less: imputed interest	(2,111)
Present value of lease liabilities	$ 8,449

Note 7. Borrowings

The Company's long-term debt, net consists of the following (in thousands).

	Annual Interest Rate	Maturity Date	As of October 1, 2023
Convertible Senior Notes	3.0 %	May 1, 2028	$ 172,500
Less: unamortized debt issuance costs			(5,420)
Long-term debt, net			$ 167,080

Convertible Senior Notes

On April 20, 2023, the Company issued $172.5 million aggregate principal amount of Convertible Senior Notes, pursuant to an indenture, dated as of April 20, 2023 (the "Indenture"), between the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"). The offerings and sale of the Convertible Senior Notes were made by the Company to the initial purchasers in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), for resale by the initial purchasers to qualified institutional buyers (as defined in the Securities Act) pursuant to the exemption from registration provided by Rule 144A under the Securities Act. The issuance included the exercise in full by the initial purchasers of their option to purchase an additional $22.5 million aggregate principal amount of the Convertible Senior Notes. $10.0 million principal amount of the Convertible Senior Notes (the "Affiliate Notes") were issued to an entity affiliated with Thurman John "T.J." Rodgers, the Company's Chairman in a concurrent private placement.

The Convertible Senior Notes are unsecured obligations of the Company and bear interest at a rate of 3.0% per year from April 20, 2023, and will be payable semiannually in arrears on May 1 and November 1 of each year, beginning on November 1, 2023. The Convertible Senior Notes will mature on May 1, 2028 unless earlier converted, redeemed or repurchased.

The net proceeds from the offerings were approximately $166.6 million. The Company used approximately $17.3 million of the net proceeds from the offerings to pay the cost of the capped call transactions entered on April 20, 2023 in connection with the offerings. The Company will use the remaining net proceeds to build out Fab2 in Malaysia and fund the acquisition of Gen2 Autolines, and for working capital and other general corporate purposes.

The conversion rate for the Convertible Senior Notes will initially be 64.0800 shares of the Company's common stock per $1,000 principal amount of the Convertible Senior Notes, which is equivalent to an initial conversion price of $15.61 per share of common stock, subject to adjustment under certain circumstances in accordance with the terms of the Indenture.

Holders of the Convertible Senior Notes may convert all or any portion of their notes, in integral multiples of $1,000 principal amount, at their option at any time prior to the close of business on the business day immediately preceding February 1, 2028 only under the following conditions:

- during any fiscal quarter commencing after the fiscal quarter ending on October 1, 2023 (and only during such fiscal quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- during the five business day period after any ten consecutive trading day period (the "measurement period") in which the "trading price" (as defined in the Indenture) per $1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day;
- if the Company calls the Convertible Senior Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date, but only with respect to the Convertible Senior Notes called (or deemed called) for redemption; or
- upon the occurrence of specified corporate events as set forth in the Indenture.

On or after February 1, 2028 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their notes, at any time, in integral multiples of $1,000 principal amount, at the option of the holder regardless of the foregoing conditions.

Upon conversion, the Company may satisfy its conversion obligation by paying or delivering, as the case may be, cash, shares of the Company’s common stock, or a combination of cash and shares of the Company’s common stock, at the Company’s election, in the manner and subject to the terms and conditions provided in the Indenture.

The Company may not redeem the Convertible Senior Notes prior to May 6, 2026. The Company may redeem for cash all or any portion of the Convertible Senior Notes, at its option, on or after May 6, 2026, if the liquidity condition is satisfied and the last reported sale price of the Company’s common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. If the Company redeem less than all the outstanding notes, at least $100.0 million aggregate principal amount of notes must be outstanding and not subject to redemption as of, and after giving effect to, delivery of the relevant redemption notice.

If the Company undergoes a “fundamental change,” as defined in the Indenture, fundamental change permits the holders of the Convertible Senior Notes to require the Company to repurchase the Convertible Senior Notes, subject to certain terms and conditions as defined in the Indenture. Holders may require the Company to repurchase for cash all or any portion of their notes in principal amounts of $1,000 or an integral multiple thereof. The fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

In accounting for the issuance of the Convertible Senior Notes, the Company accounted for the Convertible Senior Notes as liability instruments and considered it as single units of account pursuant to the Accounting Standards Update (“ASU”) No. 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity’s Own Equity (Subtopic 815-40)*, (“ASU 2020-06”). Accrued interest for the Convertible Senior Notes was recorded as Accrued expenses on the Condensed Consolidated Balance Sheet. Costs incurred in connection with the issuance of debt are deferred and amortized as interest expense over the term of the related debt using the effective interest method. To the extent that the debt is outstanding, the debt issuance costs were recorded as a reduction to Long-term debt, net on the Condensed Consolidated Balance Sheet. For the fiscal year-to-date ended October 1, 2023, the Company incurred approximately $5.9 million of debt issuance costs relating to the issuance of the Convertible Senior Notes. There was no debt issuance cost recorded for the quarter ended October 1, 2023.

The following table summarizes the interest expenses related to Convertible Senior Notes, which are recorded within Interest expense in the Condensed Consolidated Statements of Operations (in thousands).

	October 1, 2023	
	Quarter Ended	Fiscal Year-to-Date Ended
Coupon interest	$ 1,283	$ 2,326
Amortization of debt issuance costs	275	497
Total interest expense on Convertible Senior Notes	$ 1,558	$ 2,823

As of October 1, 2023, the Company had $2.3 million of accrued interest liability. There was no accrued interest liability as of January 1, 2023.

Capped Call Transactions

In connection with the issuance of the Convertible Senior Notes, the Company paid approximately $17.3 million to enter into capped call transactions with certain financial institutions (the “Capped Calls”) in the second quarter of 2023. The Capped Calls are generally expected to reduce the potential dilution to the Company's common stock upon any conversion of the Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted Convertible Senior Notes, as the case may be, with such reduction and/or offset subject to a cap based on a cap price initially equal to $21.17 per share (which represents a premium of 56.0% over the last reported sale price of the Company's common stock of $13.57 per share on The Nasdaq Global Select Market on April 17, 2023), and is subject to certain adjustments under the terms of the Capped Calls. The Company recorded the Capped Calls

as a reduction of stockholders' equity, not as derivatives, as the Capped Calls met certain accounting criteria. No subsequent remeasurement is required.

Note 8. Commitments and Contingencies

Purchase Commitments

As of October 1, 2023 and January 1, 2023, the Company's commitments included approximately $73.7 million and $22.7 million, respectively, of the Company's open purchase orders and contractual obligations that occurred in the ordinary course of business, including commitments with contract manufacturers and suppliers for which the Company has not received the goods or services, commitments for capital expenditures and construction-related activities for which the Company has not received the services. Although open purchase orders are considered enforceable and legally binding, the terms generally allow the Company the option to cancel, reschedule, and adjust its requirements based on its business needs prior to the delivery of goods or performance of services. For lease obligations, please refer to Note 6 "Leases" for more details. For the Convertible Senior Notes obligation, please refer to Note 7 "Borrowings" for more details.

Performance Obligations

As of October 1, 2023, the Company had $3.8 million of performance obligations, which comprised of total deferred revenue and customer order deposits. Currently, the Company does not expect to recognize revenue from deferred revenue within the nexttwelve months.

Litigation

From time to time, the Company is involved in a variety of claims, lawsuits, investigations, and proceedings relating to securities laws, product liability, intellectual property, commercial, insurance, contract disputes, employment, and other matters. Certain of these lawsuits and claims are described in further detail below. The Company intends to defend vigorously against all of the following allegations.

A liability and related charge to earnings are recorded in the condensed consolidated financial statements for legal contingencies when the loss is considered probable and the amount can be reasonably estimated. The assessment is re-evaluated each accounting period and is based on all available information, including the impact of negotiations, settlements, rulings, advice of legal counsel, and other information and events pertaining to each case. The outcomes of outstanding legal matters are inherently unpredictable and subject to uncertainties. While there can be no assurance of favorable outcome of these legal matters, we currently believe that the outcome of these matters will not have a material adverse effect on the Company's results of operations, liquidity or financial position.

Sopheap Prak et al. v. Enovix Corporation et al., 22CV005846, Superior Court of California, Alameda County

On January 21, 2022, two former machine operator employees filed a putative wage and hour class action lawsuit against Enovix and co-defendant Legendary Staffing, Inc. in the Superior Court of California, County of Alameda. The case is captioned *Sopheak Prak & Ricardo Pimentel v Enovix Corporation and Legendary Staffing, Inc.*, 22CV005846. The Prak complaint alleges, among other things, on a putative class-wide basis, that the defendants failed to pay all overtime wages and committed meal period, rest period and wage statement violations under the California Labor Code and applicable Wage Orders. The plaintiffs are seeking unpaid wages, statutory penalties and interest and reasonable costs and attorney fees. In September 2022, the Company began the mediation process. Based on the current knowledge of the legal proceeding, an estimate of possible loss liability was recorded on the Condensed Consolidated Balance Sheet as of October 1, 2023.

Kody Walker v. Enovix Corporation, 23CV028923. Superior Court of California, Alameda County

On March 8, 2023, a former employee filed a putative class action lawsuit against Enovix in the Superior Court of California, County of Alameda (the "Walker Complaint"). The Walker Complaint alleges, among other things, on a putative class-wide basis, that the Company failed to pay minimum wages, overtime and sick time wages, failed to reimburse employees for required expenses, failed to provide meal and rest periods and issued inaccurate wage statement under the California Labor Code and applicable Wage Orders. The Walker Complaint asserts on an individual basis that Walker was constructively discharged. The plaintiff seeks unpaid wages, statutory penalties and interest and reasonable costs and attorney fees.

Securities Class Action Compliant

On January 6, 2023, a purported Company stockholder filed a securities class action complaint in the U.S. District Court for the Northern District of California against the Company and certain of its current and former officers and directors. The complaint alleges that defendants violated Sections 10(b) and 20(a) of the Exchange Act of 1934 and Rule 10b-5 promulgated thereunder by making material misstatements or omissions in public statements related to the Company's manufacturing scaleups and testing of new equipment. A substantially identical complaint was filed on January 25, 2023 by another purported Company stockholder. Following consolidation of the cases and court appointment of two purported Company stockholder lead plaintiffs, a consolidated complaint alleging substantially similar claims, including allegations that the defendants made material misstatements or omissions in public statements related to testing of new equipment, was filed on July 7, 2023. The consolidated complaint seeks unspecified damages, interest, fees and costs on behalf of all persons and entities who purchased and/or acquired shares of the Company or RSVAC's common stock between June 24, 2021 and January 3, 2023. The Company and the named officers and directors moved to dismiss the complaint on September 15, 2023. Based on currently available information, the Company is unable to make a reasonable estimate of loss or range of losses, if any, arising from this matter.

Guarantees and Indemnifications

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future but have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations.

The Company also has indemnification obligations to its officers and directors for specified events or occurrences, subject to some limits, while they are serving at the Company's request in such capacities. The Company believes the fair value of these indemnification agreements is minimal. Accordingly, the Company has not recorded any liabilities relating to these obligations for the period presented.

Note 9. Warrants

Common Stock Warrants

On July 14, 2021, Enovix Corporation, a Delaware Corporation, Rodgers Silicon Valley Acquisition Corp. ("RSVAC"), and RSVAC Merger Sub Inc., a Delaware Corporation and wholly owned subsidiary of RSVAC, consummated the closing of the transactions contemplated by the Agreement and Plan of Merger, dated February 22, 2021 (the "Business Combination"). In connection with the Business Combination in July 2021, the Company assumed 17,500,000 common stock warrants outstanding, which consisted of 11,500,000 warrants held by third-party investors (the "Public Warrants") and 6,000,000 Private Placement Warrants. The Public Warrants met the criteria for equity classification and the Private Placement Warrants are classified as liability. In the first quarter of fiscal year 2022, the Public Warrants were either exercised or redeemed. As of October 1, 2023 and January 1, 2023, there were no Public Warrants outstanding.

Private Placement Warrants

The 6,000,000 Private Placement Warrants were originally issued in a private placement to the initial stockholder of the Sponsor in connection with the initial public offering of RSVAC. Each whole Private Placement Warrant became exercisable for one whole share of the Company's common stock at a price of $11.50 per share on December 5, 2021. As of October 1, 2023 and January 1, 2023, the Company had 6,000,000 Private Placement Warrants outstanding. See Note 3 "Fair Value Measurement" for more information.

Note 10. Net Loss per Share

The following table sets forth the computation of the Company's basic and diluted net EPS of common stock for the periods presented below (in thousands, except share and per share amount).

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Numerator:				
Net loss attributable to common stockholders - basic	$ (16,185)	$ (82,013)	$ (154,094)	$ (40,441)
Decrease in fair value of Private Placement Warrants	(31,320)	—	(4,140)	(44,040)
Net loss attributable to common stockholders - diluted	$ (47,505)	$ (82,013)	$ (158,234)	$ (84,481)
Denominator:				
Weighted-average shares outstanding used in computing net loss per share of common stock, basic	159,829,716	153,332,007	157,559,138	152,497,010
Dilutive effect of Private Placement Warrants	1,541,701	—	701,255	1,276,261
Weighted-average shares outstanding used in computing net loss per share of common stock, diluted	161,371,417	153,332,007	158,260,393	153,773,271
Net loss per share of common stock:				
Basic	$ (0.10)	$ (0.53)	$ (0.98)	$ (0.27)
Diluted	$ (0.29)	$ (0.53)	$ (1.00)	$ (0.55)

The following table discloses shares of the securities that were not included in the diluted EPS calculation above because they are anti-dilutive for the periods presented above.

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Stock options outstanding	3,075,138	5,083,643	3,075,138	5,083,643
Restricted stock units and performance restricted stock units outstanding	12,602,239	5,933,914	12,602,239	5,933,914
Assumed conversion of Convertible Senior Notes	11,053,800	—	6,608,868	—
Private Placement Warrants outstanding	—	6,000,000	—	—
Employee stock purchase plan estimated shares	243,474	380,847	243,474	380,847

Note 11. Stock-based Compensation

The Company issues equity awards to employees and non-employees in the form of stock options, restricted stock units ("RSUs") and performance based RSUs ("PRSUs"). Additionally, the Company also offers an employee stock purchase plan ("ESPP") to its eligible employees. The Company uses Black-Scholes option pricing model to value its stock

options granted and the estimated shares to be purchased under the ESPP. For both RSUs and PRSUs, the Company uses its common stock price, which is the last reported sales price on the grant date to value those securities.

In general, the Company recognizes its stock-based compensation expense on a straight-line basis over the requisite service period and records forfeitures as they occur. For PRSUs, the Company uses the graded vesting method to calculate the stock-based compensation expense. At each reporting period, the Company would recognize and adjust the stock-based compensation expense based on its probability assessment in meeting its PRSUs' performance conditions.

Stock-based Compensation Expense

The following table summarizes the total stock-based compensation expense, by operating expense category, recognized in the Condensed Consolidated Statements of Operations for the periods presented below (in thousands).

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Cost of revenue	$ 2,396	$ 1,067	$ 5,001	$ 1,317
Research and development	4,949	3,372	22,072	9,705
Selling, general and administrative	5,929	4,260	30,400	11,095
Restructuring cost	359	—	359	—
Total stock-based compensation expense	$ 13,633	$ 8,699	$ 57,832	$ 22,117

For the fiscal years-to-date ended October 1, 2023 and October 2, 2022, the Company capitalized $0.8 million and $1.2 million, respectively, of stock-based compensation as property and equipment, net on the Condensed Consolidated Balance Sheet. There was no recognized tax benefit related to stock-based compensation for the periods presented. In addition, the Company accrued an immaterial amount of bonus to be settled in equity awards as accrued compensation on the Condensed Consolidated Balance Sheet as of October 1, 2023.

As of October 1, 2023, there was approximately $140.1 million of total unrecognized stock-based compensation expense related to unvested equity awards, which are expected to be recognized over a weighted-average period of 3.9 years. As of October 1, 2023, there was approximately $0.5 million of total unrecognized stock-based compensation related to the ESPP, which is expected to be recognized over a period of 1.1 years.

Equity Award Modification

For the first quarter of 2023, in connection with the retirement or resignation of several of the Company's management team members, including the Company's former Chief Executive Officer, the Company evaluated the change in employment status in accordance with ASC 718, *Compensation - Stock Compensation*. The Company concluded that the change in status impacted the vesting conditions as the term of equity award exercise period was extended and certain of the equity awards were accelerated and vested immediately. For the quarter ended October 1, 2023, there was no equity award modification. For the fiscal year-to-date ended October 1, 2023, the Company recognized $21.1 million of stock-based compensation expense related to the modifications. There is no equity modification occurred for the corresponding period last year.

Stock Option Activity

The following table summarizes stock option activities for the fiscal year-to-date ended October 1, 2023 (in thousands, except share and per share amount).

	Number of Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value [1] [2]
Balances as of January 1, 2023	5,034,282	$ 9.07		
Exercised	(1,135,249)	8.13		$ 13,446
Forfeited	(823,895)	9.20		
Balances as of October 1, 2023	3,075,138	$ 9.39	7.5	$ 11,166

(1) The intrinsic value of options exercised is based upon the value of the Company's stock at exercise.

(2) The aggregate intrinsic value of the stock options outstanding as of October 1, 2023 represents the value of the Company's closing stock price at $ 12.55 on the last trading day of the quarter ended October 1, 2023 in excess of the exercise price multiplied by the number of options outstanding.

Unvested early exercised stock options which are subject to repurchase by the Company are not considered participating securities as those shares do not have non-forfeitable rights to dividends or dividend equivalents. Unvested early exercised stock options are not considered outstanding for purposes of the weighted average outstanding share calculation until they vest.

As of October 1, 2023, 657,981 shares remained subject to the Company's right of repurchase as a result of early exercised stock options. The remaining liability related to early exercised shares as of October 1, 2023 was immaterial and was recorded in other current and non-current liabilities in the Condensed Consolidated Balance Sheets.

Issuance of Common Stock Subject to Return

In connection with certain early exercised stock options, during the quarter ended October 1, 2023, the Company's transfer agent erroneously issued an additional 1.3 million shares of common stock to several former executive officers as a result of an administrative issue. Based on the Company's review and assessment as of October 1, 2023, the Company's loss associated with this common stock issuance was approximately $22.4 million. Currently, the Company expects a full recovery of these common stock shares from the former executive officers. Both the issuance of these shares related to the loss and the corresponding receivable from the probable recovery were recorded as additional paid-in capital on the Condensed Consolidated Balance Sheet as of October 1, 2023. The loss amount and the offsetting probable recovery amount resulted in no impact to the Condensed Consolidated Statement of Operations for the quarter and fiscal year-to-date ended October 1, 2023. This estimate is based on the current known information available, which it is possible to change in the future.

Restricted Stock Unit and Performance Restricted Stock Unit Activities

The following table summarizes RSUs and PRSUs activities for the fiscal year-to-date ended October 1, 2023 (in thousands, except share and per share amount).

ENOVIX CORPORATION
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)
(Unaudited)

	RSUs		PRSUs	
	Number of Shares Outstanding	Weighted Average Grant Date Fair Value	Number of Shares Outstanding	Weighted Average Grant Date Fair Value
Issued and unvested shares balances as of January 1, 2023	5,910,097	$ 14.11	1,461,061	$ 13.41
Granted	9,417,880	10.98	769,006	13.13
Vested	(2,018,296)	13.29	(189,251)	13.41
Forfeited	(1,245,122)	13.16	(1,503,136)	13.35
Issued and unvested shares outstanding as of October 1, 2023	12,064,559	$ 11.90	537,680	$ 13.17

Note 12. Related Party

Employment Relationship

As of October 1, 2023, the Company employed two family members of the Company's former Chief Executive Officer, who perform engineering work in the Fremont facility.

Affiliate Notes

On April 20, 2023, the Company issued $172.5 million aggregate principal amount of Convertible Senior Notes, which included $10.0 million principal amount of the Affiliate Notes that were issued to an entity affiliated with Thurman John "T.J." Rodgers, the Company's Chairman, in a concurrent private placement. The Affiliate Notes were recorded in Long-term debt, net on the Company's Condensed Consolidated Balance Sheets. For the quarter and fiscal year-to-date ended October 1, 2023, the Company recorded $0.1 million of interest expense related to the Affiliate Notes in the Company's Condensed Consolidated Statements of Operations. See Note 7 "Borrowings" for more information.

Note 13. Variable Interest Entity

YBS Agreement

On July 26, 2023, the Company entered into a manufacturing agreement (the "Agreement") with YBS International Berhad ("YBS"), a Malaysia-based investment holding company with segments including electronic manufacturing and assembly, high-precision engineering, precision machining and stamping, among others.

The Company and YBS agreed to share an initial investment of $100.0 million for the Gen2 Autoline 1 equipment and facilitation costs, as set out in the Agreement. Pursuant to the terms of the Agreement, the Company shall contribute 30% of the initial investment and YBS has the obligation to finance the remaining 70%. YBS assigned Orifast Solution Sdn Bhd ("OSSB"), a subsidiary, to manufacture lithium-ion batteries for Enovix under the terms and conditions of the Agreement. OSSB obtained $70.0 million of foreign currency term loan (the "Term Loan") in financing for manufacturing operations under the Agreement from OCBC Bank (Malaysia) Berhad ("OCBC"). The Term Loan is expected to be repaid within six years with a 12 months grace period.

Pricing under the Agreement is set on a cost-plus basis and the Company is subject to a minimum commitment pursuant to the Agreement. At any time during the first seven years of the Agreement's term, the Company reserves the right to purchase the Gen2 Autoline 1 by repaying the equipment cost, net of depreciation, as defined in the Agreement. The Company also bears the early repayment penalty fee imposed by OCBC, if any. The term of the Agreement is for ten years and automatically extends for an additional five years.

On September 13, 2023, the Company entered into a cash deposit agreement with OCBC to collateralize the Term Loan and the deposit will be placed in an interest-bearing account with an interest rate on par with the loan rate of the Term

Loan. The Company will deposit sufficient collateral for the Term Loan. As of October 1, 2023, there is no outstanding balance of the Term Loan and no deposit was made to OCBC for the collateralization.

Consolidated Variable Interest Entity

The Company consolidates a VIE when it has the power to direct the activities that most significantly impact the VIE's economic performance and the obligation to absorb losses or the right to receive benefits of the VIE, which could potentially be significant to the VIE, and, as a result, is considered the primary beneficiary of the VIE. As of October 1, 2023, the Company concluded that OSSB is considered a VIE and the Company is the primary beneficiary of OSSB based on certain assumptions and judgments made by the Company. As of October 1, 2023, the Company did not have an equity investment in OSSB. In accordance with GAAP, the Company consolidates 100% of OSSB financials. During the quarter ended and fiscal year-to-date ended October 1, 2023, OSSB had immaterial operating activities.

Note 14. Acquisition

On September 18, 2023, the Company entered into a stock purchase agreement (the "Stock Purchase Agreement") with Rene Limited, a corporation incorporated under the laws of the Republic of Korea (the "Seller"). On October 31, 2023, the Company closed the transaction contemplated by the Stock Purchase Agreement (the "Closing") to purchase Routejade, Inc. ("Routejade"), a corporation incorporated under the laws of Republic of Korea.

The total estimated purchase consideration of such transaction consists of cash consideration in the amount of approximately $15.8 million and 5,923,521 shares of common stock of the Company, par value $0.0001, for the purchase of substantially all of the outstanding shares of Routejade (the "Routejade Acquisition"). This acquisition constitutes a business acquisition under the accounting standard for business combinations and, therefore, will be accounted for as a business combination using the acquisition method of accounting. Goodwill from this acquisition is not expected to be deductible for tax purposes. The valuation of assets acquired and liabilities assumed are still being appraised by a third-party and as such, the purchase price allocation is not yet complete.

For the quarter and fiscal year-to-date ended October 1, 2023, the Company recorded approximately $1.1 million of acquisition costs, which were included in Selling, general and administrative of the Condensed Consolidated Statements of Operations.

Note 15. Restructuring Costs

Strategic Realignment of Fab1

On October 3, 2023, the Company announced that it initiated a strategic realignment of the Company's first production line ("Fab1") in Fremont designed to refocus the facility from a manufacturing hub to its "Center for Innovation," focused on new product development, including a plan of workforce reduction. Currently, the Company expects this restructuring plan to be substantially completed in the fourth quarter of 2023.

In connection with such strategic realignment, the Company recorded approximately $3.0 million of restructuring costs for the quarter and fiscal year-to-date ended October 1, 2023, which consisted of severance, termination benefits, stock-based compensation expense and inventory costs. These restructuring costs were reflected in Restructuring cost in the Condensed Consolidated Statements of Operations. As of October 1, 2023, the Company has not paid any of the restructuring costs and $2.1 million of the restructuring liability was included in Accrued compensation on the Condensed Consolidated Balance Sheet.

In addition, the Company also expects to recognize an accelerated depreciation expenses of approximately $36 million for Gen1 equipment between the fourth quarter of 2023 and the first quarter of 2024.

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

The following discussion and analysis provide information that the management of Enovix Corporation (referred as to "we," "us," "our" and "Enovix") believes is relevant to an assessment and understanding of Enovix's condensed consolidated results of operations and financial condition as of October 1, 2023 and for the quarter and fiscal year-to-date ended October 1, 2023 and should be read together with the condensed consolidated financial statements that are included elsewhere in this Quarterly Report on Form 10-Q. This discussion and analysis contain forward-looking statements based upon our current expectations, estimates and projections that involve risks and uncertainties. Actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth in the section titled "Risk Factors" and elsewhere in this Quarterly Report on Form 10-Q.

Business Overview

Enovix Corporation is on a mission to power the technologies of the future. We do this by designing, developing, manufacturing and commercializing next generation Lithium-ion, or Li-ion, battery cells that significantly increase the amount of energy density and storage capacity relative to conventional battery cells. Our battery's mechanical design, or "architecture," allows us to use high performance chemistries while enabling safety and charge time advantages.

The benefit of an enhanced battery for portable electronics is devices that have more power budget available to keep up with user preferences for more advanced features and more attractive form factors. The benefit of an advanced battery for Electric Vehicles ("EVs") is a faster charging battery.

Key Trends, Opportunities and Uncertainties

We generate revenue from the sale of (a) silicon-anode lithium-ion batteries and battery pack products ("Product Revenue") and (b) engineering revenue contracts ("Service Revenue") for the development of silicon-anode lithium-ion battery technology. Our performance and future success depend on several factors that present significant opportunities, but also pose risks and challenges as described in the section titled "Risk Factors" included elsewhere in this Quarterly Report on Form 10-Q.

Q3 2023 Highlights:

Following is a summary of the activities in the third quarter of 2023:

- In August 2023, we commenced Factory Acceptance Testing ("FAT") of second generation ("Gen2") manufacturing equipment on schedule and we recently completed FAT for one of the four zones of the production line.
- In September 2023, we entered a stock purchase agreement (the "Stock Purchase Agreement") to acquire Routejade (the "Routejade Acquisition"). The total estimated purchase consideration of the Routejade Acquisition consists of cash consideration in the amount of approximately $15.8 million and 5,923,521 shares of our common stock, par value $0.0001 per share ("Common Stock"), for the purchase of substantially all of the outstanding shares of Routejade. The closing of the transaction contemplated by the Stock Purchase Agreement (the "Closing") occurred on October 31, 2023. This acquisition helps us vertically integrate electrode coating to reduce our costs, enhance manufacturability, and speed up our technology development and provides approximately $3 to $4 million of revenue for the fourth quarter of 2023. See Note 14 "Acquisition" of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.
- Our battery has been selected for the FDA-approved accurate Meditech "Mini," a multi-vital sign monitor to be sold at CVS, Walgreens, and Walmart in 2024.
- During the third quarter of 2023, we recognized $0.2 million of revenue, which was primarily from the shipment of our custom size Enovix batteries to the U.S. Army.
- On October 3, 2023, we announced that we initiated a strategic realignment of our first production line ("Fab1") in Fremont, which is designed to refocus the facility from a manufacturing hub to its "Center for Innovation," focused on new product development, including a plan of workforce reduction. Currently, we expect this restructuring plan to be substantially completed in the fourth quarter of 2023. This strategic realignment allowed us to stop 24/7 manufacturing, reduce our burn rate by approximately $22 million annualized and free up space for enhanced research and development and prototyping for automotive original equipment manufacturers ("OEMs").

  In connection with such strategic realignment, we recorded approximately $3.0 million of restructuring costs for the quarter and fiscal year-to-date ended October 1, 2023, which consisted of severance, termination benefits, stock-based compensation expense and inventory costs. These restructuring costs were reflected in Restructuring

cost in our Condensed Statements of Operations. In addition, we also expect to recognize an accelerated depreciation expense of approximately $36.0 million for Gen1 equipment between the fourth quarter of 2023 and the first quarter of 2024. See Note 15 “Restructuring Costs” of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

Overall, we are on track to begin installing our new higher speed pilot line (“Agility Line”) for customer qualification and produce first samples from our first high-volume Gen2 Autoline in April 2024.

Product Development

Our product strategy is to develop battery “nodes” that share the same set of active materials and mechanical design and then build batteries at different sizes to accommodate customer requirements based on these nodes. Our product roadmap consists of future nodes at higher levels of energy density based on both materials and design innovation. Our goal is to drive energy density improvements at a faster rate than the Li-ion battery industry’s track record and introduce higher performing battery nodes over time.

We have historically built and sampled standard size batteries that have broad application within specific end markets such as wearables, mobile devices, laptops and AR eyewear. We have also launched custom battery designs with customers that require a unique set of dimensions to accommodate the battery cavity in their device.

In the second quarter of 2022, we began production in our first production line (“Fab1”) of a standard battery cell sized for wearable devices such as a smartwatch and other Internet-of-Things (“IoT”) devices. In the first quarter of 2024, we plan to begin installing the Agility Line to produce custom size batteries more quickly for customer qualification and focus on custom cell development.

Commercialization

During the third quarter of 2023, we shifted from a horizontal business strategy focused on many customers to a vertical business strategy focused on a subset of customer relationships where our value proposition is highest. This shift includes a greater focus on custom battery designs aligned to key customer requirements such as energy density, cycle life, charge rate, and battery dimensions. These requirements can vary by customer and end market.

For example, in mobile, we are developing a battery with over 10% higher energy density than our current generation, with a targeted cycle life of 1,000 cycles, and a charge rate of 3C (i.e., full battery recharge in 20 minutes). By comparison, we have a customer that is willing to accept lower cycle life if it means even higher energy density. And in some IoT applications, customers are willing to trade off fast charge rates in exchange for higher energy density and cycling performance in extreme temperatures.

We are well-positioned to address our customer’s varying needs due to our material agnostic strategy, which allows us to fine tune battery performance parameters based the anodes and cathodes we combine. We are currently evaluating a dozen different anode cathode formulations, giving us multiple candidates to drive improvements in energy density, cycle life, and charge rate.

Market Focus and Market Expansion

Within the portable electronics market, we have simplified our market focus to three categories: IoT (wearables, AR/VR, medical, industrial, cameras, etc.), Mobile (smartphones, land mobile radios, enterprise devices, etc.), and Computing (laptops, tablets). We estimate the Total Addressable Market (“TAM”) for lithium-ion batteries in our targeted portable electronics markets to be $23 billion in 2026 based on company estimates as of January 2023 that incorporate end market unit estimates from IDTechEx, IDC, Avicenne Energy and Statista.

We believe focusing on these categories ahead of EVs is the right strategy for any advanced battery company because of the economic and time-to-market advantages. Entering the EV battery market requires billions of dollars of capital to build Gigafactories, offers lower prices per kWh than mobile electronics and demands long qualification cycles. We believe the best approach is to start in premium markets where we can leverage our differentiated technology and solidify our manufacturing process while driving toward profitability At the same time, we are seeding our entry into the EV battery market by sampling batteries to EV OEMs and continuing work on our three-year grant with the U.S. Department of Energy to demonstrate batteries featuring our silicon anode paired with EV-class cathode materials. Our goal is to translate this work into partnerships (e.g., joint ventures or licensing) with EV OEMs or battery OEMs in order to commercialize our technology in this end market.

Access to Capital

Assuming we experience no significant delays in the research and development of our battery nor any deterioration in capital efficiency, we believe that our cash resources are sufficient to fund the continued build-out and production ramp as well as our Fab2 for growth. In April 2023, we completed our offerings of the Convertible Senior Notes. The net proceeds from the offerings were approximately $166.6 million. We used approximately $17.3 million of the net proceeds from the offerings to pay the cost of the capped call transactions entered on April 20, 2023 in connection with such offerings. In addition, we will use the remaining net proceeds to build out a second battery cell manufacturing facility and fund the acquisition of production lines of our second-generation manufacturing equipment, and for working capital and other general corporate purposes.

Regulatory Landscape

We operate in an industry that is subject to many established environmental regulations, which have generally become more stringent over time, particularly in hazardous waste generation and disposal and pollution control. Potential regulations, if adopted, could result in additional operating costs associated with compliance.

Components of Results of Operations

Revenue

In June 2022, we began to generate revenue from our planned principal business activities. We recognize revenue within the scope of Accounting Standards Codification ("ASC") 606, *Revenue from Contracts with Customers.* We generate revenue from our Product Revenue and Service Revenue for the development of silicon-anode lithium-ion battery technology.

Product Revenue is recognized once we have satisfied the performance obligations and the customer obtains control of the goods at a point in time under the revenue recognition criteria. Product Revenue is recognized in an amount that reflects the consideration for the corresponding performance obligations for thesilicon-anode lithium-ion batteries or battery pack products transferred.

Service Revenue contracts generally include the design and development efforts to conform our existing battery technology with customers' required specifications. Consideration for Service Revenue contracts generally becomes payable when we meet specific contractual milestones, which include the design and approval of custom cells, procurement of fabrication tooling to meet the customer's specifications, and fabrication and delivery of custom cells from our pilot production line. Within the existing Service Revenue contracts, the amount of consideration is fixed, the contracts contain a single performance obligation, and revenue is recognized at the point in time the final milestone is met (i.e., a final working prototype meeting all required specifications) and the customer obtains control of the deliverable.

Cost of Revenue

Cost of revenue includes materials, labor, depreciation expense, and other direct costs related to Service Revenue contracts and production lines. Labor consists of personnel-related expenses such as salaries and benefits, and stock-based compensation. Since our production commenced in the second quarter of 2022, we anticipate that cost of revenue will continue to increase as we optimize our first production line and bring-up our second production line.

Our inventory is stated at the lower of cost or net realizable value ("NRV"). Cost includes materials, labor, and normal manufacturing overhead related to the purchase and production of inventories. We value our inventory periodically to the lower of cost or NRV and record the difference to cost of revenue.

Capitalization of certain costs are recognized as an asset if they relate directly to a customer contract, generate or enhance resources of the entity that will be used in satisfying future performance obligations, and are expected to be recovered. If these three criteria are not met, the costs are expensed in the period incurred. Deferred costs are recognized as cost of revenue in the period when the related revenue is recognized.

Operating Expenses

Research and Development Expenses

Research and development expenses consist of engineering services, allocated facilities costs, depreciation, development expenses, materials, labor and stock-based compensation related primarily to our (i) technology development, (ii) design, construction, and testing of preproduction prototypes and models, and (iii) certain costs related to the design,

construction and operation of our pilot plant that are not of a scale economically feasible to us for commercial production. Research and development costs are expensed as incurred.

To date, research and development expenses have consisted primarily of personnel-related expenses for scientists, experienced engineers and technicians as well as costs associated with the expansion and ramp up of our engineering and manufacturing facility in Fremont, California, including the material and supplies to support the product development and process engineering efforts. As we ramp up our engineering operations to complete the development of batteries and required process engineering to meet customer specifications, we anticipate that research and development expenses will continue to increase for the foreseeable future as we expand hiring of scientists, engineers and technicians and continue to invest in additional plant and equipment for product development, building prototypes and testing of batteries. We established a research and development center in India that initially focuses on developing machine learning algorithms. In the second quarter of 2023, we also established an operations team in Malaysia and we target for Gen2 Autoline production in 2024.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist of personnel-related expenses, marketing expenses, allocated facilities expenses, depreciation expenses, travel expenses, acquisition costs, and professional services expenses, including legal, human resources, audit, accounting and tax-related services. Personnel related costs consist of salaries, benefits and stock-based compensation. Facilities costs consist of rent and maintenance of facilities.

We are expanding our personnel headcount to support the ramping up of commercial manufacturing and being a public company. Accordingly, we expect our selling, general and administrative expenses to increase significantly in the near term and for the foreseeable future.

Other Income (Expense)

Other income and expense primarily consists of dividends, interest income, interest expense, foreign currency transaction gain or loss and fair value adjustments for outstanding common stock warrants.

Income Tax Expense (Benefit)

Our income tax provision consists of an estimate for U.S. federal and state income taxes based on enacted rates, as adjusted for allowable credits, deductions, uncertain tax positions, changes in deferred tax assets and liabilities and changes in the tax law. We maintain a valuation allowance against the full value of our U.S. and state net deferred tax assets because we believe the recoverability of the tax assets is not more likely than not.

Results of Operations

Comparison of Quarter Ended October 1, 2023 to Prior Year's Quarter Ended October 2, 2022

The following table sets forth our condensed consolidated operating results for the periods presented below (in thousands):

	Quarters Ended			
	October 1, 2023	October 2, 2022	Change ($)	% Change
Revenue	$ 200	$ 8	$ 192	N/M
Cost of revenue	16,809	6,629	10,180	154 %
Gross margin	(16,609)	(6,621)	(9,988)	151 %
Operating expenses:				
Research and development	13,508	13,948	(440)	(3)%
Selling, general and administrative	17,245	13,110	4,135	32 %
Restructuring cost	3,021	—	3,021	N/M
Total operating expenses	33,774	27,058	6,716	25 %
Loss from operations	(50,383)	(33,679)	(16,704)	50 %
Other income (expense):				
Change in fair value of common stock warrants	31,320	(50,160)	81,480	(162)%
Interest income	4,326	1,746	2,580	148 %
Interest expense	(1,557)	—	(1,557)	N/M
Other expense, net	109	80	29	36 %
Total other income (expense), net	34,198	(48,334)	82,532	(171)%
Net loss	$ (16,185)	$ (82,013)	$ 65,828	N/M

N/M – Not meaningful

Revenue

Revenue for the quarter ended October 1, 2023 was $0.2 million, which resulted from our product shipments to the U.S. Army. Revenue for the quarter ended October 2, 2022 was immaterial.

As of both October 1, 2023 and January 1, 2023, we had $3.8 million of deferred revenue on our Condensed Consolidated Balance Sheets.

Cost of Revenue

Cost of revenue for the quarter ended October 1, 2023 was $16.8 million, compared to $6.6 million during the quarter ended October 2, 2022. The increase in cost of revenue of $10.2 million was attributable to $8.3 million of labor costs, $0.8 million of depreciation expense and the remaining increase was related to facility and other miscellaneous direct costs.

As of both October 1, 2023 and January 1, 2023, we had $0.8 million of deferred contract costs on our Condensed Consolidated Balance Sheets.

Research and Development Expenses

Research and development (“R&D”) expenses for the quarter ended October 1, 2023 were $13.5 million, compared to $13.9 million during the quarter ended October 2, 2022. The decrease of $0.4 million, or 3%, was primarily attributable to a $5.8 million decrease in R&D expenses as we ramp up our production as some of the overhead costs were period costs and recorded as cost of revenue in the third quarter of 2023 instead of R&D expenses in the corresponding period in 2022. This decrease was offset by a $2.2 million increase in R&D expenses being capitalized as fixed assets, a one-time severance, benefits and stock-based compensation expense of $1.7 million, a $0.7 million increase in salaries and employee benefits and other expenses including travel and depreciation expenses.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the quarter ended October 1, 2023 were $17.2 million, compared to $13.1 million during the quarter ended October 2, 2022. The increase of $4.1 million, or 32%, was primarily attributable to a one-time severance, benefits and stock-based compensation expense of $2.1 million in connection with the resignation of our former Chief Financial Officer (“CFO”) and acquisition costs of $1.1 million, including professional service fees, in connection with the Routejade Acquisition. The remaining increase was primarily related to the setup of Malaysia operations.

We anticipate that our overhead expenses will continue to increase in the next 12 months as we continue to hire additional personnel to support and maintain our new manufacturing facilities, as well as for our operation expansion.

Restructuring Cost

On October 3, 2023, we initiated a strategic realignment of our Fab1 in Fremont, including a restructuring plan with workforce reduction. We recorded $3.0 million of restructuring costs during the quarter ended October 1, 2023, which consisted of $2.4 million of severance and termination benefits and stock-based compensation expense and $0.6 million of inventory costs.

Change in Fair Value of Common Stock Warrants

The change in fair value of common stock warrants of $31.3 million for the quarter ended October 1, 2023 was attributable to a decrease, during the quarter, in the fair value of the 6,000,000 common stock warrants that are held by Rodgers Capital, LLC (the “Sponsor”) and certain of its members (the “Private Placement Warrants”). The decrease in fair value of Private Placement Warrants was primarily due to a decrease in our common stock price during the quarter.

The change in fair value of common stock warrants of $(50.2) million for the quarter ended October 2, 2022 was attributable to an increase, during the quarter, in the fair value of the Private Placement Warrants.

Interest Income

Interest income for the quarter ended October 1, 2023 was $4.3 million, compared to $1.7 million during the quarter ended October 2, 2022. The increase of $2.6 million was primarily due to the fact that we received higher dividend income and interest income from our money market accounts and our investments during the quarter ended October 1, 2023 as compared to the corresponding period in 2022.

Interest Expense

Interest expense for the quarter ended October 1, 2023 was $1.6 million, which primarily incurred with the Convertible Senior Notes issued in the second quarter of 2023. No interest expense was incurred for the quarter ended October 2, 2022.

Comparison of Fiscal Year-to-date Ended October 1, 2023 to Prior Fiscal Year-to-date Ended October 2, 2022

The following table sets forth our condensed consolidated operating results for the periods presented below (in thousands):

	Fiscal Years-to-Date Ended			
	October 1, 2023	October 2, 2022	Change ($)	% Change
Revenue	$ 263	$ 5,109	$ (4,846)	N/M
Cost of revenue	43,292	12,883	30,409	236 %
Gross margin	(43,029)	(7,774)	(35,255)	N/M
Operating expenses:				
Research and development	53,810	42,506	11,304	27 %
Selling, general and administrative	61,207	36,545	24,662	67 %
Impairment of equipment	4,411	—	4,411	N/M
Restructuring cost	3,021	—	3,021	N/M
Total operating expenses	122,449	79,051	43,398	55 %
Loss from operations	(165,478)	(86,825)	(78,653)	91 %
Other income (expense):				
Change in fair value of common stock warrants	4,140	44,040	(39,900)	(91) %
Interest income	9,942	2,399	7,543	N/M
Interest expense	(2,827)	—	(2,827)	N/M
Other income (expense), net	129	(55)	184	N/M
Total other income (expense), net	11,384	46,384	(35,000)	(75) %
Net loss	$ (154,094)	$ (40,441)	$ (113,653)	N/M

N/M – Not meaningful

Revenue

Revenue for the fiscal year-to-date ended October 1, 2023 was $0.3 million, which primarily resulted from our product shipments to the U.S. Army. Revenue for the fiscal year-to-date ended October 2, 2022 was $5.1 million, which was comprised of $5.1 million of Service Revenue and an immaterial amount of Product Revenue. Service Revenue was primarily attributed to the satisfaction of our final performance obligations for and our deliveries of (a) pilot cells and (b) battery packs to two customers under our Service Revenue customer contracts. Customer A represented $5.0 million of our total revenue for the fiscal year-to-date ended October 2, 2022.

As of both October 1, 2023 and January 1, 2023, we had $3.8 million of deferred revenue on our Condensed Consolidated Balance Sheets.

Cost of Revenue

Cost of revenue for the fiscal year-to-date ended October 1, 2023 was $43.3 million, compared to $12.9 million during the prior fiscal year-to-date ended October 2, 2022. The increase in cost of revenue of $30.4 million was attributable to $23.9 million of labor costs, $5.0 million of allocated depreciation expense, $4.2 million of facility and maintenance costs and increases in other miscellaneous expenses. The increases were related to the ramp up of production from our Fab1 during the first half of the year. These increases were partially offset by a $4.1 million decrease in expenses incurred related to service revenue contracts that were completed in the corresponding period of 2022.

As of both October 1, 2023 and January 1, 2023, we had $0.8 million of deferred contract costs on our Condensed Consolidated Balance Sheets.

In the beginning of June of 2022, we completed construction of our first production line and placed this equipment in service. As a result, we began depreciating this production equipment over its estimated useful life. We also began capitalizing inventory and recognizing factory overhead expenses in cost of revenue, which are largely fixed overhead costs (idle costs) that were previously recognized in research and development expenses. We expect equipment depreciation and overhead costs to continue to increase. Nine months of depreciation and overhead costs were included in

the current year-to-date period costs while approximately four months of depreciation and overhead costs (since June 2022) were included in the corresponding period of 2022.

In addition, we anticipate our factory overhead expenses will continue to increase in the next 12 months as we continue to hire additional personnel to support the build-out of additional production lines and maintain our new manufacturing facilities.

Research and Development Expenses

Research and development expenses for the fiscal year-to-date ended October 1, 2023 were $53.8 million, compared to $42.5 million during the prior fiscal year-to-date ended October 2, 2022. The increase of $11.3 million, or 27%, was primarily attributable to a one-time severance, benefits and stock-based compensation expense of $10.6 million in connection with the departures of our former Chief Technology Officer and certain other executives during this fiscal year. In addition, there were increases in our research and development employee headcount and compensation costs resulting in a $9.9 million increase in salaries and employee benefits, a $2.9 million increase in stock-based compensation expenses and a $2.0 million in depreciation and travel expenses. These increases were partially offset by $15.3 million decrease in research and development expenses as some of the overhead costs were period costs and recorded as cost of revenue in the current year instead of research and development expense in the corresponding period of 2022.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the fiscal year-to-date period ended October 1, 2023 were $61.2 million, compared to $36.5 million during the prior fiscal year-to-date ended October 2, 2022. The increase of $24.7 million, or 67%, was primarily attributable to a one-time severance, benefits and stock-based compensation expense of $17.9 million in connection with the departures of our former President, Chief Executive Officer and Director, former CFO and certain other executives during this fiscal year. The remaining increase of $6.8 million was primarily due to an increase in our selling, general and administrative employee headcount resulting in a $2.5 million increase in salaries and employee benefits and a $3.5 million increase in stock-based compensation expenses, a $1.1 million of acquisition costs, including professional service fees, in connection with the Routejade Acquisition. These increases were partially offset by decreases in other miscellaneous expenses.

We anticipate that our overhead expenses will continue to increase in the next 12 months as we continue to hire additional personnel to support and maintain our new manufacturing facilities, as well as for our operation expansion.

Impairment of equipment

We recognized $4.4 million of impairment charge for the fiscal year-to-date ended October 1, 2023 while no impairment charge was recorded in the same period last year. See Note 4 “Property and Equipment” for more information.

Restructuring Cost

On October 3, 2023, we initiated a strategic realignment of our Fab1 in Fremont, including a restructuring plan with workforce reduction. We recorded $3.0 million of restructuring costs during the fiscal year-to-date ended October 1, 2023, which consisted of $2.4 million of severance and termination benefits and stock-based compensation expense and $0.6 million of inventory costs.

Change in Fair Value of Common Stock Warrants

The change in fair value of common stock warrants of $4.1 million for the fiscal year-to-date ended October 1, 2023 was attributable to a decrease, during the current year, in the fair value of the 6,000,000 Private Placement Warrants. The decrease in fair value of Private Placement Warrants was primarily due to a decrease in our common stock price during the year.

The change in fair value of common stock warrants of $44.0 million for the fiscal year-to-date ended October 2, 2022 was attributable to a decrease, during the last year, in the fair value of the Private Placement Warrants.

Interest Income

Interest income for the fiscal year-to-date ended October 1, 2023 was $9.9 million, compared to $2.4 million during the fiscal year-to-date ended October 2, 2022. The increase of $7.5 million was primarily due to the fact that we received

higher dividend income and interest income from our money market accounts and our investments for the fiscal year-to-date ended October 1, 2023 as compared to the corresponding period in 2022.

Interest Expense

Interest expense for the fiscal year-to-date ended October 1, 2023 was $2.8 million, which primarily incurred with the Convertible Senior Notes issued in the second quarter of 2023. No interest expense was incurred for the corresponding period last year.

Non-GAAP Financial Measures

While we prepare our condensed consolidated financial statements in accordance with U.S. generally accepted accounting principles ("GAAP"), we also utilize and present certain financial measures that are not based on GAAP. We refer to these financial measures as "Non-GAAP" financial measures. In addition to our financial results determined in accordance with GAAP, we believe that EBITDA, and Adjusted EBITDA, and Free Cash Flow (each as defined below), are useful measures in evaluating our financial and operational performance distinct and apart from financing costs, certain non-cash expenses and non-operational expenses.

These Non-GAAP financial measures should be considered in addition to results prepared in accordance with GAAP but should not be considered a substitute for or superior to GAAP. We endeavor to compensate for the limitation of the Non-GAAP financial measures presented by also providing the most directly comparable GAAP measures.

We use Non-GAAP financial information to evaluate our ongoing operations and for internal planning, budgeting and forecasting purposes. We believe that Non-GAAP financial information, when taken collectively with GAAP measures, may be helpful to investors in assessing our operating performance and comparing our performance with competitors and other comparable companies. You should review the reconciliations below but not rely on any single financial measure to evaluate our business.

EBITDA and Adjusted EBITDA

"EBITDA" is defined as earnings (net loss) adjusted for interest expense; income taxes; depreciation expense, and amortization expense. "Adjusted EBITDA" includes additional adjustments to EBITDA such as stock-based compensation expense; change in fair value of common stock warrants; impairment of equipment, acquisition cost, restructuring cost, loss on early debt extinguishment and other special items as determined by management which it does not believe to be indicative of its underlying business trends. EBITDA and Adjusted EBITDA are intended as supplemental financial measures of our performance that are neither required by, nor presented in accordance with GAAP. We believe that the use of EBITDA and Adjusted EBITDA provides an additional tool for investors to use in evaluating ongoing operating results and trends, and in comparing our financial measures with those of comparable companies, which may present similar Non-GAAP financial measures to investors.

However, you should be aware that when evaluating EBITDA, and Adjusted EBITDA, we may incur future expenses similar to those excluded when calculating these measures. In addition, the presentation of these measures should not be construed as an inference that our future results will be unaffected by unusual or nonrecurring items. Our computation of EBITDA and Adjusted EBITDA may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate EBITDA and Adjusted EBITDA in the same fashion.

Below is a reconciliation of net loss on a GAAP basis to the Non-GAAP EBITDA and Adjusted EBITDA financial measures for the periods presented below (in thousands):

	Quarters Ended		Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022	October 1, 2023	October 2, 2022
Net loss	$ (16,185)	$ (82,013)	$ (154,094)	$ (40,441)
Interest expense	1,557	—	2,827	—
Depreciation and amortization	2,900	2,995	10,000	4,795
EBITDA	(11,728)	(79,018)	(141,267)	(35,646)
Stock-based compensation expense [1]	13,274	8,699	57,473	22,117
Change in fair value of common stock warrants	(31,320)	50,160	(4,140)	(44,040)
Impairment of equipment	—	—	4,411	—
Restructuring cost [1]	3,021	—	3,021	—
Acquisition cost	1,115	—	1,115	—
Adjusted EBITDA	$ (25,638)	$ (20,159)	$ (79,387)	$ (57,569)

[1] $0.4 million of stock-based compensation expense is included in the restructuring cost line of the table above for the quarter and fiscal year-to-date ended October 1, 2023.

Free Cash Flow

We define "Free Cash Flow" as (i) net cash from operating activities less (ii) capital expenditures, net of proceeds from disposals of property and equipment, all of which are derived from our Condensed Consolidated Statements of Cash Flows. The presentation of non-GAAP Free Cash Flow is not intended as an alternative measure of cash flows from operations, as determined in accordance with GAAP. We believe that this financial measure is useful to investors because it provides investors to view our performance using the same tool that we use to gauge our progress in achieving our goals and it is an indication of cash flow that may be available to fund investments in future growth initiatives. Below is a reconciliation of net cash used in operating activities to the Free Cash Flow financial measures for the periods presented below (in thousands):

	Fiscal Years-to-Date Ended	
	October 1, 2023	October 2, 2022
Net cash used in operating activities	$ (77,408)	$ (60,903)
Capital expenditures	(32,979)	(31,366)
Free Cash Flow	$ (110,387)	$ (92,269)

Liquidity and Capital Resources

We have incurred operating losses and negative cash flows from operations since inception through October 1, 2023 and expect to incur operating losses for the foreseeable future. As of October 1, 2023, we had cash, cash equivalents, restricted cash, and short-term investments of $371.5 million, working capital of $331.6 million and an accumulated deficit of $538.9 million.

On April 20, 2023, we issued $172.5 million aggregate principal amount of 3.0% Convertible Senior Notes, pursuant to an indenture, dated as of April 20, 2023 (the "Indenture"), between the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"). The offerings and sale of the Convertible Senior Notes were made by us to the initial purchasers in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), for resale by the initial purchasers to qualified institutional buyers (as defined in the Securities Act) pursuant to the exemption from registration provided by Rule 144A under the Securities Act. The issuance includes the exercise in full by the initial purchasers of their option to purchase an additional $22.5 million aggregate principal amount of Convertible Senior Notes and the issuance of $10.0 million principal amount of Convertible

Senior Notes (the "Affiliate Notes") to an entity affiliated with Thurman John "T.J." Rodgers, the Company's Chairman, in a concurrent private placement.

The Convertible Senior Notes are unsecured obligations and bear interest at a rate of 3.0% per year from April 20, 2023, and will be payable semiannually in arrears on May 1 and November 1 of each year, beginning on November 1, 2023. The Convertible Senior Notes and the Affiliated Notes will mature on May 1, 2028 unless earlier converted, redeemed or repurchased.

The net proceeds from the Convertible Senior Notes were approximately $166.6 million. We used approximately$17.3 million of the net proceeds from the offerings to pay the cost of the capped call transactions entered on April 20, 2023 in connection with the offerings. In addition, we will use the remaining net proceeds to build out a second battery cell manufacturing facility and fund the acquisition of production lines of our second-generation manufacturing equipment, and for working capital and other general corporate purposes. See Note 7 "Borrowings" of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

Following the issuance of Convertible Senior Notes, we invested in marketable securities. As of October 1, 2023, we had $100.5 million of short-term investments on the Condensed Consolidated Balance Sheet. We did not have short-term investments as of January 1, 2023.

In addition, we continue to build our facility in Malaysia and purchase property and equipment during the year. As of October 1, 2023, we had higher accrued expenses, including accrued interest associated with Convertible Senior Notes, as compared to January 1, 2023.

Material Cash Requirements

As of October 1, 2023, we had cash, cash equivalents, restricted cash, and short-term investments of $371.5 million. We currently use cash to fund operations, meet working capital requirements and fund our capital expenditures. In fiscal year 2023 and 2024, we expect that our spending in cost of revenues and operating expenses will continue to increase as we ramp up our operations.

For the fiscal year-to-date ended October 1, 2023, we used $33.0 million of our cash to fund our acquisitions of property and equipment. We will continue to increase our property and equipment purchases in the near future to support the build-out of our manufacturing facilities and our battery manufacturing production. See more discussion on contractual obligations and commitments section below.

In the second quarter of 2023, we entered into a manufacturing agreement (the "Agreement") with YBS International Berhad ("YBS"), a Malaysia-based investment holding company with segments including electronic manufacturing and assembly, high-precision engineering, precision machining and stamping, among others. YBS assigned Orifast Solution Sdn Bhd ("OSSB"), a subsidiary, to manufacture lithium-ion batteries for Enovix under the terms and conditions of the Agreement. OSSB obtained $70.0 million of foreign currency term loan (the "Term Loan") in financing for manufacturing operations under the Agreement from OCBC Bank (Malaysia) Berhad ("OCBC"). On September 13, 2023, we entered into a cash deposit agreement with OCBC to collateralize the Term Loan and the deposit will be placed in an interest-bearing account with an interest rate on par with the loan rate of the Term Loan. We will deposit sufficient collateral for the Term Loan. As of October 1, 2023, there is no outstanding balance of the Term Loan and no deposit was made to OCBC for the collateralization. See Note 13 "Variable Interest Entity" of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

As previously discussed in the Q3 2023 Highlights section, we entered into a Stock Purchase Agreement to acquire Routejade. The total estimated purchase consideration of the Routejade Acquisition consists of cash consideration in the amount of approximately $15.8 million and 5,923,521 shares of our Common Stock for the purchase of substantially all of the outstanding shares of Routejade. The Routejade Acquisition closed on October 31, 2023. See Note 14 "Acquisition" of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

As previously discussed in the Q3 2023 Highlights section, we expect the restructuring plan to be substantially completed in the fourth quarter of 2023. We recorded approximately $3.0 million of restructuring costs for the quarter and fiscal year-to-date ended October 1, 2023, which consisted of severance, termination benefits, stock-based compensation expense and inventory costs. We anticipate to pay out the majority of the restructuring costs in the fourth quarter of 2023. See Note 15 "Restructuring Costs" of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

Based on the anticipated spending and timing of expenditures, we currently expect that our cash will be sufficient to meet our funding requirements over the next twelve months from the date this Quarterly Report on Form 10-Q is filed. We believe we will meet longer-term expected future cash requirements and obligations through a combination of available

cash, cash equivalents and future debt financings, and access to other public or private equity offerings as well as potential strategic arrangements. We have made our estimates on historical experience and various other relevant factors and we believe that they are reasonable. Actual results may differ from our estimates, and we could utilize our available capital resources sooner than we expect.

Summary of Cash Flows

The following table provides a summary of cash flow data for the periods presented below (in thousands).

	Fiscal Years-to-Date Ended		
	October 1, 2023	October 2, 2022	Change ($)
Net cash used in operating activities	$ (77,408)	$ (60,903)	$ (16,505)
Net cash used in investing activities	(132,015)	(31,366)	(100,649)
Net cash provided by financing activities	157,389	55,983	101,406
Change in cash, cash equivalents, and restricted cash	$ (52,034)	$ (36,286)	$ (15,748)

Fiscal Year-to-date Ended October 1, 2023 Compared to Prior Year-to-date Ended October 2, 2022

Operating Activities

Our cash flows used in operating activities to date have been primarily comprised of cost of revenue and operating expenses. We continue to increase hiring for employees in supporting the ramping up of commercial manufacturing and being a public company. We expect our cash used in operating activities to increase significantly before we start to generate any material cash inflows from commercially manufacturing and selling our batteries.

Net cash used in operating activities was $77.4 million for the fiscal year-to-date ended October 1, 2023. Net cash used in operating activities consists of net loss of $154.1 million, adjusted for non-cash items and the effect of changes in working capital. Non-cash adjustments primarily include the change in fair value of the Private Placement Warrants of $4.1 million, stock-based compensation expense of $57.8 million, depreciation and amortization expense, net of accretion of $10.0 million and impairment of equipment of $4.4 million.

Net cash used in operating activities was $60.9 million for the fiscal quarter ended October 2, 2022. Net cash used in operating activities consists of net income of $40.4 million, adjusted for non-cash items and the effect of changes in working capital. Non-cash adjustments primarily include the change in fair value of Private Placement Warrants of $44.0 million, stock-based compensation expense of $22.1 million and depreciation and amortization expense of $4.8 million.

Investing Activities

Our cash flows used in investing activities to date have been primarily comprised of purchases of property and equipment. Starting in the second quarter of 2023, we began to invest and purchase short-term investments. We expect the costs to acquire property and equipment to increase substantially in the near future as we continue to build-out our Fab2 and develop our battery manufacturing production lines in Malaysia. Net cash used in investing activities, which were primarily related to equipment purchases, were $33.0 million and $31.4 million for the fiscal year-to-date ended October 1, 2023 and October 2, 2022, respectively. During the fiscal year-to-date ended October 1, 2023, we purchased $115.7 million of investments. No investments were purchased in the corresponding period last year. In addition, we had $16.7 million of investments mature during the fiscal year-to-date ended October 1, 2023.

Financing Activities

Net cash provided by financing activities was $157.4 million for the fiscal year-to-date ended October 1, 2023, which primarily consisted of $172.5 million of gross proceeds from the Convertible Senior Notes, $9.2 million of proceeds from the exercise of stock options to purchase our Common Stock and $1.2 million of proceeds from our employee stock purchase plan ("ESPP") to purchase our Common Stock, partially offset by $17.3 million of capped call transaction costs, $5.3 million of debt issuance costs, and $3.0 million of payroll tax payments for shares withheld upon vesting of restricted stock units

Net cash provided by financing activities was $56.0 million for the fiscal year-to-date ended October 2, 2022, which was primarily consisted of $52.8 million of net proceeds from the exercises of our common stock warrants, $2.1 million of proceeds from the exercise of stock options to purchase our Common Stock and $1.1 million of proceeds from our ESPP to purchase our Common Stock.

Contractual Obligations and Commitments

We lease our headquarters, engineering, and manufacturing space in Fremont, California under a single non-cancellable operating lease with an expiration date of August 31, 2030. We also lease a small office in Fremont, California under a non-cancellable operating lease that expires in April 2026 with an option to extend the lease for five years. For the lease payment schedule, please see Note 6 “Leases” of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

As of October 1, 2023, we had $172.5 million aggregate principal amount of 3.0% Convertible Senior Notes outstanding, which will mature on May 1, 2028 unless earlier converted, redeemed or repurchased. Please see Note 7 “Borrowings” of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

We expect to enter into other commitments to support our product development, the build-out of our manufacturing facilities, and our business development, which are generally cancellable upon notice. Additionally, from time to time, we enter into agreements in the normal course of business with various vendors, which are generally cancellable upon notice. Payments due upon cancellation consist only of payments for services provided or expenses incurred, including non-cancellable obligations of service providers, up to the date of cancellation. As of October 1, 2023, our commitments included approximately $73.7 million of our open purchase orders, including equipment purchase orders, and contractual obligations that occurred in the ordinary course of business. For contractual obligations, please see Note 8 “Commitments and Contingencies” of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

As previously discussed, we are party to the Agreement with YBS. Pricing under the Agreement is set on a cost-plus basis and is subject to a minimum commitment on behalf of Enovix. At any time during the first seven years of the Agreement’s term, we reserve the right to purchase the Gen2 Autoline 1 by repaying the equipment cost, net of depreciation, as defined in the Agreement net of depreciation and we shall also bear the early repayment penalty fee imposed by OCBC, if any. The term of the Agreement is for ten years and automatically extends for an additional five years. In addition, we entered into a cash deposit agreement with OCBC to collateralize the Term Loan. We will deposit sufficient collateral for the Term Loan. As of October 1, 2023, there is no outstanding balance of the Term Loan and no deposit was made to OCBC for the collateralization. See Note 13 “Variable Interest Entity” of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

As previously discussed, we expect the restructuring plan to be substantially completed in the fourth quarter of 2023. We recorded approximately $3.0 million of restructuring costs for the quarter and fiscal year-to-date ended October 1, 2023, which consisted of severance, termination benefits, stock-based compensation expense and inventory costs. We anticipate to pay out majority portion of the restructuring costs in the fourth quarter of 2023. See Note 15 “Restructuring Costs” of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

Critical Accounting Policies and Estimates

The preparation of our condensed consolidated financial statements in conformity with GAAP requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities in our consolidated financial statements and accompanying notes. We base these estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying amounts of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates. These estimates and assumptions include but are not limited to: depreciable lives for property and equipment, the valuation allowance on deferred tax assets, assumptions used in stock-based compensation and estimates to fair value of common stock warrants. Certain accounting policies have a more significant impact on our condensed consolidated financial statements due to the size of the financial statement elements and prevalence of their application.

There have been no material changes to our critical accounting policies and estimates disclosed in Part II, Item 7 of the Annual Report on Form 10-K, except for the additions to the accounting policies on investments as noted in Note 2 “Summary of Significant Accounting Policies” of the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Recent Accounting Pronouncements

See Note 2 “Summary of Significant Accounting Policies” of the notes to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to a variety of market and other risks, including the effects of changes in interest rates, and inflation, as well as risks to the availability of funding sources, hazard events, and specific asset risks.

Interest Rate Risk

The market risk inherent in our financial instruments and financial position represents the potential loss arising from adverse changes in interest rates. As of October 1, 2023, we had cash, cash equivalents, restricted cash, and short-term investments totaling $371.5 million. Our cash, cash equivalents, and restricted cash are held in cash deposits, money market funds and U.S. treasury bills. The primary objectives of our investment activities are the preservation of capital and the fulfillment of liquidity needs. Our short-term investments consist of highly liquid fixed-income securities and we do not enter into investments for trading or speculative purposes. Due to the short-term nature of these instruments, we do not believe that an immediate 10% increase or decrease in interest rates would have a material effect on the fair value of our investment portfolio.

As of October 1, 2023, we had $172.5 million of Convertible Senior Notes with an annual interest rate of 3.0%. As such, we do not believe that we are exposed to any material interest rate risk as a result of our borrowing activities.

Uncertain financial markets could result in a tightening in the credit markets, a reduced level of liquidity in many financial markets, and extreme volatility in fixed income and credit markets.

Foreign Currency Risk

There was immaterial foreign currency risk for the quarter ended October 1, 2023 as we primarily conducted operations in the U.S. for the quarter and fiscal year-to-date ended October 1, 2023. Our operating activities in the international subsidiaries have been limited for the quarter ended and fiscal year-to-date ended October 1, 2023.

The majority of our expenses, and capital purchasing activities are transacted in U.S. dollars. Our operations outside of the U.S. are subject to risks typical of operations outside of the U.S. including, but not limited to, differing economic conditions, changes in political climate, differing tax structures, other regulations and restrictions, and foreign exchange rate volatility. Given the impact of foreign currency exchange rates has not been material to our historical operating results, we have not entered into derivative or hedging transactions, but we may do so in the future if our exposure to foreign currency should become more significant. As our international operations grow, we will continue to reassess our approach to manage our risk relating to fluctuations in currency rates.

Inflation Risk

In recent months, inflation has continued to increase significantly in the U.S. and overseas resulting in rising transportation, wages, and other costs. Inflation may generally affect us by increasing our costs and expenses. Although there was no material inflation risk for the quarter ended October 1, 2023 as our activities to date have been primarily related to research and development activities, as well as our Fab2 construction, if our equipment and/or material costs become subject to significant inflationary pressures, we may not be able to fully offset such higher costs with increased revenue. Our inability or failure to do so could harm our business, financial condition, and results of operations.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

As of October 1, 2023, our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on the evaluation, our Chief Executive Officer and our Chief Financial Officer concluded, as of October 1, 2023, that our disclosure controls and procedures were effective at a reasonable assurance level.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting (as defined in Rules 13a-15(d) and 16d-15(d) under the Exchange Act) that occurred during the quarter ended October 1, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls, will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Refer to the heading "Litigation" in Note 8 "Commitments and Contingencies" of the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information regarding our legal proceedings.

Item 1A. Risk Factors.

Investing in our securities involves a high degree of risk. Before you make a decision to buy our securities, you should carefully consider the risks and uncertainties described below together with all of the other information contained in this Quarterly Report on Form 10-Q, including our unaudited condensed consolidated financial statements and related notes and in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations." If any of the events or developments described below were to occur, our business, prospects, operating results and financial condition could suffer materially, the trading price of our securities could decline and you could lose all or part of your investment. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business. The risks facing our business have not changed substantively from those discussed in our Annual Report, except for those risks marked with an asterisk (*).

SUMMARY OF RISK FACTORS

Below is a summary of material factors that make an investment in our securities speculative or risky. Importantly, this summary does not address all of the risks and uncertainties that we face.

- We will need to improve our energy density, cycle life, fast charging, capacity roll off and gassing metrics in order to stay ahead of competition over time, which is difficult and we may not be able to do.
- We rely on a new and complex manufacturing process for our operations: achieving volume production involves a significant degree of risk and uncertainty in terms of operational performance metrics as yield and costs.
- We are in the process of building out manufacturing facilities to produce our lithium-ion battery cell in sufficient quantities to meet expected demand, and if we cannot successfully locate and bring additional facilities online, our business will be negatively impacted and could fail.
- We rely on a third-party contract manufacturer of our batteries which is based in Malaysia, and changes to our relationship with such third-party contract manufacturer, expected or unexpected, may result in delays or disruptions that could harm our business.
- We may not be able to source or establish supply relationships for necessary components or may be required to pay costs for components that are more expensive than anticipated, which could delay the introduction of our product and negatively impact our business.
- We may be unable to adequately control the costs associated with our operations and the components necessary to build our lithium-ion battery cells.
- If our batteries fail to perform as expected, our ability to develop, market and sell our batteries could be harmed.
- If we are unable to qualify new customers, our ability to grow revenue or improve our financial results could be harmed.
- If we are unable to develop our business and effectively commercialize our products as anticipated, we may not be able to generate revenue or achieve profitability.

- We have acquired and may continue to acquire other businesses, which could require significant management attention, disrupt our business, or dilute stockholder value.
- Operational problems with our manufacturing equipment subject us to safety risks which, if not adequately addressed, could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects.
- We may not be able to source or establish supply relationships for necessary components or may be required to pay costs for components that are more expensive than anticipated, which could delay the introduction of our product and negatively impact our business.
- The battery market continues to evolve and is highly competitive, and we may not be successful in competing in this industry or establishing and maintaining confidence in our long-term business prospects among current and future partners and customers.
- If we are unable to attract and retain key employees and qualified personnel, including on a global basis, our ability to compete could be harmed.
- We are an early-stage company with a history of financial losses and expect to incur significant expenses and continuing losses for the foreseeable future.
- We may become subject to product liability claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims.
- We may not have adequate funds to acquire our next manufacturing facilities and build them out, and may need to raise additional capital, which we may not be able to do.
- We rely heavily on our intellectual property portfolio. If we are unable to protect our intellectual property rights, our business and competitive position would be harmed.
- We could face state-sponsored competition from overseas and may not be able to compete in the market on the basis of price.
- In the past, we have identified material weaknesses in our internal control over financial reporting. If we are unable to maintain an effective system of internal controls in the future, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business and stock price.
- Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.

Item 1A. Risk Factors

Risks Related to Our Manufacturing and Scale-Up

We will need to improve our energy density, cycle life, fast charging, capacity roll off and gassing metrics in order to stay ahead of competition over time, which is difficult and we may not be able to do.*

Our roadmap to improve our energy density, cycle life, fast charge, capacity roll off and gassing metrics requires us to implement higher energy density materials for both cathodes and anodes. To successfully use these materials, we will have to optimize our cell designs including, but not limited to formulations, thicknesses, geometries, materials, chemistries and manufacturing tolerances and techniques. It could take us longer to incorporate these new materials, or we might not be able to achieve every cell performance specification required by customers. Further, we will need to make improvements in packaging technology to achieve our energy density, cycle life, fast charge, capacity roll off and gassing roadmap. These improvements may not be possible, could take longer or be more difficult than forecasted. This could reduce the performance or delay the availability of products to customers. In addition, we have not yet achieved every specification for all of the products we plan to produce in our first year of commercial production. The failure to achieve all of these specifications or adequately address each of these other challenges could impact the performance of our cells or delay the availability of these products to our customers.

We rely on a new and complex manufacturing process for our operations: achieving volume production involves a significant degree of risk and uncertainty in terms of operational performance such as yield and costs.*

Although we have developed our Li-ion battery technology, we rely heavily on a new and complex manufacturing process for the production of our lithium-ion battery cells, all of which has not yet been qualified to operate at large-scale manufacturing volumes. To meet our projected future demand, we believe we need to increase our manufacturing throughput and yield metrics. Meeting our goals will be a multi-quarter endeavor and we have experienced delays in meeting these goals to date. We may experience further delays improving manufacturing yield, throughput and equipment availability.

In addition, it may take longer than expected to install, qualify and release the Gen2 Autoline at Fab2 and make further modifications to the Gen1 equipment to achieve our goals for throughput and yield. It may also take longer than anticipated to install our Agility Line.

The work required to develop these processes and integrate equipment into the production of our lithium-ion battery cells, including achieving our goals for throughput and yield, is time intensive and requires us to work closely with developers and equipment providers to ensure that it works properly for our unique battery technology. Such equipment may not arrive on schedule or may not be functioning as designed when it does arrive. This integration work will involve a significant degree of uncertainty and risk, and we have not in the past and may not in the future be able to achieve our goals for throughput and yield. Further, the integration work may result in the delay in the scaling up of production or result in additional cost to our battery cells, particularly if we encounter issues with performance or if we are unable to customize products for certain of our customers. Even after each of our Gen2 manufacturing line and Agility Line is installed, we expect that certain customers may require up to several months to complete technology qualification of the Gen2 line and/or the Agility Line before accepting product that is manufactured at high volume on the Gen2 line, if at all. In addition, even if we are able to achieve volume production for the existing uses of our batteries, we may face challenges relating to the scaling up of production for new uses of our batteries, including in the EV market.

Our large-scale Gen2 manufacturing lines require large-scale machinery. Such machinery has in the past suffered, and is likely to in the future suffer, unexpected malfunctions from time to time and will require repairs and spare parts to resume operations, which may not be available when needed.

In addition, unexpected malfunctions of our production equipment have in the past significantly affected, and may in the future significantly affect, the intended operational efficiency. The people needed to remedy these malfunctions may not be readily available. Because this equipment has not previously been used to build lithium-ion battery cells, 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 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. Further, we have in the past experienced power outages at our facilities, and if these outages are more frequent or longer in duration than expected it could impact our ability to manufacture batteries in a timely manner. If our production equipment does not achieve the projected levels of its output or our production equipment becomes obsolete, it may be necessary to record an impairment charge to reduce the carrying value of our machinery and equipment and would adversely affect our results of operations and financial conditions.

Even if we are able to successfully complete development of and modify, as necessary, this new and complex manufacturing process, we may not be able to produce our lithium-ion batteries in commercial volumes in a cost-effective manner.

We are in the process of building out manufacturing facilities to produce our lithium-ion battery cell in sufficient quantities to meet expected demand, and if we cannot successfully locate and bring an additional facility online, our business will be negatively impacted and could fail.*

In October 2023, we initiated a strategic realignment of our Fab1 in Fremont designed to refocus the facility from a manufacturing hub to a “Center for Innovation,” focused on new product development. Currently, we are preparing Fab2 for installing our new higher speed pilot line (“Agility Line”) for customer qualification, and building out our Fab2 in Malaysia. We currently anticipate to have multiple manufacturing lines in Fab2. We expect these manufacturing lines will be sufficient to produce batteries in commercial scale, but not in high enough volumes to meet our expected customer demand.

Even if we overcome the manufacturing challenges and achieve volume production of our lithium-ion battery, if the cost, performance characteristics or other specifications of the battery fall short of our or our customers’ targets, our sales, product pricing and margins would likely be adversely affected.

We have entered into an agreement with YBS, a third-party contract manufacturer of our batteries which is based in Malaysia, and a deposit agreement related to our agreement with YBS. Changes to our relationship with YBS, expected or unexpected, may result in delays or disruptions that could harm our business.*

On July 26, 2023, we entered into a 10-year manufacturing agreement (the "Agreement") with YBS International Berhad ("YBS"), a Malaysia-based investment holding company with segments including electronic manufacturing and assembly, high-precision engineering, precision machining and stamping, among others, and which, if we are able to overcome the challenges in designing and refining our manufacturing process, will have multiple lines to produce commercial volumes of our lithium-ion batteries to meet our expected customer demands.

We and YBS agreed to share an initial investment of $100.0 million for the equipment for the Gen2 Autoline 1 and facilitation costs, as set out in the Agreement. Pursuant to the terms of the Agreement, we shall contribute 30% of the initial investment and YBS has the obligation to finance the remaining 70%. YBS assigned Orifast Solution Sdn Bhd ("OSSB"), a subsidiary of YBS, to manufacture lithium-ion batteries for Enovix under the terms and conditions of the Agreement. OSSB obtained $70.0 million of foreign currency term loan (the "Term Loan") in financing for manufacturing operations under the Agreement from OCBC Bank (Malaysia) Berhad ("OCBC"). The Term Loan shall be repaid within six years with a 12-month grace period.

We entered into a cash deposit agreement with OCBC to collateralize the loan (the "Deposit Agreement"). As of October 1, 2023, there is no outstanding balance on the loan and we have not made any deposit to OCBC for the collateralization. Pursuant to the Deposit Agreement, we will deposit sufficient collateral for the Term Loan in future periods. This cash collateral will be classified as restricted cash and will not be available to support ongoing working capital and investment needs.Upon the occurrence of an event of default, which includes our failure to satisfy our deposit obligations under the Deposit Agreement or the breach of certain of the covenants under the Deposit Agreement, OCBC is entitled to accelerate amounts due under the Deposit Agreement and dispose the collateral as permitted under applicable law. Any declaration by OCBC of an event of default could adversely affect our business, prospects, operating results and financial condition and could cause the price of our common stock to decline.

Pricing under the Agreement is set on a cost-plus basis and is subject to a minimum commitment on behalf of Enovix. At any time during the first seven years of the Agreement's term, we reserve the right to purchase the Gen2 Line 1 by repaying the equipment cost, net of depreciation, as defined in the Agreement and we shall also bear the early repayment penalty fee imposed by OCBC (if any).

Our manufacturing arrangement with YBS creates risks because we will rely on YBS for manufacturing facilities, procurement, personnel and financing among others. Further, manufacturing in Malaysia is subject to possible disruptions in our manufacturing operations as a result of power outages, improperly functioning equipment, disruptions in supply of raw materials or components, or equipment failures. Our manufacturing operations may be subject to natural occurrences and possible climate changes. Other events, including political or public health crises, may affect our production capabilities or that of our suppliers, including as a result of quarantines, closures of production facilities, lack of supplies, or delays caused by restrictions on travel or shipping. As a result, in addition to disruptions to operations, our insurance premiums may increase, or we may not be able to fully recover any sustained losses through insurance. If this manufacturing arrangement does not perform as expected, it may materially and adversely affect our results of operations, financial condition and prospects.

In addition, our agreement with YBS exposes us to significant risks and limits our control and oversight over the management of manufacturing processes, capacity constraints, delivery timetables, product quality assurance and costs. If we fail to effectively manage our relationship with YBS, or if YBS is unable to meet our manufacturing requirements in a timely matter, or if we experience delays, disruptions or quality control problems, it may materially and adversely affect our business, prospects, financial condition and results of operations.

Our operations in international markets, including our manufacturing operations, expose us to operational, financial and regulatory risks.*

We have commenced international manufacturing operations in Malaysia with YBS and recently acquired Routejade, a Korean-based battery manufacturer. We are continuing to adapt to and develop strategies to address international markets, but there is no guarantee that such efforts will have the desired effect. We expect that our international activities will continue to grow for the foreseeable future as we continue to pursue opportunities in existing and new international markets, which will require significant dedication of management attention and financial resources.

International operations, including any manufacturing operations, are subject to a number of risks, including:

- burdens of complying with a wide variety of laws and regulations;
- unexpected changes in regulatory requirements;
- exposure to political or economic instability and general economic fluctuations in the countries we operate;
- risks resulting from changes in currency exchange rates;
- changes in diplomatic and trade relationships;
- trade restrictions;
- terrorist activities, natural disasters, epidemics, pandemics and other outbreaks, including the regional or local impacts of any such activity;
- political, economic and social instability, war or armed conflict;
- differing employment practices and laws and labor disruptions, including strikes and other work stoppages, strains on the available labor pool, labor unrest, changes in labor costs and other employment dynamics;
- the imposition of government controls;
- lesser degrees of intellectual property protection;
- tariffs and customs duties, or other barriers to some international markets, and the classifications of our goods by applicable governmental bodies; and
- a legal system subject to undue influence or corruption.

The occurrence of any of these risks could negatively affect our international business or increase our costs and decrease our profit margins and consequently materially and adversely affect our business, operating results and financial condition.

We may not be able to source or establish supply relationships for necessary components or may be required to pay costs for components that are more expensive than anticipated, which could delay the introduction of our product and negatively impact our business.

We rely on third-party suppliers for components necessary to develop and manufacture our lithium-ion batteries, including key supplies, such as our anode, cathode and separator materials. We are collaborating with key suppliers but have not yet entered into agreements for the supply of volume production quantities of these materials. If we are unable to enter into commercial agreements with these suppliers on beneficial terms, or these suppliers experience difficulties ramping up their supply of materials to meet our requirements, or these suppliers experience any delays in providing or developing the necessary materials, or these suppliers cease providing or developing the necessary materials, we could experience delays in delivering on our timelines. For example, cathode material vendors are transitioning from lithium cobalt oxide ("LCO") to nickel cobalt manganese ("NCM") or other chemistries due to EV adoption, and this has resulted in a downward trend of LCO supply and production. While we do not expect this to affect our near-term supply of LCO, it has induced us to identify a new LCO vendor.

The unavailability of any equipment component could result in delays in constructing the manufacturing equipment, idle manufacturing facilities, product design changes and loss of access to important technology and tools for producing and supporting our lithium-ion batteries production, as well as impact our capacity. Moreover, significant increases in our production or product design changes by us may in the future require us to procure additional components in a short amount of time. We have faced in the past, and may face suppliers who are unwilling or unable to sustainably meet our timelines or our cost, quality and volume needs, or to do so may cost us more, which may require us to replace them with other sources, which may further impact our timelines and costs. While we believe that we will be able to secure additional or alternate sources for most of our components, there is no assurance that we will be able to do so quickly or at all. Any inability or unwillingness of our suppliers to deliver necessary product components at timing, prices, quality and volumes that are acceptable to us could have a material impact on our business, prospects, financial condition, results of operations and cash flows.

Our business depends on the continued supply of certain materials for our products and we expect to incur significant costs related to procuring materials required to manufacture and assemble our batteries. The cost of our batteries depends in part upon the prices and availability of raw materials such as lithium, silicon, nickel, cobalt, copper and/or other metals.

The prices for these materials fluctuate and their available supply has been, and may continue to be, unstable depending on market conditions and global demand for these materials, including as a result of increased global production of EVs and energy storage products, recent inflationary pressures, supply chain disruption caused by pandemics or other outbreaks, such as the COVID-19 pandemic, and war or other armed conflicts, including Russia's invasion of Ukraine and the Israel-Hamas war. We also have experienced a need for expedited freight services associated with supply chain challenges, resulting in higher logistics costs. Moreover, we may not be able to negotiate purchase agreements and delivery lead-times for such materials on advantageous terms. In addition, several large battery companies are developing and manufacturing key supplies such as cathode material on their own, and as a result such supplies may be proprietary to these companies. Reduced availability of these materials or substantial increases in the prices for such materials has increased, and may continue to increase, the cost of our components and consequently, the cost of our products. There can be no assurance that we will be able to recoup increasing costs of our components, including as a result of recent inflationary pressures, by increasing prices, which in turn would increase our operating costs and negatively impact our prospects.

Any disruption in the supply of components or materials could temporarily disrupt production of our batteries until an alternative supplier is able to supply the required material. Changes in business conditions, unforeseen circumstances, governmental changes, labor shortages, the effects of pandemics or other outbreaks and other factors beyond our control or which we do not presently anticipate, could also affect our suppliers' ability to deliver components to us on a timely basis.

Currency fluctuations, trade barriers, trade sanctions, export restrictions, tariffs, embargoes or shortages and other general economic or political conditions may limit our ability to obtain key components for our lithium-ion batteries or significantly increase freight charges, raw material costs and other expenses associated with our business, which could further materially and adversely affect our results of operations, financial condition and prospects. For example, our factory is located in Fremont, California and our products require materials and equipment manufactured outside the country, including the PRC. If tariffs are placed on these materials and equipment, it could materially impact our ability to obtain materials on commercially reasonable terms.

Any of the foregoing could materially and adversely affect our results of operations, financial condition and prospects.

We may be unable to adequately control the costs associated with our operations and the components necessary to build our lithium-ion battery cells.*

We will require significant capital to develop and grow our business and expect to incur significant expenses, including those relating to raw material procurement, leases, sales and distribution as we build our brand and market our batteries, and general and administrative costs as we scale our operations. Our ability to become profitable in the future will not only depend on our ability to successfully market our lithium-ion batteries and services, but also to control our costs. A large fraction of the cost of our battery, like most commercial batteries, is driven by the cost of component materials like anode and cathode powder, separator, pouch material, current collectors, etc. It also includes machined parts that are part of the package. We have assumed based on extensive discussions with vendors, customers, industry analysts and independent research, target costs at startup of production and an assumed cost reduction over time. These estimates may prove inaccurate and adversely affect the cost of our batteries.

If we are unable to cost-efficiently manufacture, market, sell and distribute our lithium-ion batteries and services, our margins, profitability and prospects would be materially and adversely affected. We have not yet produced any lithium-ion battery cells at significant volume, and our forecasted cost advantage for the production of these cells at scale, compared to conventional lithium-ion cells, will require us to achieve certain goals in connection with rates of throughput, use of electricity and consumables, yield and rate of automation demonstrated for mature battery, battery material and manufacturing processes, that we have not yet achieved and may not achieve in the future. We are planning on improving the productivity and reducing the cost of our production lines relative to the first line we have built. In addition, we are planning continuous productivity improvements going forward. If we are unable to achieve these targeted rates or productivity improvements, our business will be adversely impacted.

Additionally, we have previously undertaken restructuring plans to manage our operating expenses and we may do so again in the future. For example, in October 2023 we initiated a strategic realignment of Fab1 in Fremont designed to refocus the facility from a manufacturing hub to a "Center for Innovation" focused on new product development, which resulted in a plan of workforce reduction. We have incurred, and may in the future incur, material costs and charges in connection with restructuring plans and initiatives, and there can be no assurance that any restructuring plans and initiatives will be successful. Any restructuring plans may adversely affect our internal programs and our ability to recruit and retain skilled and motivated personnel, may result in a loss of continuity, loss of accumulated knowledge, or inefficiency during transitional periods, may require a significant amount of employees' time and focus, and may be distracting to employees,

which may divert attention from operating and growing our business. For more information, see Note 15 "Restructuring Costs" to our condensed consolidated financial statements in Part I of this Quarterly Report on Form 10-Q for further information.

If we fail to achieve some or all of the expected benefits of any restructuring plans, which may be impacted by factors outside of our control, our business, operating results, and financial condition could be adversely affected.

Risks Related to Our Customers

Our relationships with our current customers are subject to various risks which could adversely affect our business and future prospects.

Our customers' products are typically on a yearly or longer refresh cycles. If we miss qualification timing by even a small amount, the impact to our production schedule, revenue and profits could be large. While we intend to pass all qualification criteria, some field reliability risks remain such as cycle life, long-term high-temp storage capacity and swelling, etc. While we have product wins for which we are designing custom products for specific customers, we do not have volume production commitments for each of these products. Should we not be able to convert these design wins into orders for volume production, our financial performance would be impacted. Batteries are known in the market to have historically faced risk associated with safety, and therefore customers can be reluctant to take risks on new battery technologies. Since new battery technologies have not been widely adopted by customers in the battery market, it may be difficult for us to overcome customer risk objections. If unanticipated problems arise, it may raise warranty costs and adversely affect revenue and profit.

In addition, one of our customers has exclusive rights to purchase our batteries for use in the augmented reality and virtual reality space through 2024, which could limit our ability to sell batteries to other customers in this space, which may limit our ability to grow our business in the augmented reality and virtual reality space through 2024.

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

We have experienced a limited number of returns of batteries that have failed to perform as expected. As commercial production of our lithium-ion battery cells increases, our batteries have in the past and may in the future contain defects in design and manufacture that may cause them to not perform as expected or that may require repairs, recalls and design changes. Our batteries are inherently complex and incorporate technology and components that have not been used for other applications and that may contain defects and errors, particularly when first introduced. We have a limited frame of reference from which to evaluate the long-term performance of our lithium-ion batteries. There can be no assurance that we will be able to detect and fix any defects in our lithium-ion batteries prior to the sale to potential consumers. If our batteries fail to perform as expected, we could lose design wins and customers may delay deliveries, terminate further orders or initiate product recalls, each of which could adversely affect our sales and brand and could adversely affect our business, prospects and results of operations.

Our 3D cell architecture is different than others and may behave differently in certain customer use applications that we have not evaluated. This could limit our ability to deliver to certain applications, including, but not limited to action cameras, portable gaming and smartwatches built for children. In addition, we have limited historical data on the performance and reliability of our batteries over time, and therefore it could fail unexpectedly in the field resulting in significant warranty costs or brand damage in the market. In addition, the electrodes and separator structure of our battery is different from traditional lithium-ion batteries and therefore could be susceptible to different and unknown failure modes leading our batteries to fail and cause a safety event in the field, which could further result in the failure of our end customers' products as well as the loss of life or property. Such an event could result in severe financial penalties for us, including the loss of revenue, cancellation of supply contracts and the inability to win new business due to damage in the market. In addition, some of our supply agreements require us to fund some or all of the cost of a recall and replacement of end products affected by our batteries.

Our future growth and success depend on our ability to qualify new customers.

Our growth will depend in large part on our ability to qualify new customers. We have invested heavily in qualifying our customers and plan to continue to do so. We are in the very early stages of growth in our existing markets, and we expect to substantially raise brand awareness by connecting directly with our customers. We anticipate that these activities will lead to additional deliveries, and, as a result, increase our base of our qualified customers. An inability to attract new customers would substantially impact our ability to grow revenue or improve our financial results.

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

Our potential customers are manufacturers of products that tend to be large enterprises and organizations, including the U.S. military. Therefore, our future success will depend on our ability to effectively sell 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, increased purchasing power and leverage held by large customers in negotiating contractual arrangements with us and 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, require acceptance provisions that can lead to a delay in revenue recognition and expect greater payment flexibility. All of these factors can add further risk to business conducted with these potential customers.

We may not be able to accurately estimate the future supply and demand for our batteries, 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.

It is difficult to predict our future revenue 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 forecasts of our demand to our current and future suppliers prior to the scheduled delivery of products to potential customers. Currently, there is no historical basis for making judgments on the demand for our batteries or our ability to develop, manufacture and deliver 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 requirements, our suppliers may have inadequate inventory, which could interrupt manufacturing of our products and result in delays in shipments and revenue. Many factors will affect the demand for our batteries. For example, most of the end products in which our batteries are expected to be used are manufactured in the PRC. If the political situation between the PRC and the United States were to deteriorate, it could prevent our customers from purchasing our batteries.

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 operating results.

Increases in sales of our lithium-ion battery cells may increase our dependency upon specific customers and our costs to develop and qualify our system solutions.

The development of our lithium-ion battery cells is dependent, in part, upon successfully identifying and meeting our customers' specifications for those products. Developing and manufacturing lithium-ion batteries with specifications unique to a customer increases our reliance upon that customer for purchasing our products at sufficient volumes and prices in a timely manner. If we fail to identify or develop products on a timely basis, or at all, that comply with our customers' specifications or achieve design wins with customers, we may experience a significant adverse impact on our revenue and margins. Even if we are successful in selling lithium-ion batteries to our customers in sufficient volume, we may be unable to generate sufficient profit if per-unit manufacturing costs exceed per-unit selling prices. Manufacturing lithium-ion batteries to customer specifications requires a longer development cycle, as compared to discrete products, to design, test and qualify, which may increase our costs and could harm our business, financial condition and operating results.

Risks Related to Our Business

We have a history of financial losses and expect to incur significant expenses and continuing losses for the foreseeable future.

We incurred net loss of approximately $154.1 million and $40.4 million, respectively, for the fiscal years-to-date ended October 1, 2023 and October 2, 2022 and an accumulated deficit of approximately $538.9 million as of October 1, 2023. We believe that we will continue to incur operating and net losses each quarter until at least the time we begin significant production of our Li-ion batteries.

We expect the rate at which we will incur losses to be significantly higher in future periods as we, among other things: continue to incur significant expenses in connection with the development of our manufacturing process and the

manufacturing of our batteries; secure additional manufacturing facilities and invest in manufacturing capabilities; build up inventory of components for our batteries; increase our sales and marketing activities; develop our distribution infrastructure; and increase our general and administrative functions to support our growing operations. We may find that these efforts are more expensive than we currently anticipate or that these efforts may not result in substantial revenue, which would further increase our losses.

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 products as anticipated, we may not be able to generate revenue or achieve profitability.

The growth and development of our operations will depend on the successful commercialization and market acceptance of our 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 as expected, and we may not be able to generate sufficient customer confidence in our latest designs and ongoing product improvements. There are inherent uncertainties in our ability to predict future demand for our 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 makes it difficult to evaluate our future prospects.

Beginning in the second quarter of 2022, we made commercial shipments to multiple customers. If we experience significant delays or order cancellations, or if we fail to develop our 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 products in the future, that the demand for these new products will develop, which could adversely affect our business and any possible revenue. If our 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 revenue or attain profitability. In addition, if we are unable to deliver our service on a timely basis, we may not be able to attract and engage new or existing customers for service contracts and we may not be able to generate revenue or attain profitability.

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

Producing lithium-ion batteries that meet the requirements for wide adoption by industrial and consumer applications is a difficult undertaking. We are still in the early stage of commercialization and face significant challenges achieving the long-term energy density targets for our products and producing our products in commercial volumes. Some of the challenges that could prevent the wide adoption of our lithium-ion batteries include difficulties with (i) increasing the volume, yield and reliability of our cells, (ii) increasing manufacturing capacity to produce the volume of cells needed to meet demand, (iii) installing and optimizing higher volume manufacturing equipment, (iv) packaging our batteries to ensure adequate cycle life, (v) material cost reductions, (vi) qualifying new vendors, (vii) expanding supply chain capacity, (viii) the completion of rigorous and challenging battery safety testing required by our customers or partners, including but not limited to, performance, cycle life and abuse testing and (x) the development of the final manufacturing processes.

Our Fab1 is in the early production stage and there are significant yield, material cost, performance and manufacturing process challenges to be solved prior to volume commercial production. We are likely to encounter further engineering challenges as we increase the capacity of our batteries and efficiency of our manufacturing process. If we are not able to overcome these barriers in producing our batteries, our business could fail.

The Gen1 manufacturing equipment requires qualified labor to inspect the parts to ensure proper assembly. We have already experienced equipment malfunctions during the scaling up of the manufacturing process, and the lack of qualified labor to inspect our batteries may further slow our production and impact our manufacturing costs and production schedule.

Even if we complete development and achieve volume production of our lithium-ion 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 have acquired and may continue to acquire other businesses, which could require significant management attention, disrupt our business, or dilute stockholder value.*

On October 31, 2023, we acquired Routejade, a manufacturer of lithium-ion batteries. Although we have limited experience in acquisitions, we may continue to make future acquisitions of other companies, products and technologies for the ongoing development or expansion of our existing operations. We may not be able to find suitable acquisition

candidates and we may not be able to complete acquisitions on favorable terms, if at all. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, and any acquisitions we complete could be viewed negatively by existing and potential customers, vendors, suppliers, business partners or investors. In addition, we may not be able to integrate acquired businesses successfully or effectively manage the combined company following an acquisition. If we fail to successfully integrate our acquisitions, or the people or technologies associated with those acquisitions, into our company, the results of operations of the combined company could be adversely affected. Any integration process will require significant time and resources, require significant attention from management and disrupt the ordinary functioning of our business, and we may not be able to manage the process successfully, which could harm our business. In addition, we may not successfully evaluate or utilize the acquired technology and accurately forecast the financial impact of an acquisition transaction, including accounting charges.

We have previously, and may in the future, pay cash, incur debt or issue equity securities to pay for any such acquisition, each of which could affect our financial condition or the value of our capital stock. The sale of our equity to finance any such acquisitions could result in dilution to our stockholders. If we incur more debt, it would result in increased fixed obligations and could also subject us to covenants or other restrictions that would impede our ability to flexibly operate our business.

Operational problems with our manufacturing equipment subject us to safety risks which, if not adequately addressed, could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects.

Operational problems with our manufacturing equipment subject us to safety risks which, if not adequately addressed, 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. We have retained industry experts and designed our factory with appropriate safety precautions to address the fire risk of manufacturing batteries and minimize the impact of any event. Should these precautions be inadequate or an event be larger than expected, we could have significant equipment or facility damage that would impact our ability to deliver product and require additional cash to recover. 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, results of operations, cash flows, financial condition or prospects.

Lithium-ion battery modules in the marketplace have been observed to catch fire or vent smoke and flame, and such events have raised concerns over the use of such batteries.

We develop lithium-ion battery cells for industrial and consumer equipment and intend to supply these lithium-ion battery cells for industrial and consumer applications. Historically, lithium-ion batteries in laptops and cellphones have been reported to catch fire or vent smoke and flames, and more recently, news reports have indicated that several EVs that use high-power lithium-ion batteries have caught on fire. As such, any adverse publicity and issues as to the use of high-power batteries in automotive or other applications will affect our business and prospects. In addition, any failure of our battery cells may cause damage to the industrial or consumer equipment or lead to personal injury or death and may subject us to lawsuits.

Our risks in this area are particularly pronounced given our lithium-ion batteries and our BrakeFlow™ technology have not yet been commercially tested or mass produced. We may have to recall our battery cells, which would be time-consuming and expensive. 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.

Further, product liability claims, injuries, defects or other problems experienced by other companies in the lithium-ion battery market could lead to unfavorable market conditions for the industry as a whole, and may have an adverse effect on our ability to attract new customers, thus harming our growth and financial performance.

The battery market continues to evolve and is highly competitive, and we may not be successful in competing in this industry or establishing and maintaining confidence in our long-term business prospects among current and future partners and customers.

The battery market in which we compete continues to evolve and is highly competitive. To date, we have focused our efforts on our silicon anode technology, which has been, and is being, designed to outperform conventional lithium-ion battery technology and other battery technologies. However, lithium-ion battery technology has been widely adopted, and our current competitors have, and future competitors may have, greater resources than we do and may also be able to devote greater resources to the development of their current and future technologies. These competitors also may have greater access to customers and may be able to establish cooperative or strategic relationships amongst themselves or with third parties that may further enhance their resources and competitive positioning. Furthermore, existing and potential customers have developed, and may in the future develop, their own lithium-ion battery technology and other battery technologies. In addition, lithium-ion battery manufacturers may make improvements in energy density faster than they have historically and what we have assumed, continue to reduce cost and expand supply of conventional batteries and therefore reduce our energy density advantage and price premium, which would negatively impact the prospects for our business or negatively impact our ability to sell our products at a market-competitive price and sufficient margins.

There are a number of companies seeking to develop alternative approaches to lithium-ion battery technology. We expect competition in battery technology to intensify. Developments in alternative technologies, improvements in batteries technology made by competitors, or changes in our competitors' respective business models may materially adversely affect the sales, pricing and gross margins of our batteries. For example, large battery companies are becoming increasingly vertically integrated with respect to cathode materials, with the consequence being that next generation LCO material development will be proprietary to large battery companies. If a competing technology is developed that has superior operational or price performance, our business will be harmed. Further, our financial modeling assumes that, in addition to improving our core architecture over time, we are able to retain access to state-of-the-art industry materials as they are developed. If industry battery competitors develop their own proprietary materials, we would be unable to access these and would lose our competitive advantage in the market. If we fail to accurately predict and ensure that our battery technology can address customers' changing needs or emerging technological trends, or if our customers fail to achieve the benefits expected from our lithium-ion batteries, our business will be harmed.

We must continue to commit significant resources to develop our battery technology in order to establish a competitive position, and these commitments will be made without knowing whether such investments will result in products potential customers will accept. There is no assurance we will successfully identify new customer requirements or develop and bring our batteries to market on a timely basis, or that products and technologies developed by others will not render our batteries obsolete or noncompetitive, any of which would adversely affect our business and operating results. Further, if we are unable to improve our energy density at a rate faster than the industry, our competitive advantage will erode. In addition, if we fail to produce batteries in large scale volume production at reduced unit cost, it may negatively impact our competitive advantage in the industry.

Customers will be less likely to purchase our batteries if they are not convinced that our business will succeed in the long term. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed in the long term. Accordingly, in order to build and maintain our business, we must maintain confidence among current and future partners, customers, suppliers, analysts, ratings agencies and other parties in our long-term financial viability and business prospects. Maintaining such confidence may be particularly complicated by certain factors including those that are largely outside of our control, such as our limited operating history, market unfamiliarity with our products, any delays in scaling manufacturing, delivery and service operations to meet demand, competition and uncertainty regarding our production and sales performance compared with market expectations.

We could face state-sponsored competition from overseas and may not be able to compete in the market on the basis of price.

One or more foreign governments, including the PRC, have concluded that battery technology and battery manufacturing is a national strategic priority and therefore have instituted official economic policies meant to support these activities. These policies may provide our competitors with artificially lower costs. If these lower costs materialize and enable competitive products to be sold into our markets at prices that, if applied to us, would cause us to become unprofitable, our ability to continue operating could be threatened.

Our failure to keep up with rapid technological changes and evolving industry standards may cause our batteries to become less marketable or obsolete, resulting in a decrease in demand for our batteries and harm our ability to grow revenue and expand margins.

The lithium-based battery market is characterized by changing technologies and evolving industry standards, which are difficult to predict. This, coupled with frequent introduction of new products and models, has shortened product life cycles and may render our batteries less marketable or obsolete. Also, our ability to grow revenue and expand margins will depend on our ability to develop and launch new product designs. If we fail to invest in the development of new products and technologies, we may lose the opportunity to compete effectively or at all, particularly in the electric vehicle space, which has been the subject of significant progress in recent years. Third parties, including our competitors, may improve their technologies or even achieve technological breakthroughs that could decrease the demand for our batteries. Our ability to adapt to evolving industry standards and anticipate future standards and market trends will be a significant factor in maintaining and improving our competitive position and our prospects for growth.

If we are unable to attract and retain key employees and qualified personnel on a global basis, our ability to compete could be harmed.*

Our success depends on our ability to attract and retain our executive officers, key employees and other qualified personnel on a global basis, and, as a relatively small company with key talent residing in a limited number of employees, our operations and prospects may be severely disrupted if we lose any one or more of their services. There have been, and from time to time, there may continue to be, changes in our management team resulting from the hiring or departure of executives and key employees, or the transition of executives within our business, which could disrupt our business. For example, Dr. Raj Talluri began serving as our new Chief Executive Officer on January 18, 2023 and Farhan Ahmad began service as our new Chief Financial Officer on July 10, 2023. Such changes in our executive management team may be disruptive to our business. Some of our executive officers and members of our management team have been with us for a short period of time and we continue to develop key functions within various aspects of our business. We are also dependent on the continued service of our other senior technical and management personnel because of the complexity of our products. Our senior management, including Dr. Talluri and Mr. Ahmad, and key employees are employed on an at-will basis. We cannot ensure that we will be able to retain the services of any member of our senior management or other key employees or that we would be able to timely replace members of our senior management or other key employees should any of them depart. The loss of one or more of our senior management or other key employees could harm our business.

Further, as we locate our new manufacturing facilities, build it out and bring it online, we will need to hire personnel to staff and maintain this facility with the technical qualifications, which we may not be able to do in the location at which this facility is located. Labor is subject to external factors that are beyond our control, including our industry's highly competitive market for skilled workers and leaders, cost inflation, and workforce participation rates. As we build our brand and become more well known and grow globally, there is increased risk that competitors or other companies will seek to hire our personnel. While some of our employees are bound by non-competition agreements, these may prove to be unenforceable. The failure to attract, integrate, train, motivate and retain these personnel could seriously harm our business and prospects.

In the past, we had identified material weaknesses in our internal control over financial reporting. If we are unable to implement and maintain effective internal control over financial reporting in the future, investors may lose confidence in the accuracy and completeness of our financial reports, and the market price of our common stock may be materially adversely affected.

In the past, we and our independent registered public accounting firm identified two material weaknesses in our internal control over financial reporting, all of which have since been remediated. We did not identify any material weakness for the fiscal year-to-date ended October 1, 2023.

Furthermore, if, in the future, we have a material weakness in our internal controls over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We or our independent registered public accounting firm may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting, which could harm our operating results, cause investors to lose confidence in our reported financial information and cause the trading price of our stock to fall. In addition, as a public company, we are required to file accurate and timely quarterly and annual reports with the SEC under the Exchange Act. Any failure to report our financial results on an accurate and timely basis could result in sanctions, lawsuits, delisting of our shares from The Nasdaq Global Select Market or other adverse consequences that would materially harm our business. In addition, we could become subject to investigations by the stock exchange on which our securities are listed, the SEC and other regulatory authorities and litigation from investors and stockholders, which could harm our reputation and our financial condition, or divert financial and management resources from our core business.

We have incurred and will incur significant increased expenses and administrative burdens as a public company, which could negatively impact our business, financial condition and results of operations.

We face increased legal, accounting, administrative and other costs and expenses as a public company that we did not incur as a private company. We expect such expenses to further increase now that we are no longer an "emerging growth company" as defined in Section 2(a)(19) of the Securities Act, as modified by the Jumpstart our Business Startups Act. The Sarbanes-Oxley Act of 2002, including the requirements of Section 404, as well as rules and regulations subsequently implemented by the SEC, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations promulgated and to be promulgated thereunder, the PCAOB and the securities exchanges, impose additional reporting and other obligations on public companies. Compliance with public company requirements will increase costs and make certain activities more time consuming. A number of those requirements require us to carry out activities that we had not done previously. For example, we have created new board committees and adopted new internal controls and disclosure controls and procedures. In addition, expenses associated with SEC reporting requirements have been and will be incurred. Furthermore, if any issues in complying with those requirements are identified (for example, if we identify a material weakness or significant deficiency in the internal control over financial reporting), we could incur additional costs rectifying those issues, and the existence of those issues could adversely affect our reputation or investor perceptions of us. It may also be more expensive to obtain director and officer liability insurance. Risks associated with our status as a public company may make it more difficult to attract and retain qualified persons to serve on our board of directors or as executive officers. The additional reporting and other obligations imposed by these rules and regulations have increased and will increase legal and financial compliance costs and the costs of related legal, accounting and administrative activities. These increased costs will require us to divert a significant amount of money that could otherwise be used to expand the business and achieve strategic objectives. Advocacy efforts by stockholders and third parties may also prompt additional changes in governance and reporting requirements, which could further increase costs.

In addition, we implemented an enterprise resource planning ("ERP"), system for our company. An ERP system is intended to combine and streamline the management of our financial, accounting, human resources, sales and marketing and other functions, enabling us to manage operations and track performance more effectively. However, an ERP system will likely require us to complete many processes and procedures for the effective use of the system or to run our business using the system, which may result in substantial costs. Additionally, in the future, we may be limited in our ability to convert any business that we acquire to the ERP. Any disruptions or difficulties in using an ERP system could adversely affect our controls and harm our business, including our ability to forecast or make sales and collect our receivables. Moreover, such disruption or difficulties could result in unanticipated costs and diversion of management attention.

Our failure to maintain effective controls and procedures required by Section 404(a)of the Sarbanes-Oxley Act of 2002 that are applicable to us could negatively impact our business.

We are subject to Section 404 of the Sarbanes-Oxley Act of 2002. The standards required for a public company under Section 404(a) of the Sarbanes-Oxley Act of 2002 are significantly more stringent than those that were required of us as a privately held company. Management may not be able to maintain effective controls and procedures that adequately respond to the increased regulatory compliance and reporting requirements that are applicable to us. If we are not able to maintain the additional requirements of Section 404(a) in a timely manner or with adequate compliance, we may not be able to assess whether our internal controls over financial reporting are effective, which may subject us to adverse regulatory consequences and could harm investor confidence and the market price of our securities.

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting. In addition, our independent registered public accounting firm is required to attest to the effectiveness of our internal control over financial reporting. Our compliance with Section 404 requires that we incur substantial expenses and expend significant management efforts. We engaged a third party service provider to perform a review of our internal control over financial reporting. As we continue to grow, we will hire additional accounting and finance staff with appropriate public company experience and technical accounting knowledge to update the process documentation and internal controls for compliance with Section 404.

We have previously been and may in the future be involved in class-action lawsuits and other litigation matters that are expensive and time-consuming. If resolved adversely, lawsuits and other litigation matters could seriously harm our business.*

We have previously been and may in the future be subject to litigation such as putative class action and shareholder derivative lawsuits brought by stockholders. We anticipate that we will be a target for lawsuits in the future, as we have been in the past.

On January 6, 2023, a purported Company stockholder filed a securities class action complaint in the U.S. District Court for the Northern District of California against us and certain of its current and former officers and directors. The complaint alleges that defendants violated Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by making material misstatements or omissions in public statements related to our manufacturing scaleups and testing of new equipment. A substantially identical complaint was filed on January 25, 2023 by another purported Company stockholder. Following consolidation of the cases and court appointment of two purported Company stockholder lead plaintiffs, a consolidated complaint alleging substantially similar claims, including allegations that the defendants made material misstatements or omissions in public statements related to testing of new equipment, was filed on July 7, 2023. The consolidated complaint seeks unspecified damages, interest, fees and costs on behalf of all persons and entities who purchased and/or acquired shares of the Company or RSVAC's common stock between June 24, 2021 and January 3, 2023. The Company and the named officers and directors moved to dismiss the complaint on September 15, 2023. We and the other defendants intend to vigorously defend against the claims in these actions. Any litigation to which we are a party may result in an onerous or unfavorable judgment that may not be reversed on appeal, or we may decide to settle lawsuits on similarly unfavorable terms. Any such negative outcome could result in payments of substantial monetary damages and accordingly our business could be seriously harmed. The results of lawsuits and claims cannot be predicted with certainty. Regardless of the final outcome, defending these claims, and associated indemnification obligations, are costly and can impose a significant burden on management and employees, and we may receive unfavorable preliminary, interim, or final rulings in the course of litigation, which could seriously harm our business.

Risks Related to Our Capital Needs and Capital Strategy

We may not have adequate funds to finance our operating needs and our growth, and may need to raise additional capital, which we may not be able to do.

The design, manufacture and sale of batteries is a capital-intensive business. As a result of the capital-intensive nature of our business, we can be expected to continue to sustain substantial operating expenses without generating sufficient revenue to cover expenditures. We may need to raise additional capital to acquire our next manufacturing facility and build it out, as well as to support our manufacturing agreement with YBS and our cash deposit agreement with OBCB. Adequate additional funding may not be available to us on acceptable terms or at all, and if the financial markets become difficult or costly to access, including due to rising interest rates, fluctuations in foreign currency exchange rates or other changes in economic conditions, our ability to raise additional capital may be negatively impacted. Our failure to raise capital in the future would have a negative impact on our ability to complete our manufacturing facilities, our financial condition and our ability to pursue our business strategies. The amount of capital that we will be required to raise, and our ability to raise substantial additional capital, will depend on many factors, including, but not limited to:

- our ability and the cost to develop our new and complex manufacturing process that will produce lithium-ion batteries in a cost-effective manner;
- our ability to continue to build-out and scale our Fremont manufacturing facility in a timely and cost-effective manner;
- our ability to locate and acquire new, larger manufacturing facilities on commercially reasonable terms;
- our ability to build out our new, larger manufacturing facilities in a cost-effective manner;
- the cost of preparing to manufacture lithium-ion batteries on a larger scale;
- the costs of commercialization activities including product sales, marketing, manufacturing and distribution;
- our ability to hire additional personnel;
- the demand for our lithium-ion batteries and the prices for which we will be able to sell our lithium-ion batteries;
- the emergence of competing technologies or other adverse market developments; and

- volatility in the equity markets, including as a result of rising interest rates, inflation or war or other armed conflict, such as Russia's invasion of Ukraine and the Israel-Hamas war.

Our long-term financial model assumes we expand both on our own and by partnering with other battery companies. Should we not be able to achieve these partnering goals we would have to expand purely on our own. This would require additional capital and could impact how fast we can ramp revenue and achieve profitability. It could also impact our ability to service some customers that require second sources for supply. Additionally, if we can achieve these partnerships but not on the financial terms we are assuming, it could impact our financial performance.

Further, we cannot guarantee that our business will generate sufficient cash flow from operations to fund our capital expenditures or other liquidity needs. Over time, we expect that we will need to raise additional funds through the issuance of equity, equity-related or debt securities or through obtaining credit from financial institutions to fund, together with our principal sources of liquidity, ongoing costs such as research and development relating to our batteries, any significant unplanned or accelerated expenses and new strategic investments.

As discussed in the condensed consolidated financial statements, in Part I, item 1 of this Quarterly Report on Form 10-Q, we are not profitable and have incurred losses in each year since our inception. We incurred net loss of $154.1 million and $40.4 million, respectively, for the fiscal years-to-date ended October 1, 2023 and October 2, 2022. As of October 1, 2023, we had an accumulated deficit of $538.9 million. We expect to continue to incur losses for the foreseeable future, and we anticipate these losses will increase as we continue our manufacturing scale up, add additional manufacturing capacity, continue commercialization and continue to operate as a public company and comply with legal, accounting and other regulatory requirements. We cannot be certain that additional capital will be available on attractive terms, if at all, when needed, which could be dilutive to stockholders, and our financial condition, results of operations, business and prospects could be materially and adversely affected.

Raising additional funds may cause dilution to existing stockholders and/or may restrict our operations or require us to relinquish proprietary rights.*

To the extent that we raise additional capital by issuing equity or convertible debt securities, our existing stockholders' ownership interest may experience substantial dilution, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of a holder of our Common Stock. Any agreements for future debt or preferred equity financings, if available, may involve covenants limiting or restricting our ability to take specific actions, such as raising additional capital, incurring additional debt, making capital expenditures or declaring dividends. In addition, if we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may be required to relinquish valuable rights to our technologies or future revenue streams. If we incur additional debt, the debt holders, together with holders of our outstanding Convertible Senior Notes, would have rights senior to holders of common stock to make claims on our assets, and the terms of any future debt could restrict our operations, including our ability to pay dividends on our common stock.

Risks Related to Our Convertible Senior Notes

Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.*

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the Convertible Senior Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations, including the Convertible Senior Notes.

The conditional conversion feature of the Convertible Senior Notes, if triggered, may adversely affect our financial condition and operating results.*

In the event the conditional conversion feature of the Convertible Senior Notes is triggered, holders of the Convertible Senior Notes will be entitled to convert their notes at any time during specified periods at their option. If one or more holders elect to convert their notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion

or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Senior Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

Certain provisions in the indenture governing the Convertible Senior Notes may delay or prevent an otherwise beneficial takeover attempt of us.*

Certain provisions in the indenture governing the Convertible Senior Notes may make it more difficult or expensive for a third party to acquire us. For example, the indenture governing the Convertible Senior Notes will require us to repurchase the Convertible Senior Notes for cash upon the occurrence of a fundamental change and, in certain circumstances, to increase the conversion rate for a holder that converts its notes in connection with a make-whole fundamental change. A takeover of us may trigger the requirement that we repurchase the Convertible Senior Notes and/or increase the conversion rate, which could make it costlier for a potential acquirer to engage in such takeover. Such additional costs may have the effect of delaying or preventing a takeover of us that would otherwise be beneficial to investors.

Conversion of the Convertible Senior Notes may dilute the ownership interest of our stockholders or may otherwise depress the price of our common stock.*

The conversion of some or all of the Convertible Senior Notes may dilute the ownership interests of our stockholders. Upon conversion of the Convertible Senior Notes, we have the option to pay or deliver, as the case may be, cash, shares of our common stock, or a combination of cash and shares of our common stock. If we elect to settle our conversion obligation in shares of our common stock or a combination of cash and shares of our common stock, any sales in the public market of our common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Convertible Senior Notes may encourage short selling by market participants because the conversion of the Convertible Senior Notes could be used to satisfy short positions, or anticipated conversion of the Convertible Senior Notes into shares of our common stock could depress the price of our common stock.

The accounting method for the Convertible Senior Notes could adversely affect our reported financial condition and results.*

The accounting method for reflecting the Convertible Senior Notes on our Condensed Consolidated Balance Sheet, accruing interest expense for the Convertible Senior Notes and reflecting the underlying shares of our common stock in our reported diluted earnings per share may adversely affect our reported earnings and financial condition.

In August 2020, the Financial Accounting Standards Board ("FASB") published Accounting Standards Update ("ASU") 2020-06 ("ASU 2020-06"), which simplified certain of the accounting standards that apply to convertible notes. ASU 2020-06 eliminated the cash conversion and beneficial conversion feature modes used to separately account for embedded conversion features as a component of equity. Instead, an entity would account for convertible debt or convertible preferred stock securities as a single unit of account, unless the conversion feature requires bifurcation and recognition as derivatives. Additionally, the guidance requires entities to use the "if-converted" method for all convertible instruments in the diluted earnings per share calculation and to include the effect of potential share settlement for instruments that may be settled in cash or shares. ASU 2020-06 became effective for us beginning on January 1, 2022.

In accordance with ASU 2020-06 and subject to our full accounting assessment, which is not complete as of the date of this Quarterly Report on Form 10-Q, we expect that the Convertible Senior Notes will be reflected as a liability on our Condensed Consolidated Balance Sheets, with the initial carrying amount equal to the principal amount of the Convertible Senior Notes, net of issuance costs. The issuance costs will be treated as a debt discount for accounting purposes, which will be amortized into interest expense over the term of the Convertible Senior Notes. As a result of this amortization, the interest expense that we expect to recognize for the Convertible Senior Notes for accounting purposes will be greater than the cash interest payments we will pay on the Convertible Senior Notes, which will result in lower reported income.

In addition, we expect that the shares of common stock underlying the Convertible Senior Notes will be reflected in our diluted earnings per share using the "if converted" method, in accordance with ASU 2020-06. Under that method, diluted earnings per share would generally be calculated assuming that all the Convertible Senior Notes were converted solely into shares of common stock at the beginning of the reporting period, unless the result would be anti-dilutive. The application of the if-converted method may reduce our reported diluted earnings per share to the extent we are profitable in the future, and accounting standards may change in the future in a manner that may adversely affect our diluted earnings per share.

Furthermore, if any of the conditions to the convertibility of the Convertible Senior Notes is satisfied, then we may be required under applicable accounting standards to reclassify the liability carrying value of the Convertible Senior Notes as a current, rather than a long-term, liability. This reclassification could be required even if no noteholders or holders of Affiliate Notes convert their Convertible Senior Notes or Affiliate Notes, respectively, following the satisfaction of those conditions and could materially reduce our reported working capital.

The capped call transactions may affect the value of the Convertible Senior Notes and our common stock.*

In connection with the pricing of the Convertible Senior Notes and the exercise by the initial purchasers of their option to purchase additional Convertible Senior Notes, we entered into capped call transactions (the "Capped Call Transactions") with certain of the initial purchasers or affiliates thereof and/or other financial institutions (the "Option Counterparties"). The Capped Call Transactions will cover, subject to customary adjustments, the number of shares of our common stock initially underlying the Convertible Senior Notes. The Capped Call Transactions are expected generally to reduce the potential dilution to our common stock upon any conversion of notes and/or offset any cash payments we are required to make in excess of the principal amount of converted notes, as the case may be, with such reduction and/or offset subject to a cap.

In connection with establishing their initial hedges of the Capped Call Transactions, the Option Counterparties or their respective affiliates likely entered into various derivative transactions with respect to our common stock and/or purchased shares of our common stock concurrently with or shortly after the pricing of the Convertible Senior Notes, including with, or from, as the case may be, certain investors in the Convertible Senior Notes.

In addition, the Option Counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the Convertible Senior Notes (and are likely to do so on each exercise date of the Capped Call Transactions, or, to the extent we exercise the relevant election under the Capped Call Transactions, following any repurchase, redemption, or conversion of the Convertible Senior Notes).

We cannot make any prediction as to the direction or magnitude of any potential effect that the transactions described above may have on the price of the Convertible Senior Notes or the shares of our common stock. Any of these activities could adversely affect the value of the Convertible Senior Notes and our common stock.

We are subject to counterparty risk with respect to the Capped Call Transactions.*

The Option Counterparties are financial institutions, and we will be subject to the risk that any or all of them might default under the Capped Call Transactions. Our exposure to the credit risk of the Option Counterparties will not be secured by any collateral.

If an Option Counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under the capped call transaction with such Option Counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price and in the volatility of our common stock. In addition, upon a default by an Option Counterparty, we may suffer more dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of the Option Counterparties.

Risks Related to Our Intellectual Property

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

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

on computer systems that could be penetrated by intruders and potentially misappropriated. There is no guarantee that our efforts to protect our computer systems will be effective. In addition, existing intellectual property laws and contractual remedies may afford less protection than needed to safeguard our intellectual property portfolio.

Patent, copyright, trademark and trade secret laws vary significantly throughout the world. A number of foreign countries do not protect intellectual property rights to the same extent as do the laws of the United States. Therefore, our intellectual property rights may not be as strong or as easily enforced outside of the United States, and efforts to protect against the unauthorized use of our intellectual property rights, technology and other proprietary rights may be more expensive and difficult outside of the United States. Further, we have not established our intellectual property rights in all countries in the world, and competitors may copy our designs and technology and operate in countries in which we have not prosecuted out intellectual property. Failure to adequately protect our intellectual property rights could result in our competitors using our intellectual property to offer products, and competitors' ability to design around our intellectual property would enable competitors to offer similar or better batteries, in each case potentially resulting in the loss of some of our competitive advantage and a decrease in our revenue, which would adversely affect our business, prospects, financial condition and operating results.

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

Companies, organizations or individuals, including our current and future competitors, may hold or obtain patents, trademarks or other proprietary rights that would prevent, limit or interfere with our ability to make, use, develop or sell our products, which could make it more difficult for us to operate our business. From time to time, we may receive inquiries from holders of patents or trademarks inquiring whether we are infringing their proprietary rights and/or seek court declarations that they do not infringe upon our intellectual property rights. Companies holding patents or other intellectual property rights relating to batteries, electric motors or electronic power management systems may bring suits alleging infringement of such rights or otherwise asserting their rights and seeking licenses. In addition, if we are determined to have infringed upon a third party's intellectual property rights, we may be required to do one or more of the following:

- cease selling, incorporating or using products that incorporate the challenged intellectual property;
- pay substantial damages;
- obtain a license from the holder of the infringed intellectual property right, which license may not be available on reasonable terms or at all; or
- redesign our batteries.

In the event of a successful claim of infringement against us and our failure or inability to obtain a license to the infringed technology, our business, prospects, operating results and financial condition could be materially adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs and diversion of resources and management's attention.

We also license patents and other intellectual property from third parties, and we may face claims that our use of this intellectual property infringes the rights of others. In such cases, we may seek indemnification from our licensors under our license contracts with them. However, our rights to indemnification may be unavailable or insufficient to cover our costs and losses, depending on our use of the technology, whether we choose to retain control over conduct of the litigation and other factors.

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 our 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 to those who may claim priority, any of our existing or pending patents may also be challenged by others on the basis that they are otherwise invalid or unenforceable. Furthermore, patent applications filed in foreign countries are subject to laws, rules and

procedures that differ from those of the United States, and thus we cannot be certain that foreign patent applications related to issued U.S. patents will be issued.

Even if our patent applications succeed and we are issued patents in accordance with them, it is 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 upon or designed around by others, and others may obtain patents that we need to license or design around, either of which would increase costs and may adversely affect our business, prospects, financial condition and operating results.

Risks Related to Our Regulatory Compliance

We may encounter regulatory approval difficulties which could delay our ability to launch our lithium-ion battery cells, and compliance with regulatory laws may limit their usefulness.

Any delay in the development and manufacturing scale-up of our lithium-ion battery cells would negatively impact our business as it will delay time to revenue and negatively impact our customer relationships. For example, although we plan on passing all the required regulatory abuse testing, because our design is new and has very high energy density, there may be unanticipated failure modes that occur in the field which could delay or prevent us from launching our batteries. Further, there are current limits on the amount of energy that can be transported via different methods, particularly air travel. These limits have been historically based on the energy of batteries currently on the market. These limits may have to be increased in the future if they are not to limit the transportation of our batteries. If these limits are not increased, it could increase the costs and duration of shipping of our finished product and limit customer use of our batteries in certain cases. This could increase our inventory costs and limit sales of our batteries in some markets.

We are subject to substantial regulation, and unfavorable changes to, or our failure to comply with, these regulations could substantially harm our business and operating results.

Our batteries are subject to substantial regulation under international, federal, state and local laws, including export control laws. We expect to incur significant costs in complying with these regulations. Regulations related to the battery and alternative energy are currently evolving, and we face risks associated with changes to these regulations.

To the extent the laws change, our products may not comply with applicable international, federal, state or local laws, which would have an adverse effect on our business. Compliance with changing regulations could be burdensome, time consuming and expensive. To the extent compliance with new regulations is cost prohibitive, our business, prospects, financial condition and operating results would be adversely affected.

Internationally, there may be laws in 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. The laws in this area can be complex, difficult to interpret and may change over time. Continued regulatory limitations and other obstacles that may interfere with our ability to commercialize our products could have a negative and material impact on our business, prospects, financial condition and results of operations.

We are subject to a variety of laws and regulations related to the safety and transportation of our batteries. Our failure to comply with these laws and regulations may have a material adverse effect on our business and results of operations.

Many federal, state and local authorities require certification by Underwriters Laboratory, Inc., an independent, not-for-profit corporation engaged in the testing of products for compliance with certain public safety standards, or other safety regulation certification prior to marketing battery cells. Foreign jurisdictions also have regulatory authorities overseeing the safety of consumer products. Our products may not meet the specifications required by these authorities. A determination that any of our products are not in compliance with these rules and regulations could result in the imposition of fines or an award of damages to private litigants.

In addition, lithium batteries have been identified as a Class 9 dangerous good during transport. To be safely transported (by air, sea, rail or roadways), they must meet various international, national, state and local authorities, including, for example, the provisions laid out in United Nations standard UN 38.3. This standard applies to batteries transported either on their own or installed in a device. UN 38.3 has been adopted by regulators and competent authorities

around the world, thus making it a requirement for global market access. The failure to manage the transportation of our products could subject us to increased costs or future liabilities.

We are subject to requirements relating to environmental and safety regulations and environmental remediation matters which could adversely affect our business, results of operations 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 will have 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 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 the company brand, finances or ability to operate.

A failure to properly comply (or to comply properly) with foreign trade zone laws and regulations could increase the cost of our duties and tariffs.

Our manufacturing facility in Fremont, California has been established as a foreign trade zone through qualification with U.S. Customs. Materials received in a foreign trade zone are not subject to certain U.S. duties or tariffs until the material enters U.S. commerce. We benefit from the adoption of foreign trade zones by reduced duties, deferral of certain duties and tariffs and reduced processing fees, which help us realize a reduction in duty and tariff costs. However, the operation of our foreign trade zone requires compliance with applicable regulations and continued support of U.S. Customs with respect to the foreign trade zone program. If we are unable to maintain the qualification of our foreign trade zones, or if foreign trade zones are limited or unavailable to us in the future, our duty and tariff costs would increase, which could have an adverse effect on our business and results of operations.

Risks Related to Ownership of Our Securities

The trading price of our Common Stock may be volatile, and the value of our Common Stock may decline.

Historically, our stock price has been volatile. During the fiscal year ended January 1, 2023, our stock traded as high as $28.17 per share and as low as $7.26 per share, and from January 2, 2023 to November 6, 2023, our stock price has ranged from $23.90 per share to $6.50 per share. The trading price of our securities could be volatile and subject to wide fluctuations in response to various factors, some of which are beyond our control. Any of the factors listed below could have a material adverse effect on your investment in our securities and our securities may trade at prices significantly below the price you paid for them. In such circumstances, the trading price of our securities may not recover and may experience a further decline.

Factors affecting the trading price of our securities:

- actual or anticipated fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to us;
- changes in the market's expectations about our operating results;
- success of competitors;
- our operating results failing to meet the expectation of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning us or the market in general;
- operating and stock price performance of other companies that investors deem comparable to us;
- our ability to develop product candidates;

- changes in laws and regulations affecting our business;
- commencement of, or involvement in, litigation involving us;
- changes in our capital structure, such as future issuances of securities or the incurrence of additional debt;
- the volume of shares of our securities available for public sale;
- any major change in our board of directors or management;
- sales of securities convertible into shares of our capital stock by us;
- sales of substantial amounts of Common Stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions, interest rates, fuel prices, international currency fluctuations and acts of war or other armed conflict or terrorism.

Broad market and industry factors may materially harm the market price of our securities irrespective of our operating performance. The stock market in general and The Nasdaq Global Select Market in particular have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the particular companies affected. The trading prices and valuations of these stocks, and of our securities, is not predictable. A loss of investor confidence in the market for battery company stocks or the stocks of other companies which investors perceive to be similar to us could depress our stock price regardless of our business, prospects, financial conditions or results of operations. A decline in the market price of our securities also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future.

Furthermore, short sellers may engage in manipulative activity intended to drive down the market price of target company stock. We have in the past been the subject of a short seller report containing certain allegations against us. While we reviewed the allegations in such report and believe them to be unsubstantiated, we may in the future become subject to additional unfavorable reports, which may cause us to expend a significant number of resources to investigate such allegations and may lead to increased volatility in the price of our Common Stock.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business, or our market, or if they change their recommendations regarding our securities adversely, the price and trading volume of our securities could decline.

The trading market for our securities is influenced by the research and reports that industry or securities analysts may publish about us, our business, our market, or our competitors. If any of the analysts who currently cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, the price of our securities would likely decline. If any analyst who currently cover us were to cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline. If we obtain additional coverage and any new analyst issues, an adverse or misleading opinion regarding us, our business model, our intellectual property or our stock performance, or if our operating results fail to meet the expectations of analysts, our stock price could decline.

The future sales of shares by existing stockholders may adversely affect the market price of our Common Stock.

Sales of a substantial number of shares of our Common Stock in the public market could occur at any time. If our stockholders sell, or the market perceives that our stockholders intend to sell, substantial amounts of our Common Stock in the public market, the market price of our Common Stock could decline. As of November 6, 2023, we have outstanding a total of 167,774,133 shares of Common Stock. All of our outstanding shares are eligible for sale in the public market, other than shares and options held by directors, executive officers, and other affiliates that are subject to volume limitations under Rule 144 of the Securities Act, various vesting agreements, and shares that must be sold under an effective registration statement. Additionally, the shares of Common Stock subject to outstanding options and restricted stock unit awards under our equity incentive plans and the shares reserved for future issuance under our equity incentive plans will become eligible for sale in the public market upon issuance, subject to applicable insider trading policies.

To the extent our Private Placement Warrants are exercised, additional shares of Common Stock will be issued, which will result in dilution to the holders of Common Stock and increase the number of shares eligible for resale in the public market. Sales, or the potential sales, of substantial numbers of shares in the public market by the selling security holders, could increase the volatility of the market price of Common Stock or adversely affect the market price of Common Stock.

A market for our securities may not continue, which would adversely affect the liquidity and price of our securities.

The price of our securities may fluctuate significantly due to general market and economic conditions and an active trading market for our securities may not be sustained. In addition, the price of our securities can vary due to general economic conditions and forecasts, our general business condition and the release of our financial reports. If our securities are not listed on, or for any reason become delisted from, The Nasdaq Global Select Market and are quoted on the OTC Bulletin Board, an inter-dealer automated quotation system for equity securities that is not a national securities exchange, the liquidity and price of our securities may be more limited than if we were quoted or listed on The Nasdaq Global Select Market or another national securities exchange. You may be unable to sell your securities unless a market can be established or sustained.

There can be no assurance that we will be able to comply with the continued listing standards of The Nasdaq Global Select Market.

If The Nasdaq Global Select Market delists our securities from trading on its exchange for failure to meet the listing standards, we and our stockholders could face significant material adverse consequences including:

- a limited availability of market quotations for our securities;
- a determination that our Common Stock is a "penny stock" which will require brokers trading in our Common Stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our Common Stock;
- a limited amount of analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

Private Placement Warrants are exercisable for our Common Stock, which would increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders.

In connection with the RSVAC initial public offering ("RSVAC IPO"), RSVAC issued Private Placement Warrants to purchase 6,000,000 shares of Common Stock to the Sponsor. Each Warrant is exercisable to purchase one share of Common Stock at $11.50 per share. To the extent such warrants are exercised, additional shares of our Common Stock will be issued, which will result in dilution to the then existing 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 could adversely affect the market price of our Common Stock. The Warrants became exercisable 12 months from the closing of the RSVAC IPO, and they expire five years after the completion of the Business Combination or earlier upon redemption or liquidation, as described in our Registration Statement on Form S-1, filed with the SEC on August 2, 2021, as may be amended.

Our amended and restated certificate of incorporation provides 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 disputes between us and our stockholders, which could limit our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) is the exclusive forum for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a claim of breach of fiduciary duty owed by any of our current or former directors, officers or other employees to us or our stockholders;
- any action asserting a claim against us by any of our current or former directors, officers or other employees to us or our stockholders arising under the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws;
- any action or proceeding to interpret, apply, enforce or determine the validity of the amended and restated certificate of incorporation or the amended or restated bylaws (including any right, obligation or remedy thereunder);

- any action or proceeding as to which the General Corporation Law of the State of Delaware (the "DGCL") confers jurisdiction to the Court of Chancery of the State of Delaware; and
- any action asserting a claim against us or any of our current or former directors, officers or other employees that is governed by the internal affairs doctrine, in all cases to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

This exclusive-forum provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction, or the Securities Act. In addition, to prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, the Amended Charter provides that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, 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. However, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. Accordingly, both state and federal courts have jurisdiction to entertain such claims. As noted above, our amended and restated certificate of incorporation provides that the federal district courts of the United States will be the exclusive forum for the resolution of any complaint asserting a cause of action under the Securities Act. Due to the concurrent jurisdiction for federal and state courts created by Section 22 of the Securities Act over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder, there is uncertainty as to whether a court would enforce the exclusive form provision. Our amended and restated certificate of incorporation further provides that any person or entity holding, owning or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to these provisions. Investors also 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. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring such a claim arising under the Securities Act against us or our directors, officers or other employees in a venue other than in the federal district courts of the United States of America. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our amended and restated certificate of incorporation. This may require significant additional costs associated with resolving such action in other jurisdictions and we cannot assure you that the provisions will be enforced by a court in those other jurisdictions. If a court were to find either exclusive-forum provision in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur further significant additional costs associated with resolving the dispute in other jurisdictions, all of which could harm our business.

General Risk Factors

We have been, and may in the future be, involved in legal proceedings and commercial or contractual disputes, which could have an adverse impact on our profitability and condensed consolidated financial position.

We may be involved in legal proceedings and commercial or contractual disputes that, from time to time, are significant. These are typically claims that arise in the normal course of business including, without limitation, commercial or contractual disputes, including warranty claims and other disputes with potential customers and suppliers, intellectual property matters, personal injury claims, environmental issues, tax matters and employment matters. For example, on January 21, 2022, two former machine operator employees filed a putative wage and hour class action lawsuit against Enovix and co-defendant Legendary Staffing, Inc. in the Superior Court of California, County of Alameda. The case is captioned *Sopheak Prak & Ricardo Pimentel v Enovix Corporation and Legendary Staffing, Inc*., 22CV005846. The Prak complaint alleges, among other things, on a putative class-wide basis, that the defendants failed to pay all overtime wages and committed meal period, rest period and wage statement violations under the California Labor Code and applicable Wage Orders. The plaintiffs are seeking unpaid wages, statutory penalties and interest, and reasonable costs and attorney fees. In September 2022, we began the mediation process with the plaintiff.

It is difficult to predict the outcome or ultimate financial exposure, if any, represented by these matters, and there can be no assurance that any such exposure will not be material. Such claims may also negatively affect our reputation.

Global conflicts could adversely impact our business, costs, supply chain, sales, financial condition or results of operations.

In late February 2022, Russia initiated significant military action against Ukraine. In response, the U.S. and certain other countries imposed significant sanctions and trade actions against Russia and Belarus, and the U.S. and certain other countries could impose further sanctions, trade restrictions and other retaliatory actions should the conflict continue or worsen. It is not possible to predict the broader consequences of the conflict, including related geopolitical tensions, and the measures and retaliatory actions taken by the U.S. and other countries in respect thereof, as well as any counter measures or retaliatory actions by Russia and Belarus in response, have caused and are likely to continue to cause regional instability and geopolitical shifts. Further, such conflict has materially adversely affected and is likely to continue to materially adversely affect global trade, currency exchange rates, regional economies and the global economy. While it is difficult to anticipate the impact of any of the foregoing on the Company, such conflict, and any similar future conflicts, including as a result of rising tensions between China and Taiwan, and actions taken in response could increase our costs, disrupt our supply chain, reduce our sales and earnings, impair our ability to raise additional capital when needed on acceptable terms, if at all, or otherwise adversely affect our business, financial condition and results of operations.

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

Highly publicized incidents of laptop computers and cell phones bursting into flames have focused attention on the safety of lithium-ion batteries. If one of our products were to cause injury to someone or cause property damage, including as a result of product malfunctions, defects or improper installation leading to a fire or other hazardous condition, we may become subject to product liability claims, even those without merit, which could harm our business, prospects, operating results and financial condition. 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 batteries have a limited history of commercial testing and mass production. 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 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.

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

In the ordinary course of business, we collect, receive, store, process, generate, use, transfer, disclose, make accessible, protect, secure, dispose of, transmit, and share (collectively, process) personal data and other sensitive information, including proprietary and confidential business data, trade secrets, intellectual property, and sensitive third-party data. Cyber-attacks, malicious internet-based activity, online and offline fraud, and other similar activities threaten the confidentiality, integrity, and availability of our sensitive information and information technology systems, and those of the third parties upon which we rely. Such threats are prevalent and continue to rise, are increasingly difficult to detect, and come from a variety of sources, including traditional computer “hackers,” threat actors, “hacktivists,” organized criminal threat actors, personnel (such as through theft or misuse), sophisticated nation states, and nation-state-supported actors. Some actors now engage and are expected to continue to engage in cyber-attacks, including without limitation nation-state actors for geopolitical reasons and in conjunction with military conflicts and defense activities. During times of war and other major conflicts, we, the third parties upon which we rely, and our customers may be vulnerable to a heightened risk of these attacks, including retaliatory cyber-attacks, that could materially disrupt our systems and operations, supply chain, and ability to produce, sell and distribute our goods and services.

We and the third parties upon which we rely are subject to a variety of evolving threats, including but not limited to social-engineering attacks (including through deep fakes, which may be increasingly more difficult to identify as fake, and phishing attacks), malicious code (such as viruses and worms), malware (including as a result of advanced persistent threat intrusions), denial-of-service attacks (such as credential stuffing), credential harvesting, personnel misconduct or error, ransomware attacks, supply-chain attacks, software bugs, server malfunctions, software or hardware failures, attacks facilitated or enhanced by artificial intelligence, loss of data or other information technology assets, adware,

telecommunications failures, earthquakes, fires, floods, and other similar threats. In particular, severe ransomware attacks are becoming increasingly prevalent – particularly for companies like ours that are engaged in manufacturing – and can lead to significant interruptions in our operations, loss of sensitive data and income, reputational harm, and diversion of funds. Extortion payments may alleviate the negative impact of a ransomware attack, but we may be unwilling or unable to make such payments due to, for example, applicable laws or regulations prohibiting such payments.

Remote work has become more common and has increased risks to our information technology systems and data, as more of our employees utilize network connections, computers and devices outside our premises or network, including working at home, while in transit and in public locations. Additionally, future or past business transactions (such as acquisitions or integrations) could expose us to additional cybersecurity risks and vulnerabilities, as our systems could be negatively affected by vulnerabilities present in acquired or integrated entities' systems and technologies. Furthermore, we may discover security issues that were not found during due diligence of such acquired or integrated entities, and it may be difficult to integrate companies into our information technology environment and security program.

We rely on third-party service providers and technologies to operate critical business systems to process sensitive information in a variety of contexts, including, without limitation, cloud-based infrastructure, data center facilities, encryption and authentication technology, employee email, and other functions. Our ability to monitor these third parties' information security practices is limited, and these third parties may not have adequate information security measures in place. If our third-party service providers experience a security incident or other interruption, we could experience adverse consequences. While we may be entitled to damages if our third-party service providers fail to satisfy their privacy or security-related obligations to us, any award may be insufficient to cover our damages, or we may be unable to recover such award.

Any of the previously identified or similar threats could cause a security incident or other interruption that could result in unauthorized, unlawful, or accidental acquisition, modification, destruction, loss, alteration, encryption, disclosure of, or access to our sensitive information or our information technology systems, or those of the third parties upon whom we rely. A security incident or other interruption could disrupt our ability (and that of third parties upon whom we rely) to provide our products. We may expend significant resources or modify our business activities to try to protect against security incidents. Certain data privacy and security obligations may require us to implement and maintain specific security measures or industry-standard or reasonable security measures to protect our information technology systems and sensitive information.

While we have implemented security measures designed to protect against security incidents, there can be no assurance that these measures will be effective. We take steps to detect and remediate vulnerabilities, but we may not be able to detect and remediate all vulnerabilities because the threats and techniques used to exploit the vulnerability change frequently and are often sophisticated in nature. Therefore, such vulnerabilities could be exploited but may not be detected until after a security incident has occurred. These vulnerabilities pose material risks to our business. Further, we may experience delays in developing and deploying remedial measures designed to address any such identified vulnerabilities.

Applicable data privacy and security obligations may require us to notify relevant stakeholders of security incidents. For example, new SEC rules require disclosure on Form 8-K of the nature, scope and timing of any material cybersecurity incident and the reasonably likely impact of such incident. Such disclosures are costly, and the disclosure or the failure to comply with such requirements could lead to adverse consequences. If we (or a third party upon whom we rely) experience a security incident or are perceived to have experienced a security incident, we may experience adverse consequences, such as government enforcement actions (for example, investigations, fines, penalties, audits, and inspections); additional reporting requirements and/or oversight; restrictions on processing sensitive information (including personal data); litigation (including class claims); indemnification obligations; negative publicity; reputational harm; monetary fund diversions; interruptions in our operations (including availability of data); financial loss; and other similar harms. Security incidents and attendant consequences may cause customers to stop using our products, deter new customers from using our products, and negatively impact our ability to grow and operate our business.

Our contracts may not contain limitations of liability, and even where they do, there can be no assurance that limitations of liability in our contracts are sufficient to protect us from liabilities, damages, or claims related to our data privacy and security obligations. We cannot be sure that our insurance coverage will be adequate or sufficient to protect us from or to mitigate liabilities arising out of our privacy and security practices, that such coverage will continue to be available on commercially reasonable terms or at all, or that such coverage will pay future claims.

We are subject to stringent and evolving U.S. and foreign laws, regulations, rules, contractual obligations, policies and other obligations related to data privacy and security. Our actual or perceived failure to comply with such obligations

could lead to regulatory investigations or actions; litigation; fines and penalties; disruptions of our business operations; reputational harm; loss of revenue or profits; loss of customers or sales; and other adverse business consequences.

In the ordinary course of business, we collect, receive, store, process, generate, use, transfer, disclose, make accessible, protect, secure, dispose of, transmit, and share (collectively, process) personal data and other sensitive information, including proprietary and confidential business data, trade secrets, intellectual property, and sensitive third-party data. Our data processing activities may subject us to numerous data privacy and security obligations, such as various laws, regulations, guidance, industry standards, external and internal privacy and security policies, contractual requirements, and other obligations relating to data privacy and security. In the United States, federal, state, and local governments have enacted numerous data privacy and security laws, including data breach notification laws, personal data privacy laws, consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act), and other similar laws. For example, the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 ("CPRA") (collectively, "CCPA") applies to personal data of consumers, business representatives, and employees who are California residents, and requires businesses to provide specific disclosures in privacy notices and honor requests of such individuals to exercise certain privacy rights. The CCPA provides for administrative fines of up to $7,500 per violation and allows private litigants affected by certain data breaches to recover significant statutory damages. In addition, the CPRA expanded the CCPA's requirements, including by adding a new right for individuals to correct their personal data and establishing a new regulatory agency to implement and enforce the law. Other states, such as Virginia and Colorado, have also passed comprehensive privacy laws, and similar laws are being considered in several other states, as well as at the federal and local levels. These developments further complicate compliance efforts and increase legal risk and compliance costs for us and the third parties upon whom we rely.

Additionally, on July 26, 2023, the SEC adopted new cybersecurity disclosure rules for public companies that require disclosure regarding cybersecurity risk management (including the corporate board's role in overseeing cybersecurity risks, management's role and expertise in assessing and managing cybersecurity risks, and processes for assessing, identifying and managing cybersecurity risks) in annual reports. These new cybersecurity disclosure rules also require the disclosure of material cybersecurity incidents in a Form 8-K, generally within four days of determining an incident is material. We will be subject to such annual report disclosure requirements starting with our 2023 Form 10-K and we will be subject to such Form 8-K disclosure requirements starting December 18, 2023.

Outside the United States, an increasing number of laws, regulations, and industry standards may govern data privacy and security, for example, the European Union's General Data Protection Regulation ("EU GDPR") and the United Kingdom's GDPR ("UK GDPR"). Under the EU GDPR, companies may face temporary or definitive bans on data processing and other corrective actions; fines of up to 20 million Euros or 4% of annual global revenue, whichever is greater; or private litigation related to processing of personal data brought by classes of data subjects or consumer protection organizations authorized at law to represent their interests.

In the ordinary course of business, we may transfer personal data from Europe and other jurisdictions to the United States or other countries. Europe and other jurisdictions have enacted laws requiring data to be localized or limiting the transfer of personal data to other countries. In particular, the European Economic Area ("EEA") and the United Kingdom ("UK") have significantly restricted the transfer of personal data to the United States and other countries whose privacy laws it believes are inadequate. Other jurisdictions may adopt similarly stringent interpretations of their data localization and cross-border data transfer laws. Although there are currently various mechanisms that may be used to transfer personal data from the EEA and UK to the United States in compliance with law, such as the EEA and UK's standard contractual clauses, these mechanisms are subject to legal challenges, and there is no assurance that we can satisfy or rely on these measures to lawfully transfer personal data to the United States. If there is no lawful manner for us to transfer personal data from the EEA, the UK or other jurisdictions to the United States, or if the requirements for a legally-compliant transfer are too onerous, we could face significant adverse consequences, including the interruption or degradation of our operations, the need to relocate part of or all of our business or data processing activities to other jurisdictions at significant expense, increased exposure to regulatory actions, substantial fines and penalties, the inability to transfer data and work with partners, vendors and other third parties, and injunctions against our processing or transferring of personal data necessary to operate our business. Additionally, companies that transfer personal data out of the EEA and UK to other jurisdictions, particularly to the United States, are subject to increased scrutiny from regulators, individual litigants, and activist groups. Some European regulators have ordered certain companies to suspend or permanently cease certain transfers out of Europe for allegedly violating the GDPR's cross-border data transfer limitations.

We are also bound by contractual obligations related to data privacy and security, and our efforts to comply with such obligations may not be successful. For example, certain privacy laws, such as the GDPR and the CCPA, require our customers to impose specific contractual restrictions on their service providers. We publish privacy policies, marketing

materials and other statements regarding data privacy and security. If these policies, materials or statements are found to be deficient, lacking in transparency, deceptive, unfair, or misrepresentative of our practices, we may be subject to investigation, enforcement actions by regulators or other adverse consequences.

Obligations related to data privacy and security are quickly changing, becoming increasingly stringent, and creating regulatory uncertainty. Additionally, these obligations may be subject to differing applications and interpretations, which may be inconsistent or conflict among jurisdictions. Preparing for and complying with these obligations requires us to devote significant resources, which may necessitate changes to our services, information technologies, systems, and practices and to those of any third parties that process personal data on our behalf. In addition, these obligations may require us to change our business model. We may at times fail (or be perceived to have failed) in our efforts to comply with our data privacy and security obligations. Moreover, despite our efforts, our personnel or third parties on whom we rely may fail to comply with such obligations, which could negatively impact our business operations. If we or the third parties on which we rely fail, or are perceived to have failed, to address or comply with applicable data privacy and security obligations, we could face significant consequences, including but not limited to: government enforcement actions (e.g., investigations, fines, penalties, audits, inspections, and similar); litigation (including class-action claims); additional reporting requirements and/or oversight; bans on processing personal data; and orders to destroy or not use personal data. Any of these events could have a material adverse effect on our reputation, business, or financial condition, including but not limited to: loss of customers; inability to process personal data or to operate in certain jurisdictions; limited ability to develop or commercialize our products; expenditure of time and resources to defend any claim or inquiry; adverse publicity; or substantial changes to our business model or operations.

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 or other armed conflicts, health epidemics, pandemics and other outbreaks, such as the COVID-19 pandemic, the long-term effects of climate change and other calamities. Our headquarters and initial manufacturing facilities are located in Fremont, California, which is prone to earthquakes. We cannot assure you that any backup systems will be adequate to protect us 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.

Any financial or economic crisis, or perceived threat of such a crisis, including a significant decrease in consumer confidence, may materially and adversely affect our business, financial condition and results of operations.

Global economic conditions have impacted, and will likely continue to impact, businesses around the world, including ours. Inflation and other macroeconomic pressures in the United States and the global economy such as rising interest rates and recession fears are creating a complex and challenging environment for us and our customers.

The United States and certain foreign governments have taken actions in an attempt to address and rectify these extreme market and economic conditions by providing liquidity and stability to the financial markets. If the actions taken by these governments are not successful, the return of adverse economic conditions may negatively impact the demand for our lithium-ion battery cells and may negatively impact our ability to raise capital, if needed, on a timely basis and on acceptable terms or at all.

Our ability to utilize our net operating losses and certain other tax attributes to offset future taxable income and taxes may be subject to certain limitations.

Under the Internal Revenue Code of 1986, as amended, (the “Code”), a corporation is generally allowed a deduction for net operating losses (“NOLs”) carried over from a prior taxable year. Under the Code, we can carryforward our NOLs to offset our future taxable income, if any, until such NOLs are used or expire. The same is true of other unused tax attributes, such as tax credits. Under current U.S. federal income tax law, U.S. federal NOLs generated in taxable years beginning after December 31, 2017, may be carried forward indefinitely, but the deductibility of such U.S. federal NOLs is limited to 80 percent of taxable income. It is uncertain if and to what extent various states will conform to current U.S. federal income tax law, and there may be periods during which states suspend or otherwise limit the use of NOLs for state income tax purposes.

In addition, under Sections 382 and 383 of the Code and corresponding provisions under state law, a corporation that undergoes an “ownership change” is subject to limitations on its ability to use its pre-change NOL carryforwards and other

pre-change tax attributes to offset future taxable income and taxes. The limitations apply if a corporation undergoes an "ownership change," which is generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a three-year period. We have experienced ownership changes and are subject to limitations on our ability to utilize a portion of our NOLs and other tax attributes to offset taxable income or tax liability. In addition, future changes in our stock ownership, which may be outside of our control, may trigger additional ownership changes. Similar provisions of state tax law may also apply to suspend or otherwise limit our use of accumulated state tax attributes. As a result, even if we earn net taxable income in the future, our ability to use our or Legacy Enovix's NOL carryforwards and other tax attributes to offset such taxable income or tax liability may be subject to limitations, which could potentially result in increased future income tax liability to us.

Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could adversely affect our business operations and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, the Tax Cuts and Jobs Act of 2017, the Coronavirus Aid, Relief, and Economic Security Act of 2020 and the Inflation Reduction Act of 2022 enacted many significant changes to the U.S. tax laws. Further guidance from the Internal Revenue Service and other tax authorities with respect to such legislation may affect us, and certain aspects of such legislation could be repealed or modified in future legislation. In addition, it is uncertain if and to what extent various states will conform to federal tax laws. Future tax reform legislation could have a material impact on the value of our deferred tax assets and could increase our future U.S. tax expense.

In addition, effective January 1, 2022, the Tax Cuts and Jobs Act of 2017 requires taxpayers to capitalize and subsequently amortize research and development expenses over five years for research activities conducted in the United States and over 15 years for research activities conducted outside the United States. Unless the United States Department of the Treasury issues regulations that narrow the application of this provision to a smaller subset of our research and development expenses or the provision is deferred, modified, or repealed by Congress, it could harm our future operating results by effectively increasing our future tax obligations. The actual impact of this provision will depend on multiple factors, including the amount of research and development expenses we will incur, whether we achieve sufficient income to fully utilize such deductions and whether we conduct our research and development activities inside or outside the United States.

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

We are subject to anti-corruption, anti-bribery, anti-money laundering, import and export controls, financial and economic sanctions and similar laws and regulations in various jurisdictions in which we conduct or in the future may conduct activities, including the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.K. Bribery Act 2010 and other anti-corruption laws and regulations. The FCPA and the U.K. Bribery Act 2010 prohibit us and our officers, directors, employees and business partners acting on our behalf, including agents, from directly or indirectly corruptly offering, promising, authorizing or providing anything of value to foreign government officials for the purposes of influencing official decisions or obtaining or retaining business or otherwise obtaining favorable treatment. The FCPA also requires companies to make and keep books, records and accounts that accurately reflect transactions and dispositions of assets and to maintain a system of adequate internal accounting controls. The U.K. Bribery Act also prohibits non-governmental "commercial" bribery and soliciting or accepting bribes. A violation of anti-corruption laws or regulations could adversely affect our business, results of operations, financial condition and reputation. Our policies and procedures designed to ensure compliance with these regulations may not be sufficient and our directors, officers, employees, representatives, consultants, agents and business partners could engage in improper conduct for which we may be held responsible.

We are also subject to import and export control laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations, and various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control, and similar laws in other jurisdictions in which we conduct business. Exports of our products must be made in compliance with these laws and regulations. In addition, these laws may restrict or prohibit altogether the provision or supply of certain of our products to certain governments, persons, entities, countries, and territories, including those that are the target of comprehensive sanctions, unless there are license exceptions that apply or specific licenses are obtained. Any changes in import, export control, or sanctions laws and regulations, shift

in the enforcement or scope of existing laws and regulations, or change in the countries, governments, persons, or technologies targeted by such laws and regulations, could result in decreased ability to export our products internationally.

Significant increases in import and excise duties or other taxes on, as well as any tariffs, particularly on our products to China, could materially increase our costs of our products and have an adverse effect on our business, liquidity, financial condition, and/or results of operations.

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

Our insurance coverage may not be adequate to protect us from all business risks.

We may be subject, in the ordinary course of business, to losses resulting from products liability, accidents, acts of God and other claims against us, for which we may have no insurance coverage. As a general matter, the policies that we do have may include significant deductibles or self-insured retentions, and we cannot be certain that our insurance coverage will be sufficient to cover all future losses or claims against us. A loss that is uninsured or which exceeds policy limits may require us to pay substantial amounts, which could adversely affect our financial condition and operating results.

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

Convertible Senior Notes

On April 20, 2023, we issued $172.5 million aggregate principal amount of 3.0% Convertible Senior Notes due 2028, including the exercise in full by the initial purchasers of their option to purchase an additional $22.5 million aggregate principal amount of the Convertible Senior Notes. $10.0 million principal amount of the Convertible Senior Notes were issued to an entity affiliated with Thurman John “T.J.” Rodgers, the Company’s Chairman, in a concurrent private placement. We offered and sold the Convertible Senior Notes to the initial purchasers in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act, and for resale by the initial purchasers to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. The Convertible Senior Notes are convertible into shares of our common stock on the terms set forth in the Indenture. Additional information relating to the issuance of the Convertible Senior Notes can be found under “Convertible Senior Notes” in Note 7 “Borrowings” of the notes to our unaudited condensed consolidated financial statements included in Part I, Item 1 of this Form 10-Q, as well as in our Current Report on Form 8-K filed with the Securities and Exchange Commission on April 21, 2023.

Routejade Acquisition

As partial consideration for our acquisition of Routejade on October 31, 2023, we issued 5,923,521 shares of our common stock to Rene Limited (the “Seller”). The total estimated purchase consideration of such transaction consists of cash consideration in the amount of approximately $15.8 million and 5,923,521 shares of common stock of Enovix, par value $0.0001, for the purchase of substantially all of the outstanding shares of Routejade. The shares of common stock were issued in reliance on the exemption from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended, on the basis of representations of eligibility and suitability made to the Company by the Seller.

Issuer Purchases of Equity Securities

The following table provides information about purchases we made during the quarter ended October 1, 2023 of equity securities that are registered by us pursuant to Section 12 of the Exchange Act: (In thousands, except per share data)

Fiscal periods	(a) Total Number of Shares Purchased [1] [2]	(b) Average Price Paid Per Share	(c) Shares Purchased as Part of Publicly Announced Plans or Programs [3]	(d) Approximate Dollar Value of Shares That May Yet be Purchased Under the Plans or Programs
7/3/2023 thru 7/30/2023	93,008	$ 17.78	—	—
7/31/2023 thru 8/27/2023	130,763	0.72	—	—
8/28/2023 thru 10/1/2023	32,506	0.75	—	—
Total	256,277	$ 6.91	—	—

(1) A total of 94,540 shares were withheld by us from employees in satisfaction of the tax withholding obligations associated with the vesting of restricted stock units during the quarter.

(2) We repurchased 161,737 shares from former employees for the early exercised stock options, which were unvested on the termination date, at the exercise price.

(3) We did not have a repurchase program in place.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

Insider Trading Arrangements

During the quarter ended October 1, 2023, the Company's directors and officers (as defined in Rule 16a-1(f) under the Exchange Act) adopted or terminated the contracts, instructions or written plans for the purchase or sale of the Company's securities set forth in the table below.

			Type of Trading Arrangement				
Name and Position	**Action**	**Adoption/Termination Date**	**Rule 10b5-1***	**Non-Rule 10b5-1****	**Total Shares of Common Stock to be Sold**	**Total Shares of Common Stock to be Purchased**	**Expiration Date [1]**
Betsy Atkins, Board of Director	Adoption	August 29, 2023	x		35,506	—	December 26, 2024

* Contract, instruction or written plan intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act.
** "Non-Rule 10b5-1 trading arrangement" as defined in Item 408(c) of Regulation S-K under the Exchange Act.
(1) The plan expires on December 26, 2024, or upon the earlier completion of all authorized transactions under the plan.

Item 6. Exhibits.

The documents listed in the Exhibit Index of this Quarterly Report on Form 10-Q are incorporated by reference or are filed or furnished with this Quarterly Report on Form 10-Q, in each case as indicated therein:

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Schedule/Form	File No.	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation	8-K	001-39753	3.1	July 19, 2021	
3.2	Amended and Restated Bylaws	8-K	001-39753	3.2	July 19, 2021	
4.1	Indenture, dated as of April 20, 2023, by and between Enovix Corporation and U.S. Bank Trust Company, National Association, as Trustee	8-K	001-39753	4.1	April 21, 2023	
4.2	Form of Global Note, representing Enovix Corporation's 3.00% Convertible Senior Notes due 2028 (included as Exhibit A to the Indenture filed as Exhibit 4.1)	8-K	001-39753	4.1	April 21, 2023	
10.1†	Cash Deposit Agreement dated September 13, 2023, by and between Enovix Corporation and OCBC Bank (Malaysia) Berhad					X
10.2†	Stock Purchase Agreement dated September 18,2023, by and between Enovix Corporation and Rene Limited					X
31.1	Certification of Chief Executive Officer (Principal Executive Officer) Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer) Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1*	Certification of Chief Executive Officer (Principal Executive Officer) Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes- Oxley Act of 2002.					
32.2*	Certification of Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer) Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					
101.INS	Inline XBRL Instance Document					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X

101.DEF	Inline XBRL Taxonomy Extension Definition 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 and contained in Exhibits 101)	

† The Company has omitted portions of the referenced exhibit pursuant to Item 601(b) of Regulation S-K because it (a) is not material and (b) the type of information that the Registrant both customarily and actually treats as private and confidential. In addition, certain exhibits and schedules to the referenced exhibit have been omitted pursuant to Item 601(b)(2) of Regulation S-K.

+ Certain of the exhibits and schedules to this exhibit have been omitted in accordance with Regulation S-K Item 601. The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

# Indicates a management contract or compensatory plan, contract or arrangement.

* The certifications attached as Exhibit 32.1 and Exhibit 32.2 that accompany this Quarterly Report on Form 10-Q are deemed furnished and are not filed with the SEC for purposes of the Exchange Act nor shall they be deemed incorporated by reference into any filing of Enovix Corporation under the Exchange Act or the Securities Act whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

SIGNATURES

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

Dated: November 9, 2023

Enovix Corporation

By: /s/ Raj Talluri

Dr. Raj Talluri
President and Chief Executive Officer
(Principal Executive Officer)

By: /s/ Farhan Ahmad

Farhan Ahmad
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Certain identified information has been excluded from the exhibit because it is not material and would likely cause competitive harm to the company if publicly disclosed

(INDIV/COMPANY/LLP & 1P/3

CASH DEPOSIT AGREEMENT

To: **OCBC BANK (MALAYSIA) BERHAD** (Company No. 199401009721 / 295400-W) ("the Bank")

In consideration of the Bank (which expression shall include any persons deriving title thereunder and its successors-in-title) agreeing at my/our request to open or continue an account with the Bank or granting or making available or continuing to grant or make available or having granted or made available advances, loans, banking or other facilities or accommodation or granting any time in such manner, to such an extent and for so long as the Bank may at its absolute discretion deem fit to the party(ies) whose name(s) and address(es) is/are set out in **Section 2 of the Schedule** hereto (hereinafter called "the Borrower"), I/we the undersigned whose name(s) and details is/are set out and described as "the Depositor" in the **Execution Page** hereto (hereinafter called "the Depositor") hereby agree and covenant with the Bank as follows:-

1. The Depositor has deposited or has agreed to deposit all or such sums of moneys and/or to place all or such amounts of investments in the account(s) described in **Section 3 of the Schedule** with the Bank at any place of business of the Bank from time to time in whatever currency ("Account(s)" which term, in the case of structured investments, shall refer to the investment amount, contract number(s) or any other reference number identifying the investment). All such sum or sums and investments are referred in this Agreement to the extent of the Indebtedness (defined below) owing by Orifast Solutions Sdn. Bhd ("YBS") under and pursuant to Letter Offer dated 19th July 2023 ("YBS Loan") as "the Deposit" which expression shall include any other sum or sums or investments in whatever currency which are from time to time deposited, invested, placed or to be placed by the Depositor with the Bank in the Account(s) or in any other accounts(s) and shall include proceeds from matured or early terminated investments, reinvested into investments or deposited into fixed deposits or savings accounts or other types of account by way of addition, renewal, replacement or reinvestment, together with all interest, returns, yield or whatsoever gains accruing from time to time in respect of such sums. Notwithstanding anything to the contrary herein, any sum which has been deposited with the Bank in the Account(s) in excess of Indebtedness is unrestricted and does not fall under this Agreement. For additional clarity, the term "Deposit" excludes any cash or proceeds which the Depositor may choose to place in the Bank which is greater than the Indebtedness.

2. The Deposit is charged to the Bank by way of first fixed charge as a continuing security for the discharge and satisfaction of all money and liabilities, present or future, actual or contingent (including liabilities as surety or guarantor), for which the Borrower is now or may at any time or times after this date be indebted or liable to the Bank on any account or in any manner whatsoever and whether alone or jointly with YBS for the YBS Loan (the aggregate of such money and liabilities being referred to below as "the Indebtedness" which expression shall include the whole or any part thereof and any other sum payable or covenanted to be paid by the Borrower and/or the Depositor under this Agreement).

3. The Deposit will be placed in an interest-bearing account with an interest rate on par with loan rate as per the YBS Loan and in accordance with the Product Terms for the Deposit. The interest earned from the Deposit can be withdrawn by the Depositor with written request and subject to the Bank's approval, which shall not be withheld if there is sufficient collateral in the Deposit for the YBS loan.

4. The Depositor irrevocably and unconditionally agrees and covenants with the Bank that as long as there is any Indebtedness outstanding (notwithstanding any intermediate payment or settlement of account) or capable of arising:

(a) the Depositor shall not without the prior written consent of the Bank, withdraw or request for repayment of the whole or any part of the Deposit, provided that notwithstanding the forgoing the Depositor may prepay the Indebtedness without any penalty;

(b) all interest dividend profit or other payment howsoever derived from or accruing in respect of the Deposit can be withdrawn by the Depositor with written request and subject to the Bank's approval provided that the Bank is not permitted to deny the request in the event that the Deposit is in line with the extent of indebtedness of the YBS Loan;

(c) the Depositor shall not, other than this security, create, attempt to create, or permit to subsist any security interest on or over the Deposit or any part of it;

(d) the Depositor shall not sell, assign, transfer or otherwise deal with the Deposit or any

part of it, nor attempt so to do;

(e) at the Depositor's own cost and expense do all such acts, deeds and things including, but not limited to, the execution or signing of all such endorsements, transfers, assignments, assurances and documents and giving of all such notices as the Bank may require for the perfection, continuance or enforcement of this security;

(f) the Depositor shall maintain, in respect of the Deposit, such margin of security in relation to the Indebtedness as may from time to time be required by the Bank, by the deposit immediately on demand by the Bank of additional sums into the Account(s) provided that in no way shall the amount exceed the extent of Indebtedness;

(g) in the event that the Depositor shall receive any of the monies hereby agreed to be charged and/or charged or any part thereof, the Depositor shall hold the same on trust for the Bank and forthwith pay the same to such account or accounts as the Bank may stipulate; and

(h) notwithstanding any other terms stipulated within this Agreement, it is explicitly established that the Bank shall be prohibited from seizing assets or collateral beyond the extent required for the collateralization of the YBS Loan. This provision ensures that the Bank's right to collateral remains limited solely to the specific amount essential for securing the aforementioned YBS loan, regardless of any conflicting terms outlined within this Agreement.

5. The security constituted by this Agreement is to be a continuing security and shall not be considered as satisfied by any conditional payment or satisfaction of the whole or any part or parts of the Indebtedness or by any payment held in suspense and notwithstanding that the Depositor and/or the Borrower may at any time and from time to time cease to be so indebted for any period or periods. The security is in addition to and without prejudice to or affect on any other right or remedy which the Bank may be entitled or any other security which the Bank may now or hereafter hold in respect of it.

6. The Depositor represents and warrants to the Bank that:-

(a) the Depositor is the beneficial owner of the Deposit, has the power and capacity to execute, deliver and perform the terms of this Agreement and has taken all necessary corporate (if applicable) and other action to authorise the execution, delivery and performance of this Agreement;

(b) the execution of this Agreement will not result in the creation or imposition of, or any obligation to create or impose any security interest (which expression shall herein and below include any mortgage, lien, pledge, right of set-off, assignment or charge or any other encumbrance, priority or security interest or arrangement whatsoever) on any of the Depositor's assets under this Agreement;

(c) no extraordinary circumstances or change of law or other governmental action has occurred which makes it improbable that the Depositor will be able to observe and perform the covenants and obligations on its part to be observed and performed under this Agreement;

(d) that there are no material adverse change in the financial condition, operating environment, management of the Depositor or other conditions which will materially affect the ability of the Depositor to perform its obligations under this Agreement; and

(e) the Depositor is not entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken under this Agreement; and

(f) the Deposit (including profits generated from the Deposit) and all monies now or hereafter paid to the Bank come from lawful sources and does not breach the Anti- Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 or similar legislation applying in the jurisdiction where the monies are derived or any tax laws which the Depositor is subject to.
The Depositor acknowledges that the Bank has accepted this Agreement on the basis of, and in full reliance upon the aforesaid representations and warranties which will be correct and complied with in all material respects so long as this Agreement shall remain in force and/or as long as there is any Indebtedness outstanding as if repeated by reference to the then existing circumstances.

7. The Bank is irrevocably authorised and entitled, without prior notice to or demand on the Depositor, at any time or times without restriction:-

(a) in the event that the Deposit or any part or parts thereof may have been deposited for a fixed period, to renew on behalf of the Depositor, the period for which it has been deposited for a further period upon each expiry of the preceding period;
(b) in the event the Deposit or any part thereof invested in structured deposits, to deposit proceeds from matured or early or prematurely terminated investments into fixed deposits or savings accounts or other types of account and whether in the same or any other currency;
(c) to apply or appropriate at any time by uplifting or withdrawing (including prior to the maturity date of the Deposit), the whole or any part or parts of the Deposit in or towards the payment or discharge or all or any of the Indebtedness and such monies may be applied or appropriated by the Bank in such manner and for such purpose as the Bank may at its sole and absolute discretion deem fit;
(d) in order to discharge the Indebtedness, the Bank may convert at the Depositor's expense, the whole or any part or parts of the Deposit into any currency at the Bank’s spot rate of exchange then prevailing and where no such rate is available, at the then prevailing spot rate of exchange quoted by a commercial bank selected and approved by the Bank;
(e) to enter into any settlement or arrangement or accept any compositions or grant any waiver or time in relation to the whole or any part or parts of the Deposit without any concurrence by the Depositor and such settlement or arrangement, composition or waiver or granting of time shall be binding on the Depositor;
(f) to place and keep any monies appropriated under this Agreement to the credit of a non-interest bearing suspense account to apply the same or any part thereof in or towards the payment or discharge of the Indebtedness or any part thereof. In the event of any bankruptcy, liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of the Indebtedness in the same manner as if this security had not been created.

8. The Bank’s right of set-off, combination of accounts, lien or other right (by operation of law, contract or otherwise) against the Depositor is not affected by this Agreement. In the event that this Agreement is invalid or ineffective as a charge on the Deposit, this instrument shall confer on the Bank a contractual right of set off the Indebtedness from the Deposit.

9. The Bank may at any time, at its discretion by notice to the Borrower, the Depositor or security party(ies), combine or consolidate all or any of the accounts of the Borrower for the Deposit and/or the Depositor’s Deposit’s Account(s) for the Deposit in relation to this Agreement and/or security party(ies)and set-off or transfer any sum or sums in whatever currency and standing to the credit of anyone or more of such accounts at any office or branch of the Bank in any country for the Deposit in or towards satisfaction of any of the liabilities of the Borrower and/or the Depositor and/or security party(ies) to the Bank. The Depositor agrees that such liabilities after consolidation shall form part of the Indebtedness secured by this Agreement. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. The accounts for the Deposit which may be consolidated include current, deposit or loan accounts at any office or branch of the Bank in any country.

9.1 Where the Depositor and the Borrower are different parties, the Depositor unconditionally and irrevocably jointly and severally guarantees payment to the Bank of the Borrower's liability to the Bank for the Indebtedness whether in Ringgit Malaysia or in any other

currency or currencies whether such liabilities are or may be joint or several or primary or collateral or contingent.

9.2 If the Borrower does not pay the Indebtedness in time and in accordance with any agreement which imposes the obligation to pay it, the Depositor agrees to pay the Indebtedness to the
Bank on demand from the Bank (whether or not demand has been made by the Bank on the Borrower). A demand may be made at any time or from time to time.

9.3 This guarantee is a continuing security for the payment of all moneys payable under this Agreement. The Depositor waives any right it has of first requiring the Bank to proceed against or enforce any other right, power, remedy or security or claim payment from the Borrower or any other person before claiming from the Depositor under this Agreement.

10. The Bank shall not be under any obligation to the Depositor or any other person or party to take or continue any action or steps to appropriate the Deposit or any part thereof. The Bank shall not be liable in any manner whatsoever (including, without limitation, for any loss of interest) to the Depositor in connection with the exercise of any of its powers, rights or remedies under this Agreement.

11.1 The Depositor unconditionally and irrevocably indemnifies the Bank on a full indemnity basis against any loss the Bank suffers from Indebtedness because:-

[***]

This indemnity shall not be discharged or cancelled under any circumstances whatsoever and shall continue as an independent covenant without merger into any judgment that the Bank may obtain against the Borrower/Depositor. The certificate or confirmation issued by the Bank as to any sums payable to it pursuant to this Clause shall, save for any manifest error, be final and conclusive and binding upon the Borrower and Depositor.

11.2 The Depositor as principal debtor agrees to pay to the Bank on demand a sum equal to the amount of any loss described in this Clause 11. The Depositor can prepay the Indebtedness at any time without any prepayment penalty.

12.1 The liability of the Depositor under this Agreement and all rights herein of the Bank are not affected by anything done by the Bank and the Bank may at any time without affecting or releasing or discharging the Depositor, provided that Depositor shall have no liability in excess of Indebtedness and no limitations on removing cash in excess of Indebtedness:-

(a) determine, vary, increase, renew, amend or restructure any credit or other facility granted to the Borrower and may open and/or continue any account or accounts current or otherwise with the Borrower at any branch or branches of the Bank provided that Depositor shall have no liability in excess of Indebtedness and no restricted cash obligations in excess of Indebtedness;

(b) grant to the Borrower or to any other surety or guarantor any time or indulgence;

(c) renew any bills notes or other negotiable securities;

(d) deal with, exchange, release or modify or abstain from perfecting or enforcing any securities or other guarantees or rights the Bank may now or any time hereafter or from time to time have from or against the Borrower or any other person or compound with the Borrower or any other person or guarantor.

12.2 The liability of the Depositor under this Agreement is not affected:-

(a) because any other person who was intended to become a co-surety or co-indemnifier for the payment of the Indebtedness or other money payable under this Agreement has not done so or has not done so effectively; or

(b) because a person who is co-surety or co-indemnifier under this Agreement is discharged under an agreement or under statute or a principle of law or equity.

13. The securities, liabilities and/or obligations created by this Agreement shall continue to be valid and binding for all purposes whatsoever notwithstanding any change whether by reason of amalgamation, bankruptcy, death, insanity, incorporation, liquidation, reconstruction, winding up or otherwise howsoever in the name, style, constitution or composition of the Borrower and/or the Depositor.

[***] Certain information has been excluded from this exhibit because it is both not material and would likely cause competitive harm to the company if publicly disclosed.

14. If the Borrower and/or the Depositor being a firm is dissolved by reason of the introduction of a further partner or partners into the firm or the death, bankruptcy, insanity or retirement of any existing partners from the firm or the amalgamation of the firm with another firm or in consequence of a corporation taking over all the assets of the firm, this Agreement shall continue in full force and effect and in addition to the debts and liabilities of the old firm shall apply to all money and liabilities due or incurred to the Bank from or by the new firm or corporation thereby constituted as though there had been no change in the firm as previously constituted.

15. The provisions of this Agreement shall remain binding on the Depositor notwithstanding any amalgamation that may be effected by the Bank with any other company or companies and notwithstanding any reconstruction by the Bank involving the formation of a new company and transfer of all or any of its assets to it and notwithstanding the sale of all or any part of its undertaking and assets to another company. All rights conferred by it upon the Bank may be assigned to and enforced by any such company or companies as if such company or companies had been named in this Agreement instead of the Bank.

16. Where this Agreement is signed by or on behalf of two (2) or more persons, (i), all agreements, covenants, obligations, undertakings and liabilities of such persons under it shall be deemed to be made by or binding on such persons jointly and severally and (ii) any notice given by the Bank to any one of such persons shall be sufficient notice to all the Depositors and any instructions or notices issued by any one of them to the Bank shall be deemed to have been issued on behalf of all the Depositors and the Bank shall be entitled to act upon and rely on such notices or instructions without any enquiry.

17. For all purposes, including any legal proceedings:-
    (a) a certificate or confirmation issued by the Bank as to the Indebtedness for the time being due to the Bank by the Depositor or incurred by the Bank on behalf of the Depositor and/or the Borrower shall be conclusive evidence of it against the Depositor;
    (b) any notification, certification or determination by the Bank under the terms of this Agreement shall be conclusive and binding for the purposes of this Agreement.

18. The Bank may enforce this security at any time notwithstanding that other means of payment have not been resorted to for Indebtedness. The Depositor hereby waives any rights which the Depositor may have to claim prior exhaustion of remedies by the Bank against any other party.

19. Insofar as the law shall permit, no provision of any law restricting the right of consolidation shall apply to this Agreement and the Depositor shall not be discharged from its obligations under this Agreement except on payment to the Bank of not only all the Indebtedness but also all other monies (whatsoever and howsoever) which may be due or owing by the Borrower and/or the Depositor and/or security party(ies) to the Bank (whether such other indebtedness be present, future, actual, contingent, primary, collateral, several or joint) whether or not secured by any other security documents.

20. The Depositor hereby agrees to pay all legal and other fees, costs and disbursements incurred in connection with the preparation, stamping (including penalties incurred for late stamping), perfection, continuance or enforcement of this Agreement on a full indemnity basis.

21. In the event that the Depositor shall fail to pay to the Bank any sums under this Agreement for Indebtedness when due, interest thereon (both before as well as after any demand or judgment) at such rate as the Bank may from time to time at the Bank's discretion determine from the due date of such sum shall be recoverable by the Bank from the Depositor and shall be repaid on demand, and until such sum and interest thereon shall have been paid in full the amount outstanding shall form part of the amount secured hereunder.

22. Any term, condition, stipulation, provision, covenant or undertaking of this Agreement which is illegal, void, prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions hereof.

23. Any settlement or discharge between the Bank and the Depositor shall be conditional upon no security or payment to the Bank being invalidated for any reason whatsoever or being

avoided or set aside by virtue of any laws relating to bankruptcy, insolvency, liquidation, preference or priority. The Bank shall be entitled to recover the value or amount of any such security or payment from the Depositor subsequently as if such settlement or discharge had not occurred.

24. The Depositor represents and warrants to the Bank that in the execution and delivery of this Agreement, the Depositor has sought, obtained and relied upon its own independent legal advice and acknowledges that the Bank has accepted and entered into this Agreement on the basis of and in full reliance upon the aforesaid warranty. The Depositor hereby confirms having read and understood this Agreement.

25. Time shall be deemed to be and treated as of the essence of this Agreement but no failure to exercise and no delay in exercising on the part of the Bank of any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

26.1 Subject to the Depositor's express instruction (if any) restricting disclosure, the Depositor irrevocably consents to and authorises the Bank and its officers to disclose the Depositor's personal data, account details and relationship with the Bank, the terms of the advances, loans, banking or other facilities or accommodation or granting any time in such manner secured by this Agreement and this Agreement given to the Bank to the following classes of persons:-

(a) the Bank's data processors or service providers, both within and outside Malaysia, engaged to carry out the Bank's functions and activities;

(b) the Bank's Related Corporations and associated companies, both in or outside Malaysia, their assignees and successors-in-title;

(c) regulatory bodies, tax authorities, government agencies, the police, law enforcement bodies and courts, both within and outside Malaysia;

(d) other banks or financial institutions including Cagamas Berhad and Credit Guarantee Corporation (Malaysia) Berhad, takaful/insurance brokers, takaful operators/insurers and any retakaful operators/reinsurer (in or outside Malaysia);

(e) credit bureaus, credit reporting agencies, Central Credit Reference Information System and corporations set up for the purposes of collecting and providing credit information;

(f) the security partiy(es) and third parties who intend to settle the Indebtedness or any third parties who utilise any of the banking or other facilities or accommodation secured by this Agreement;

(g) debt collection agents, lawyers, custodians and nominee companies;

(h) the Borrower's and/or the Depositor's authorised agents, executor, administrator or legal representative;

(i) the Bank's assignees or acquirers, potential assignees or acquirers and successors- in-title; and

(j) such persons or bodies to whom the Bank is legally required to disclose.

26.2 The Depositor irrevocably (i) consents and authorizes the Bank to conduct credit checks and verify information given by the Depositor to the Bank, with any party (including without limitation with any credit bureau, organization or corporation set up for the purposes of collecting and providing credit or other information); (ii) consents to the relevant credit reporting agencies (as defined under the Credit Reporting Agencies Act, 2010) ("CRAs") with whom the Bank conducts credit checks to disclose the Depositor's credit report/information to the Bank in connection with the the advances, loans, banking or other facilities or accommodation secured by this Agreement and for the Bank's risk management and review. The Bank is hereby authorized but is under no obligation to convey the Depositor's consent and the purpose of such disclosure to the relevant CRAs.

26.3 The Depositor warrants and represents to the Bank that it has (i) obtained consent from the directors, partners, relevant officers, managers and shareholders of the Depositor (collectively together with the Depositor, "Consenting Parties") to disclose their personal data to the Bank in connection with the advances, loans, banking or other facilities or accommodation secured by this Agreement; (ii) informed them that the Bank may collect or verify their personal data with third party sources such as CRAs, Companies Commission or

[***] Certain information has been excluded from this exhibit because it is both not material and would likely cause competitive harm to the company if publicly disclosed.

Insolvency Department and have obtained their consent for the relevant CRAs to disclose their credit report/information to the Bank and to convey their consent to the relevant CRAs for the purpose of the advances, loans, banking or other facilities or accommodation secured by this Agreement including its other products and services and for its risk management and review; (iii) informed them that the Bank may disclose their personal data to classes of third parties described in the Bank's Privacy Policy and to read the Bank's Privacy Policy posted at the Bank's website.

26.4 The Depositor irrevocably grant consent to and have obtained irrevocable consent from the Consenting Parties for Bank Negara Malaysia to disclose the credit information of the Consenting Parties in relation to the Facility(es) to other financial institutions, credit reporting agency(ies) and other persons as stipulated under Section 47(2) of the Central Bank of Malaysia Act 2009 ("CBA") and for other financial institutions, credit reporting agency(ies) and such other persons as Bank Negara Malaysia thinks fit or deems necessary to access and use the credit information for purposes stipulated in Section 47(2) of CBA and for other purposes as Bank Negara Malaysia thinks fit, which may include but is not limited to, assessing the creditworthiness of existing and potential customers, providing credit reporting or credit assessment services, providing electronic Know-Your-Customer (e-KYC) solutions and providing financial advisory services.

26.5 The Depositor, if an individual:-

(a) consents to the Bank's disclosure of his personal data (limited to his name and contact details) to organizations (in and outside Malaysia) which are in an arrangement or alliance with the Bank, for the purpose of direct marketing of these organisations' products and services. The Depositor may at any time withdraw his consent for direct marketing of such products or services by written request to the Bank; and

(b) acknowledges having read the Bank's Privacy Policy posted at the Bank's website which notified him that (i) the Bank may collect his personal data directly from him or from third party sources (ii) purpose for which his personal data is collected; (iii) his right to access his personal data and correct it; (iv) the class of third parties to whom the Bank may disclose his personal data; (v) the choices and means for limiting the processing of his personal data; (vi) whether the personal data requested is obligatory or voluntary, and if obligatory, the consequences for not providing such data; (vii) that he may update his personal data as soon as there are changes; and (viii) the Bank's contact details if he wish to make inquiries or give feedback.

27. All sums payable by the Depositor under this Agreement shall be paid in full (without any deductions, set-off or withholdings) for Indebtedness to the extent owed or payable. All such sums are exclusive of any goods, sales and services tax or any other taxes which if payable shall be for the account of the Depositor. If any deduction or withholding is required by law, the Depositor shall forthwith pay to the Bank or authorize the Bank to deduct from his account, such additional amount so that the net amount received by the Bank will equal the full amount which would have been received by the Bank had no such deduction or withholding been made. Without prejudice to the survival of any other agreement of the Depositor hereunder, the agreements and obligations of the Depositor contained herein shall survive the payment in full of the principal and interest hereunder.

28. This Agreement shall be binding upon the personal representatives, successors-in-title, permitted assigns of the Depositor and the successors-in-title and assigns of the Bank.

29.1 Any demand for payment of the monies due and payable under this Agreement may be made by a notice in writing requiring payment within seven (7) days from the date thereof and may be issued by the Bank or by any solicitor or firm of solicitors or agent purporting to act for the Bank and such notice shall be taken as sufficiently served on the Depositor if it is left at the usual or last known place of residence or at the address herein stated of the Depositor or at the usual or last known place of business of the Depositor or sent by registered letter or ordinary mail or by telex or facsimile to any of such addresses or telex/facsimile numbers of the Depositor. In the case of posting, the service shall be taken as made within three (3) Business Days after posting if posted within Malaysia and five (5) Business Days after posting if posted out of Malaysia, in the case of telex, the service shall be taken as made immediately upon transmission thereof and confirmed by answer back and in the case of

facsimile, on production of a transmission report by the machine from which the facsimile was sent.

"Business Day" means a day on which commercial banks and the Bank are open in the State where the place of business of the Bank is located for transaction of business of the nature required or contemplated by this Agreement.

29.2 Any notice or communications from the Depositor to be given to the Bank may be sent by personal despatch, courier or by post to the Bank's place of business as set out in **Section 4 of the Schedule** to this Agreement and such notices or communications shall only be received when acknowledged by the Bank.

30.1 This instrument shall be governed by and construed in accordance with the laws of Malaysia and the Depositor irrevocably submits to the non-exclusive jurisdiction of the Courts of Malaysia, waives any objection on the ground of venue or forum non conveniens or any similar grounds and consents to service of process by mail or in any other manner permitted by the relevant law.

30.2 Agent for Service of Process
In respect of any one of the Depositors who is outside the jurisdiction of the courts of Malaysia, he irrevocably authorises and appoints the person(s) specified in **Section 5 of the Schedule** hereto to accept service of all legal process arising out of or connected with this Agreement and if for any reason such agent no longer serves as his agent to receive service of process, another agent shall be promptly appointed and the acceptance by such agent of his appointment shall be delivered to the Bank. Until such substituted agent is appointed, the

original agent will continue to be the agent for the Depositor. Service on such agent (or his substitute) shall be deemed service on the applicable Depositor.

30.3 Effective Date
This Agreement shall be effective on the date written in **Section 1 of the Schedule** ("Effective Date") irrespective of the diverse dates on which the parties may have executed the same.

30.4 Discharge and Release
The obligations and duties of the Depositor under this Agreement will be discharged and released upon full settlement of the Indebtedness and thereafter, this Agreement shall be terminated.

30.5 Replacement of Agreement.
The Bank acknowledges and agrees that this Agreement replaces in full the Cash Deposit Agreement between the Bank and Enovix Corporation ("Old Agreement"), and the Old agreement has no further force or effect.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

SCHEDULE

(to be read and construed as an essential part of this Agreement)

<table>
<tr><th>Section</th><th>Item</th><th colspan="3">Particulars</th></tr>
<tr><td>1.</td><td><u>Effective Date</u>
(clause 30.3)</td><td colspan="3"></td></tr>
<tr><td>2.</td><td><u>The Borrower(s)</u>

Name(s):

*Identity Card /Passport No. & Country of Issue:

* Company No./
Business Registration No.:

**Address/Place of Business:</td><td colspan="3">Orifast Solutions Sdn Bhd
N/A

201401029088 (1105174-D)

Plot 171, Mukim 13 Jalan Perindustrian Bukit Minyak, Kawansan Perindustrian Bukit Minyak, Bukit Mertajam, 14000, Pulau Pinang.</td></tr>
<tr><td>3.</td><td>Account Number(s) (if Account(s) already opened):

If Account(s) not opened yet:</td><td colspan="3">and shall include such other Account(s) to be opened or maintained with any branch(s) of the Bank from time to time which is charged to the Bank as security for the Indebtedness.

The account(s) to be opened or maintained with any branch(s) of the Bank from time to time which is charged to the Bank as security for the Indebtedness.</td></tr>
<tr><td rowspan="2"></td><td rowspan="2">#Structured Investment(s)</td><td>Principal Investment Amount</td><td>Investment Code</td><td>Contract No(s).</td></tr>
<tr><td>N/A</td><td>N/A</td><td>N/A</td></tr>
<tr><td>4.</td><td><u>The Bank</u>

Place of Business:</td><td colspan="3">No. 47, 49, 51 & 53, Jalan Perniagaan Gemilang 1, Pusat Perniagaan Gemilang, 14000 Bukit Mertajam, Penang, Malaysia</td></tr>
<tr><td>5.</td><td><u>## Agent for Service of Process</u>

Name:

*NRIC/Company No.:

**Address:</td><td colspan="3">N/A</td></tr>
</table>

* *Delete whichever not applicable.*
** *For individuals, insert residential address. For companies/businesses, insert business address.*
# *If a structured investment is charged to the Bank, please state the investment amount, the investment code and contract number(s) of the investment in this column.*
Applicable only if the Depositor resides outside Malaysia or is a foreign company

[***] Certain information has been excluded from this exhibit because it is both not material and would likely cause competitive harm to the company if publicly disclosed.

Exhibit 10.2

Certain identified information marked by [***] has been excluded from this exhibit because it is both (i) not material and (ii) the type of information that the Registrant both customarily and actually treats as private and confidential

STOCK PURCHASE AGREEMENT

by and between

ENOVIX CORPORATION

and

RENE LIMITED

September 18, 2023

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STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "Agreement") is made as of September 18, 2023 by and between Enovix Corporation, a Delaware corporation (the "Purchaser"), and Rene Limited, a corporation incorporated under the laws of Korea (the "Seller"). Each of the parties hereto will also be referred to hereinafter as a "Party," individually, and the "Parties," collectively.

WHEREAS, as of the date of this Agreement, the Seller owns [***] percent ([***]%) of the Shares (as defined below), and following the date hereof shall endeavor to obtain further shares of the Company so that it owns at least ninety-five percent (95%) of the Equity Interests in the Company immediately prior to the closing of the transactions contemplated hereby;

WHEREAS, the Seller desires to sell to the Purchaser and the Purchaser desires to purchase from the Seller, the Sale Shares, in accordance with the provisions of this Agreement; and

WHEREAS, upon the closing of the transactions contemplated in this Agreement, a portion of the consideration payable to the Seller for the Sale Shares will be paid by the issuance to the Seller of certain shares of the Purchaser as further set forth herein.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual provisions set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article 1
DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. For the purposes of this Agreement and the Ancillary Agreements, the following terms shall have the respective meanings specified below:

"Accounting Firm" has the meaning set forth in Section 2.4(b)(i).

"Accounting Rules" means K-GAAP to the extent used in the preparation of the Financial Statements (including with respect to the exercise of management judgment) applied on a consistent basis, to the extent consistent with K-GAAP.

"Accredited Investor" has the meaning set forth in Section 3.5.

"Affiliate" means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. In addition to the foregoing, if the specified Person is an individual, the term "Affiliate" also includes (a) the individual's spouse, (b) the Immediate Family Members, and (c) any corporation, limited liability company, general or limited partnership, trust, association or other business or investment entity that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with any of the foregoing individuals. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or

otherwise. For the avoidance of doubt, for the purposes of this Agreement, portfolio companies of the Sponsor are Affiliates of the Sponsor and the Seller.

"Agreement" has the meaning set forth in the Preamble.

"Ancillary Agreements" means, collectively, the Escrow Agreement, the Employment Agreements, the Sponsor Guaranty and any other agreements contemplated to be executed pursuant to the terms of this Agreement.

"Anti-Corruption Law(s)" has the meaning set forth in Section 4.25(c).

"Antitrust Laws" mean all antitrust or competition Laws of any Governmental Authority.

"Associate" has the meaning set forth in Section 4.23(b).

"Automatic Resale Registration Statement" has the meaning set forth in Section 6.13(b).

"Balance Sheet" has the meaning set forth in Section 4.5(a).

"Business Day" means any day other than Saturday, Sunday or any day on which banking institutions in San Francisco, California or Seoul, Korea are closed either under applicable Law or action of any Governmental Authority.

"Cash Consideration" has the meaning set forth in Section 2.2.

"Certain R&W Insurance Exclusions" has the meaning set forth in Section 10.6(b).

"Claim Notice" has the meaning set forth in Section 10.3(a).

"Claims" has the meaning set forth in Section 6.12(a).

"Closing" has the meaning set forth in Section 2.5.

"Closing Date" has the meaning set forth in Section 2.5.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means Routejade, Inc., a corporation incorporated under the laws of Korea.

"Company Insurance Policies" has the meaning set forth in Section 4.22.

"Company Plan" means any "employee benefit plan" and any other written plan, policy, program, Contract or arrangement involving direct or indirect compensation or benefits, including insurance coverage, welfare benefits, change in control, severance, retention, holiday pay, vacation pay, paid time off, death benefit, disability benefits, retirement plans, profit sharing, deferred compensation, bonuses, stock options, stock purchase, restricted stock or stock units, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation (including, retirement benefit, pension, defined contribution retirement or deferred compensation plan), educational assistance, holiday pay, housing assistance, moving expense reimbursement, fringe benefit, or other employee benefit sponsored, maintained or contributed to by the Company for the benefit of any current or former director, officer, employee of the Company; regardless of whether it is mandated under Korean Law, voluntary, private, funded, unfunded, financed by the purchase of

insurance, contributory or noncontributory; *provided* that any governmental plan or program requiring the mandatory payment of social insurance taxes or similar contributions to a governmental fund with respect to the wages of an employee will not be considered a "Company Plan."

"Company Product" means, as of the date hereof or as of the Closing Date, as applicable, any and all Li-ion cell and battery pack products, services, and components thereof, including the electrode active material chemistries, processing techniques, power management circuits/software, product development and project management software tools developed or under development (including any products in design stage or in pre-production), manufactured, delivered, deployed, made publicly or commercially available, marketed, distributed, provided, serviced, hosted, supplied, sold, offered for lease or sale, imported or exported for resale or licensed out by or on behalf of the Company (either solely or in collaboration with third Persons), including all versions and releases thereof, together with any related documentation, materials or information.

"Company Registered IP" means all Registered IP that is Owned Intellectual Property.

"Company Technology" means all Technology purported to be owned, used, or held for use by the Company.

"Company Transaction Expenses" means all expenses of the Company incurred or to be incurred prior to and through the Closing Date (whether or not payable as of the Closing Date) in connection with the negotiation, preparation and execution of this Agreement and the Ancillary Agreements, and the consummation of the transactions contemplated hereby and thereby, and the Closing, including all disbursements, out-of-pocket costs, fees of financial advisors, attorneys, accountants and other advisors and service providers, and which have not been paid as of the Measurement Time.

"Confidentiality Agreement" has the meaning set forth in Section 6.6(a).

"Confidential Information" means all confidential, competitively valuable, non-public or proprietary information or data of the Company, whenever and however disclosed (i.e., whether before or after the date hereof, in any form whatsoever or in or by any medium whatsoever), including, without limitation, scientific, financial, business, marketing, operations, technical, economic, engineering, trade, business or research plans, services information or data, or discoveries, ideas, inventions (whether or not protectable by patent or otherwise), concepts, techniques, designs, strategies, specifications, drawings, blueprints, flow-chats, computer programs, or marketing plans that are confidential or proprietary to the Company or to a third party to whom the Company has a duty of confidentiality.

"Consent" means any approval, consent, ratification, waiver or other authorization.

"Consideration Share Amount" has the meaning set forth in Section 2.2.

"Consideration Shares" means the number of fully paid Purchaser Common Shares having a value of the Consideration Share Amount to be issued by the Purchaser to the Seller at Closing in accordance with the terms of this Agreement. The subscription price of the Consideration Shares to be issued hereunder shall be the Purchaser Share Price.

"Contract" means any contract, agreement, lease, license, commitment, arrangement, understanding, franchise, warranty, guaranty, mortgage, note, bond, option, warrant, right or other instrument or consensual obligation, whether written or oral.

"Controlling Party" has the meaning set forth in Section 10.4(b).

"COVID-19 Measures" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester, safety or similar Law, directive, guideline, pronouncement, or recommendation promulgated by any industry group or any Governmental Authority including the World Health Organization, the Korean Disease Control and Prevention Agency or an industry group providing for business closures, in each case, in connection with or in response to COVID-19, including the Infectious Disease Control and Prevention Act of Korea, *provided* that such matters are implemented in a reasonable manner and for a reasonable period of time.

"Current Company Business" has the meaning set forth in Section 6.11(a).

"Cut-Off Time" has the meaning set forth in Section 1.2(a).

"[***]".

"Disqualification Event" has the meaning set forth in Section 3.7.

"Employee" means any employee of the Company, including each such employee who is on a leave of absence (including medical leave, personal leave, extended COVID-related leave, military leave, workers compensation leave, short-term disability or long-term disability) or paid or unpaid time off (or who otherwise becomes such an employee between the date of this Agreement and Closing in the ordinary course of business and consistent with the terms of this Agreement).

"Employee IP Assignment Agreement" has the meaning set forth in Section 6.17(c).

"Employee List" has the meaning set forth in Section 4.16(a).

"Employment Agreements" means those certain employment agreements entered into by and between the Company and each of the Key Employees prior to or at the Closing, which will become effective upon the Closing, providing for, among other things, their continued employment with the Company pursuant to the terms and conditions set forth therein. The drafts of the Employment Agreements agreed to by the Purchaser shall be provided to the Key Employees within one (1) week following the date hereof for their review and execution; *provided* that, the Purchaser shall have first delivered to the Seller information about their compensation packages in reasonable detail.

"Encumbrance" means any charge, claim, mortgage, servitude, easement, right of way, community or other marital property interest, covenant, license, lease or other possessory interest, lien, option, equity swap, short selling position, pledge, hypothecation, security interest, preference, priority, right of first refusal, condition, limitation or restriction of any kind or nature whatsoever (whether absolute or contingent).

"End Date" means December 18, 2023.

"Environmental Law" means any Law relating to the protection of the environment, natural resources, or public and worker health and safety, or any Law pertaining to the exposure to or the generation, management, manufacture, processing, use, registration, distribution, transportation, treatment, storage, recycling, reuse or disposal, and any Release or threatened Release of Hazardous Materials.

"Equity Interest" means any share of capital stock or other equity interest, limited liability company membership interest, general or limited partnership interest, trust certificate or beneficiary interest or other equity interest or participation under local Law that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity, or any other right, warrant or option to acquire any of the foregoing securities.

"Escrow Agent" means KEB Hana Bank or any successor escrow agent under the Escrow Agreement. The Seller shall bear all costs, expenses, and fees of the Escrow Agent and administration of the account maintained thereby.

"Escrow Agreement" means the escrow agreement with respect to the Escrow Amount, to be entered into on the Closing Date by the Purchaser, the Seller and the Escrow Agent, in substantially the form attached hereto as Exhibit F.

"Escrow Amount" means an amount equal to the sum of (i) USD [***] plus (ii) the product of (x) the Sale Ratio multiplied by (y) the Retention Amount, which aggregate amount is to be deposited by the Purchaser with the Escrow Agent in accordance with the terms of this Agreement and held and released pursuant to the terms and subject to the conditions set forth in this Agreement and the Escrow Agreement.

"Escrow Pending Claim" has the meaning set forth in Section 10.3(d).

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

"Excluded Representations" has the meaning set forth in Section 10.6(b).

"Exclusively Licensed Third Party Intellectual Property" has the meaning set forth in Section 4.12(a).

"Exempt Stockholders" has the meaning set forth in Section 6.13(a).

"FCPA" has the meaning set forth in Section 4.25(c).

"Financial Statements" has the meaning set forth in Section 4.5(a).

"Fraud" means, with respect to any Person, intentional misrepresentation of a material fact by such Person in the making of the representations and warranties in Article 3 or 4 hereof, the Seller Disclosure Schedule or any certificate delivered by the Seller in connection with the Proposed Transactions, which intentional misrepresentation was made with the specific intent to induce the Person to whom such misrepresentation was made (the "Recipient") to enter into or consummate the Proposed Transactions, upon which the Recipient reasonably relied to its detriment.

"Fundamental Representations" means the representations or warranties set forth in Section 3.1 (*Authority and Enforceability*), Section 3.2 (*No Conflict*), Section 3.3 (*Title to Shares*), Section 3.10 (*Brokers or Finders*), Section 3.11 (*Korean Resident)*, Section 4.1 (*Organization and Good Standing*), Section 4.2 (*Authority and*

Enforceability), Section 4.3 (*No Conflict*), Section 4.4 (*Capitalization and Ownership*), and Section 4.23 (*Related Party Transactions*).

"Government Bid" means any bid, offer, proposal or response to solicitation which, if accepted or awarded, would result in the establishment of a Government Contract.

"Government Contract" means any Contract with (a) any Governmental Authority, (b) any prime contractor to any Governmental Authority, (c) any government-owned or -controlled entities, or (d) any customers of the Company's military or defense related business.

"Government Official" includes, but is not limited to: (a) officers, employees or representatives of any Governmental Authority, (b) any individual who, although temporarily or without payment, holds a public position, employment or function, (c) officers, employees or representatives of companies in which a Governmental Authority owns an interest, (d) any private person acting in an official capacity for or on behalf of any Governmental Authority (such as a consultant retained by a Governmental Authority), (e) candidates for political office at any level, (f) political parties and their officials, (g) royal family members, including ones who may lack formal authority, but could otherwise be influential in advancing business interests, through, for example, partially owning or managing a state-owned or state-controlled entity, and (h) officers, employees or representatives of public international organizations (such as the United Nations, the World Bank and the International Monetary Fund).

"Governmental Authority" means any (a) nation, region, state, county, city, town, village, district or other jurisdiction, (b) federal, state, local, municipal, foreign or other government, (c) department, agency or instrumentality of a foreign or other government, including any state-owned or state controlled instrumentality of a foreign or other government, (d) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department or other entity and any court or other tribunal), (e) Public International Organization or multinational organization, (f) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or power of any nature or (g) stock exchanges.

"Governmental Authorization" means any Consent, license, franchise, permit, exemption, expiration of any applicable waiting period, clearance or registration issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

"Harmful Code" means any Software, design, routine, or other mechanism of any kind (including any viruses, worms, malware, bombs, backdoors, clocks, hidden keys, timers, and traps) designed to (automatically, immediately, with passage of time, or upon command) (a) disrupt, disable, interfere with, erase, make inoperable, make inaccessible, or harm in any material manner any other Software, hardware, system, or process or its operation, except solely for any Software, design, routine, or other mechanism to the extent the Person lawfully owning or controlling such other Software, hardware, system, or process knowingly agreed to such Software, design, routine, or other mechanism and its purpose on or in such other Software, hardware, system, or process, (b) materially disrupt, disable, or interfere with any electronic communication, (c) gain access to or collect any data or information, except to the extent that each Person whose data and information is accessed or collected has knowingly agreed to such access and collection by such Software, design, routine, or other mechanism, including any spyware, (d) misuse or misappropriate any business, personal, or other data or information, or (e) cause unauthorized or unlawful advertising or promotional messages, or any other messages (other than notices or

information by the licensor or owner of such Software, design, routine, or other mechanism related to the use, installation, errors, updates, or similar matters for such Software, design, routine, or other mechanism or the use, access, or exit of any website, webpage, or webspace of such Software, design, routine, or other mechanism) to pop-up, appear, be downloaded, be installed, or be linked anywhere on a computer or screen (e.g., as a window, frame, balloon, tab, or other format) in connection with such Software, design, routine, or other mechanism.

"Hazardous Material" means any raw material, product, waste, material, or substance that is listed, defined, designated or classified as hazardous, radioactive or toxic or a pollutant or a contaminant, or otherwise regulated, under any Environmental Law, including any admixture or solution thereof, and including petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos or asbestos-containing materials in any form or condition, per- and polyfluoroalkyl substances, and polychlorinated biphenyls.

"Immediate Family Member" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, domestic partner, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, of a natural Person .

"Indebtedness" means, with respect to any Person, (a) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, (b) indebtedness evidenced by any note, bond, debenture, mortgage or other debt instrument, (c) indebtedness in respect of "earn-out" obligations and other obligations for the deferred purchase price of property, goods or services (other than trade payables or accruals incurred in the ordinary course of business, but excluding aged payables), (d) indebtedness for the capitalized liability under all capital leases of such Person (determined in accordance with K-GAAP and consistent with past accounting practice to the extent consistent with K-GAAP), (e) indebtedness of any amount raised by way of acceptance under any acceptance credit facility or dematerialised equivalent, (f) indebtedness evidenced from any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price, (g) indebtedness for any break fees, prepayment fees, balloon payments or other amounts, costs, expenses or penalties relating to the termination or repayment of any of the foregoing, or (h) direct or indirect guarantees or indemnity with respect to any indebtedness, obligation, claim or liability of any other Person of a type described in clauses (a) through (g) above.

"Indemnified Party" has the meaning set forth in Section 10.3(a).

"Indemnifying Party" has the meaning set forth in Section 10.3(a).

"Infringement" or "Infringe" means that (or an assertion that) a given item or activity directly or indirectly infringes, misappropriates, dilutes, or constitutes unauthorized use of, or otherwise violates the Intellectual Property Rights of any Person; or otherwise constitutes unfair trade practices or false advertising, as applicable to the underlying Intellectual Property Rights.

"Insolvency and Equity Exceptions" has the meaning set forth in Section 3.1(a).

"Intellectual Property Rights" means all intellectual property, industrial property, and proprietary rights worldwide, whether registered or unregistered, including rights in and to (a) patents, design patents, and utility models (including any provisionals, divisionals, continuations, continuations-in-part, renewals, reissuances, re-examinations, extensions, and foreign and international counterparts), and related rights of priority, and inventions and invention disclosures (whether or not patentable), (b) works of authorship, copyrightable works, copyrights,

moral rights, rights in Software and mask work/integrated circuit topography rights, (c) trade secrets, know-how, proprietary information (such as processes, formulae, models and methodologies), and other non-public or confidential information ("Trade Secrets"), (d) trademarks, trade names, logos, service marks, trade dress, emblems, certification marks, collective marks, signs, insignia, slogans, corporate names, DBAs, social media account names, other similar designations of source or origin and general intangibles of like nature, together with all of the goodwill symbolized by or associated with any of the foregoing, (e) rights in Technology, (f) rights of publicity and privacy and other rights to use the names, likeness, image, photograph, voice, identity and personal information of individuals, (g) any registrations or applications for registration related to any of the foregoing, (h) analogous rights to any of the foregoing, and (i) rights to sue for past, present, and future Infringement of the rights of any of the foregoing.

"Interim Financial Statements" has the meaning set forth in Section 4.5(a).

"IPO Preparation" has the meaning set forth in Section 6.5.

"IRS" means the U.S. Internal Revenue Service and, to the extent relevant, the Department of Treasury.

"IT System" means any electronic data processing, information, recordkeeping, communications, telecommunications, account management, inventory management and other computer or information technology systems, Software, hardware, websites, applications, networks, servers, and all other information technology assets, including all data (including Personal Data) processed thereby.

"Joint Owner IP Assignment Agreement" has the meaning set forth in Section 6.17(d).

"Judgment" means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Authority or arbitrator.

"K-GAAP" means generally accepted accounting principles for financial reporting in Korea, as in effect as of the date of this Agreement.

"Key Employees" means the persons listed in Schedule II.

"KFTC" means the Korean Fair Trade Commission.

"KFTC Approval" means an approval issued by the KFTC under the Monopoly Regulation and Fair Trade Act of Korea in respect of the Proposed Transactions.

"Knowledge of the Seller" means the actual or constructive knowledge of any of Ja No Lim, Albert Seungro Choe and any person in a directorship or higher position in the Company with the assumption that such individuals have made due inquiry of the matters presented.

"Known Breach" shall mean any breach of any representation or warranty set forth in Article 3 or Article 4, or the failure of any representation or warranty set forth in Article 3 or Article 4 to be true or correct, in connection with any fact, matter, event, circumstance, implication or effect disclosed or made available to the Purchaser in the Seller Disclosure Schedule, or which was in the knowledge of the Purchaser as of or prior to the date of this Agreement.

"Korea" means the Republic of Korea.

"Korea Leakage and Protection Act" has the meaning set forth in Section 4.12(l).

"Law" means any federal, state, provincial, local, municipal, foreign, international, multinational, or other constitution, law, statute, treaty, rule, regulation, ordinance, code, binding case law or principle of common law and rules and policies of applicable self-regulatory bodies.

"Leakage" means each and any of the following that occurred during the period from the Locked Box Date through the date hereof or that occurs between the date hereof and the Closing Date (or on the Closing Date): (a) any dividend or other distribution (whether in cash or in specie) declared, paid or made by the Company to the Seller or any Related Parties, (b) any payment by the Company to the Seller or any Related Parties for the purchase, redemption or repayment of any share capital, loan capital or other securities of the Company, or any other return of capital to the Seller or any Related Parties, (c) payment obligations to directors, officers and employees in respect of severance, bonuses, retention payments and any other change-of-control or similar payments payable as a result of or in connection with the Proposed Transaction and the Ancillary Agreements and any employer-paid Taxes related thereto (excluding, for the avoidance of doubt, any compensation or other payments to be made by the Company to the Key Employees pursuant to the Employment Agreements), (d) the Company paying, incurring or otherwise assuming Liability for any fees, costs or expenses in connection with the Proposed Transactions (including professional advisers' fees, consultancy fees, transaction bonuses, finders fees, brokerage or other commission), (e) any payment of any other nature (including royalties, license fees, management fees, monitoring fees, consulting fees, interest payments, loan payments, service or directors' fees, bonuses or other compensation of any kind) made by the Company to or for the benefit of the Seller or any Related Parties, (f) any transfer or surrender of assets, rights or other benefits (including the waiving or release of any claim) by the Company to or for the benefit of the Seller or any Related Parties, (g) the Company assuming or incurring any liability or obligation for the benefit of the Seller or any Related Parties, (h) the provision of any guarantee or indemnity or the creation of any Encumbrance by the Company in favor, or for the benefit, of the Seller or any Related Parties, (i) any waiver, discount, deferral, release or discharge by the Company of any amount, obligation or liability owed to it by the Seller or any Related Parties, (j) any payment of a Tax that relates to a Taxable period or portion of a Taxable period ending on or before the Locked Box Date to the extent that a specific provision or reserve for such Tax amount was not reflected on the Locked Box Accounts, (k) the attributable value of the Company's inventory shortfall (*i.e.*, the amount by which the inventory count as of the Closing Date is lower than the inventory count as of June 30, 2023 as disclosed to the Purchaser via the Virtual Data Room prior to the date hereof), excluding, however, any such shortfall that is due to inventory increases and decreases in the Company's ordinary course of business operations, such as (A) use of the inventory for sales activities, (B) supply to customers (including free and paid cell customer supply), (C) for certification, testing, research and development, production, quality control, and (D) utilization for scrap purpose not exceeding [***] percent ([***]%) of the total quantity of the inventory as of June 30, 2023; *provided* that, this item (k) shall be deemed "Leakage" hereunder only to the extent any shortfall in the inventory is caused by an illicit or improper use or utilization by the Seller or any of its Affiliates (other than the Company) to gain unfair benefits through fraudulent usage or sale of such inventory, (l) any increase in the Uncashed-Out Leave Amount since the July 31, 2023 calculation, (m) any agreement, arrangement or other commitment by the Company to do or give effect to any of the matters referred to in the foregoing paragraphs (a) through (l); and/or any Tax becoming payable, paid, incurred or assumed by or on behalf of the Company in respect of any of the matters set out in (a) to (l) (inclusive) above which occur or are accrued after the Locked Box Date and prior to the Closing Date, *provided* that, no Permitted Leakage shall be deemed Leakage hereunder.

“Leakage Claim Notice” has the meaning set forth in Section 2.4(b).

“Leakage Claim Period” has the meaning set forth in Section 2.4(b).

“Leakage Statement” has the meaning set forth in Section 2.3(a)(ii).

“Leased Real Property” has the meaning set forth in Section 4.11(b).

“Leases” has the meaning set forth in Section 4.11(b).

“Liability” includes liabilities, debts or other obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise, due or to become due or otherwise, matured or unmatured, determined or determinable, and whether or not required to be reflected on a balance sheet prepared in accordance with K-GAAP.

“Locked Box Accounts” means the audited balance sheet, audited income statement and the audited cash flow statement of the Company for the fiscal year ended on the Locked Box Date.

“Locked Box Date” means December 31, 2022.

“Loss” means any loss, Proceeding, Judgment, damage, fine, penalty, expense (including reasonable attorneys’ or other professional fees and expenses and court costs), injury, Liability, Tax (including interest and penalties thereon), Encumbrance or other cost, expense or adverse effect whatsoever, including any losses or costs incurred in investigating, defending or settling any Proceeding, Judgment or other matter described herein.

“Material Adverse Effect” means any event, change, circumstance, effect or other matter that has, or would reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on (a) the business, assets, properties, condition (financial or otherwise), operating results, or operations of the Company, taken as a whole, or (b) the ability of the Seller to perform its obligations under this Agreement or to consummate timely the Proposed Transactions, but shall exclude any event, change, circumstance, effect or other matter resulting or arising from: (i) any change or prospective change in any Law or K-GAAP or interpretation thereof, (ii) any change in interest rates, exchange rates, or general economic conditions in the industries or markets in which the Company operates or affecting the United States of America or foreign economies or foreign or domestic financial markets in general, (iii) any change that is generally applicable to the industries or markets in which the Company operates, (iv) any acts of God, including any earthquakes, pandemic (including COVID-19 and COVID-19 Measures), hurricanes, tornados, floods, tsunamis or other natural disasters, or any other damage to or destruction of assets caused by casualty or acts of war or terrorism or any escalation or material worsening of any such acts of war or terrorism existing as of the date hereof, or (v) the execution, announcement or performance of this Agreement or the Proposed Transactions by any Party in accordance with the terms of this Agreement or any action taken by the Seller or the Company in accordance with the written direction or consent of the Purchaser; *provided*, *however*, that in the case of each of clauses (i), (ii), (iii), and (iv) of the foregoing, any such event, change, circumstance or occurrence shall not be excluded to the extent that it has or would reasonably be expected to have a materially disproportionate adverse effect on the Company or the financial condition or results of operations of the Company, taken as a whole, relative to that of other companies similar to the Company; *provided*, *further*, that in the event the Company’s revenue for the eight (8)-month period ending on

August 31, 2023 is [***] percent ([***]%) or less of KRW [***], which is the aggregate of the projected revenue of the Company for the same period (for the avoidance of doubt, in calculating the Company's revenue, any revenue incurred until and up to August 31, 2023 but that needs to be recorded in September or a later period in the year 2023 under applicable accounting standards due to, for instance, delay in delivery (*aka* "delivery incoterms"), customer requests or change in vendor schedules, shall be included), then the Company shall be deemed to have had a Material Adverse Effect. Notwithstanding the foregoing, the Parties acknowledge and agree that if the Closing occurs before the comparison of the actual and projected revenue of the Company can be made pursuant to the last proviso of the foregoing sentence, no Material Adverse Effect shall be deemed to have occurred for the reason provided in such proviso, and, after the Closing, neither the Purchaser nor any of its Affiliates shall have any claim whatsoever against the Seller or any of its Affiliates that the Company failed to meet its projected revenue and/or a Material Adverse Effect had occurred or existed as of the Closing Date.

"Material Contract" has the meaning set forth in Section 4.13(a).

"Material Customer" has the meaning set forth in Section 4.21(a).

"Material Supplier" has the meaning set forth in Section 4.21(b).

"Measurement Time" means 11:59:59 p.m. in the applicable location on the day immediately preceding the Closing Date.

"Noncontrolling Party" has the meaning set forth in Section 10.4(b).

"Objection Notice" has the meaning set forth in Section 10.3(a).

"OFAC" has the meaning set forth in the definition of Sanctioned Parties.

"Open Source Software" means any Software that is licensed, distributed or conveyed as (a) "open source software," "free software," "copyleft" or under a similar licensing or distribution model, or (b) under a Contract that requires as a condition of its use, modification or distribution that such Software, or other Software that is derived from or linked to such Software or into which such Software is incorporated or integrated or with which such Software is combined or distributed, be (i) disclosed or distributed in source code form, (ii) delivered at no charge or (iii) be licensed, distributed or conveyed under the same terms as such Contract (including Software licensed under the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, Microsoft Shared Source License, Common Public License, Artistic License, Netscape Public License, Sun Community Source License (SCSL), Sun Industry Standards License (SISL), Apache License and any license listed at www.opensource.org).

"Open Trading Window" has the meaning set forth in Section 6.13(b).

"Organizational Documents" means (a) with respect to a corporation, the certificate or articles of incorporation and bylaws, (b) with respect to any other entity, any charter or similar document adopted or filed in connection with the creation, formation or organization of such entity, and the limited liability company agreement, agreement of limited partnership, trust agreement or similar agreement, and (c) any stockholders, shareholders, equityholders, registration rights, voting, proxy or other similar agreement.

"Owned Intellectual Property" means all Intellectual Property Rights that are owned or purported to be owned by the Company.

"Owned Real Property" means real property, including buildings, or an interest in real property, including improvements thereon and easements appurtenant thereto, owned in fee by the Company.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Permitted Encumbrances" means (a) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar Persons incurred in the ordinary course of business for sums not yet due and payable and that do not impair the conduct of the business of the Company or the present or proposed use of the affected property or asset, (b) statutory liens for current real or personal property Taxes not yet due and payable and for which adequate reserves have been recorded in line items on the Financial Statements, and (c) Encumbrances on the Consideration Shares arising under this Agreement.

"Permitted Leakage" means each and any of the following: (a) any payments by the Company to the Seller or its Affiliates, directly or indirectly, in the ordinary course, on arm's length terms and on a basis consistent with past practice, (b) any payments made by the Seller which have been specifically accrued or provided for in the Locked Box Accounts, (c) any payments, compensation or indemnity in respect of salaries, directors' fees, pension contributions, expenses or bonuses made to, or in respect of services provided by, employees, workers, directors, officers or consultants of the Company which are made in the ordinary course of business and in accordance with the terms of the related employment or service contract, (d) the fees of Hanwul Accounting Firm ("한울회계법인" in Korean) up to the aggregate amount of KRW [***] pursuant to the applicable advisory or consulting agreements therewith in connection with the IPO Preparation, and (e) any other payment, accrual, transfer of assets or assumption of liability by the Company which the Purchaser has expressly approved in writing (including repayment on [***] by the Company of a loan from [***], a director of the Company, in the original principal amount of KRW [***]).

"Permitted Suspension" has the meaning set forth in Section 6.13(e).

"Permitted Transfer" has the meaning set forth in Section 2.8(d).

"Permitted Transferee" has the meaning set forth in Section 2.8(d).

"Person" means an individual or an entity, including a corporation, limited liability company, partnership, trust, unincorporated organization, association or other business or investment entity, or any Governmental Authority.

"Personal Data" means any information relating to an identified or identifiable natural Person or device that can reasonably be used, whether alone or in combination with other information, to contact, locate or identify a natural Person or device.

"Post-Locked Box Tax Period" means (a) any taxable period ending after the Locked Box Date and (b) with respect to a Straddle Tax Period, the portion of such taxable period beginning after the Locked Box Date.

"Pre-Locked Box Tax Period" means (a) any taxable period ending on or before the Locked Box Date and (b) with respect to a Straddle Tax Period, the portion of such taxable period ending on the Locked Box Date.

"Pre-Locked Box Taxes" means (a) all Taxes (or the non-payment thereof) of the Company for all Tax Periods ending on or before the Locked Box Date, including any Taxes apportioned to such Tax Period in accordance with Section 9.2(a); and (b) any and all Taxes of any Person imposed on the Company as a transferee or successor, or otherwise in respect of an event or transaction occurring on or before the Locked Box Date, pursuant to applicable Law, a Tax Sharing Agreement or otherwise.

"Privacy Policies" means any externally-facing or internal policies relating to Personal Data or the operation or security of any IT System.

"Proceeding" means any action, prosecution, enforcement, arbitration, audit, examination, investigation, inquiry, hearing, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Procurement Laws" means all Laws that apply to a Government Contract or a Government Bid, or that apply to activities relating to the seeking, obtaining and performing of a Government Contract or a Government Bid, including activities such as proposal development and submission, negotiations, change orders, accounting, terminations, claims and audits.

"Proposed Transactions" means the transactions contemplated by this Agreement and the Ancillary Agreements.

"Public International Organization" means (a) any international organization formed by states, governments or other international organizations or (b) any organization that is designated by executive order pursuant to Section 1 of the United States International Organizations Immunities Act (22 U.S.C. 288).

"Purchase Price" has the meaning set forth in Section 2.2.

"Purchaser" has the meaning set forth the Preamble.

"Purchaser Common Shares" means shares of common stock of the Purchaser, par value USD 0.0001 per share.

"Purchaser Indemnified Parties" has the meaning set forth in Section 10.1.

"Purchaser Preferred Shares" has the meaning set forth in Section 5.5.

"Purchaser SEC Documents" has the meaning set forth in Section 5.6.

"Purchaser Share Price" means USD 15.12.

"R&W Insurance Policy" has the meaning set forth in Section 6.15.

"R&W Insurance Policy Costs" means the amount in USD equal to the aggregate amount of any and all premium(s), fees, underwriting and other costs, if any, necessary to obtain the R&W Insurance Policy.

"Registered IP" means any Intellectual Property Right that has been registered, issued, filed, applied for, certified or otherwise perfected or recorded with or by any Governmental Authority or quasi-public legal authority (including domain name registrars), and any applications for any of the foregoing.

"Registrable Shares" has the meaning set forth in Section 6.13(a).

"Registration Deadline" has the meaning set forth in Section 6.13(b).

"Registration Period" has the meaning set forth in Section 6.13(b).

"Regulation S" means Regulation S under the Securities Act.

"Related Parties" has the meaning set forth in Section 6.12(a).

"Release" means any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, injecting, pumping, pouring, emptying, escaping, dumping, disposing or migration of Hazardous Materials in, on, at, or under any site or location or into the environment.

"Release Date" has the meaning set forth in Section 10.3(d).

"Released Parties" has the meaning set forth in Section 10.6(c).

"Released Persons" has the meaning set forth in Section 6.12(a).

"Representatives" means, with respect to any Person, such Person's directors, managers, officers, employees, agents, consultants and other advisors, agents and representatives.

"Resale Registration Statement" has the meaning set forth in Section 6.13(a).

"Restricted Period" has the meaning set forth in Section 6.11.

"Restricted Persons" has the meaning set forth in Section 6.6(b).

"Retention Amount" means the amount in USD equal to the retention amount under the R&W Insurance Policy.

"Sale Ratio" means (i) the number of the Sale Shares calculated immediately prior to the Closing *divided by* (ii) the number of the Shares, expressed as a percentage.

"Sale Shares" means all Shares owned by the Seller as of immediately prior to the Closing.

"Sanctioned Countries" means countries subject to comprehensive sanctions by the U.S. Department of Treasury, Office of Foreign Assets Control (including, as of the date of this Agreement, Cuba, the Crimea region of Ukraine, Iran, North Korea, Russia, Syria, Sudan, Myanmar (Burma), after March 2015, Venezuela, or after February 2022, the Donetsk People's Republic and Luhansk People's Republic).

"Sanctioned Parties" means any Person targeted by the United States, the European Union, the United Nations or any other relevant jurisdiction's trade or economic sanctions or export controls, including but not limited to (a) any Person listed in any sanctions or export controls-- related lists of designated persons maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, the U.S. Department of Commerce, the United Nations Security Council, or the European Union, (b) any Person located, organized or resident in a Sanctioned Country, (c) any government of a Sanctioned Country, or (d) any person fifty percent (50%) or more owned or otherwise controlled by any such person or persons described in (a), (b) or (c).

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" has the meaning set forth in Section 3.3.

"Seller" has the meaning set forth in the Preamble.

"Seller Disclosure Schedule" has the meaning set forth in Article 3.

"Seller Indemnified Parties" has the meaning set forth in Section 10.2.

"Seller Prepared Return" has the meaning set forth in Section 9.1(a).

"Selling Stockholder" has the meaning set forth in Section 6.13(a).

"Selling Stockholder Questionnaires" has the meaning set forth in Section 6.13(a).

"Service Provider" means any natural person or sole member independent contractor currently engaged by the Company (or who otherwise becomes such a natural person or sole member independent contractor between the date of this Agreement and Closing in the ordinary course of business and consistent with the terms of this Agreement).

"Share Restrictions" has the meaning set forth in Section 6.14(a).

"Shares" means the issued and outstanding capital stock of the Company, consisting of [***] shares of common stock, par value KRW 500 per share.

"Software" means software, firmware and computer programs and applications (including source code, executable or object code, architecture, algorithms, data files, computerized databases, plugins, libraries, subroutines, tools and APIs) and all related specifications and documentation.

"[***]".

"Source Material" means, individually and collectively, with regard to Software, the human readable source code of such Software, and all associated materials and documentation enabling a reasonably skilled programmer to understand such Software's design, structure and implementation and to enable a professional software programmer skilled in the applicable software language to write documentation and help files, including without limitation any schematics or flow charts, system documentation, program procedures (including build procedures), descriptions and statements of operation and principle, programmer notes, testing data, custom or special compilers, and all other materials related to such Software's design, structure and implementation.

"Special Claims" has the meaning set forth in Section 10.4(b).

"Sponsor" means Ace Equity Partners LLC, a company duly organized and existing under the Laws of Korea.

"Sponsor Guaranty" means the letter of undertaking granted by the Sponsor in favor of the Purchaser to be delivered to the Purchaser at the Closing in the form attached hereto as Exhibit E.

"Standards Body" has the meaning set forth in Section 4.12(i).

"Statement of Company Transaction Expenses" has the meaning set forth in Section 2.3(a)(i).

"Straddle Tax Period" means any taxable period that begins on or before the Locked Box Date and ends after the Locked Box Date.

"Subsidiary" means, with respect to a specified Person, any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred) are held by the specified Person or one or more of its Subsidiaries.

"Tax" (and with correlative meaning, "Taxes" and "Taxable") means (a) any national, federal, state, provincial, local, municipal, foreign or other tax, charge, fee, duty (including customs duty), levy or assessment, including any income, gross receipts, net proceeds, alternative or add-on minimum, corporation, ad valorem, turnover, real property, personal property (tangible or intangible), sales, use, franchise, excise, value added, goods and services, harmonized, stamp, leasing, lease, user, transfer, fuel, excess profits, profits, occupational, premium, interest equalization, windfall profits, severance, license, registration, payroll, environmental, carbon, escheat, unclaimed property, capital stock, capital duty, disability, estimated, gains, wealth, welfare, employee's income withholding, other withholding, unemployment, employment or social security or any other tax of whatever kind and any successor type Taxes (or liabilities with respect to Taxes) to the foregoing (including repayments of any grants, subsidies, state aid or similar amounts received or deemed received from any Governmental Authority and any duty fee, assessment, impost or other charges in the nature of or in lieu of any tax) that is imposed by any Governmental Authority, including any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any such items, (b) any Liability for payment of amounts described in clause (a) whether as a result of transferee liability, joint and several liability, or by reason of being a member of an affiliated, consolidated, combined, unitary or other group for any period, or payable by reason of contract assumption, operation of law, or otherwise, and (c) any Liability for the payment of amounts described in clause (a) or (b) as a result of any Tax Sharing Agreement, Tax indemnity agreement or any other express or implied agreement to pay or indemnify any other Person whether by contract or otherwise.

"Tax Proceeding" has the meaning set forth in Section 9.3(b).

"Tax Return" means any report, return, form, document, declaration, designation, election or other information or filing that is supplied or required to be supplied to any Taxing Authority with respect to Taxes, including information returns and any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, form, document, declaration, designation, election or other information.

"Tax Sharing Agreements" means any Tax sharing, allocation or indemnification or similar agreement, provision or arrangement, other than pursuant to any ordinary-course commercial contract the primary purpose of which does not relate to Taxes and that is germane to the subject matter of such contract.

"Taxing Authority" means with respect to any Tax, the Governmental Authority having jurisdiction over the assessment, determination, reporting, collection, or administration of any Taxes.

"Technology" means (a) Software, (b) databases, data compilations and collections, and customer and technical data, (c) data centers, (d) methods and processes, (e) devices, prototypes, designs and schematics and (f) tangible items related to, constituting, disclosing or embodying any or all of the foregoing, including all versions thereof.

"Third Party Claim" has the meaning set forth in Section 10.4(a).

"Trade Compliance Laws" means all applicable export control (including those related to encryption and technology transfers), trade and economic sanctions, customs, import control, and anti-boycott Laws of the United States and any other relevant jurisdictions, including but not limited to (a) the United States Export Administration Act, the Export Control Reform Act, the International Emergency Economic Powers Act, the Trading with the Enemy Act, and related regulations, including but not limited to the Export Administration Regulations, International Traffic in Arms Regulations and Foreign Trade Regulations to the extent applicable, (b) trade and economic sanctions regulations and related Executive Orders administered by OFAC, and (c) the EU Dual Use Regulation No. 428/2009, as amended, and applicable EU and EU Member States' trade and economic sanctions laws and regulations.

"Trade Secrets" has the meaning set forth in the definition of Intellectual Property Rights.

"Transfer" has the meaning set forth in Section 6.14(a).

"Transfer Taxes" means sales, use, value added, goods and services, documentary, transfer, stamp, stock transfer, real property transfer, state controlling-interest transfer or similar Taxes, fees or charges (together with any interest, penalties or additions in respect thereof) imposed by any Taxing Authority as a result of, or payable or collectible or incurred in connection with, this Agreement, including the sale of the Sale Shares. For the avoidance of doubt, Transfer Taxes shall not include (a) any income, gains, franchise, or similar Taxes or (b) any withholding Taxes that apply to amounts payable in connection with this Agreement.

"Treasury Regulations" means the United States Treasury Regulations.

"Uncashed-Out Leave Amount" has the meaning set forth in Section 4.16(o).

"Unregistered Shares" has the meaning set forth in Section 6.16(b).

"VAT Law" means the Value-Added Tax Act of Korea (or any corresponding or similar provision of applicable Tax Law).

"Virtual Data Room" has the meaning set forth in Section 1.2(a).

"Warranty Insurer" has the meaning set forth in Section 10.6(b).

"Willful Misconduct" means, with respect to any Person, intentional or reckless wrongdoing, not mere negligence or gross negligence, with respect to the making of the representations and warranties in Article 3 or Article 4 of the SPA, the Seller Disclosure Schedule or any certificate delivered by the Seller in connection with the Proposed Transactions, and "wrongdoing" of the foregoing means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

Section 1.2 Construction.

(a) Any reference in this Agreement to an "Article," "Section," "Exhibit" or "Schedule" refers to the corresponding Article, Section, Exhibit or Schedule of or to this Agreement, unless the context indicates otherwise. The table of contents and the headings of Articles and Sections are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. All words used in this Agreement are to be construed to be of such gender or number as the circumstances require. The words "including," "includes" or "include" are to be read as listing non-exclusive examples of the matters referred to, whether or not words such as "without limitation" or "but not limited to" are used in each instance. The word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase will not mean simply "if." The term "or" will not be deemed to be exclusive. The words "made available to the Purchaser" and words of similar import refer to documents (i) posted to the electronic datasite hosted by Ernst & Young Korea (the "Virtual Data Room") at least 48 hours prior to the date hereof (the "Cut-Off Time") or (ii) delivered in person or electronically to the Purchaser or its Representatives at least 24 hours prior to the date hereof. The Seller shall on or around the date hereof deliver (or shall cause to be delivered) to the Purchaser and Warranty Insurer (electronically or on one or more DVDs, CD-ROMs or USB drives) a true, complete and accurate copy as of the Cut-Off Time of the Virtual Data Room containing each of the documents in the Virtual Data Room. Where this Agreement states that a Party "shall," "will" or "must" perform in some manner or otherwise act or omit to act, it means that the Party is legally obligated to do so in accordance with this Agreement. The words such as "herein," "hereinafter," "hereof," "hereunder" and "hereto" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. References to any statute shall be deemed to refer to such statute as amended through the date hereof and to any rules or regulations promulgated thereunder as amended through the date hereof. References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with its terms thereof and hereof. Any reference herein to "days" shall mean calendar days unless Business Days are expressly specified and, when evaluating a period of time before which, within which or following which any act is to be done or taken pursuant to this Agreement, the reference date in calculating such period shall be excluded and, if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day. Unless otherwise provided in this Agreement, (x) all monetary values stated herein are expressed in United States currency and all references to "dollars" "USD" or "$" will be deemed references to the United States dollar and (y) all monetary values stated herein are expressed in Korean currency and all references to "KRW" or "₩" will be deemed references to the Korean won. All references to shares in this Agreement shall be appropriately adjusted to reflect any stock split, stock dividend or other change in the shares which may be made after the date of this Agreement.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by any Party and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

Article 2
THE TRANSACTION

Section 2.1 Purchase and Sale of the Sale Shares. On the terms, and subject to the conditions set forth in this Agreement, at the Closing, the Seller will sell and transfer to the Purchaser, and the Purchaser will purchase and acquire from the Seller, all rights, title and interest in and to the Sale Shares, free and clear of any and all Encumbrances and together with all accrued rights and benefits attached thereto.

Section 2.2 Purchase Price. The aggregate consideration to be paid by the Purchaser for the sale and transfer of the Sale Shares shall be the amount equal to the sum of the following (the "Purchase Price"): USD 110,000,000 multiplied by (i) the Sale Ratio, minus (ii) the Company Transaction Expenses, minus (iii) an amount equal to any Leakage (other than Permitted Leakage) as set forth in the Leakage Statement. The Purchase Price shall be paid in the following manner: (x) fifteen percent (15%) of the Purchase Price (the "Cash Consideration") shall be paid in cash pursuant to the terms of this Agreement and (y) the Purchase Price minus the Cash Consideration (the "Consideration Share Amount") shall be paid by the issuance of the Consideration Shares, rounded off downwards to the nearest whole share, at the Purchaser Share Price pursuant to the terms of this Agreement. For the purpose of clarity and illustration only, Schedule I presents certain potential cases describing division of the Purchase Price between the Cash Consideration and the Consideration Share Amount.

Section 2.3 Pre-Closing Deliveries.

(a) The Seller shall deliver, or shall cause the Company to deliver to the Purchaser, not less than two (2) Business Days prior to the Closing:

(i) a statement listing all Company Transaction Expenses which remain outstanding as of the Closing Date, if any, the identity of each Person that is to be paid any Company Transaction Expenses, the total amount payable to each such payee and the wire transfer instructions for each such payee ("Statement of Company Transaction Expenses"). On the Closing Date, if and to the extent applicable, simultaneously with the Closing, the Purchaser shall pay, or cause to be paid, for the account of the Company, by wire transfer of immediately available funds, all of such Company Transaction Expenses set forth in the Statement of Company Transaction Expenses which remain outstanding as of the Closing Date;

(ii) an accounting of any Leakage that occurred or will occur through and including the Closing Date (such statement, the " Leakage Statement");

(iii) the full legal name of the Seller, the Seller's street and email addresses, telephone number, taxpayer identification number, bank name and number, bank branch name and address, the account information of the Seller to which the Cash Consideration shall be paid (including SWIFT number, account number and other wire transfer information), and United States brokerage account details; and

(iv) (A) the aggregate amount of the Cash Consideration, calculated in accordance with Section 2.2; and (B) the aggregate amount of the Consideration Shares issuable to the Seller, calculated in accordance with Section 2.2.

Section 2.4 Leakage.

(a) The Seller (i) represents and warrants to the Purchaser that, during the period commencing on (and including) the Locked Box Date up to (and including) the date of this Agreement, there has been no Leakage from the Company other than Permitted Leakage, and (ii) undertakes to the Purchaser that there shall be no Leakage from the Company from the date of this Agreement up to the Closing Date other than Permitted Leakage.

(b) Subject to the Closing occurring, in the event of any breach of Section 2.4(a) (to the extent not already accounted for in the calculation of the Purchase Price under Section 2.2), the Seller undertakes to pay and shall pay to the Purchaser on demand a sum equal to the aggregate amount necessary to put the Company into the position it would have been in if such Leakage had not occurred; *provided* that, any Leakage claim to be made by the Purchaser pursuant to this Section 2.4(b) must be made in writing within six (6) months following the Closing Date (the "Leakage Claim Period") to the Seller setting out in reasonable detail the Purchaser's calculation of the amount of Leakage other than Permitted Leakage (such notice, the "Leakage Claim Notice"), and:

(i) if the Purchaser timely delivers the Leakage Claim Notice to the Seller, the Purchaser and the Seller shall attempt in good faith, for a period of ten (10) Business Days, to agree on the amount of the Leakage. If the Parties do not resolve all disputes with respect to the Leakage Claim Notice by the end of such ten (10) Business Day period after the date of delivery of the Leakage Claim Notice, then the Parties shall submit any remaining items in dispute to PricewaterhouseCoopers Korea ("삼일회계법인" in Korean) or, if PricewaterhouseCoopers Korea is not available, another accounting firm of international repute that the Parties mutually agree (such accounting firm, the "Accounting Firm") for resolution. The Purchaser and the Seller will instruct the Accounting Firm to render its determination with respect to the remaining items in dispute based solely on the information and materials provided by each Party and on the definitions and other terms included herein, by no later than ten (10) Business Days after the engagement of the Accounting Firm by the Parties. The determination by the Accounting Firm shall be final and binding to the Parties, and the determination of the Accounting Firm shall constitute an arbitral award that is final, binding and non-appealable and upon which a judgment may be entered by a court having jurisdiction over the Party against which such determination is to be enforced. The fees and expenses of the Accounting Firm will be shared by the Purchaser and the Seller in inverse proportion to the relative amounts of the disputed amount determined to be for the account of the Purchaser and the Seller, respectively, and

(ii) within ten (10) Business Days after the final determination of the amount of Leakage pursuant to this Section 2.4(b), the Seller shall pay to the Purchaser such amount by wire transfer of immediately available funds to an account designated in advance by the Purchaser.

(c) For the avoidance of doubt, the Seller shall have no liability for any Leakage unless it has received the Leakage Claim Notice on the date of or before the expiry of the Leakage Claim Period. The Purchaser acknowledges that, notwithstanding anything to the contrary in this Agreement, the Seller shall have no liability to the Purchaser in respect of any Leakage if the Closing does not occur. The Purchaser's sole remedy in respect of any claim based on Leakage is contained in Section 2.4(b). Any payment made by the Seller to the Purchaser under this Section 2.4 shall be treated as a reduction of the Purchase Price paid to the Seller. Except in the event of Fraud, Willful Misconduct or willful and material breach, the Seller shall have no liability for any Leakage pursuant to this Section 2.4 to the extent the aggregate liability of the Seller to the Purchaser for Leakage claims exceeds USD [***].

Section 2.5 Closing. Subject to the satisfaction or waiver of all of the conditions set forth in Article 7, the closing of the Proposed Transactions (the "Closing") will take place remotely via the electronic exchange of documents and signatures at 9:00 a.m., Seoul time, on the date which shall be (a) the later of (i) the date that is three (3) Business Days after satisfaction or waiver of the last of the conditions set forth in Article 7 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) or (ii) October 31, 2023, or (b) at such other time and place as the Purchaser and the Seller may agree in writing. The date on which the Closing actually occurs in Seoul is referred to in this Agreement as the "Closing Date." Unless the Seller and the Purchaser agree otherwise in writing, the Closing shall be deemed effective as of 12:01:01 a.m., local time, in each applicable jurisdiction on the Closing Date.

Section 2.6 Closing Deliveries.

(a) At the Closing, the Seller will deliver or cause to be delivered to the Purchaser:

(i) the Escrow Agreement duly executed by the Seller;

(ii) (1) a notice to the IRS, in accordance with the requirements of Treasury Regulations Section 1.897-2(h)(2), dated as of the Closing Date and executed by the Company, together with written authorization for the Purchaser to deliver such notice to the IRS on behalf of the Company after the Closing, and (2) a certification that the Sale Shares are not United States real property interests as defined in Section 897(c) of the Code prepared in accordance with the Treasury Regulations under Sections 897 and 1445 of the Code in a form reasonably acceptable to the Purchaser for purposes of satisfying the Purchaser's obligations under Treasury Regulation Section 1.1445-2(c)(3), in each case, validly executed by a duly authorized officer of the Company;

(iii) all documentation reasonably requested by the Purchaser in connection with its payment obligations pursuant to this Agreement, including all "know your customer" requirements and all other Tax forms from each recipient;

(iv) a certificate, substantially in the form of Exhibit A, dated as of the Closing Date, duly executed by the Seller confirming the satisfaction of the conditions specified in Section 7.1(a) through (g);

(v) resignations, in a form and substance reasonably satisfactory to the Purchaser (which shall include a statement that, as of the Closing date, the Company owes no remuneration, such as severance payments or compensation, to the directors and officers in relation to their roles as directors and officers, as applicable, other than the severance payment the Company has already contributed to the pension plan), which resignations shall be accompanied by those documents necessary for the court registration of such resignations, effective as of the Closing Date of each director and the statutory auditor of the Company, as the Purchaser may have requested in writing prior to the Closing Date;

(vi) a certified copy of (A) the Articles of Incorporation of the Seller and (B) all resolutions of the board of directors or equivalent managing body of the Seller relating to this Agreement and the Proposed Transactions;

(vii) certificates representing all of the Sale Shares, duly endorsed in the name of the Purchaser;

(viii) the shareholders' registry of the Company duly certified as true and correct by the representative director of the Company evidencing the Purchaser as the registered owner of the Sale Shares; and

(ix) the Sponsor Guaranty, in the form attached hereto as Exhibit E, duly executed by the Sponsor.

(b) At the Closing, the Purchaser will deliver or cause to be delivered:

(i) to the Seller, the Escrow Agreement duly executed by the Purchaser and the Escrow Agent;

(ii) to the Seller, the Consideration Shares by way of book entry transfer in the system maintained by the Deposit Trust Company and in accordance with other applicable terms of this Agreement;

(iii) to the Seller, an amount equal to the Cash Consideration less the Escrow Amount and less the amount of the R&W Insurance Policy Costs by wire transfer of immediately available funds to the accounts as notified by the Seller no later than within three (3) Business Days prior to the Closing Date;

(iv) to the Escrow Agent, an amount equal to the Escrow Amount by wire transfer of immediately available funds to the accounts as notified by the Escrow Agent no later than within three (3) Business Days prior to the Closing Date;

(v) to the Seller, a certificate, substantially in the form of Exhibit B, dated as of the Closing Date, duly executed by the Purchaser confirming the satisfaction of the conditions specified in Section 7.2(a) and (e); and

(vi) if applicable, to the relevant parties the Company Transaction Expenses for which invoices have been submitted to the Purchaser at least two (2) Business Days prior to the Closing Date as set forth on the Statement of Company Transaction Expenses.

Section 2.7 Withholding Rights. The Purchaser shall be entitled to deduct and withhold from amounts otherwise payable in connection with this Agreement or with the Proposed Transactions, such amounts as the Purchaser reasonably determines it may be required to deduct and withhold under any provision of applicable Tax Law, and the recipient of any such payment shall use commercially reasonable efforts to provide the applicable withholding agent with all necessary Tax forms. To the extent amounts are so deducted or withheld, such withheld amounts will be treated for all purposes as having been paid to the Person to whom such amounts would otherwise have been paid.

Section 2.8 Consideration Shares.

(a) The Consideration Shares constitute "restricted securities" under the Securities Act and may not be transferred absent registration under the Securities Act or an exemption therefrom. Any such transfer shall be subject to compliance with applicable state securities Laws.

(b) The Seller undertakes not to conduct any short selling, enter into any equity swaps or any similar arrangements having an effect on the price of the Purchaser's securities on Nasdaq Global Select Market or any other market place from the date of this Agreement until and including the Closing Date. To ensure compliance with the restrictions imposed by this Agreement, the Purchaser may issue appropriate "stop-transfer" instructions to its transfer agent. The Purchaser shall not be required (i) to transfer on its books any Consideration Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as

owner of such Consideration Shares, or to accord the right to vote or pay dividends, to any purchaser or other transferee to whom such Consideration Shares has been purportedly so transferred.

(c) Each book-entry security entitlement representing any Consideration Shares (or any other securities issued in respect of such shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event) issued to or held by the Seller in accordance with the terms hereof shall bear the following legends (or substantially similar legends, in addition to any other legends required by law, the Purchaser's Organizational Documents or any other agreement to which the Seller is a party):

> "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***ACT***"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS."

> "THE SECURITIES MAY NOT BE USED IN HEDGING TRANSACTIONS UNLESS IN COMPLIANCE WITH THE ACT AND ALL SUCH APPLICABLE LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE OR IN ACCORDANCE WITH REGULATION S OF THE ACT."

(d) Notwithstanding the foregoing, and subject to Section 6.13, the Seller may transfer Consideration Shares in a transaction that does not constitute a sale under Rule 144 of the Securities Act (i) to an Affiliate of the Seller, (ii) pursuant to the laws of testamentary or intestate succession or otherwise involuntarily transferred by operation of law, or (iii) if the Seller is a partnership, corporation, or limited liability company, to any one or more partners, stockholders or members thereof; *provided*, *however*, that (A) the Seller shall give the Purchaser written notice prior to the time of such transfer stating the name and address of the transferee and identifying the shares being transferred to the transferee, and (B) if reasonably requested by the Purchaser, such transferee shall agree in writing, in form and substance reasonably satisfactory to the Purchaser, to be bound by the provisions of this Section 2.8. Any such transfer of such shares pursuant to this Section 2.8(d) is referred to as a "Permitted Transfer," and any such transferee of shares pursuant to this Section 2.8(d) is referred to herein as a "Permitted Transferee."

Article 3
REPRESENTATIONS AND WARRANTIES CONCERNING THE SELLER

The Seller represents and warrants to the Purchaser that, as of the date of this Agreement and as of the Closing Date, the statements set forth in this Article 3 are true and correct, except as set forth on the disclosure schedule delivered by the Seller to the Purchaser concurrently with the execution and delivery of this Agreement and dated as of the date of this Agreement (the "Seller Disclosure Schedule").

Section 3.1 Authority and Enforceability.

(a) The Seller has all requisite power, authority and capacity to execute and deliver this Agreement and to perform its respective obligations under this Agreement. The execution, delivery and performance of this Agreement and the consummation of the Proposed Transactions have been duly authorized by all necessary action on the part of the Seller. The Seller has duly and validly executed and delivered this Agreement. This Agreement constitutes the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization,

moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (the " Insolvency and Equity Exceptions").

(b) The execution, delivery and performance of each Ancillary Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Seller. Upon execution and delivery each Ancillary Agreement to which the Seller is a party will constitute, the valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforcement may be limited by the Insolvency and Equity Exceptions.

Section 3.2 No Conflict. Neither the execution, delivery and performance of this Agreement or any Ancillary Agreement by the Seller nor the consummation of the Proposed Transactions, will (a) (with or without notice, lapse of time or both) conflict with, result in a breach or violation of, constitute a default under, give rise to any right of revocation, withdrawal, suspension, acceleration, cancellation, termination, modification, imposition of additional obligations or loss of rights under, result in any payment becoming due under, result in the imposition of any Encumbrances on any of the Shares or any of the properties, rights or assets of the Seller under, or otherwise give rise to any right on the part of any Person to exercise any remedy or obtain any relief under (i) any Contract to which the Seller is a party, by which the Seller or any of its properties, rights or assets is bound or affected or pursuant to which the Seller is an obligor or a beneficiary or (ii) any Law, Judgment or Governmental Authorization applicable to the Seller, or any of its respective businesses, properties, rights or assets, or (b) require the Seller to obtain any Consent or Governmental Authorization of, give any notice to, or make any filing or registration with, any Governmental Authority or other Person, except, in the case of clauses (a)(i) and (a)(ii), for such breaches or defaults which are not, and would not reasonably be expected to be, material to the Seller.

Section 3.3 Title to Shares. The Seller (a) on the Closing Date will be the sole record holder and beneficial owner of all of the Sale Shares and (b) on the Closing Date will have, good and valid title to all of the Sale Shares free and clear of all Encumbrances. The Seller acquired, or will have acquired, all of such Shares from third parties in compliance with applicable Law. There are no Contracts to which the Seller or any Affiliate of the Seller is a party or by which the Seller or any Affiliate of the Seller is bound, or may become bound, with respect to voting (including voting trusts, agreements or proxies), registration under the Financial Investment Services And Capital Markets Act of Korea, the Securities Act of 1933 (the "Securities Act") or any foreign securities Law, or the sale or transfer (including Contracts imposing transfer restrictions) of any equity or voting interests or securities of the Company (other than any sale and purchase agreement(s) entered into in connection with Section 6.14).

Section 3.4 Restricted Securities. The Seller is acquiring the Consideration Shares solely for the Seller's own account, for investment purposes only, and not with a view to, or with any present intention of, reselling or otherwise distributing such capital stock or dividing its participation herein with others, except for resales through transactions registered under the Securities Act or exempt therefrom. The Seller understands and acknowledges that: (a) none of the Consideration Shares to be issued by the Purchaser to the Seller will have been registered or qualified under the Securities Act, or under any securities Laws of any state of the United States or other jurisdiction, in reliance upon specific exemptions thereunder for transactions not involving any public offering, (b) other than the obligations set forth in Section 6.13, the Purchaser has no obligation to register or qualify any of such Consideration Shares, and (c) all of such Consideration Shares constitute "restricted securities" as defined in Rule 144 under the Securities Act. The Seller is aware of the provisions of Rule 144

promulgated under the Securities Act, which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things: the availability of certain current public information about the Purchaser, the resale occurring following the required holding period under Rule 144 and the number of shares being sold during any three-month period not exceeding specified limitations. The Seller will not Transfer or otherwise dispose of any of the Consideration Shares or any interest therein in any manner that may cause any securityholder to be in violation of the Securities Act or any applicable state securities Laws.

Section 3.5 Seller Status. The Seller is an "accredited investor" within the meaning of SEC Rule 501 of Regulation D, as amended (an "Accredited Investor").

Section 3.6 Seller Qualifications. The Seller (a) is a sophisticated Person familiar with transactions similar to the Proposed Transactions, (b) has such knowledge and experience in financial and business matters, is capable of evaluating the merits and risks of the acquisition of the Consideration Shares, has the capacity to protect the Seller's own interests in connection with the Proposed Transactions, and is financially capable of bearing a total loss of the Consideration Shares, (c) has adequate information concerning the business and financial condition of the Purchaser to make an informed decision regarding the acquisition of the Consideration Shares, and (d) has independently and without reliance upon the Purchaser, and based on such information and the advice of such advisors as the Seller has deemed appropriate, conducted the Seller's own analysis and decision to enter into and be bound by this Agreement. The Seller acknowledges that neither the Purchaser nor any of its Affiliates, officers, directors, employees or agents (x) are acting as a fiduciary or financial or investment adviser to the Seller or (y) have given the Seller any investment advice, opinion or other information on whether acquisition of the Consideration Shares is prudent. The Seller understands that the Purchaser is relying on the accuracy and truth of the representations and warranties of the Seller set forth in this Agreement.

Section 3.7 No Bad Actors. The Seller is not subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) under the Securities Act. The Seller has exercised reasonable care to determine whether it is subject to a Disqualification Event. The issuance of the Consideration Shares to the Seller will not subject the Purchaser to any Disqualification Event due to the Seller's previous activities or status. There are no matters that would have triggered disqualification of the Seller under Rule 506(d)(1) under the Securities Act but that occurred before September 23, 2013.

Section 3.8 No General Solicitation. At no time was the Seller presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television, internet or other form of general advertising or solicitation in connection with the Consideration Shares.

Section 3.9 Legal Proceedings. There is no Proceeding pending or, to the Knowledge of the Seller, threatened, against the Seller that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Proposed Transactions.

Section 3.10 Brokers and Finders. No Liability has been incurred to the Company or the Purchaser from any fees or commissions to any broker, finder or agent or any other similar payment by the Seller nor any Person acting on its behalf, if any, in connection with the Proposed Transactions.

Section 3.11 Korean Resident. The Seller is Korean resident under the Tax Laws of Korea.

Section 3.12 The Locked Box Accounts. The Locked Box Accounts have been prepared in accordance with K-GAAP and fairly represent the assets and liabilities and profit and losses of the Company as of the date on which they have been prepared. The Locked Box Accounts do not (i) materially misstate, or omit any material item regarding, the assets or liabilities of the Company as at the Locked Box Date, or (ii) materially misstate, or omit any material item regarding, the profits or losses of the Company in respect of the period to which they relate.

Article 4
REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANY

The Seller represents and warrants to the Purchaser that as of the date of this Agreement and as of the Closing Date the statements set forth in this Article 4 are true and correct, except as set forth on the Seller Disclosure Schedule.

Section 4.1 Organization and Good Standing.

(a) The Company is an entity duly organized, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its formation and has all requisite corporate power and authority to own, lease and operate its properties, rights and assets and to conduct its business as presently conducted. The Company is duly qualified or licensed to do business and is in good standing in the jurisdiction in which the character of the properties, rights and assets it owns, operates or leases or the nature of its activities makes such qualification or licensure necessary, except where the failure to so qualify has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has neither initiated nor is subject to any bankruptcy, dissolution or liquidation proceedings and, to the Knowledge of the Seller, there are no grounds for such proceedings. There are no restrictions of any kind that prevent or restrict the payment of dividends or other distributions by the Company other than those imposed by the Laws of general applicability of their respective jurisdictions of organization or those set forth in the Organizational Documents of the Company. The Company has made available to the Purchaser accurate and complete copies of the Organizational Documents of the Company, as currently in effect, and the Company is not in default under or in violation of any provision thereof.

(b) Section 4.1 of the Seller Disclosure Schedule sets forth an accurate and complete list of the Company's jurisdiction of organization and the other jurisdictions in which it is authorized to do business, and an accurate and complete list of the current directors and officers of the Company.

Section 4.2 Authority and Enforceability. The Company has all requisite entity power and authority (i) to execute and deliver each Ancillary Agreement to which it is a party and (ii) to perform its obligations under each such Ancillary Agreement. The execution, delivery and performance of each Ancillary Agreement by the Company to which it is a party have been duly authorized by all necessary action on the part of the Company. Upon execution and delivery of each Ancillary Agreement to which the Company is a party, such Ancillary

Agreement will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforcement may be limited by Insolvency and Equity Exceptions.

Section 4.3 No Conflict. The execution, delivery and performance by the Company of any Ancillary Agreement to which the Company is a party, will (a) (with or without notice, lapse of time or both) conflict with, result in a breach or violation of, constitute a default under, give rise to any right of revocation, withdrawal, suspension, acceleration, cancellation, termination, modification, imposition of additional obligations or loss of rights under, result in any payment becoming due under, result in the imposition of any Encumbrances on any of the Interests or any of the properties, rights or assets of the Company under, or otherwise give rise to any right on the part of any Person to exercise any remedy or obtain any relief under (i) the Organizational Documents of the Company, or any resolution adopted by the board of directors, board of managers, or members of the Company, (ii) any Contract to which the Company is a party, by which the Company or any of its properties, rights or assets is bound or affected or pursuant to which the Company is an obligor or a beneficiary or (iii) any Law, Judgment or Governmental Authorization applicable to the Company or any of its businesses, properties, rights or assets; or (b) except as disclosed in Section 4.3(b) of the Seller Disclosure Schedule, require the Company to obtain any Consent or Governmental Authorization of, give any notice to, or make any filing or registration with, any Governmental Authority or other Person, except, in the case of clauses (a)(ii) and (a)(iii), for such breaches or defaults which are not, and would not reasonably be expected to be, material to the Company, taken as a whole.

Section 4.4 Capitalization and Ownership.

(a) Section 4.4(a) of the Seller Disclosure Schedule sets forth (i) the number of authorized shares of the Company and the par value per share thereof and (ii) the number of issued and outstanding shares of the Company and the record and beneficial ownership thereof and the number of shares held in treasury or local equivalent as of the date hereof. The Shares represent all of the issued and outstanding Equity Interests of the Company.

(b) The Company has no Subsidiaries.

(c) Except as set forth in Section 4.4(c) of the Seller Disclosure Schedule, (i) there are no equity or voting interests or securities of any class of the Company, or any interest or security exchangeable into or exercisable for such equity or voting interests or securities, authorized, issued, reserved or committed for issuance, or outstanding and (ii) there are no options, warrants, equity securities, equity interests, voting interests, calls, subscriptions, claims of any character, rights, obligations, agreements, commitments or other Contracts to which the Company is a party or by which the Company is bound obligating the Company to issue, exchange, transfer, deliver or sell, or cause to be issued, exchanged, transferred, delivered or sold, additional shares of capital stock or other equity or voting interests or securities of the Company or any security or rights convertible into or exchangeable or exercisable for any such shares or other equity interests, or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise modify or amend or enter into any such option, warrant, equity security, call, right, or Contract. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to the Company. Except for the Organizational Documents of the Company, there are no Contracts to which the Company or its Affiliate is a party or by which the Company or its Affiliate is bound with respect to the voting (including voting trusts, agreements or proxies), registration under the Securities Act or any foreign securities Law, or the sale or transfer (including Contracts imposing transfer restrictions) of any shares of capital stock or other equity or voting interests or securities of the

Company. Except as set forth in Section 4.4(c) of the Seller Disclosure Schedule, no holder of Indebtedness of the Company has any right to (i) convert or exchange such Indebtedness for any equity or voting interests or securities of the Company or (ii) solely in its capacity as a holder of such Indebtedness, vote on any matter with respect to the Company.

(d) There are no obligations, contingent or otherwise, of the Company to repurchase, redeem or otherwise acquire any equity interests of the Company. The Company is not subject to any obligation or requirement to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any other Person.

Section 4.5 Financial Statements.

(a) Attached as Section 4.5(a) of the Seller Disclosure Schedule are the following: (i) the audited balance sheet of the Company as of December 31, 2021 and 2022 (the most recent of which, the "Balance Sheet"), and the related audited consolidated statements of income, changes in equityholders' interests and cash flows for each of the fiscal years then ended, including in each case any notes thereto; and (ii) the unaudited balance sheet and profits and loss statements of the Company as of June 30, 2023 and for the six (6)-month period then ended (the "Interim Financial Statements", and (i) and (ii) collectively, the "Financial Statements").

(b) Except as set forth in Section 4.5(b) of the Seller Disclosure Schedule, the Financial Statements (including the notes thereto) are correct and complete in all material respects, are consistent with the books and records of the Company, have been prepared in accordance with K-GAAP, consistently applied throughout the periods involved, and fairly present the financial condition, results of operations, changes in equityholders' interests and cash flows of the Company as of the respective dates and for the periods indicated therein (except that the Interim Financial Statements have been prepared based on the management accounts of the Company and reflect the best estimates and projections of the management of the Company as of the date hereof, and, subject to notes, comments and other statements contained therein, would not differ materially from the actual financial status, condition or operating results of the Company as of and for the period indicated therein). No financial statements of any Person other than the Company are required by K-GAAP to be included in the financial statements of the Company.

(c) Except as set forth in Section 4.5(c) of the Seller Disclosure Schedule, the Company maintains and since January 1, 2021 has maintained a system of internal accounting controls, internal controls over financial reporting and disclosure controls and procedures adequate to ensure (i) that books, records and accounts accurately and fairly reflect, in reasonable detail, the transactions and dispositions of the assets of the Company, (ii) that the integrity of its financial statements is maintained, and (iii) that access to assets is permitted only in accordance with management's general or specific authorizations. No independent auditor of the Company has identified or been made aware of (A) any significant deficiency or material weakness in the internal accounting controls utilized by the Company, (B) any fraud, whether or not material, that involves the Company's management or any other current or former employee, consultant, contractor or director of the Company who has a role in the preparation of financial statements or the internal accounting controls utilized by the Company, or (C) any claim or allegation regarding any of the foregoing.

(d) Except as set forth in Section 4.5(d) of the Seller Disclosure Schedule, none of the Liabilities of the Company is guaranteed by or subject to a similar contingent obligation of any other Person. The Company has

not guaranteed or become subject to a similar contingent obligation in respect of the Liabilities of any other Person. There are no outstanding letters of credit, surety bonds or similar instruments of the Company or any of its Affiliates in connection with or relating to the business, properties or assets of the Company.

Section 4.6 Books and Records. The books of account, equity interest record books and other records of the Company, all of which have been made available to the Purchaser, are accurate and complete in all material respects and since January 1, 2021 have been maintained in accordance with sound business practices and an adequate system of internal controls. All corporate actions taken by the Company have been properly authorized by the Company's equityholders, managers, directors or directors' committees, as applicable. None of the Company's records, systems, controls, data or information has been recorded, stored, maintained, operated or otherwise wholly or partly dependent on or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of the Company. At the time of the Closing, all of such books and records will be in the possession of the Company.

Section 4.7 Accounts Receivable; Accounts Payable; Bank Accounts; Inventories.

(a) All accounts receivable of the Company are reflected properly on the Financial Statements or the accounting records of the Company as of the Closing Date in the context of the Accounting Rules. The accounts receivable set forth on the Financial Statements will, as of the Closing Date, represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business. There is no contest, claim, defense or right of setoff, other than returns, rebates and price protection programs in the ordinary course of business or permitted under applicable Law, relating to the amount or validity of such account receivable.

(b) All accounts payable and notes payable by the Company to third parties reflected on the Financial Statements and arising after the date of the Financial Statements have arisen in the ordinary course of business, have arisen from the purchase of goods or services in the ordinary course of the business, and accurately reflect, in all material respects, all amounts owed by the Company with respect to trade accounts due and other payables as of the date of the Financial Statements or the Closing, as the case may be, in the context of the Accounting Rules, and no such account payable or note payable is delinquent more than ninety (90) days in its payment. The charges, accruals and reserves on the books of the Company in respect of the accounts payable as of the date thereof were recorded in accordance with past practice consistently applied during the periods involved.

(c) Section 4.7(c) of the Seller Disclosure Schedule sets forth an accurate and complete list of the names and addresses of all banks and financial institutions in which the Company has an account, deposit, safe-deposit box, line of credit or other loan facility or relationship, or lock box or other arrangement for the collection of accounts receivable, with the names as of the date of this Agreement of all Persons authorized to draw or borrow thereon or to obtain access thereto (pursuant to a power of attorney or otherwise).

(d) The inventory of the Company is in the physical possession of the Company or in transit to or from a customer or supplier of the Company and no inventory has been pledged as collateral or otherwise is subject to any Encumbrances (other than a Permitted Encumbrance) or is held on consignment from others. The inventory reflected in the Interim Financial Statements, and the inventory reflected on the books and records of the Company has been, determined and valued on a weighted average price basis, in accordance with K-GAAP, and, in the case of the inventory reflected on the Company's books and records, on a basis consistent with the

Financial Statements; *provided* that, with respect to the inventory reflected in the Interim Financial Statements, it reflects the best estimates and projections of the management of the Company as of the date hereof, and is subject to any notes, comments and other statements contained therein with respect thereto. The inventory of the Company was acquired or produced in the ordinary course of business of the Company.

Section 4.8 No Undisclosed Liabilities; Indebtedness. The Company has no Liabilities, except for (a) Liabilities accrued or expressly reserved for in line items on the Financial Statements, (b) Liabilities incurred in the ordinary course of business after the Locked Box Date (none of which is a Liability for violations of Law or for tort, infringement or breach of Contract or warranty), (c) the Company Transaction Expenses as set forth on the Statement of Company Transaction Expenses, (d) the Liabilities disclosed in Section 4.8 of the Seller Disclosure Schedule and (e) executory obligations under any Contract of the Company set forth in the Seller Disclosure Schedule that have not arisen from a breach thereof or thereunder.

Section 4.9 Absence of Certain Changes and Events. Since the Locked Box Date until the date hereof, the Company has conducted its business only in the ordinary course of business consistent with past practice and no event, circumstance, development, state of facts, occurrence, change or effect has occurred that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth in Section 4.9 of the Seller Disclosure Schedule, since the Locked Box Date until the date hereof, there has not been any:

(a) amendment or restatement, or authorization of any amendment or restatement, of the Organizational Documents of the Company that could be expected to delay or otherwise interfere with the consummation of the Proposed Transactions;

(b) change in the Company's authorized or issued equity interests, or issuance, sale, grant, repurchase, redemption, pledge or other disposition of or Encumbrance on any of its equity or voting interests or securities convertible, exchangeable or redeemable for, or any options, warrants or other rights to acquire, any such securities or any phantom stock or similar equity-based payment option that are outstanding prior to the date of this Agreement and the repurchase of any equity interests of the Company from former employees or consultants in accordance with Contracts disclosed on the Seller Disclosure Schedule providing for such repurchase in connection with any termination of service;

(c) split, combination or reclassification of any equity interests, or any other change in the capital structure of the Company;

(d) declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property) in respect of any other equity or voting interests or security of the Company;

(e) (i) issuance, incurrence, assumption, guarantee or amendment of any Indebtedness of the Company, (ii) loans, advances (other than routine advances to its employees in the ordinary course of business) or capital contributions to, or investment in, any other Person, in connection with or relating to the Company, or (iii) entry by the Company into any hedging Contract or other financial agreement or arrangement designed to protect the Company against fluctuations in commodities prices or exchange rates;

(f) sale, transfer, lease, license or sublicense, pledge, assignment, or other disposition of, on or expiration or lapse of any of its properties, rights or assets of the Company (other than with respect to any

Intellectual Property Rights or sales for fair consideration in the ordinary course of the business consistent with past practices);

(g) acquisition (i) by the Company by merger or consolidation with, or by purchase of all or a substantial portion of the assets or any equity interests of, or by any other manner, any business, line of business, or Person, or (ii) of any inventory, properties, rights or assets that are material to the Company individually or in the aggregate, except purchases of inventory for fair consideration and in the ordinary course of business consistent with past practices;

(h) formation of any Subsidiary of the Company;

(i) damage to, or destruction or loss of, any of its properties or assets with an aggregate value to the Company in excess of USD [***], whether or not covered by insurance;

(j) entry into, modification, acceleration, cancellation or termination of, or receipt of notice of cancellation or termination of, any Material Contract or any Contract outside the ordinary course of business consistent with past practice;

(k) other than as required by Law or Contract, (i) adoption, entry into, termination or amendment of any Company Plan or collective bargaining agreement, employment agreement, severance agreement or similar Contract, or except as required by Law or by the terms of any Company Plan as in effect as of the date of this Agreement, (ii) material increase in the compensation or fringe benefits of, or payment of any bonus or benefit to, any director, officer, Service Provider and/or Employee being paid an annual base salary or compensation of USD [***] or more, (iii) grant of any awards under any bonus, incentive, performance or other compensation plan or arrangement or benefit plan, including the grant of stock options, stock appreciation rights, stock based or stock related awards, performance units or restricted stock, or the removal of existing restrictions in any Company Plans or Contracts or awards made thereunder, (iv) voluntary recognition or promise of neutrality to any labor organization, or (v) any action other than in the ordinary course of business to fund or in any other way secure the payment of compensation or benefits under any Company Plan;

(l) by the Company other than in the ordinary course of business and consistent with past practice (i) hiring of any employee above the level of director or with an annual base salary in excess of USD [***], (ii) engagement of any independent contractor for services expected to result in annual fees in excess of USD [***], or (iii) resignation or termination, or threatened resignation or termination, of the employment of any of its officers or its Key Employees;

(m) planning, announcing, implementing or effecting any reduction in force, lay-off, furlough, early retirement program, severance program or other program or effort concerning the termination of employment of employees;

(n) waiver of, release of, amendment of or failure to enforce the restrictive covenant obligations of any current or former employee, independent contractor, officer or director of the Company;

(o) cancellation, compromise, release or waiver of any claim or right (or series of related claims or rights) with a value to the Company exceeding USD [***] or otherwise outside the ordinary course of business;

(p) payment, settlement, discharge, satisfaction or compromise in connection with any Proceeding involving the Company;

(q) capital expenditure or other expenditure with respect to property, plant or equipment in excess of USD [***] in the aggregate for the Company, taken as a whole, except for the capital expenditures set forth in the Company's business plan or the capital expenditure schedule made available to the Purchaser, including equipment and facilities for secondary batteries for defense business;

(r) material change in payment or processing practices or policies regarding intercompany transactions;

(s) acceleration or delay in the payment of accounts payable or other Liabilities or in the collection of notes or accounts receivable outside the ordinary course of business;

(t) revaluation of any assets, including writing down the value of inventory or writing off notes or accounts receivable by the Company;

(u) making, changing or revocation of any Tax election, changing of any Tax annual accounting period, adoption or changing of any accounting method, filing of any amended Tax Return, entering into of any closing agreement, settlement, compromise, conceding or abandoning of any Tax claim or assessment, surrender of any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment or failure to pay any Tax as it becomes due; or

(v) agreement or commitment by the Company, whether in writing or otherwise, to do any of the foregoing.

Section 4.10 Title to Tangible Assets.

(a) Except as set forth in Section 4.10 of the Seller Disclosure Schedule, the Company has good and marketable title to, or in the case of leased properties and tangible assets, valid leasehold interests in, all of its properties, rights and tangible assets, free and clear of any Encumbrances other than Permitted Encumbrances. The Company has valid title to, or a valid leasehold interest in (or other right to use), all of the tangible personal property and assets (including all Intellectual Property Rights) which are used or held for use in connection with its business, in each case, free and clear of any Encumbrances other than Permitted Encumbrances. All items of tangible personal property or assets of the Company (including all Intellectual Property Rights) which, individually or in the aggregate, are material to the operation of the business of the Company, are (i) in good condition and in a state of good maintenance and repair (ordinary wear and tear excepted), (ii) adequate and suitable for the purposes for which they are presently being used or held for use, and (iii) to the Knowledge of the Seller, free from material defects, both patent and latent, other than such minor defects as do not interfere with the intended use thereof in the conduct of the normal operation of the business of the Company, and there is no need, or pending need, to replace any such items. There are no properties, tangible assets, rights or entitlements relating to the ownership or operation of the business of the Company, which are not owned, licensed or leased by the Company, free and clear of any Encumbrances. Any Permitted Encumbrances on such property, rights or tangible assets of the Company, individually or in the aggregate, do not materially interfere with the current use by the Company of any such property or asset or materially detract from the value of any such property, right or tangible asset or its suitability for use in the operation of the business of the Company.

(b) The Company owns or leases all tangible assets used in or necessary to conduct its business as currently conducted. Each such tangible asset is in all material respects in good operating condition and repair, ordinary wear and tear excepted, is free from latent and patent defects, is suitable for the purposes for which it is being used and currently planned to be used and has been maintained in accordance with normal industry practice.

(c) The tangible personal property used or held by the Company for use, together with all Leased Real Property, and all other tangible assets and rights (including rights under Contracts) of the Company are sufficient in all respects for the operation of the business of the Company as currently conducted by the Company.

Section 4.11 Real Property.

(a) Except the Owned Real Properties set forth in Section 4.11(a) of the Seller Disclosure Schedule, the Company does not own any real property. The Company has good and marketable title to all of the Owned Real Property, free and clear of any Encumbrances other than Permitted Encumbrances. There are no leases, licenses or occupancy agreements pursuant to which any third party is granted the right to use of the Owned Real Property; and there are no outstanding options or rights of first refusal to purchase the Owned Real Property. The Company has not received notice of any proposed condemnation proceeding, and to the Knowledge of the Seller, there is no condemnation proceeding threatened with respect to any Owned Real Property.

(b) Section 4.11(b) of the Seller Disclosure Schedule sets forth a list of all real property that is leased or otherwise occupied by the Company (the "Leased Real Property"). The Company holds valid leasehold interests in the Leased Real Property, free and clear of any Encumbrances other than Permitted Encumbrances. The Company has delivered to the Purchaser accurate and complete copies of all leases, subleases, licenses, sublicenses and any other agreements providing rights to use or occupy, in whole or in part, the Leased Real Property (collectively, the "Leases"). The Company has not received notice of any proposed condemnation proceeding, and to the Knowledge of the Seller, there is no condemnation proceeding threatened with respect to any Leased Real Property. With respect to each Lease, the Company has not exercised or given any notice of exercise by such party of, nor has any lessor or landlord exercised or given any notice of exercise by such party of, any option, right of first offer or right of first refusal contained in any such Lease. The Company is not in default in any material respect under any of the Leases. The rental set forth in each Lease is the actual rental being paid, and there are no separate agreements or understandings with respect to the same. Each Lease grants the tenant under the Lease the exclusive right to use and occupy the demised premises thereunder.

(c) In the ordinary course of business, the Company does not use or occupy any real property material to the business other than the Owned Real Property or the Leased Real Property.

(d) Except as set forth in Section 4.11(d) of the Seller Disclosure Schedule, the Company is in peaceful and undisturbed possession of the Leased Real Property, and there are no contractual or legal restrictions that preclude or restrict the ability of the Company to use such Leased Real Property for the purposes for which it is currently being used. The Company has not leased, subleased, licensed or otherwise granted to any Person the right to use or occupy any portion of the Leased Real Property, and the Company has not received notice, and, to the Knowledge of the Seller, of any claim of any Person to the contrary.

(e) All Leased Real Property is suitable for the purpose of conducting the Company's business as currently conducted. The Leased Real Property constitutes all such property used in or necessary to conduct the business as conducted and as currently planned to be conducted by the Company.

(f) To the Knowledge of the Seller, there are no facts or circumstances that would prevent the Leased Real Property from being occupied or otherwise used by the Company after the Closing in the same manner as prior to the Closing.

(g) All of the Owned Real Property and Leased Real Property and buildings, fixtures and improvements thereon (i) are in good operating condition in all material respects without material structural defects, and all mechanical and other systems located thereon are in good operating condition in all material respects, and no condition exists requiring material repairs, alterations or corrections and (ii) are suitable, sufficient and appropriate in all respects for their current and contemplated uses.

Section 4.12 Intellectual Property.

(a) Section 4.12(a) of the Seller Disclosure Schedule lists (i) all Company Registered IP (identifying the owner and registration/application details of each), (ii) all material unregistered trademarks, including social media account names, that are Owned Intellectual Property (identifying the owner of each and jurisdictions in which they are used), and (iii) all Intellectual Property Rights owned or purported to be owned by third parties, including all Software, that are exclusively licensed to the Company ("Exclusively Licensed Third Party Intellectual Property") (identifying the licensee of each). With respect to each item of Company Registered IP: (A) each such item is currently in compliance with all formal legal requirements to maintain and protect such Company Registered IP (including payment of filing, examination and maintenance fees, Taxes and proofs of use and the filing of all necessary documents with the United States Patent and Trademark Office or equivalent authority or registrar anywhere in the world, as the case may be, for the purposes of maintaining and protecting such Intellectual Property Rights); and (B) each such item is subsisting and unexpired, and to the Knowledge of the Seller, is valid and enforceable. Except as set forth in Section 4.12(a) of the Seller Disclosure Schedule, there are no actions that must be taken by the Company within ninety (90) days of the Closing Date, with respect to any item of Company Registered IP to maintain and protect the same. The Company has not misrepresented, or failed to disclose, any facts or circumstances in any application for any Company Registered IP or in the prosecution of such application that would constitute fraud or a misrepresentation with respect to such application or that would otherwise negatively affect the enforceability of any Company Registered IP.

(b) Except as set out in Section 4.12(b) of the Seller Disclosure Schedule, the Company is the sole and exclusive owner of the Owned Intellectual Property, free and clear of all Encumbrances, except for Permitted Encumbrances, and own or otherwise have valid and enforceable rights to use all other Intellectual Property Rights used or held for use in any of the Company's business as presently conducted. There is no Intellectual Property owned by the Company that is primarily related to the business of the Company that is not solely and exclusively owned by the Company, free and clear of all Encumbrances except Permitted Encumbrances.

(c) The conduct of the business of the Company, has not and does not Infringe, and, when conducted in substantially the same manner by the Purchaser or any of its Affiliates or the Company after the Closing, will not Infringe any Intellectual Property Rights of any Person. The Company is not subject or party to any past, pending or threatened Proceeding or judgement or stipulation related to Intellectual Property Rights and the Company has not received any written notice of the same (including offers to grant a license or cease and desist letters). To the Knowledge of the Seller, no Person has Infringed or is Infringing any Owned Intellectual Property or any Exclusively Licensed Third Party Intellectual Property. The Company has taken commercially reasonable steps to protect the Owned Intellectual Property, including by requiring each Person with access to Trade Secrets

of the Company to execute a binding confidentiality agreement to the extent such Persons are not otherwise bound by substantially similar confidentiality obligations by virtue of their role or status.

(d) Except as set out in Section 4.12(d) of the Seller Disclosure Schedule, each current or former employee of the Company and any other Person that has contributed to the creation, invention, development or modification of any Owned Intellectual Property has assigned in writing to the Company all of its rights in same. No trade secret material to the business of the Company as presently conducted and proposed to be conducted has been authorized to be disclosed or has been actually disclosed by the Company to any of its former employees, employees or any third Person other than pursuant to a non-disclosure agreement restricting the disclosure and use of such trade secret material. The Company has taken adequate security measures to protect the secrecy, confidentiality and value of all the trade secrets held by the Company and any other non-public proprietary information, which measures are reasonable in the industry in which the Company operates.

(e) Except as set out in Section 4.12(e) of the Seller Disclosure Schedule, no Governmental Authority, university, college, other educational institution, multi-national, bi-national or international organization or research center has a claim or right (including license rights) to, or has provided or is providing funding (including tax incentives or relief), facilities or resources used in the development of any Owned Intellectual Property or any Company Product. There is no Proceeding or claim pending, asserted or, to the Knowledge of the Seller, threatened, against the Company concerning the ownership, validity, registrability, enforceability, infringement or use of, or licensed right to use, any outcomes derived from the projects funded by Governmental Authorities except as disclosed in Section 4.12(e) of the Seller Disclosure Schedule.

(f) The Company has not used Open Source Software in any manner that would or could, with respect to any Company Product, Company Technology or other Owned Intellectual Property: (i) require its disclosure, licensing or distribution in source code form to any person, (ii) require the licensing thereof for the purpose of making derivative works, (iii) impose any restriction on the consideration to be charged for the distribution thereof, (iv) create, or purport to create, obligations for the Company, or any of its Affiliates (including, after the Closing Date, the Purchaser or any of its Affiliates) with respect to any Intellectual Property Rights owned by them or grant, or purport to grant, to any third party, any rights or immunities under any such Intellectual Property Rights, or (v) impose any other material limitation, restriction, or condition on the right or ability of the Company with respect to its use or distribution. With respect to any Open Source Software that is or has been used by the Company, the Company has at all times been in material compliance with all applicable licenses with respect thereto, including all notice and attribution requirements.

(g) Neither the Company, nor any other Person acting on its behalf, has disclosed, licensed, released, or delivered to any Person, or is subject to any current or contingent obligation to disclose, license, release, or deliver to any Person (including any escrow agent), any Source Materials of any Owned Intellectual Property, Company Product, or Company Technology except for disclosures to employees of the Company under binding written confidentiality agreements.

(h) All Company Products, Company Technology and Software owned or purported to be owned by the Company are free of any Harmful Code. The Company has taken commercially reasonable steps to protect the same from Harmful Code.

(i) The Company currently is not, and has not been, a member or promoter of, or a contributor to, any industry standards body or other organization that produces or maintains standards or specifications ("Standards Body"). The Company has not made any written promises, declarations or commitments, or is otherwise bound by any obligations, to any Standards Body, including such commitments and obligations arising from any membership agreements, by-laws or policies. None of the Owned Intellectual Property or the Exclusively Licensed Third Party Intellectual Property is subject to any written promise, declaration, commitment or obligations requiring its disclosure to any Standards Body or its licensing on fair, reasonable or non-discriminatory terms. The Company has not made or refused an offer to license in breach of any promise, declaration, commitment, or obligation to a Standards Body made by or otherwise binding on such member.

(j) All Company Products and Company Technology perform in all material respects in accordance with the design specifications to which such Company Products and Company Technology were developed. All installation services, programming services, integration services, repair services, maintenance services, support services, training services, upgrade services and other services that have been performed by the Company for any current or potential customer were performed properly and in conformity with all applicable Laws.

(k) The IT Systems used in the operation of the business of the Company are (i) adequate in all material respects for their intended use and for the operation of the business of the Company, (ii) in good material working condition (normal wear and tear excepted), and (iii) do not contain any bugs, errors or problems of a nature that would materially disrupt their operation or have a material adverse impact on the operation of the such IT Systems.

(l) None of the Company Technology constitutes "National Core Technology" as defined in the Act on Prevention of Leakage and Protection of Industrial Technology of Korea ("Korea Leakage and Protection Act"). Subject to filing of the foreign direct investment reports in connection with the Proposed Transactions, the execution and performance of this Agreement will not be prohibited or otherwise prevented under the Korea Leakage and Protection Act, the Korean Foreign Trade Law, the Korean Foreign Investment Promotion Act or the Defense Acquisition Program Act of Korea.

(m) None of the applications, registrations and filings for Intellectual Property that have been registered, filed or certified by any Governmental Authority is subject to any action and no such action is pending or, to the Knowledge of the Seller, threatened against the Company.

(n) Section 4.12(n) of the Seller Disclosure Schedule lists, in reasonable detail, any and all current-generation lithium ion-based pouch-type battery cells, battery packs and battery products that are currently under development as of the date hereof in research and development process. Each such battery cell, battery pack or battery product constitutes solely an improvement on current-generation lithium ion-based batteries.

Section 4.13 Material Contracts.

(a) Section 4.13(a) of the Seller Disclosure Schedule sets forth an accurate and complete list as of the date hereof of each Contract (or group of related Contracts) to which the Company is a party, by which the Company or any of the properties, rights or assets of the Company is bound or affected, or pursuant to which the Company is an obligor or beneficiary (*provided* that, for the avoidance of doubt, such list shall not group or differentiate such Contracts based on the categories below or any particular order, other than with respect to clauses (xiii) and (xxiii) below), which:

(i) contains restrictions with respect to payment of dividends or any other distribution in respect of the equity interests of the Company;

(ii) is for capital expenditures in excess of KRW [***];

(iii) is for the purchase, sale or delivery of materials, supplies, goods, services, equipment or other assets, the performance of which extends over a period of more than one year or that otherwise involves, in each case, an amount or value in excess of KRW [***];

(iv) is a mortgage, advance (other than advances for travel and other appropriate business expenses), indenture, guarantee, loan or credit agreement, security agreement or other Contract relating to Indebtedness, other than accounts receivables and payables in the ordinary course of business;

(v) is a Lease or any other lease or sublease of any real or personal property, or that otherwise affects the ownership of, leasing of, title to, or use of, any real or personal property (other than personal property leases and conditional sales agreements having a value per item or aggregate payments of less than KRW [***] and a term of less than one year);

(vi) is with any agent, distributor or other representative that is not terminable without penalty on thirty (30) days' or less notice involving an annual commitment or payment in excess of KRW [***];

(vii) is with a Material Supplier or a Material Customer;

(viii) is a Contract relating to Intellectual Property Rights or IT Systems, other than (A) any non-exclusive license to use any Intellectual Property Rights in a Company Product granted by the Company in the ordinary course of business or (B) any Software licensed to any of the Company under generally and commercially available non-negotiated standardized shrinkwrap or clickwrap licenses and that is not incorporated into any Company Product with annual fees of less than KRW [***];

(ix) is for the employment of, or receipt of any services from, any director or officer or any other Person on a full-time, part-time, consulting or other basis providing annual compensation in excess of KRW [***];

(x) is a works council or other agreement with any labor union or employee representative group;

(xi) provides for severance, change in control, termination, change in control or similar pay to any current or former directors, officers, employees or independent contractors;

(xii) provides for a loan or advance of any amount to any director or officer, other than advances for travel and other appropriate business expenses in the ordinary course of business;

(xiii) is with an Affiliate, director or officer of the Seller or the Company;

(xiv) contains any "non-competition," "non-solicitation," exclusive dealing arrangement or "no-hire" provision that restricts the Company;

(xv) licenses any Person to manufacture, reproduce or distribute any Company Product or Company Technology or any Contract to produce, sell or distribute any Company Product or Company Technology (including granting any exclusive rights to make, sell or distribute any Company Product);

(xvi) is a joint venture, partnership, strategic alliance, co-marketing, co-promotion, co-packaging, joint development or other similar Contract involving (A) any joint conduct or sharing of any business, venture or enterprise, (B) a sharing of profits or losses or (C) pursuant to which the Company has any ownership interest in any other Person or business enterprise;

(xvii) is a Contract for (A) the sale of any of the business, properties, rights or assets of the Company other than in the ordinary course of business, (B) the grant to any Person of any preferential rights to purchase any of the Company's properties, rights or assets, or (C) the acquisition by the Company of any operating business, properties, rights or assets, whether by merger, purchase or sale of equity interests or assets or otherwise (other than Contracts for the purchase of inventory or supplies entered into in the ordinary course of business);

(xviii) is a membership agreement, stockholder agreement, investors' rights agreement, voting agreement, voting trust, right of first refusal agreement, co-sale agreement or registration rights agreement;

(xix) (A) grants rights of first refusal, rights of first negotiation or similar rights, (B) grants any "most favored nations" or similar rights, or (C) otherwise prohibits or limits the right of the Company to make, sell or distribute any products or services, including the Persons to whom the Company may sell products or deliver services;

(xx) involves (A) payments based, in whole or in part, on profits, revenues, fee income or other financial performance measures of the Company, or (B) minimum or guaranteed payments by the Company to any Person (other than employment or services related Contracts covered by sub-clause (viii));

(xxi) requires the Company to purchase its total requirements of any product or service from any Person, contains "take or pay" provisions, or contains minimum purchase requirements;

(xxii) is a power of attorney granted by or on behalf of the Company;

(xxiii) is a Government Contract or involves a Government Bid;

(xxiv) is a written warranty, guaranty or other similar undertaking with respect to contractual performance extended by the Company other than in the ordinary course of business;

(xxv) provides for ongoing indemnification obligations, other than in respect of the performance of the Company's obligations under Contracts or other arrangements to which the Company is a party for goods or services furnished by or to it;

(xxvi) is a release, resolution or settlement agreement with respect to any pending or threatened Proceeding entered into within three (3) years prior to the date of this Agreement;

(xxvii) was entered into other than in the ordinary course of business and that involves an amount or value in excess of KRW [***] or contains or provides for an express undertaking by the Company to be responsible for consequential damages;

(xxviii) includes any Liability of the Company in connection with unsold inventories of the Company used in or held for use in connection with the business of the Company; or

(xxix) is otherwise material to the business, properties, rights, assets or Liabilities of the Company under which the consequences of a default or termination would or would reasonably be expected to have a Material Adverse Effect.

Each Contract required to be listed in Section 4.13(a) of the Seller Disclosure Schedule, a "Material Contract."

(b) The Seller has delivered or made available to the Purchaser correct and complete copies of the Material Contracts (except, for the avoidance of doubt, any documents related to the Material Contracts that are not material to the transactions to which the Material Contracts are subject and the absence of which would not render the information regarding such Material Contracts to be misleading in any material respect). With respect to each Material Contract:

(i) such Material Contract is legal, valid, binding, enforceable, and in full force and effect, except to the extent it has previously expired in accordance with its terms;

(ii) except as set forth in Section 4.13(b)(ii) of the Seller Disclosure Schedule, the Company and, to the Knowledge of the Seller, the other parties to such Material Contract have performed all of their respective obligations required to be performed under such Material Contract;

(iii) neither the Company nor, to the Knowledge of the Seller, any other party to such Material Contract has exercised any termination rights or, in the case of the other party, indicated to the Company in writing, or to the Knowledge of the Seller orally, such party's intent to terminate such Material Contract, in each case other than termination at the end of the such Material Contract's term in accordance with its terms;

(iv) neither the Company nor, to the Knowledge of the Seller, any other party to such Material Contract is or is alleged to be in breach or default under such Material Contract and no event has occurred or circumstance exists that (with or without notice, lapse of time or both) would constitute a breach or default by the Company or, to the Knowledge of the Seller, by any such other party, or give rise to any right of revocation, withdrawal, suspension, acceleration, cancellation, termination, repudiation, modification, imposition of additional obligations or loss of rights under, result in any payment becoming due under, result in the imposition of any Encumbrances on any of Shares or any of the properties, rights or assets of the Company under, or otherwise give rise to any right on the part of any Person to exercise any remedy or obtain any relief under, such Material Contract, nor has the Company given or received notice or other communication alleging the same; and

(v) (A) such Material Contract is not under negotiation, (B) no written demand for any renegotiation of such Material Contract has been made, (C) no party to such Material Contract has repudiated any portion of such Material Contract, (D) to the Knowledge of the Seller, no party to such Material Contract does not intend to renew it at the end of its current term, and (E) to the Knowledge of the Seller, no party to such Material Contract intends terminate such Material Contract or materially reduce the volume of products, goods or services sold to or acquire from the Company.

(c) To the Knowledge of the Seller, no director, agent, employee or consultant or other independent contractor of the Company is a party to, or is otherwise bound by, any Contract, including any confidentiality, noncompetition or proprietary rights agreement, with any other Person that in any way adversely affects or will affect (i) the performance of his or her duties for the Company, (ii) his or her ability to assign to the Company rights to any invention, improvement, discovery or information used or held for use in connection with, necessary for or relating to the business, or (iii) the ability of the Company to conduct its business, or any portion thereof, as currently conducted or as currently proposed to be conducted.

Section 4.14 Tax Matters.

(a) The Company has timely filed all Tax Returns that it was required to file in accordance with applicable Laws, and each such Tax Return is true, correct and complete in all respects. The Company has timely paid all Taxes due with respect to the taxable periods covered by such Tax Returns and all other Taxes (whether or not shown on any Tax Return). The Company has not requested an extension of time within which to file any Tax Return which has not since been filed. The Seller has made available to the Purchaser accurate and complete copies of all Tax Returns of the Company (and its predecessors) for the prior five (5) tax years.

(b) The Financial Statements fully accrue all actual and contingent liabilities for Taxes with respect to all periods through the dates thereof in accordance with the Accounting Rules. The Company will establish, in the ordinary course of business and consistent with its past practices, reserves adequate for the payment of all Taxes for the period from the Locked Box Date through the Closing Date, and the Company will disclose the dollar amount of such reserves to the Purchaser on or prior to the Closing Date. The Company has not incurred any liability for Taxes since the Locked Box Date outside of the ordinary course of business. All payments of estimated Taxes have been made in the ordinary course of business consistent with past practice.

(c) Except as set forth in Section 4.14(c) of the Seller Disclosure Schedule, no Governmental Authority has assessed or will assess any additional Taxes for any period for which Tax Returns have been filed. No federal, state, provincial, local or foreign audits or other Proceedings have been conducted within the last five (5) years, are pending or being conducted, nor has the Company received any (i) notice from any Governmental Authority that any such audit or other Proceeding is pending, threatened or contemplated, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any Governmental Authority against the Company with respect to any Taxes due from or with respect to the Company or any Tax Return filed by or with respect to the Company. The Company has not granted nor been requested to grant any waiver of any statutes of limitations applicable to any claim for Taxes or with respect to any Tax assessment or deficiency. The Seller has made available to the Purchaser accurate and complete copies of all notices of Tax audit results ("세무조사결과 통지서" in Korean) and statements of deficiencies assessed against or agreed to by the Company in respect of the three (3) preceding tax years of the Company.

(d) All Tax deficiencies that have been claimed, proposed or asserted in writing against the Company have been fully paid or finally settled, and no issue has been raised in any examination which, by application of similar principles, could be expected to result in the proposal or assertion of a Tax deficiency for any other year not so examined.

(e) No claim has been made by a Taxing Authority of a jurisdiction where the Company has not filed Tax Returns claiming that the Company may be subject to taxation by that jurisdiction. The Company has not, or has not had, any (i) place of management, (ii) branch, (iii) office, (iv) place of business, (v) operations or employees, (vi) agent with binding authority, or (vii) any other activities, in each case that gives rise to a permanent establishment or taxable presence in any country other than the jurisdiction in which the Company is incorporated, continued or organized.

(f) The Company (i) is not a party to or bound by any Tax Sharing Agreement, Tax indemnity obligation or similar contract with respect to Taxes (other than a Contract the primary purpose of which does not relate to Taxes), (ii) has not requested, received, or entered into any Tax ruling, loss determination, or advance pricing contract with any Taxing Authority, (iii) is not bound by, has agreed to or is not required to make any adjustments pursuant to Corporate Tax Act of Korea, Adjustment of International Taxes Act of Korea, VAT Law (or any corresponding or similar provision of applicable Tax Law), (iv) is not liable for the taxes of any other Person as a transferee or successor, by operation of Law or otherwise, or (v) has not ever been a member of a group of companies that file consolidated, combined, join, unitary, or similar Tax Returns.

(g) The Company is not required to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period (or portion thereof) ending after the Closing Date as a result of any (i) improper use of or change in a method of accounting during a Tax period ending on or prior to the Closing Date, (ii) closing agreement (or similar agreement under any corresponding or similar provision of applicable Tax Law) executed on or prior to the Closing Date, (iii) installment sale or open transaction disposition made on or prior to the Closing Date, (iv) prepaid amount received on or prior to the Closing Date, (v) intercompany transaction or excess loss account described in the Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of applicable Tax Law), or (vi) election under Section 108(i) of the Code (or any corresponding or similar provision of applicable Tax Law).

(h) Except as set forth in Section 4.14(h) of the Seller Disclosure Schedule, the Company (i) has complied with applicable Tax Law relating to the payment, reporting and withholding and collection of Taxes, including withholding taxes, (ii) has, within the time and in the manner prescribed by applicable Tax Law, withheld from payments to third parties (including employee wages or consulting compensation) and timely paid over to the proper Governmental Entities (or is properly holding for such timely payment) all amounts required to be so withheld and paid over under applicable Tax Laws, and (iii) has timely filed all withholding Tax Returns, for all periods.

(i) The Company has collected all sales, use value-added, goods and services, harmonized sales and other similar indirect Taxes required to be collected, and has remitted such amounts to the appropriate Governmental Entity in compliance with all applicable sales and use Tax Laws (or has been furnished properly completed exemption certificates and has maintained all such records and supporting documents, in each case, in compliance with all applicable Tax Law).

(j) All transactions or arrangements between the Company and/or any other companies or persons affiliated to the Company are and were effected at arm’s length terms and have been made in full compliance with applicable transfer pricing law and regulations. None of the transactions between the Company and any other companies or persons affiliated with the Company is subject to any material adjustment, apportionment, allocation or recharacterization under any Applicable Law.

(k) The value of the Company is not, and has not been at any time, at least fifty percent (50%) attributable to real property owned by the Company.

(l) The Company has not participated in a distribution of stock qualifying for Tax-free treatment under Tax Law.

(m) The Company has not be granted any Tax holidays or incentives in the last three (3) years prior to the date of this Agreement.

(n) No closing agreements, private letter rulings, Tax decisions, or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Entity with or in respect of the Company. The Company has not requested or received a ruling from any Taxing Authority. The Company is not party to an arrangement or agreement with any Taxing Authority that requires it to take any action or to refrain from taking any action relating to Taxes or that would be terminated as a result of the transaction contemplated by this Agreement.

(o) The Company does not have and has not had any nexus with the United States, a trade or business or permanent establishment within the United States or any other connection with the United States that has subjected or could reasonably be expected to have subjected it to U.S. federal, state or local Tax. To the knowledge of the Seller, the Company is not currently and has not ever been treated as or deemed to be a U.S. corporation or a corporation otherwise subject to U.S. taxation under any provision of U.S. tax law.

(p) The Company has not filed an entity classification election Form 8832 under Section 7701 of the Code and is a classified as a corporation for U.S. federal tax purposes.

(q) There are no material Encumbrances upon any properties or assets of the Company arising from any failure or alleged failure to pay any Tax.

(r) The Company (i) is in compliance with all applicable Tax Law relating to escheat and unclaimed property, (ii) has submitted to the appropriate Tax Authority all amounts required to be paid thereunder, and (iii) has filed all statements, returns, and reports required to be filed thereunder.

(s) The Company is duly registered for all Taxes in the nature of goods and services tax, harmonized sales tax, value added taxes, sales taxes and similar taxes for which it is required to be registered.

Section 4.15 Employee Benefit Matters.

(a) Section 4.15(a) of the Seller Disclosure Schedule sets forth an accurate and complete list of all Company Plans. No Company Plan has any participants who are not Employees or former employees of the Company or their eligible dependents or beneficiaries. No Company Plan is sponsored by an entity that is not the Company.

(b) The Company has made available to the Purchaser an accurate and complete copy of (i) each Company Plan, including plan documents, plan amendments and any related trusts, and (ii) in respect of any Company Plan, all notices that were given by any Governmental Authority, to the Company since January 1, 2021.

(c) No Company Plan is a defined benefit pension plan or other arrangement that provides benefits on a defined benefit basis in the event of retirement or redundancy, or has any material unfunded benefit obligation.

(d) Except as required by applicable Law, the Company does not provide health or welfare benefits for any retired or former employee, or their beneficiaries or dependents, nor is the Company obligated to provide health or welfare benefits to any Employee following such Employee's retirement or other termination of service.

(e) Each Company Plan is and at all times has been maintained, funded, operated and administered, and the Company has performed all of its obligations under each Company Plan, in each case in all material respects in accordance with the terms of such Company Plan and in material compliance with all applicable Laws. All contributions required to be made to any Company Plan by applicable Law and the terms of such Company Plan, and all premiums due or payable with respect to insurance policies funding any Company Plan, for any period through the Closing Date, have been timely made or paid in full or, to the extent not required to be made or paid on or before the Closing Date, have been fully reflected in line items on the Financial Statements to the extent required. All returns, reports, and filings required by any Governmental Authority or which must be furnished to any Person with respect to each Company Plan have been filed or furnished.

(f) To the Knowledge of the Seller, no event has occurred or circumstance exists that would reasonably be expected to result (i) in a material increase in premium costs of any Company Plan that is insured or (ii) a material increase in the cost of any Company Plan that is self-insured. Other than routine claims for benefits submitted by participants or beneficiaries, no claim against, or Proceeding involving, any Company Plan or any fiduciary thereof is pending or, to the Knowledge of the Seller, is threatened, which would reasonably be expected to result in any material Liability, direct or indirect (by indemnification or otherwise) of the Company to any Governmental Authority or any other Person, and, to the Knowledge of the Seller, no event has occurred or circumstance exists that would reasonably be expected to give rise to any such Liability.

(g) The Company has the right to modify and terminate benefits (other than pensions) with respect to both retired and active employees, subject to the statutory procedures for amendment of the rules of employment under Korean Laws, the applicable Laws on human rights, discrimination, termination of employment and constructive dismissal.

(h) The consummation of the Proposed Transactions (either alone or in conjunction with any other event) will not (i) result in any payment becoming due, or increase the amount of any compensation due; (ii) result in the acceleration of the payment or vesting of any compensation or benefits; (iii) cause accelerated vesting, payment or delivery of, or increase the amount or value of any payment or benefit under or in connection with any Company Plan; or (iv) constitute a "deemed severance" or "deemed termination" under any Company Plan otherwise with respect to, any director, officer, employee, or former director, former officer or former employee of the Company.

(i) The Company will not be required to "gross up" or otherwise compensate any individual because of the imposition of any Tax on any compensatory payment to such individual.

(j) Each Company Plan has been administered in compliance with its terms and the operational and documentary requirements under the Act on the Guarantee of Employees' Retirement Benefits of Korea and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder.

(k) The Company has timely paid any and all accrued severance payments in accordance with applicable Laws and Company Plans.

Section 4.16 Employment and Labor Matters.

(a) Section 4.16(a) of the Seller Disclosure Schedule sets forth an accurate and complete list of all Employees, stating such employee's (i) title or position, (ii) date of hire, (iii) work location (including city and state), (iv) secondment status and location of secondment (if applicable), (v) current annual base compensation rate (salary or hourly), (vi) full or part-time status, (vii) active or leave status (and, if on leave, the nature of the leave and the expected return date), and (viii) work authorization (including visa type and status, if applicable) (such list, the "Employee List"). To the Knowledge of the Seller, no officer or Key Employee of the Company intends to terminate his or her employment with the Company.

(b) The Company engages no Service Provider under any Contract for its business or operations.

(c) The Company has delivered to the Purchaser standard form or template employment agreements used by the Company. No Employee has entered into an employment agreement with the Company that materially deviates from the Company's standard forms or templates. All Employees are employed in and working from Korea.

(d) The Company is not, nor has been, a party to or bound by any collective bargaining agreement, labor agreement, agreement with any employee representative or other Contract (including, but not limited to, any recognition agreement or arrangement), whether oral or in writing, and whether official, unofficial or existing by reason of custom and practice, and whether or not legally binding, with any labor union or representative of any employee group, nor is any such Contract being negotiated by the Company. None of the Employees belongs to any union or other employee representative body or organization for the purpose of collective bargaining, negotiation, information or consultation, and the Company does not recognize any such labor union or other employee representatives or organization for the purpose of collective bargaining, negotiation, information or consultation, and no such labor union or other employee representative body or organization has, since January 1, 2021, made any demand (whether formal or informal) or applied for recognition or certification with respect to any current or former employees (or independent contractors). The Company has not done any act which might be construed as recognition of any labor union or for the establishment of any employee representative body or any similar organization. To the Knowledge of the Seller, there have not been any union organizing, election or other activities made or threatened at any time since January 1, 2021 by or on behalf of any union, employee representative body or other labor organization or group of employees with respect to any employees of the Company. There is no union, employee representative or other labor organization, which, pursuant to applicable Law, must be notified, consulted or with which negotiations need to be conducted in connection with the Proposed Transactions.

(e) Since January 1, 2021 (and prior to January 1, 2021, to the Knowledge of the Seller) the Company has not experienced any labor strike, picketing, slowdown, lockout, employee grievance process or other work stoppage, industrial action or labor dispute (including any action short of strike action), nor to the Knowledge of the Seller is any such action threatened or anticipated. To the Knowledge of the Seller, there is no unfair labor practice charge, common or related employer application, employee grievance charge, or other charge or complaint outstanding, or threatened against or affecting, the Company.

(f) The Company has complied in all material respects with all applicable Laws and its own policies, handbooks, work rules relating to labor and employment matters, including the classification and compensation of employees, contingent workers and independent contractors, fair employment practices, terms and conditions of employment, data privacy, contractual obligations, equal employment opportunity, nondiscrimination, workplace violence and harassment, disability and accommodation rights, pay equity, leaves of absence, immigration, wages, hours of work and overtime, benefits and pensions, workers' compensation or workplace safety and insurance (including any applicable Law concerning health and safety issues related to COVID-19, and any applicable COVID-19 Measures), employee termination, plant closings and changes in operations, unemployment insurance, the payment of social security and similar Taxes, occupational safety and sick leave (including under any applicable Laws concerning COVID-19-related paid sick leave or other benefits).

(g) To the Knowledge of the Seller, there is no Proceeding pending or, to the Knowledge of the Seller, threatened against or affecting the Company, relating to the alleged violation by the Company (or its directors or officers) of any Law pertaining to labor relations or employment matters.

(h) The Company is not, and since January 1, 2021 has not been, a party to a settlement agreement with a current or former employee, officer, director or independent contractor that relates primarily to allegations of discrimination, sexual harassment or sexual misconduct. To the Knowledge of the Seller, since January 1, 2021, no allegations of discrimination or sexual harassment, sexual misconduct have been made against: (i) any director or officer of the Company, in his, her or their capacity as a director or officer of the Company; or (ii) any current or former employee in connection with his or her employment.

(i) To the extent the Company is aware of any Employee who has tested positive for, or has had suspected cases of, COVID-19, the Company has taken reasonable precautions with respect to such individuals in line in all material respects with guidance issued by any applicable Governmental Authorities.

(j) Since January 1, 2021, the Company has not implemented any plant closing or layoff of employees that could give rise to any liabilities of the Company under the Labor Standards Act of Korea and Employment and Labor Trade Union and Labor Relations Adjustment Act of Korea or implicate the Worker Adjustment and Retraining Notification Act of 1988, or any similar foreign, state or local Law.

(k) Other than as set forth in Section 4.16(k) of the Seller Disclosure Schedule, the Company has or will have no later than the Closing Date, paid all accrued fees, bonuses, commissions, wages, severance and accrued vacation pay to the Employees and Service Providers due to be paid through the Closing Date. All sums due for fees, wages, contributions, premiums and other payments due or required to be paid in connection with each Company Plan, and all vacation time owing has been duly and adequately accrued in all material respects in the Financial Statements. The Company has no Liabilities for unemployment or social security insurance payments or any other amounts required by Korean Law. All interim severance payments made to employees of the Company qualify as "Interim Severance" payments for purposes of the Employee Severance Income Security Act in Korea.

(l) The Company has paid, in full, all amounts due and owing under all applicable workers' compensation, occupational health and safety and other similar Laws in all jurisdictions in which it does business (to the extent required by applicable Law). All current employer contributions, assessments and filings, including, but not limited to, experience rating surcharges, payroll premiums, non-compliance charges, contributions or any

other amounts under the applicable workers' compensation or workplace safety and insurance legislation and occupational health and safety legislation have been paid by the Company. The Company has not been subject to any special or penalty assessment or surcharge, including, but not limited to, experience rating surcharges under such legislation, and, to the Knowledge of the Seller, there are no circumstances that would permit or result in a special or penalty assessment or surcharge under such legislation or the applicable experience rating plan or program.

(m) The Company has not adopted, whether formally or informally and whether in writing or otherwise, any policy, custom or practice of making redundancy or severance payments, nor has it historically made any such redundancy or severance payments.

(n) To the Knowledge of the Seller, no current director, officer, employee or independent contractor is in any respect in violation of any term of any employment agreement, nondisclosure agreement, fiduciary duty, non-competition agreements, restrictive covenant or other obligation to the Company.

(o) Section 4.16(o) of the Seller Disclosure Schedule sets forth an accurate and complete list of all uncashed-out amounts (in KRW) of employee leave entitlements or accruals for each Employee as of July 31, 2023 (in the aggregate, the "Uncashed-Out Leave Amount").

Section 4.17 Environmental, Health and Safety Matters. Since January 1, 2021:

(a) Except as set forth in Section 4.17(a) of the Seller Disclosure Schedule, the Company has been, in compliance in all material respects with all, and not subject to any material Liability under any, Environmental Laws. Without limiting the generality of the foregoing, the Company has obtained and complied in all material respects with all material Governmental Authorizations that are required pursuant to Environmental Laws for the occupation of their facilities and the operation of the business of the Company.

(b) The Company has not received any notice, report or other written communication, and the Company is not subject to any pending, or to the Knowledge of the Seller, threatened Proceedings by any Governmental Authority or other third party, regarding any actual, alleged or potential violation of or Liability under any Environmental Law relating to the Company, any Leased Real Property, or other property or facility currently owned, operated or used by the Company, that not have been remediated, resolved or otherwise addressed in compliance with applicable Environmental Laws.

(c) No Hazardous Material, landfill, surface impoundment, disposal area, underground storage tank, groundwater monitoring well, drinking water well or production water well is present or, to the Knowledge of the Seller, has ever been present at the Leased Real Property in connection with the operation of the business of the Company or, to the Knowledge of the Seller, as a result of the acts or omissions of any third party. The Company has not treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, generated, manufactured, distributed, exposed any Person to, or released any Hazardous Material, and, to Knowledge of the Seller, there have been no Releases or disposal of Hazardous Material by any third party at, on, or under the Leased Real Property or other property owned, operated or used by the Company, in each case, in a manner that has given rise to or would reasonably be expected to give rise to a violation of or material Liability under Environmental Laws.

(d) The Company has not, either expressly or by operation of Law, assumed, undertaken, provided an indemnity with respect to or otherwise become subject to any material Liability, including any material obligation for corrective or remedial action, of any other Person relating to any Environmental Law.

(e) The Company has made available to the Purchaser accurate and complete copies of all environmental Governmental Authorizations, reports, investigations, audits, and correspondence with any Governmental Authority possessed or initiated by the Company relating to environmental conditions of the Leased Real Property and any other property currently owned, operated or used by the Company, and its compliance with Environmental Law.

(f) To the Knowledge of the Seller, neither this Agreement, nor the consummation of any of the Proposed Transactions, will result in any obligation for site investigation or cleanup, or Consent or Governmental Authorization of, notice to, or filing or registration with, any Governmental Authority or other Person, pursuant to any of the so-called “transaction-triggered” or “responsible property transfer” Environmental Laws.

Section 4.18 Compliance with Laws and Governmental Authorizations.

(a) Without limiting the scope of any other representation in this Agreement, the Company is in material compliance and has complied in all material respects with all, and the Company has not violated in any material respect any, Laws, Judgments or Governmental Authorizations applicable to it or to the conduct of its business or the ownership or use of any of its properties or assets. The Company has not received since January 1, 2021 any written notice, warning letter, or similar communications that (i) alleges a violation of, or asserts a failure to comply with, any applicable Law, Judgment or Governmental Authorization, or (ii) imposes an obligation to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. There is no pending or, to the Knowledge of the Seller, threatened regulatory action, investigation or inquiry of any sort (other than nonmaterial routine or periodic inspections or reviews) against the Company.

(b) Section 4.18(b) of the Seller Disclosure Schedule sets forth an accurate and complete list of all Governmental Authorizations held by the Company or that otherwise relates to the business of, or any of the assets owned or used by, the Company all of which are valid and in full force and effect, and have not lapsed, expired, or been cancelled, terminated or withdrawn. Such Governmental Authorizations collectively constitute all of the Governmental Authorizations necessary for the lawful operation of the business of the Company as currently conducted, and necessary for the lawful ownership and use of the Company’s properties and assets. No Proceeding to modify, suspend, revoke, withdraw, terminate or otherwise limit any Governmental Authorization is pending, or, to the Knowledge of the Seller, threatened, and to the Knowledge of the Seller, there isn’t any valid basis for any such Proceeding, including the Proposed Transactions. The Company is not in default under or violation in any material respect of and, to the Knowledge of the Seller, no event has occurred which, with notice or the lapse of time or both, would constitute a default under or violation in any material respect of any term, condition or provision of any material Governmental Authorization to which it is a party, to which its business is subject or by which its properties or assets are bound, and to the Knowledge of the Seller there are no facts or circumstances which could form the basis for any such default or violation.

Section 4.19 No Government Contracts or Subcontracts. Except as set forth in Section 4.19 of the Seller Disclosure Schedule, the Company is not, and at any time since January 1, 2021 has not been, p

arty to any Government Contract or Government Bid. The Company is not, and has not been, at any time since January 1, 2021, subject to or in violation of any requirement imposed by any of the Procurement Laws.

Section 4.20 Legal Proceedings. Section 4.20 of the Seller Disclosure Schedule sets forth an accurate and complete list of (a) all material Judgments to which the Company, or any of the properties or assets owned or used by the Company, is or has since January 1, 2021, been subject and (b) all pending Proceedings (i) by or against the Company, (ii) to the Knowledge of the Seller, by or against any of the directors or officers of the Company in their capacities as such, or (iii) that challenge, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Proposed Transactions. To the Knowledge of the Seller, no other such Proceeding has been threatened, and no event has occurred or circumstance exists that could reasonably be expected to give rise to or serve as a basis for the commencement of any such Proceeding.

Section 4.21 Material Customers and Material Suppliers.

(a) Section 4.21(a) of the Seller Disclosure Schedule sets forth an accurate and complete list of the ten (10) largest customers of the Company during the 12-month period ended on December 31, 2022 (determined on the basis of the total dollar amount of net revenues) (each, a "Material Customer") showing the dollar amount of net revenues from each such Material Customer during each such period. The Company has not received any written notice or, to the Knowledge of the Seller, has not had any reason to believe that any Material Customer (i) has ceased, or will cease, to use the products, goods or services of the Company, (ii) has substantially reduced, or will substantially reduce, the use of products, goods or services of the Company, (iii) has sought, or is seeking, to reduce the price it will pay for products, goods or services of the Company, including in the case of the preceding sub-clauses (i)-(iii) after the consummation of the Proposed Transactions, or (iv) has otherwise threatened to take any action described in the preceding clauses (i)-(iii) as a result of the consummation of the Proposed Transactions. No Material Customer of the Company has any right to any credit or refund for products or goods sold or services rendered or to be rendered by the Company pursuant to any Contract with the Company, other than pursuant to its normal course return policy. With respect to the products or goods that are for military use only, no Material Customer that is a military tier 1 customer purchases products or goods similar or equivalent to the products or goods purchased from the Company from a source other than the Company.

(b) Section 4.21(b) of the Seller Disclosure Schedule sets forth an accurate and complete list of the ten (10) largest suppliers to the Company during the 12-month period ended on December 31, 2022 (determined on the basis of the total dollar volume of purchases during such periods) (each, a "Material Supplier") showing the dollar amount of the purchases from each such Material Supplier during such period. The Company has not received any written notice nor, to the Knowledge of the Seller, has any reason to believe that, as a result of the consummation of the Proposed Transactions or otherwise, there has been any material adverse change in the price of such raw materials, supplies, merchandise or other goods or services, or that any such Material Supplier will not sell raw materials, supplies, merchandise and other goods and services to the Company at any time after the Closing on terms and conditions similar to those used in its current sales to the Company, subject to general and customary price increases.

Section 4.22 Insurance. Section 4.22 of the Seller Disclosure Schedule sets forth an accurate and complete list as of the date hereof of all certificates of insurance, binders for insurance policies and insurance maintained by the Company (the "Company Insurance Policies"). The Company Insurance Policies are valid, binding and enforceable, all premiums due and payable thereunder have been paid, and the Company i

s otherwise in compliance in all material respects with the terms thereof. To the Knowledge of the Seller, there is no threatened termination of, or material premium increase with respect to, any Company Insurance Policy. No material claims have been asserted by the Company (including with respect to insurance obtained but not currently maintained). The Company has not failed to give in a timely manner any notice of any claim that may be insured under any Company Insurance Policy and there are no outstanding claims which have been denied or disputed by the insurer. The Company maintains in full force and effect, certificates of insurance, binders and policies of such types and in such amounts and for such risks, casualties and contingencies as is reasonably adequate to insure the Company against insurable losses, damages, claims and risks to or in connection with or relating to its business, properties, assets and operations. The Company has not maintained, established, sponsored, participated in or contributed to any self-insurance program, retrospective premium program or captive insurance program.

Section 4.23 Related Party Transactions.

(a) Section 4.23(a) of the Seller Disclosure Schedule sets forth an accurate and complete list of all Contracts, transfers of assets or Liabilities or other commitments or transactions relating to the business, whether or not entered into in the ordinary course of business, to or by which the Company, on the one hand, and any Affiliate of the Company on the other hand, is a party or otherwise bound. Each Contract, transfer of assets or Liabilities or other commitment or transaction required to be set forth in Section 4.23(a) of the Seller Disclosure Schedule was on terms and conditions as favorable to the business of the Company as would have been obtainable by them at the time in a comparable arm's-length transaction with a Person other than an Affiliate.

(b) No Seller, any director, officer or employee of the Company, or an Affiliate of the Seller (each, an " Associate"), (i) owns or since January 1, 2021 has owned, directly or indirectly, and whether on an individual, joint or other basis, any interest in (A) except as set forth in Section 4.23(a) of the Seller Disclosure Schedule, any property or asset, real, personal or mixed, tangible or intangible, used in or pertaining to the business of the Company, (B) any Person that has had business dealings or a financial interest in any transaction with the Company, or (C) any Person that is a supplier, customer or competitor of the Company except for securities having no more than one percent (1%) of the outstanding voting power of any such supplier, customer or competing business which are listed on any national securities exchange, (ii) has had since January 1, 2021, business dealings or a financial interest in any transaction with the Company, other than, in the case of employees of the Company, salaries and employee benefits and other transactions pursuant to any Company Plans in the ordinary course of business, or (iii) serves as an officer, director or employee of any Person that is a supplier, customer or competitor of the Company.

Section 4.24 Personal Data; Data Security.

(a) The Company has complied and is in compliance with, and caused its operations and activities to be in compliance with all (i) Privacy Policies, (ii) applicable Laws and (iii) Contracts to which the Company is a party or which otherwise bind the Company in the case of (ii) and (iii) relating to (A) the data protection data privacy or data security or (B) the collection, storage, use, transfer and any other processing of any Personal Data collected, stored, processed or used by or on behalf of the Company in any manner or stored or maintained by third parties on behalf of the Company. The Company has obtained all requisite Consents of Governmental Authorities or other Governmental Authorizations and all requisite Consents from each Person subject of the Personal Data (including in each case any required notices to such Persons) to the extent required under

applicable Law or the data protection policies and contractual and fiduciary obligations of the Company. The execution, delivery and performance of this Agreement, including the transfer of data or databases or the change of data controller and data processor related thereto, complies with applicable Law and with the applicable notices and policies of the Company relating to data protection, data privacy and Personal Data. There have been no complaints, claims or warnings made or concerns raised by any Person (including any Governmental Authority) in respect of the Company's compliance with the same.

(b) The Company has taken commercially reasonable measures (including implementing, and monitoring compliance with, technical, administrative and physical security) to maintain and protect the integrity, security, redundancy, and continuous operation of all IT Systems used by or on behalf of the Company, and there have been no attempted or successful breaches, violations, failures, malfunctions, outages, or interruptions of or unauthorized access, use, modification, disclosure, destructions, or other misuse of the same, or any loss, theft, breach or unauthorized access to or misuse of Personal Data.

Section 4.25 Corruption and Trade Regulation.

(a) Neither the Seller nor the Company nor any of their respective Affiliates or Representatives (nor any Person acting on behalf of any of the foregoing) has at any time since January 1, 2021 directly, or indirectly through a third-party intermediary, corruptly paid, offered, given, promised to pay, or authorized the payment of any money or anything of value (including any gift, sample, travel, meal and lodging expense, entertainment, service, equipment, debt forgiveness, employment, donation, grant or other thing of value, however characterized) to any Government Official or any other Person at the suggestion, request, direction or for the benefit of a Government Official, in each case intending to improperly obtain or retain business, or an advantage in the conduct of business, for the Company or the Seller.

(b) Neither the Seller nor the Company nor any of their respective Affiliates or Representatives (nor any Person acting on behalf of any of the foregoing) has at any time since January 1, 2021, taken any corrupt action with respect to any Person, intending to improperly obtain or retain business, or an advantage in the conduct of business, for the Company that would have breached Section 4.25 if that person were a Government Official.

(c) Neither the Seller nor the Company nor any of their respective Affiliates or Representatives has violated or is in violation of (i) the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), (ii) the U.K. Bribery Act of 2010, (iii) any applicable Law promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on December 17, 1997, and (iv) any other applicable Law of similar purpose and scope in any jurisdiction, including books and records offenses relating directly or indirectly to a bribe (together, the "Anti-Corruption Laws").

(d) At all times since January 1, 2021, each transaction of the Company has been properly and accurately recorded in reasonable detail on the books and records of the Company and each document on which entries in the Company's books and records are based (including purchase orders, customer or company invoices and service agreements and related financial records) is accurate and complete in all respects.

(e) The Company has not, nor has any of its Affiliates or Representatives, since January 1, 2021, (i) conducted an internal review or investigation related to potential or alleged violations of Anti-Corruption Laws, (ii) made any voluntary disclosure to any Governmental Authority or other Person with respect to a possible

violation of Anti-Corruption Laws, or (iii) been subject to any government prosecution, enforcement, investigation, subpoena or other inquiry related to potential non-compliance with the Anti-Corruption Laws.

(f) At all times since January 1, 2021, the Company has maintained a system of internal controls designed to reasonably ensure compliance with the Anti-Corruption Laws.

(g) None of the assets, contracts, licenses, approvals, permits, permissions or authorizations sought, obtained or held by the Company has been procured in violation of the Anti-Corruption Laws.

(h) No Employee has been convicted of or pleaded guilty to an offense involving fraud or a violation of any of the Anti-Corruption Laws, nor has any Employee been listed by any Governmental Authority as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.

(i) Neither the Seller nor the Company nor, to the Knowledge of the Seller, any of their respective Affiliates or Representatives or any Immediate Family Members of the foregoing involved in the business of the Company is presently (or has been within the last year) a Governmental Authority in a position to influence this Agreement or the Proposed Transactions.

(j) Neither the Seller, nor the Company or any Person acting on behalf of any of the foregoing, has, directly, or indirectly through a third-party intermediary, entered into any Contract that remains in effect and that contains provisions reflecting participation in, or cooperation with, a foreign boycott that is not sanctioned by the United States, including without limitation the Arab League boycott of Israel.

(k) Since January 1, 2021, all exports, re-exports, imports, sales or transfers of any items (i.e., commodities, technologies, or software) by the Company have been effected in accordance with all applicable Trade Compliance Laws. Without limiting the foregoing, the Company has obtained, and is in compliance with, any required licenses, permits, authorizations and approvals for all export, re-exports, imports, sales, transfers, and other transactions, and, to the Knowledge of the Seller, there is no fact or circumstance which (with or without the receipt of notice) may constitute or result in a violation by the Company of any Trade Compliance Laws.

(l) Neither the Seller nor the Company nor, to the Knowledge of the Seller, any of their respective Affiliates or Representatives (nor any Person acting on behalf of any of the foregoing) has at any time since January 1, 2021 engaged in any transaction or other business, including the sale, purchase, import, export, re-export or transfer of any items (e.g., commodities, technologies, or software) or services, either directly or indirectly, to or from (i) Sanctioned Countries or (ii) Sanctioned Parties. Since such time, neither of the Seller nor the Company nor, to the Knowledge of the Seller, any of its Affiliates or Representatives (nor any Person acting on behalf of any of the foregoing) has been a party to or beneficiary of, or had any interest in, any franchise, license, management or other Contract with any Person, either public or private, in the Sanctioned Countries or with any Sanctioned Parties, or been a party to any investment, deposit, loan, borrowing or credit arrangement or involved in any other financial dealings, directly or indirectly, with any Person, either public or private, in the Sanctioned Countries or who is a Sanctioned Party. Neither the Seller nor the Company nor any of their respective Affiliates or Representatives (nor any Person acting on behalf of any of the foregoing) is a Sanctioned Party.

(m) Since January 1, 2021, (i) the Company has not conducted or initiated any internal review or investigation or made any voluntary disclosure to any Governmental Authority with respect to any alleged act or omission arising under any applicable Trade Compliance Laws, Anti-Corruption Laws or any other application Laws and (ii) no Governmental Authority has initiated, or threatened to initiate, a Proceeding against the Company, the Seller or any of their respective Affiliates or Representatives asserting that the Company, the Seller, or any of their Affiliates or Representatives is not in compliance with any Trade Compliance Laws or the FCPA or any other applicable Law of similar effect.

(n) The Korean operations of the Company do not include (i) the production, design, testing, manufacture, fabrication, or development of "critical technologies" as that term is defined in 31 C.F.R. § 800.215, (ii) the performance of any of the functions set forth in column 2 of Appendix A to 31 C.F.R. part 800 with respect to covered investment "critical infrastructure," or (iii) the maintenance or collection, directly or indirectly, of "sensitive personal data" as that term is defined in 31 C.F.R. § 800.241 or in Personal Information Protection Act of Korea; and, therefore, the Company is not a "TID US business" within the meaning of 31 C.F.R. § 800.248.

Section 4.26 Restrictions on Business Activities.

(a) There is no Contract (non-competition or otherwise) or Judgment to which the Company is a party or otherwise binding upon the Company, or of the properties, rights or assets of the Company, which has or may reasonably be expected to have the effect of prohibiting or impairing (i) any business practice of the Company, (ii) any acquisition of property (tangible or intangible) by the Company, (iii) the conduct of business by the Company, or (iv) otherwise limiting the freedom of the Company to engage in any line of business or to compete with any Person.

(b) Without limiting the generality of the foregoing, the Company has not entered into any Contract under which the Company is restricted from selling, licensing, manufacturing or otherwise distributing any of its technology or products or from providing services to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market, or from hiring or soliciting potential employees, consultants or independent contractors.

Section 4.27 Product Liability. Except as set forth in Section 4.27 of the Seller Disclosure Schedule, there are no defects in design, construction or manufacture of any products designed or manufactured by the Company which would materially adversely affect performance or create an unusual risk of injury to persons or property. For the past three years, none of the products has been the subject of any replacement, field fix or retrofit, modification or recall campaign by the Company and, to the Knowledge of the Seller, no facts or conditions related to any product exist which could reasonably be expected to result in such a campaign or material Liability for returns or other product liability claims.

Article 5
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Except as disclosed in the Purchaser SEC Documents filed prior to the date of this Agreement but without giving effect to any amendment to any such document filed after the date of this Agreement (and excluding any disclosures in any risk factors section that do not constitute statements of fact, disclosures in any forward-looking statements disclaimer and other disclosures that are generally cautionary, predictive or forward-looking in nature),

the Purchaser represents and warrants to the Seller that as of the date of this Agreement and as of the Closing Date the statements set forth in this Article 5 are true and correct:

Section 5.1 Organization and Good Standing. The Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to conduct its business as presently conducted. The Purchaser is duly qualified or licensed to do business and is in good standing in each jurisdiction in which failure to so qualify would reasonably be expected to have, individually or in the aggregate, a material adverse effect on it.

Section 5.2 Authority and Enforceability.

(a) The Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement to which it is a party and to perform its obligations under this Agreement and each such Ancillary Agreement. The execution, delivery and performance of this Agreement and each Ancillary Agreement to which the Purchaser is a party and the consummation of the Proposed Transactions and thereby have been duly authorized by all necessary action on the part the Purchaser, other than the issuance of any Consideration Shares which are subject to the Purchaser approval as set forth in Section 2.3. The Purchaser has duly and validly executed and delivered this Agreement and, on or prior to the Closing, the Purchaser will have duly and validly executed and delivered each Ancillary Agreement to which it is a party and which is to be executed in connection with Closing. This Agreement constitutes, and upon execution and delivery each Ancillary Agreement to which the Purchaser is a party will constitute, the valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, except as such enforcement may be limited by the Insolvency and Equity Exceptions.

(b) The Consideration Shares, when issued and delivered by the Purchaser pursuant to this Agreement, will be duly and validly authorized and issued and fully paid and will not be subject to any call for the payment of further capital and are free and clear of all liens, Encumbrances, equities and other third-party rights or claims, and the Consideration Shares will rank *pari passu* in all respects with the other Purchaser Common Share as at the date of the issue of the Consideration Shares.

Section 5.3 No Conflict. Neither the execution, delivery and performance by the Purchaser of this Agreement or any Ancillary Agreement by the Purchaser to which it is a party, nor the consummation of the Proposed Transactions, will: (a) directly or indirectly (with or without notice, lapse of time or both), conflict with, result in a breach or violation of, constitute a default under, give rise to any right of revocation, withdrawal, suspension, acceleration, cancellation, termination, modification, imposition of additional obligations or loss of rights under, result in any payment becoming due under, or result in the imposition of any Encumbrance on any of the properties or assets of the Purchaser under (i) the Organizational Documents of the Purchaser or any resolutions adopted by its stockholders or board of directors, (ii) any Contract to which the Purchaser is a party or by which the Purchaser is bound or to which any of its properties or assets is subject or (iii) any Law, Judgment or Governmental Authorization applicable to the Purchaser or any of its properties or assets; or (b) require the Purchaser to obtain any Consent (other than the approval by the Purchaser's stockholders) or Governmental Authorization of, give any notice to, or make any filing or registration with, any Governmental Authority or other Person, except with respect to clauses (a) and (b) in any case that would not reasonably be expected to have, either

individually or in the aggregate, a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement or on the ability of each of the Purchaser to consummate the Proposed Transactions.

Section 5.4 Legal Proceedings. There is no Proceeding pending or, to the Purchaser's knowledge, threatened, against the Purchaser that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Proposed Transactions.

Section 5.5 Capitalization. As of the date of this Agreement, the authorized capital stock of the Purchaser consists of 1,000,000,000 Purchaser Common Shares and 10,000,000 shares of the Purchaser's preferred stock, par value USD 0.0001 per share (the "Purchaser Preferred Shares"). At the close of business on September 14, 2023, (i) 161,713,210 Purchaser Common Shares were issued and outstanding and (ii) no Purchaser Preferred Shares were issued and outstanding.

Section 5.6 SEC Filings and Financial Statements. The Purchaser has filed with the SEC in a timely manner all reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) required to be filed by it under the Exchange Act or the Securities Act since January 3, 2022 (all such documents, collectively, the "Purchaser SEC Documents"). The Purchaser SEC Documents, at the time of their respective filing dates, (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the light of the circumstances under which they were made) not misleading, except to the extent corrected by a subsequently filed Purchaser SEC Document and (ii) complied in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as applicable. All of the audited financial statements and unaudited interim financial statements of the Purchaser included in the Purchaser SEC Documents, at the time filed, (x) were prepared in accordance with U.S. GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto, or, in the case of unaudited financial statements, except as permitted under Form 10-Q under the Exchange Act) and (y) fairly presented in all material respects the consolidated financial position and consolidated results of operations of the Purchaser taken as a whole as of the dates and for the periods indicated (subject to, in the case of unaudited statements, normal and recurring year-end audit adjustments).

Section 5.7 Absence of Material Adverse Effect. Since April 2, 2023, there has been no event, change, circumstance, effect or other matter that has, or would reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on (a) the business, financial condition or operations of the Purchaser, taken as a whole, or (b) the ability of the Purchaser to perform its obligations under this Agreement or to consummate timely the Proposed Transactions.

Section 5.8 Exclusivity of Representations. The representations and warranties made by the Purchaser in Article 5 are the exclusive representations and warranties made by the Purchaser.

Article 6
COVENANTS

Section 6.1 Access Prior to Closing. Until the Closing, subject to the applicable bona fide policies and practices of the Company, any contractual restrictions existing as of the date hereof to the extent disclosed to the Purchaser in writing prior to the date hereof, and any applicable Law, the Seller shall, upon reasonable advance notice from the Purchaser, use reasonable best efforts to cause the Company to afford the Purchaser and

its Representatives reasonable access during normal business hours to the Company's properties, facilities, assets, Contracts, books and records and other documents and data, and senior management and accountants of the Company as the Purchaser may reasonably request, in each case, to the extent not interfering with or unduly disrupting the normal business operations of the Company and for the purpose of ensuring an orderly and efficient transition of the Company to the Purchaser in preparation of the Closing; *provided*, *however*, that the Seller shall not be required to cause to be provided access to any information that, based on advice of counsel, would violate applicable Law or fiduciary standards, or would compromise any attorney-client privilege or violate any obligation of the Company owing to a third party with respect to confidentiality (to the extent such obligation is disclosed to the Purchaser in writing prior to the date hereof). Until the Closing, the Seller will use reasonable best efforts to cooperate with the Purchaser in its efforts to interview the Material Customers and Material Suppliers of the Company as requested by the Purchaser in writing, including arranging meetings between the Purchaser and such Material Customers and Material Suppliers; *provided*, that the Purchaser and the Seller shall use their respective commercially reasonable efforts to agree upon the timing of and a process by which such meetings will take place; and *provided*, *further*, that the Purchaser will not contact, meet nor attempt to contact or meet, any Material Customer or Material Supplier of the Company without advance notice to, and express consent by, the Seller, other than in the ordinary course of business or with respect to matters unrelated to the Proposed Transactions.

Section 6.2 Operation of the Business Prior to Closing. Until the Closing, the Seller will cause the Company to conduct its business only in the ordinary course of business (including, for the avoidance of doubt, participation in any Government Bid) and use its commercially reasonable efforts to preserve and protect its business organization, employment relationships, and relationships with customers, strategic partners, suppliers, distributors, landlords and others having dealings with it. Without limiting the generality of the foregoing, until the Closing, except (i) as may be required or not otherwise prohibited by this Agreement, (ii) as required by applicable Law, a Governmental Authority or by any contract to which the Company is bound and which has been made available to the Purchaser, or (iii) with the prior written consent of the Purchaser (such consent not to be unreasonably withheld, conditioned or delayed; *provided* that, the consent of the Purchaser shall be deemed to have been given if the Purchaser does not object within five (5) Business Days from the date on which the request for such consent is provided by the Seller to the Purchaser), the Seller will not Transfer any of the Sale Shares, and the Seller will not cause or permit the Company to:

(a) declare, set aside or pay any dividend or distribution (whether in cash, securities or other property) in respect of its equity interests or any of its other securities;

(b) split, combine or reclassify any of the equity interests or sell, issue, sponsor, create or distribute (or authorize the issuance, sponsorship, creation or distribution of) or file a registration statement with any securities exchange regulator with respect to any other securities in respect of, in lieu of or in substitution for equity interests or any of the other securities, of the Company (including any digital tokens, cryptocurrency or other blockchain-based assets) or any instrument convertible into or exchangeable for any equity interests or any of the other securities of the Company;

(c) purchase, redeem or otherwise acquire any equity interests or any other of securities of the Company or any options, warrants or other rights to acquire any such shares or securities, except the obligations of the Seller to purchase additional Shares pursuant to Section 6.16;

(d) enter into, assume, become subject to, amend, terminate (except for a termination resulting from the expiration of a Material Contract in accordance with its terms) or waive any rights under any Material Contract, or Governmental Authorization applicable to the Company or its business, properties or assets;

(e) enter into, assume or become subject to any Contract that, if entered into prior to the date of this Agreement, would be deemed a Material Contract, other than (A) any Contract in the ordinary course of business or (B) any Contract for the purchase of raw materials and supplies in the ordinary course of business that has an aggregate future Liability to the Company of not more than KRW [***];

(f) acquire (A) by merger or consolidation with, or by purchase of all or a substantial portion of the assets or any equity interests of, or by any other manner, any business or Person, or (B) any assets that are material to the Company individually or in the aggregate, except (x) purchases of inventory, raw materials and software in the ordinary course of business consistent with past practice, or (y) the acquisition of (or an attempt to acquire) the battery cell business for military use from [***];

(g) except in the ordinary course of business consistent with past practice, or as required by applicable Law or by the terms of any Company Plan as in effect as of the date of this Agreement, grant (or commit to grant) any material increase in the compensation, or accelerate the vesting or payment (or commit to accelerate the vesting or payment) of the compensation, (including incentive or bonus compensation) of any of its Employees, officers, directors, or Service Providers, or institute, adopt or materially amend (or commit to institute, adopt or materially amend), except for amendments required by applicable Law, any compensation or benefit plan, policy, program or arrangement or collective bargaining agreement applicable to any such employee, officer, director or independent contractor, or change any actuarial assumption used to calculate funding obligations with respect to any Company Plan;

(h) serve notice of termination or terminate the services of any Key Employee or enter into any new employment arrangements or independent contractor agreements other than those in the ordinary course of business or those consistent with the business plans discussed with the Purchaser with yearly compensation of USD [***] or less;

(i) waive, release, amend or fail to enforce the restrictive covenant obligations of any current or former employee, independent contractor, officer, manager or director of the Company;

(j) change accounting principles, methods or practices or investment practices;

(k) fail to maintain its books and records consistent with its past custom and practice;

(l) fail to pay its accounts payable and other obligations when they become due and payable in the ordinary course of business;

(m) accelerate or delay the payment of accounts payable or other Liabilities, or accelerate or delay the invoicing or in the collection of notes or accounts receivable, and all accounts payable and other Indebtedness of the Company which has become due has been settled within the applicable period of credit;

(n) make, change or revoke any Tax election or otherwise change the Tax classification of the Company, change any Tax annual accounting period, file any amended Tax Return, enter into any closing agreement, settle, compromise, concede or abandon any Tax claim or assessment relating to the Company,

surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Company, fail to pay any Tax as it becomes due, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, become resident for Tax purposes outside of its country of incorporation, create any branch, agency or permanent establishment for the purposes of any Tax outside of its country of incorporation;

(o) sell, transfer, assign, dispose license or sublicense, abandon, cancel, or let lapse or expire, or subject to an Encumbrance (other than a Permitted Encumbrance) of any rights under or with respect to any Owned Intellectual Property other than licenses to customers in the ordinary course of business consistent with past practice;

(p) publish any new Privacy Policy of the Company or materially amend the same;

(q) make any material changes to any IT System used by the Company, other than in the ordinary course of business, including as necessary for the Company's performance of its defense Contracts;

(r) transfer to or encumber any assets, or assumed, indemnified or incurred any Liabilities for the benefit of the Seller or any of its Affiliates; or

(s) agree, whether in writing or otherwise, to do any of the foregoing.

Section 6.3 Consents and Filings.

(a) The Seller will, and will cause the Company to, and the Purchaser will, and will cause each of its Affiliates to, use its commercially reasonable efforts (i) to take promptly, or cause to be taken (including actions after the Closing), all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable to consummate and make effective the Proposed Transactions, and (ii) as promptly as practicable after the date of this Agreement, to obtain all Governmental Authorizations from, give all notices to, and make all filings with, all Governmental Authorities, and to obtain all other Consents from, and give all other notices to, all other Persons, that are necessary or advisable in connection with the authorization, execution and delivery of this Agreement and the consummation of the Proposed Transactions, including (x) the overseas direct investment report and securities acquisition report, each on the part of the Seller, and the foreign direct investment report, on the part of the Purchaser and (y) notices to Material Customers and to the banks holding security interests in real properties of the Company.

(b) Without limiting the generality of the foregoing, the Purchaser shall as promptly as practicable following the Closing, (i) take such actions as are necessary to file or cause to be filed a business combination report to obtain the KFTC Approval to the consummation of the Proposed Transactions, (ii) take such actions as reasonably necessary to obtain the KFTC Approval as soon as reasonably practicable, (iii) as soon as reasonably practicable comply with any request for additional information from the KFTC, and (iv) consult and cooperate with the Seller, and consider in good faith the views of the Seller, in connection with any analyses, presentations, opinions and proposals made or submitted by or on behalf of any Party in connection with proceedings under the applicable Laws. The Purchaser shall promptly notify the Seller of any material communication made to, or received from, the KFTC regarding the Proposed Transactions. The Seller shall, as soon as reasonably practicable, to the extent permissible under applicable Law and capable to provide by using its commercially reasonable efforts, provide the Purchaser with any information, documents and assistance reasonably required by the

Purchaser to assist the Purchaser in fulfilling its obligations under this Section 6.3(b); *provided*, *however*, that, neither the Purchaser nor any of its Affiliates shall be required (1) to propose, negotiate, commit to or effect, execute or carry out agreements to sell, divest, lease, license, transfer, hold separate or to take any other action with respect to the Purchaser's or any of its Affiliates' or the Company's or any of its Subsidiary's abilities to own or operate any assets or categories of assets, (2) to undertake any behavioral or conduct remedy that would be material to the Purchaser or any of its Affiliates or the Company, (3) to defend, contest or resist (x) any administrative or judicial action or proceeding instituted (or threatened to be instituted) by a Governmental Entity or any other governmental or regulatory body challenging the Proposed Transactions or (y) any order or injunction, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts the consummation of the Proposed Transactions, or (4) to take any action or make any omission that would violate applicable Law.

Section 6.4 Notification. Until the Closing, each of the Seller and the Purchaser will give prompt notice to the other Party of (a) any failure to comply with or satisfy in any material respect any covenant to be complied with or satisfied by such Party under this Agreement, (b) the failure of any condition precedent to the other Party's obligations under this Agreement, (c) any change or event having a Material Adverse Effect, (d) any notice or other communication from any Person alleging that the Consent of such Person is or may be required in connection with the consummation of the Proposed Transactions, and (e) any notice or other communication from any Governmental Authority in connection with the consummation of the Proposed Transactions. No notification pursuant to this Section 6.4 will be deemed to amend or supplement the Seller Disclosure Schedule, prevent or cure any misrepresentation, breach of warranty or breach of covenant, or limit or otherwise affect any rights or remedies available to the Purchaser, including pursuant to Article 8 or Article 10.

Section 6.5 No Negotiation. Until the Closing, except for the customary bona fide preparation process for an initial public offering of the Company consistent with market practice (but subject in all respects to the terms and conditions of Section 6.2 hereof and other applicable provisions and restrictions of this Agreement) (the "IPO Preparation"), the Seller (a) will not, and will cause the Company and its Affiliates, equityholders and Representatives not to, directly or indirectly: (i) solicit, initiate, encourage, knowingly facilitate, or entertain any inquiry or the making of any proposal or offer, (ii) enter into, continue or otherwise participate in any discussions or negotiations, (iii) furnish to any Person any non-public information or grant any Person access to its properties, assets, books, Contracts, personnel or records, (iv) approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principal, merger agreement, acquisition agreement, option agreement or other Contract, or (v) propose, whether publicly or to any manager, director or equityholder, or agree to do any of the foregoing for the purpose of encouraging or facilitating any proposal, offer, discussions or negotiations, in each case relating to any business combination transaction involving the Company, or any other transaction to acquire all or any material part of the business, properties or assets of the Company or any amount of the equity interests of the Company (whether or not outstanding), whether by merger, purchase of assets, purchase of stock, purchase of limited liability company membership interests, tender offer, lease, license or otherwise, other than with the Purchaser; and (b) will immediately cease and cause to be terminated (and will cause any of their Affiliates) any such negotiations, discussion or other communication, or Contracts (other than with the Purchaser) with respect to the foregoing and will immediately cease providing and secure the return of any non-public information and terminate any access of the type referenced in clause (iii) above. If the Company, the Seller or any of their respective Affiliates, equityholders or Representatives receives, prior to the Closing, any offer, proposal, request, inquiry or other contact, directly or indirectly, of the type referenced in this Section 6.5,

the Seller will immediately suspend or cause to be suspended any discussions with such offeror or Person with regard to such offers, proposals or requests and notify the Purchaser thereof, including information as to the identity of the offeror or Person making any such offer or proposal and the material terms of such offer or proposal, as the case may be, and such other information related thereto as the Purchaser may reasonably request.

Section 6.6 Confidentiality.

(a) The Parties agree to continue to abide by that certain Mutual Non-Disclosure Agreement, dated as of [***], by and between the Company and the Purchaser (the "Confidentiality Agreement") and the Seller agrees to be bound thereby as if it had been a party to the Confidentiality Agreement. Until the Closing, neither the Seller nor any of its respective Affiliates will waive any right under any other nondisclosure agreement previously entered into by the Seller or any of its Affiliates and any other Person with respect to the evaluation of the sale of the Company without the prior written consent of the Purchaser.

(b) From and after the Closing, the Seller will, and will cause each of its Affiliates and its and their respective directors, officers, equityholders, employees, agents, consultants, independent contractors and other advisors and representatives (its "Restricted Persons") to, maintain the confidentiality of, and not use for their own benefit or the benefit of any other Person, the Confidential Information. Except as contemplated by Section 6.7, neither the Purchaser nor the Seller will, and the Purchaser and the Seller will cause each of their respective Restricted Persons not to, disclose to any Person any information with respect to the legal, financial or other terms or conditions of this Agreement, any of the Ancillary Agreements or any of the Proposed Transactions; *provided*, *however*, that the Purchaser may disclose such Confidential Information (including a copy of this Agreement) as required in order to comply with reporting, disclosure, filing, or other requirements (including under applicable securities laws and the rules of a stock exchange on which the Purchaser's securities are listed). The foregoing does not restrict the right of any Party to disclose such information (i) to its respective Restricted Persons (and, with respect to the Seller, its investors, partners, direct or indirect shareholders, any current or potential financing sources and minority shareholders of the Company) to the extent reasonably required to facilitate the negotiation, execution, delivery or performance of this Agreement and the Ancillary Agreements, (ii) to any Governmental Authority or arbitrator to the extent reasonably required in connection with any Proceeding relating to the enforcement of this Agreement or any Ancillary Agreement and (iii) as permitted in accordance with Section 6.6(c). Each Party will advise its respective Restricted Persons with respect to the confidentiality obligations under this Section 6.6(b) and will be responsible for any breach or violation of such obligations by its Restricted Persons.

(c) If a Party or any of its respective Restricted Persons becomes legally compelled or required under applicable stock exchange regulations to make any disclosure that is prohibited or otherwise restricted by this Agreement, then such Party will (i) give the other Party immediate written notice of such requirement, (ii) consult with and assist the other Party in obtaining an injunction or other appropriate remedy to prevent such disclosure, and (iii) use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any information so disclosed. Subject to the previous sentence, the disclosing Party or such Restricted Persons may make only such disclosure that, in the opinion of its counsel, it is legally compelled or otherwise required to make to avoid standing liable for contempt or suffering other material penalty.

(d) Effective upon the Closing, the Seller hereby assigns to the Purchaser all of its rights under each confidentiality agreement (other than the Confidentiality Agreement) to which the Seller is a party and which pertain to the business or operations of the Company.

Section 6.7 Public Announcements. Any public announcement or similar publicity with respect to this Agreement or the Proposed Transactions will be issued at such time and in such manner as the Purchaser and the Seller mutually agree; *provided*, that where a public announcement by the Purchaser is required by Law or the rules and regulations of Nasdaq Global Select Market or any other applicable stock exchange, the Purchaser will have the right to timely make such announcement without the agreement of the Seller. The Purchaser and the Seller will consult with each other concerning the means by which the employees, customers, suppliers and others having dealings with the Company will be informed of the Proposed Transactions.

Section 6.8 Resignation of Officers and Directors. At the written request of the Purchaser (which request will be delivered at least ten (10) Business Days prior to the Closing), the Seller will cause any officer and/or member of the boards of directors (or equivalent governing body) of the Company to tender his/her resignation from such position effective immediately as of the Closing, and in the event any such individual does not tender his/her resignation, the Company will take such actions necessary to remove such individuals from such positions effective as of the Closing.

Section 6.9 Post-Closing Cooperation. For the longer of the period required by applicable Law or six (6) years following the Closing Date, each of the Purchaser and the Seller will (a) retain books and records relating to the Company in their possession with respect to periods prior to the Closing and (b) afford the other and, their representatives, during normal business hours of the requested party and at the requesting Party's expense, reasonable access to the books and records relating to the Company in their possession with respect to periods prior to the Closing and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party.

Section 6.10 Further Assurances. Subject to the other express provisions of this Agreement, the Parties will cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and the Parties agree (a) to furnish, or cause to be furnished, upon request to each other such further information, (b) to execute and deliver, or cause to be executed and delivered, to each other such other documents, and (c) to do, or cause to be done, such other acts and things, all as the requesting Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Proposed Transactions.

Section 6.11 Non-competition and Non-solicitation. The Seller acknowledges that the Company has over many years devoted substantial time, effort and resources to developing for the Company the Trade Secrets and other confidential and proprietary information, as well as the Company's relationships with customers, suppliers, employees and others doing business with the Company; that such relationships, Trade Secrets and other information are vital to the successful operation of the Company after Closing; that the enforcement of the restrictive covenants against the Seller as set forth in this Section 6.11 would not impose any undue burden upon the Seller; and that the ability to enforce the restrictive covenants against such is a material inducement to the

decision of the Purchaser to consummate the Proposed Transactions. Accordingly, during the period commencing on the Closing Date and ending on third (3rd) anniversary of the Closing Date (the "Restricted Period"):

(a) the Seller shall not, and shall cause its Affiliates not to, directly or indirectly, engage in any business anywhere in the world that develops, manufactures, produces, markets, sells or distributes any (x) current-generation (and those among next generation currently being developed) lithium ion-based pouch-type battery cells and battery packs or (y) battery products that are reduced to practice or being reduced to practice in research and development process as of the Closing Date, in each case, that the Company develops (or is currently developing), manufactures, produces, markets, sells or distributes as of the Closing Date (the "Current Company Business"), or own an interest in, manage, operate, join, control, lend money or render financial assistance to, be employed by, or participate in as a partner or equity holder, any Person that is engaged in the Current Company Business; *provided*, *however*, that, for the purposes of this Section 6.11, ownership of securities having no more than five percent (5%) of the outstanding voting power of any Person which are listed on any national securities exchange for investment purposes will not be deemed to be in violation of this Section 6.11; and

(b) the Seller shall not, and shall cause its Affiliates not to, directly or indirectly, for itself or on behalf of or in conjunction with any other Person, (i) call upon any employee who is, at the time the individual is called upon, an employee of the Purchaser or any of its Affiliates (including the Company) (except one (1) employee who has been seconded or dispatched to the Company by the Seller, namely [***], whom the Seller or its Affiliates shall be free to solicit and/or employ after 12 months following the Closing Date notwithstanding anything to the contrary in this Section 6.11(b)) for the purpose or with the intent of soliciting such employee away from or out of the employ of such Person, or employ or offer employment to any individual who was or is employed by the Purchaser or any of its Affiliates (including the Company) unless such individual will have ceased to be employed by such Person for a period of at least six (6) months prior thereto or (ii) cause, induce or attempt to cause or induce any customer, strategic partner, supplier, distributor, landlord or others doing business with the Company to cease or reduce the extent of its business relationship with the Company or to deal with any competitor of the Company; *provided*, *however*, that this Section 6.11(b) will not be deemed to prohibit the Seller or its Affiliates from engaging in general media advertising or solicitation that may be targeted to a particular geographic or technical area but that is not targeted towards employees of the Purchaser or any of its Affiliates (including the Company).

Section 6.12 Release.

(a) Effective as of the Closing, the Seller, on its own behalf and on behalf of its past and present agents, representatives, Affiliates, employees, officers, directors, managers, controlling Persons, shareholders, members, partners, Subsidiaries, successors, assigns and all other Persons that have or could potentially derive rights through it (collectively, the "Related Parties"), will be deemed to have irrevocably and unconditionally released, waived, acquitted, remises and forever discharged the Purchaser and the Company, each of their respective Subsidiaries, Affiliates, successors, assigns, controlling Persons, shareholders, members, partners, directors, officers, attorneys and other professionals, principals, trustees, employees, representatives, agents, executors and administrators, whether past, present, or future (collectively, the "Released Persons") from any and all claims, demands or Proceedings, causes of action, orders, Contracts, agreements, Liabilities, rights, remedies, damages, expenses and attorneys' or other professionals' fees and of whatsoever kind or nature, fixed or contingent, whether known or unknown, suspected or unsuspected, then existing or thereafter arising, whether

based on or sounding in or alleging (in whole or in part) tort, contract, negligence, strict liability, contribution, subrogation, respondent superior, violations of Laws, breach of fiduciary duty, any other legal theory or otherwise, whether individual, class, direct or derivative in nature, liquidated or unliquidated, fixed or contingent, whether at law or in equity, whether based on federal, state, provincial or foreign law or right of action, foreseen or unforeseen, matured or unmatured, known or unknown, disputed or undisputed, accrued or not accrued, or otherwise (collectively, the "Claims") which the Seller or any of the Related Parties now have, have ever had or may hereafter have against the respective Released Persons on account of, arising out of or relating in any way to any matter, cause or event relating solely to time periods on or prior to the Closing, including such Claims relating to or in connection with the Seller's ownership, directly or indirectly, of equity interests of the Company or the Seller's management, officer and/or employment position(s) with the Company, if applicable, including termination or resignation of such position(s).

(b) For the avoidance of doubt, nothing contained in this Section 6.12 will operate to release any Claims arising on or after the Closing Date under this Agreement, nor will operate to release any Claims that may arise under the terms and conditions of this Agreement arising from the terms of this Agreement (including, for the avoidance of doubt, the indemnities under Article 10).

Section 6.13 Resale Registration Statement.

(a) Promptly following the date of this Agreement, the Purchaser shall prepare a registration statement registering the resale by the Seller and any Permitted Transferee of the Consideration Shares that are Accredited Investors and non-"U.S. persons" within the meaning of Regulation S (together, the "Exempt Stockholders") of the Consideration Shares (such shares, the "Registrable Shares," and such registration statement, the "Resale Registration Statement"); *provided* that any such securities shall cease to be Registrable Shares on the earliest to occur of when (i) such Registrable Shares have been disposed of in accordance with the Resale Registration Statement, (ii) such Registrable Shares shall have been sold in accordance with Rule 144 (or any similar provision then in effect), (iii) such Registrable Shares have been transferred in a transaction in which the transferor's rights under this Agreement are not assigned to the transferee of the securities in accordance with the terms of this Agreement, (iv) with respect to a holder, such securities are eligible for resale by such holder, together with its Affiliates, pursuant to Rule 144 under the Securities Act (or other exemption from registration under the Securities Act) without any volume, manner of sale or other limitations or (v) such Registrable Securities have ceased to be outstanding. The Seller shall complete, execute and deliver the Selling Stockholder Questionnaires in the form attached hereto as Exhibit D (the "Selling Stockholder Questionnaires") to the Purchaser. The Seller and any other Exempt Stockholder who has returned a properly completed Selling Stockholder Questionnaire is referred to herein as a "Selling Stockholder."

(b) The Purchaser shall file the Resale Registration Statement with the SEC no later than the tenth Business Day following the Closing Date (such day, the "Registration Deadline"); *provided* that if the Registration Deadline is not during an "open trading window" as determined by the Purchaser's insider trading policies (an "Open Trading Window"), the Registration Deadline shall be the Business Day following the first Business Day of the next Open Trading Window. If the Purchaser is eligible to file a Resale Registration Statement on Form S-3 pursuant to Rule 462(e) under the Securities Act (an "Automatic Resale Registration Statement"), the Resale Registration Statement shall be an Automatic Shelf Registration Statement. If the Purchaser is not eligible to use an Automatic Shelf Registration Statement, the Resale Registration Statement shall

be on Form S-3, or if Form S-3 is not available to the Purchaser, another appropriate form. If the Resale Registration Statement is not an Automatic Resale Registration Statement, the Purchaser shall use its reasonable best efforts to have the Resale Registration Statement declared effective under the Securities Act as promptly as practicable after such Resale Registration Statement is filed. The Purchaser will advise the Seller promptly after the Purchaser receives any request by the SEC for amendment of the Resale Registration Statement or any SEC comments thereon. Once the Resale Registration Statement is declared effective, the Purchaser shall notify the Seller of such declaration, and thereafter, subject to the other applicable provisions of this Agreement, shall use commercially reasonable efforts to cause the Resale Registration Statement to be continuously effective and usable until the date that is the one-year anniversary of the Closing Date, or such earlier time when no Registrable Securities remain (such period, the "Registration Period"). The Purchaser shall use commercially reasonable efforts to cause the Resale Registration Statement (including the documents incorporated therein by reference) to comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act.

(c) The Resale Registration Statement (or any prospectus or prospectus supplement forming a part of such Resale Registration Statement), as initially filed, shall include the Registrable Shares of all Selling Stockholders for whom the Purchaser has received properly completed Selling Stockholder Questionnaires on or before the Closing Date. On or about a date requested by the Seller in writing (so long as such date is at least ten Business Days after such request and is within an Open Trading Window), the Purchaser shall file an amendment or supplement, as appropriate, to the Resale Registration Statement (and any prospectus or prospectus supplement forming a part of such Resale Registration Statement) to include the Registrable Shares of (i) any Selling Stockholders who deliver properly completed Selling Stockholder Questionnaires after the Closing Date or (ii) any Permitted Transferees (who shall be deemed a Selling Stockholder hereunder following delivery of a Selling Stockholder Questionnaire) who delivers a properly completed Selling Stockholder Questionnaire after the Closing Date. The Purchaser shall only be required to file one such amendment or supplement.

(d) The Purchaser shall notify the Seller promptly upon discovery that, or upon the discovery of the happening of any event as a result of which, the Resale Registration Statement or any supplement to any prospectus forming a part of the Resale Registration Statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading in the light of the circumstances under which they were made, and, as promptly as practicable, use commercially reasonable efforts to supplement or amend such prospectus so that such prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein not misleading in the light of the circumstances under which they were made. After the Resale Registration Statement becomes effective, the Purchaser shall notify the Seller of any request by the SEC that the Purchaser amend or supplement such Resale Registration Statement or prospectus, and the Purchaser shall use commercially reasonable efforts to prepare and file with the SEC such amendments and supplements to the Resale Registration Statement and the prospectus used in connection therewith as may be reasonably necessary to keep the Resale Registration Statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Shares covered by the Resale Registration Statement. The Purchaser shall furnish to each Selling Stockholder such numbers of copies of a prospectus, including a preliminary prospectus, and any supplement to any prospectus, as required by the Securities Act and shall take such other actions (including causing the removal of any restricted legends), as the Selling Stockholders may reasonably request in order to facilitate their disposition of their Registrable Shares,

subject to each Selling Stockholder providing any information reasonably requested by the Purchaser to facilitate such action.

(e) Notwithstanding any of the provisions of this Section 6.13 to the contrary, the Purchaser shall be entitled to postpone or suspend (a "Permitted Suspension"), for a reasonable period of time not more than thirty (30) consecutive days, the effectiveness or use of, or trading under, any Resale Registration Statement (and such postponement or suspension shall not be a breach of its obligations hereunder) if the Purchaser shall determine that any such sale of any securities pursuant to such Resale Registration Statement would in the good faith judgment of the Purchaser's board of directors:

(i) materially impede, delay or interfere with any material pending or proposed financing, acquisition, corporate reorganization or other similar transaction involving the Purchaser for which the Purchaser's board of directors has authorized negotiations;

(ii) materially adversely impair the consummation of any pending or proposed material offering or sale of any class of securities by the Purchaser; or

(iii) require disclosure of material nonpublic information that, if disclosed at such time, would be materially harmful to the interests of the Purchaser and its stockholders;

provided, *however*, that the aggregate period of Permitted Suspension may not exceed sixty (60) days in any six (6) month period; and *provided*, *further*, that the Purchaser shall not register any securities for its own account or that of any other shareholder during any period of Permitted Suspension. In the event of the postponement or suspension of effectiveness of any Resale Registration Statement pursuant to this Section 6.13, the Selling Stockholders shall be precluded from using the Resale Registration Statement in connection with a disposition of the relevant Registrable Shares for the duration of such postponement or suspension, and the applicable time period during which such Resale Registration Statement is to remain effective shall be extended by that number of days equal to the number of days the effectiveness of such Resale Registration Statement was postponed or suspended.

(f) The Purchaser shall indemnify and hold harmless each Selling Stockholder with Registrable Shares included in the Resale Registration Statement against any Losses to which such Selling Stockholder may become subject arising out of or based upon (i) any untrue statement or alleged untrue statement of a material fact contained in or incorporated by reference into the Resale Registration Statement or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Purchaser (or any of its Representatives or Affiliates) of the Securities Act, the Exchange Act or any state securities Law in connection with the Resale Registration Statement or the offer or sale of Registrable Shares thereunder, in each case, to the extent such Losses arise out of or are based upon any claim or cause of action made against such Selling Stockholder by an unaffiliated third party (excluding, for the avoidance of doubt, any Permitted Transferee) who purchased such Registrable Shares from such Selling Stockholder; *provided* that the Purchaser shall not liable for any such Losses to the extent such Losses arise out of or are based upon information furnished to the Purchaser by or on behalf of such Selling Stockholder expressly for use in the Resale Registration Statement; *provided*, *further*, that the Purchaser shall not be liable under this Section 6.13(f) for any Losses arising out of or resulting from the diminution in value of the Registrable Shares held by any Selling Stockholder

following the date of this Agreement; *provided, further*, that the indemnity obligations set forth in this Section 6.13(f) shall not apply to amounts paid in settlement of any such Losses if such settlement is effected without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld. The Purchaser shall have the right to assume the defense and settlement of any claim or suit for which the Purchaser may be responsible for indemnification under this Section 6.13(f).

(g) From the date of this Agreement until the earlier of the date this Agreement is terminated in accordance with its terms and the end of the Registration Period, the Purchaser shall use its commercially reasonable efforts to make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, and file with the SEC in a timely manner all reports and other documents required to be filed by the Purchaser under the Securities Act and the Exchange Act.

(h) All of the expenses incurred in connection with any registration of Registrable Shares pursuant to this Agreement, including all SEC fees, blue sky registration and filing fees, listing notices and filing fees, printing fees and expenses, transfer agents' and registrars' fees and expenses and all fees and expenses of the Purchaser's outside counsel and independent accountants of the Purchaser shall be paid by the Purchaser. The Purchaser shall not be responsible for any selling expenses of any Selling Stockholder (including any broker's fees or commissions) or fees or expenses of outside counsel or independent accountants of Selling Stockholder or, to the extent incurred prior to the Closing, the Company in connection with the Resale Registration Statement.

(i) The Purchaser shall use commercially reasonable efforts to cause the Consideration Shares being issued to be approved for listing (subject to notice of issuance) on the Nasdaq Global Select Market effective as of the Closing.

Section 6.14 Volume Trading Management.

(a) The Seller agrees that it shall not, and shall cause and direct each of its controlled Affiliates not to, (i) offer, sell, contract to sell, pledge, grant any option to purchase, transfer or assign (with or without consideration), lend or otherwise dispose of the Consideration Shares, (ii) engage in any hedging or other transaction or arrangement (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) which is designed to or which reasonably could be expected to lead to or result in a sale, loan, pledge or other disposition (whether by the Seller or someone other than the Seller), or transfer of any of the economic consequences of ownership, in whole or in part, directly or indirectly, of the Consideration Shares, whether any such transaction or arrangement (or instrument provided for thereunder) would be settled by delivery of the Consideration Shares, in cash or otherwise (any such sale, loan, pledge or other disposition, or transfer of economic consequences, a "Transfer") or (iii) otherwise publicly announce any intention to engage in or cause any action or activity described in clause (i) above or transaction or arrangement described in clause (ii) above; *provided, however*, that nothing herein shall prevent the Seller from making a Permitted Transfer so long as the Permitted Transferee agrees in a written agreement (which must be provided to the Purchaser before the Permitted Transfer is effective) that (x) any Consideration Shares transferred pursuant to the Permitted Transfer remain subject to restrictions identical to, and remaining in place for the same duration as, those contained in this Section 6.14 otherwise applicable to the Consideration Shares as if no such Permitted Transfer had occurred (the "Share Restrictions"), and (y) the Purchaser shall be made an express third party beneficiary of such agreement with the right to enforce the Share Restrictions against the Permitted Transferee. The Seller represents and

warrants that the Seller is not currently, and has not caused or directed any of its Affiliates to be or become, a party to any agreement or arrangement that provides for, is designed to or which reasonably could be expected to lead to or result in any prohibited Transfer of Consideration Shares. Notwithstanding the foregoing in this Section 6.14(a), the Seller and its Permitted Transferees, if any, shall collectively be permitted to (i) Transfer up to an aggregate of 3,000,000 Consideration Shares per week on a noncumulative basis (not to exceed an aggregate of 1,000,000 Consideration Shares on any one trading day) or (ii) Transfer Consideration Shares without any volume limitation through private transactions or block trades executed outside of any stock exchange.

(b) The Seller acknowledges and agrees that all certificates representing the Consideration Shares of the Seller (and the shares of every other person to which the Seller has made a Permitted Transfer subject to the restrictions contained in this Section 6.14) shall bear a legend or legends referencing the restrictions applicable to such shares under this Section 6.14, which legend shall state in substance:

"THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO VOLUME TRADING RESTRICTIONS AS SET FORTH IN AN AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED UPON WRITTEN REQUEST OF THE SECRETARY OF THE ISSUER. SUCH VOLUME TRADING RESTRICTIONS ARE BINDING ON TRANSFEREES OF THESE SECURITIES."

Section 6.15 R&W Insurance Policy. On or prior to the Closing, the Purchaser shall have obtained and bound third-party insurance in respect of inaccuracies or breaches of the representations and warranties made by the Seller in Article 3 and Article 4 (the "R&W Insurance Policy"), which R&W Insurance Policy shall be in full force and effect as of the Closing. Until the Closing, the Seller will use, and will cause the Company to use, commercially reasonable efforts to cooperate with and assist the Purchaser in obtaining the R&W Insurance Policy and remediating any matters that could be the basis of a Loss and that are the subject of exclusions from the coverage of the R&W Insurance Policy at all times prior to the Closing Date (*provided*, *however*, that, in no event shall the Seller be required to incur any costs or expenses for such efforts of remediation (and if the Seller decided to incur any costs or expenses, it would be in the Seller's sole discretion)).

Section 6.16 Further Acquisition of Shares.

(a) Until the Closing, the Seller shall use its reasonable best efforts to purchase and acquire additional Shares so that the Sale Ratio at the Closing shall be at least ninety-five percent (95%). The Contract, or an amendment or supplement thereto, evidencing the acquisition of the additional Shares by the Seller shall contain a release of claims executed by the relevant seller of such additional Shares, which provision shall be in Korean substantially of the content below:

> "[The relevant minority seller] (the "Seller") acknowledges that, in connection with the sale of the shares owned by the Seller (the "Sale Transaction") to Rene Limited (the "Purchaser"), the terms and conditions of the Sale Transaction have been considered and agreed upon by the parties after collection of sufficient information and negotiation of commercial terms, and confirms that it will not raise any objection to the Purchaser, the Company or other shareholders of the Company (including a subsequent third party acquiror of the shares purchased by the Purchaser from the Seller in this Sale Transaction) in connection with the Sale Transaction, except in the case where the Purchaser breaches the terms and conditions of the Sale Transaction."

(b) Until the Closing, the Seller shall use its reasonable best efforts to purchase and acquire the [***] common shares of the Company issued pursuant to certain stock option agreements but which had not been duly registered with the corporate registry (collectively, the "Unregistered Shares").

Section 6.17 Other Pre-Closing Covenants.

(a) Factory Registration. Prior to the Closing, the Seller shall cause the Company to take all necessary steps in order to complete, with respect to the factory located at [***], which has been leased by [***], (i) execution of an occupancy agreement with the management agency of the [***] agro-industrial complex and (ii) factory registration with the competent Governmental Authority, it being understood that the actual completion of the foregoing (i) or (ii) might occur only after the Closing.

(b) Permit on Use of Hazardous Substances. Prior to the Closing, the Seller shall cause the Company to take all necessary steps in order to obtain, as soon as practicable, permits to store and use hazardous chemical substances (including Methyl Ethyl Ketone) in the factory located at [***], it being understood that such permits might actually be obtained only after the Closing.

(c) In-Service Invention Assignments. Prior to the Closing, the Seller shall use its reasonable best efforts to cause the Company to (i) obtain an Employee Intellectual Property Assignment Agreement substantially in the form of Exhibit C-2 (the "Employee IP Assignment Agreement ") from each of the current Employees who is registered as an inventor of the patents registered under the name of the Company, which irrevocably confirms that each such current Employees had assigned all right, title and interest in the patents registered under the name of the Company and waived or been paid any compensation, in form and substance reasonably satisfactory to the Purchaser, and (ii) make amendment to the in-service invention regulation of the Company to include clauses requiring that each Employee assign to the Company all right, title and interest in any information conceived of or reduced to practice by such Employee in the course of service for the Company.

(d) Joint Owner IP Invention Assignments. Prior to the Closing, the Seller shall use its reasonable best efforts to cause the Company to (i) obtain the Joint Owner Intellectual Property Assignment Agreement, substantially in the form of Exhibit C-1 (the "Joint Owner IP Assignment Agreement") duly executed by each of the parties thereto, and acquire (with no additional consideration having been delivered or deliverable for such acquisition) patent interests held by [***] in the patents which are jointly owned with [***] as of the date of this Agreement with patent registration numbers of [***] and [***], and (ii) complete registration declaring the Company to be the sole and exclusive owner thereof.

(e) Financial Statements. Prior to the Closing, the Seller shall use its reasonable best efforts to cause the Company to prepare and deliver to the Purchaser the unaudited balance sheet and profits and loss statements of the Company as of August 31, 2023 and for the eight (8)-month period then ended, such financial statements prepared on the same basis as the Interim Financial Statements.

Article 7
CONDITIONS PRECEDENT TO OBLIGATION TO CLOSE

Section 7.1 Conditions to the Obligation of the Purchaser. The obligation of the Purchaser to consummate the Proposed Transactions is subject to the satisfaction, on or before the Closing Date, of each of the following conditions (any of which may be waived by the Purchaser, in whole or in part):

(a) Accuracy of Representations and Warranties. The representations and warranties of the Seller contained in Article 3 and Article 4 shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date as though such representations and warranties were made at and as of the Closing (except that (i) representations and warranties expressly stated to relate to a specific date, in which case such representation and warranties shall be true and correct in all material respects as of such earlier date and (ii) representations and warranties that are qualified by materiality, "Material Adverse Effect" and similar qualifications limiting the scope of such representations and warranties shall be true and correct in all respects); *provided*, that the Fundamental Representations and the representations and warranties of the Seller contained in Section 4.14 (*Tax Matters*) shall be true and correct in all respects at the date of this Agreement and as of the Closing as if made at and as of such time (or, in the case of those representations and warranties that are made as of a particular date or period, as of such date or period); *provided*, *however*, that for purposes of determining the accuracy of any representations and warranties, any update of or modification to the Seller Disclosure Schedule made or purported to have been made on or after the date of this Agreement and any notice provided by the Seller pursuant to Section 6.4 shall be disregarded;

(b) Performance of Covenants. All of the covenants and obligations that the Seller is required to perform or comply with under this Agreement on or before the Closing Date must have been duly performed and complied with in all material respects (with materiality being measured individually and on an aggregate basis with respect to all breaches of covenants and obligations);

(c) Consents. Each of the Governmental Authorizations that the Seller is required to obtain prior to the Closing for the consummation of the Proposed Transactions under applicable Laws, if any, shall have been obtained and be in full force and effect;

(d) No Action. There must not be in effect any Law, Judgment or pending review process of the Governmental Authority and there must not have been commenced or, to the Knowledge of the Seller, threatened any Proceeding, that in any case would reasonably be expected to prohibit or make illegal the consummation of any of the Proposed Transactions or result in imposition of a divestment order on the Purchaser by the Governmental Authority;

(e) No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any event, circumstance, development, state of facts, occurrence, change or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(f) Key Employees. Each of the Key Employees shall have remained employed by the Company in his current position, and shall have entered into the Employment Agreements, which shall be effective upon the Closing; *provided* that, the Purchaser shall have first provided to the Seller information about the compensation packages for each Key Employee in reasonable detail

(g) Percentage of Sale Shares. The Sale Ratio immediately prior to the Closing shall be at least ninety-five percent (95%); and

(h) Transaction Documents. The Seller must have delivered or caused to be delivered each document that Section 2.6(a) requires it to deliver.

Section 7.2 Conditions to the Obligation of the Seller. The obligation of the Seller to consummate the Proposed Transactions is subject to the satisfaction, on or before the Closing Date, of each of the following conditions (any of which may be waived by the Seller, in whole or in part):

(a) Accuracy of Representations and Warranties. The representations and warranties of the Purchaser contained in Article 5 shall be true and correct at the date of this Agreement and at and as of the Closing as if made at and as of such time (or, in the case of those representations and warranties that are made as of a particular date or period, as of such date or period), except where the failure of such representations and warranties to be so true and correct would not reasonably be expected to, individually or in the aggregate, materially delay or prevent the ability of the Purchaser to consummate the Proposed Transactions in accordance with the terms hereof;

(b) Performance of Covenants. All of the covenants and obligations that the Purchaser is required to perform or comply with under this Agreement on or before the Closing Date must have been duly performed and complied with in all material respects (with materiality being measured individually and on an aggregate basis with respect to all breaches of covenants and obligations);

(c) Consents. All applicable waiting periods (and any extensions thereof), clearances or approvals under the Antitrust Laws, and any contractual timing commitments with Governmental Authorities through timing agreements or otherwise must have expired, been satisfied, or otherwise been terminated;

(d) No Action. There must not be in effect any Law or Judgment and there must not have been commenced or, to the knowledge of the Purchaser, threatened any Proceeding, that in any case would reasonably be expected to prohibit or make illegal the consummation of any of the Proposed Transactions;

(e) R&W Insurance Policy. The Purchaser shall have obtained the R&W Insurance Policy in the form consistent with the terms of this Agreement and reasonably satisfactory to the Seller, to be effective at and upon the Closing; and

(f) Transaction Documents. The Purchaser must have delivered or caused to be delivered each document that Section 2.6(b) requires it to deliver.

Article 8
TERMINATION

Section 8.1 Termination Events. This Agreement may, by written notice given at any time prior to the Closing, be terminated:

(a) by mutual consent of the Purchaser and the Seller;

(b) by the Purchaser (so long as the Purchaser is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement) if there has been a breach of any of the Seller's representations, warranties, covenants or agreements contained in this Agreement which would

result in the failure of a condition set forth in Section 7.1(a) or Section 7.1(b), and which breach has not been cured or cannot be cured by the earlier of (i) the date that is thirty (30) days after the notice of the breach from the Purchaser and (ii) the End Date;

(c) by the Seller (so long as the Seller is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement) if there has been a breach of any of the Purchaser's representations, warranties, covenants or agreements contained in this Agreement which would result in the failure of a condition set forth in Section 7.2(a) or Section 7.2(b), and which breach has not been cured or cannot be cured by the earlier of (i) the date that is thirty (30) days after the notice of breach from the Seller and (ii) the End Date;

(d) by the Purchaser if there has been a Material Adverse Effect;

(e) by either the Purchaser or the Seller if any Governmental Authority has issued a nonappealable final Judgment or taken any other nonappealable final action, in each case having the effect of restraining, enjoining or otherwise prohibiting the Proposed Transactions;

(f) by the Purchaser if the Closing has not occurred on or before the End Date, *provided* that the Purchaser's failure to perform in any material respect any of their covenants or agreements contained in this Agreement has not been the cause of or resulted in the failure of the Closing to occur on or before the End Date; or

(g) by the Seller if the Closing has not occurred on or before the End Date, *provided* that the Seller's failure to perform in any material respect any of their respective covenants or agreements contained in this Agreement has not been the cause of or resulted in the failure of the Closing to occur on or before the End Date.

Section 8.2 Effect of Termination. Each party's rights of termination under Section 8.1 are in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such rights of termination is not an election of remedies. If this Agreement is terminated pursuant to Section 8.1, this Agreement and all rights and obligations of the parties under this Agreement automatically end without Liability against any party or its Affiliates, except that (a) Section 6.6 (*Confidentiality*), Section 6.7 (*Public Announcement*), Article 11 (*General Provisions*) (except for Section 11.9 (*Specific Performance*)) and this Section 8.2 will remain in full force and survive any termination of this Agreement and (b) termination of this Agreement shall not relieve any party hereto from liability for willful and material breach, Fraud or Willful Misconduct.

Article 9
CERTAIN TAX MATTERS

Section 9.1 Tax Returns.

(a) The Seller shall prepare, or cause the Company to timely and correctly prepare, and file all Tax Returns of the Company for any Pre-Locked Box Tax Period (each a "Seller Prepared Return"). All Seller Prepared Returns shall be prepared on a basis which is consistent with the manner in which such Tax Returns were prepared in previous (accounting and tax) periods and in compliance with the relevant Tax Law. The Seller shall submit a draft of each Seller Prepared Return, together with all supporting documents and workpapers at least twenty (20) calendar days prior to the date the Seller Prepared Return is due, taking into account any valid

extensions. The Purchaser shall, and shall cause the Company (as applicable) to, timely file such Seller Prepared Return that are due after the Closing Date; *provided*, that, such Seller Prepared Return is, in the Purchaser's good faith determination, true, correct and complete. If the Purchaser determines in good faith that any draft Seller Prepared Return is not true, correct and complete, the Purchaser and Seller shall cooperate in good faith to resolve any disagreements over such Seller Prepared Return.

(b) The Purchaser shall cause the Company to prepare and timely file all Tax Returns with respect to the Company for the Straddle Tax Period that are required to be filed after the Closing Date.

Section 9.2 Tax Apportionment.

(a) In the case of Taxes that are payable with respect to a Straddle Tax Period, the portion of any such Tax that is allocable to the portion of the period ending on the Locked Box Date will be:

(i) in the case of Taxes that are either (A) based upon or related to income, sales, or receipts or (B) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible) (other than any Transfer Taxes), deemed equal to the amount which would be payable if the taxable period ended as of the close of business on the Locked Box Date; and

(ii) in the case of Taxes not described in Section 9.2(a)(i), imposed on a periodic basis with respect to the assets of the Company, or otherwise measured by the amount, value or level of any item, be deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of calendar days in the period ending on the Locked Box Date and the denominator of which is the number of calendar days in the entire period.

(b) All Transfer Taxes imposed as a result of any transaction under this Agreement will be borne fifty percent (50%) by the Seller and fifty percent (50%) by the Purchaser. The Purchaser and the Seller agree to cooperate in the execution and delivery of all instruments and certificates reasonably necessary to minimize the amount of any Transfer Taxes and to enable the Purchaser and the Seller to comply with any filing requirements related to Transfer Taxes. Notwithstanding anything herein to the contrary, the Party responsible under applicable Law for filing any Tax Returns with respect to Transfer Taxes shall prepare and timely file such Tax Returns and provide a copy of such Tax Return to the other party no later than ten (10) Business Days after filing, together with reasonable evidence that all Transfer Taxes have been timely paid.

Section 9.3 Tax Proceedings.

(a) (i) The Purchaser shall promptly (and in any event within ten (10) Business Days) notify the Seller in writing upon receipt by the Purchaser, any of its Affiliates or, after the Closing Date, the Company, of notice of any proposed, pending or threatened Tax audits or assessments relating to any taxable period of the Company ending on or before the Locked Box Date or relating to a Tax for which the Seller may be liable pursuant to this Agreement; *provided* that failure to comply with this provision shall not affect any Purchaser Indemnified Party's right to indemnification hereunder, and (ii) the Seller shall promptly (and in any event within ten (10) Business Days) notify the Purchaser in writing upon receipt by the Seller, any of their Affiliates or, prior to the Closing Date, the Company, of notice of any Tax audits or assessments that relate to the Company, in each case in (i) and (ii), such notice shall be deemed to be a Claim Notice for purposes of Article 10.

(b) Upon written notice to the Purchaser, the Seller shall have the right, at the Seller's expense, to represent the Company's interests in any Tax audit, controversy, dispute or proceeding ("Tax Proceeding") relating to a taxable period ending on or before the Locked Box Date that would not have a material adverse impact on the Liability for Taxes for any Post-Locked Box Tax Period of the Purchaser, its Affiliates, or the Company. The Seller shall employ counsel of the Seller's choice at the Seller's expense; *provided*, that the Purchaser shall be permitted to be present at, and to participate in, any such Tax Proceeding, including the review of any correspondence and providing reasonable comments to any documents related to such Tax Proceeding. Notwithstanding the foregoing, the Seller shall not be entitled to settle, either administratively or after the commencement of any Tax Proceeding, any claim for Taxes which would adversely affect in any material respect the Liability for Taxes for any Post-Locked Box Tax Period of the Purchaser, its Affiliates, or the Company without the prior written consent of the Purchaser.

(c) Upon written notice to the Seller, the Purchaser shall have the right to represent its and the Company's interests in any Tax Proceeding relating to a Straddle Tax Period or relating to a taxable period ending on or before the Locked Box Date that would have a material adverse impact on the Liability for Taxes for any Post-Locked Box Tax Period of the Purchaser, its Affiliates or the Company. The Purchaser shall employ counsel of the Purchaser's choice, *provided* that Seller shall be permitted at the Seller's expense to be present at, any such Tax Proceeding, including the review of any correspondence related to such Tax Proceeding.

Section 9.4 Tax Cooperation. The Purchaser and the Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Company (including access to books and records) as is within such party's possession or control and is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any Tax Proceeding. The Purchaser and the Seller shall retain all books and records with respect to Taxes pertaining to the Company that are within such party's possession or control until the expiration of any applicable statute of limitations and abide by all record retention agreements entered into with any Taxing Authority for all periods required by such Taxing Authority. The Purchaser and the Seller shall cooperate with each other, as and to the extent reasonably requested by the other party, in the conduct of any audit or other Tax Proceeding involving the Company.

Section 9.5 Tax Sharing Agreements. The Seller shall cause the Company to terminate any Tax sharing agreement to which the Company is a party on or before the Closing Date.

Section 9.6 Overlap. To the extent of any conflict between this Article 9 and Article 10, the provisions of this Article 9 shall control.

Article 10
INDEMNIFICATION

Section 10.1 Indemnification by the Seller. Subject to the limitations expressly set forth in this Article 10, the Seller will indemnify and hold harmless the Purchaser and its Affiliates (including, following the Closing, the Company) and their respective equity owners, employees and Representatives (collectively, the "Purchaser Indemnified Parties") from and against, and will pay to the Purchaser Indemnified Parties the

monetary value of, any and all Losses incurred or suffered by the Purchaser Indemnified Parties arising out of or resulting from:

(a) any inaccuracy in or breach of, or any claim or Proceeding asserted by any Person that, if meritorious, would constitute an inaccuracy in or breach of, any representation or warranty of the Seller contained in this Agreement (including Article 3 and Article 4), the Seller Disclosure Schedule or in any certificate delivered by the Seller in connection with the Proposed Transactions (without giving effect to any update of or modification to the Seller Disclosure Schedule made or purported to have been made on or after the date of this Agreement);

(b) any nonfulfillment, nonperformance or other breach of any covenant or agreement of the Seller contained in this Agreement;

(c) regardless of any disclosure of any matter set forth in the Seller Disclosure Schedule, (i) any Pre-Locked Box Taxes, excluding (A) any Tax to the extent it was reflected on the Locked Box Accounts; (B) any Tax that is included in the definition of Leakage (for the avoidance of doubt, this clause (B) is intended to prevent duplication of any item recovered under Section 2.4); and (C) any Tax subject to Section 10.1(d); (ii) any Taxes of the Seller (including, without restricting the generality of the foregoing, withholding Taxes on any payments made to the Seller pursuant to this Agreement); and (iii) any Transfer Taxes for which the Seller is liable under Section 9.2(b);

(d) any Taxes arising from any matters set forth on Schedule 10.1(d);

(e) any Fraud or Willful Misconduct committed by the Seller or any of its Affiliates;

(f) disregarding anything set forth in the Seller Disclosure Schedule, any of the matters set forth in Schedule 10.1(f), numbered as items (1) and (2); or

(g) (i) any claim by any current or former or purported securityholder of the Company, asserting, alleging or seeking to assert rights or remedies relating to Equity Interests other than the Sale Shares, including the Unregistered Shares, or any claim asserted, based upon or related to (1) the ownership or rights to ownership of Equity Interests other than the Sale Shares or (2) any rights of a securityholder of the Company, including any rights to securities, preemptive rights or rights to notice or to vote securities, or (ii) any other claim by any current or former securityholder of the Company relating to this Agreement or the Proposed Transactions; *provided* that, in each case, such claim is not due to causes attributable to any act or failure to act of a Purchaser Indemnified Party.

Section 10.2 Indemnification by the Purchaser. Subject to the limitations expressly set forth in Section 10.7, from and after the Closing, the Purchaser will indemnify and hold harmless the Seller and its Affiliates and their respective equity owners, employees and Representatives (collectively, the "Seller Indemnified Parties") from and against, and will pay to the Seller Indemnified Parties the monetary value of, any and all Losses incurred or suffered by the Seller Indemnified Parties arising out of or resulting from:

(a) any inaccuracy in or breach of, or any claim or Proceeding asserted by any Person that, if meritorious, would constitute an inaccuracy in or breach of, any representation or warranty of the Purchaser

contained in this Agreement (including Article 5) or in any certificate delivered by the Purchaser in connection with the Proposed Transactions;

(b) any nonfulfillment, nonperformance or other breach of any covenant or agreement of the Purchaser contained in this Agreement; and

(c) any claim by any current or former securityholder of the Company asserting, alleging or seeking to assert rights or remedies relating to Equity Interests of the Company in connection with any process (a merger or otherwise) the Purchaser or any of its Affiliates (including, after the Closing, the Company) pursue after the Closing to "squeeze out" the then-remaining securityholders of the Company for the Purchaser to obtain one hundred percent (100%) of the Shares; *provided* that, such claim is not due to causes attributable to any act or failure to act of a Seller Indemnified Party.

Section 10.3 Claim Procedures.

(a) A Party that seeks indemnity under this Article 10 (an "Indemnified Party") will give written notice (a "Claim Notice") to the Party from whom indemnification is sought (an "Indemnifying Party") containing (i) a description and, if known, the estimated amount, of any Losses incurred or reasonably expected to be incurred by the Indemnified Party, (ii) a reasonably detailed explanation of the basis for the Claim Notice to the extent of the facts then known by the Indemnified Party, and (iii) a demand for payment of those Losses in accordance with the terms hereof. Within thirty (30) days after delivery of a Claim Notice, the Indemnifying Party will deliver to the Indemnified Party a written response in which the Indemnifying Party will either: (A) agree that the Indemnified Party is entitled to receive all of the Losses at issue in the Claim Notice; or (B) dispute the Indemnified Party's entitlement to indemnification by delivering to the Indemnified Party a written notice (an "Objection Notice") setting forth in reasonable detail each disputed item, the basis for each such disputed item and certifying that all such disputed items are being disputed in good faith. For purposes of this Article 10, (x) if the Purchaser (or any other Purchaser Indemnified Party) comprises the Indemnified Party, any references to Indemnifying Party (except provisions relating to an obligation to make or receive payments) shall be deemed to refer to the Seller, and (y) if the Purchaser comprises the Indemnifying Party, any references to the Indemnified Party shall be deemed to refer to the Seller. If an Indemnified Party delivers, before the expiration of the applicable survival period described in Section 10.5, a Claim Notice to the Indemnifying Party, then such applicable survival period shall be deemed extended until the final resolution thereof.

(b) Any indemnification payments pursuant to this Article 10 will be made within five (5) Business Days after the earliest of (i) the date on which the amount of such payments are determined by mutual agreement of the Seller and the Purchaser, (ii) if an Objection Notice has not been timely delivered, the thirtieth (30th) day after the delivery of a Claim Notice and (iii) if an Objection Notice has been timely delivered, the date on which both such amount and the Indemnifying Party's obligation to pay such amount have been finally determined by a final Judgment of a court having jurisdiction over such Proceeding as permitted by Section 11.10.

(c) With respect to any claim that a Purchaser Indemnified Party may have under Section 10.1(a) (other than in respect of a breach of or inaccuracy in a Fundamental Representation or a representation or warranty set forth in Section 4.14 (*Tax Matters*)) that is covered on the face of the R&W Insurance Policy, it shall be recovered exclusively under the R&W Insurance Policy. With respect to any claim that a Purchaser Indemnified Party may have under Section 10.1(a) that is based upon a breach of or inaccuracy in a Fundamental

Representation or a representation or warranty set forth in Section 4.14 (*Tax Matters*), it shall be recovered first from the R&W Insurance Policy (to the extent covered on the face thereof and to the fullest amount which can be recovered thereunder with respect to a breach of or inaccuracy in such representation or warranty), and then the Escrow Amount, and then, to the extent that the amount available under the R&W Insurance Policy is exhausted and the Escrow Amount is exhausted or released, directly from the Seller. With respect to any claim that a Purchaser Indemnified Party may have under Section 10.1(a) that is based upon an Excluded Representation or under Section 2.4 with respect to any Leakage, it shall be first recovered from the Escrow Amount and then, to the extent that the Escrow Amount is exhausted or released, directly from the Seller. With respect to any claim that a Purchaser Indemnified Party may have under Section 10.1(b), (c), (d), (f), or (g), it shall be first recovered from the Escrow Amount and then, to the extent that the Escrow Amount is exhausted or released, directly from the Seller. For the avoidance of doubt, neither this Section 10.3(c) nor any other provision of this Agreement will inhibit any Purchaser Indemnified Party from obtaining any remedy that the Purchaser or any of its Affiliates may have against any insurer or under the R&W Insurance Policy. Any amount to be paid directly by the Seller pursuant to the foregoing in this Section 10.3(c) shall be paid directly by the Seller by wire transfer of immediately available United States dollars from the Seller to an account designated by the Purchaser.

(d) On the third (3rd) Business Day after the date that falls twenty-four (24) months from the Closing Date (such date, the "Release Date"), the Seller and the Purchaser shall jointly instruct the Escrow Agent to disburse by wire transfer of immediately available funds from the Escrow Amount an amount, if any, equal to (i) the remaining balance of the Escrow Amount *minus* (ii) the aggregate amount of any claims which shall have been asserted to be recovered from the Escrow Amount by any Purchaser Indemnified Party in accordance with this Agreement on or prior to such date and which remain pending on such date (any such claim as of a specified date, an "Escrow Pending Claim") to the Seller. To the extent that on or after the Release Date, any amount shall have been reserved and withheld from distribution from the Escrow Amount on account of an Escrow Pending Claim and, subsequent to the Release Date, such Escrow Pending Claim is resolved, the Seller and the Purchaser shall, within three (3) Business Days of the resolution of such Escrow Pending Claim, jointly instruct the Escrow Agent to disburse by wire transfer of immediately available funds from the Escrow Amount to (A) the Purchaser an amount, if any, equal to the amount of Loss due in respect of such claim as finally determined and (B) an amount, if any, equal to (x) the amount then held in the Escrow Amount *minus* (y) the aggregate amount of any then remaining Escrow Pending Claims, for distribution to the Seller.

(e) Notwithstanding anything to the contrary in this Article 10, in the event of an indemnification claim pursuant to Section 10.1(a) for which the Warranty Insurer notifies an Indemnified Party that it would be entitled to recover for such Losses from the R&W Insurance Policy but for the retention amount thereunder, the Seller and the Purchaser shall immediately (and in no event later than three (3) Business Days after receipt of such notice from the Warranty Insurer) jointly instruct the Escrow Agent to disburse by wire transfer of immediately available funds from the amount then remaining in the Escrow Amount to pay for such claim amount to such Indemnified Party, without the requirement for the Indemnified Party to deliver a Claim Notice or otherwise perform any of the other procedural requirements of an Indemnified Party under this Section 10.3; *provided* that, the aggregate amount paid from the Escrow Amount for the reason of the foregoing shall in no event exceed the product of the Sale Ratio multiplied by the Retention Amount.

Section 10.4 Third Party Claims.

(a) If the Indemnified Party seeks indemnity under this Article 10 in respect of, arising out of or involving a claim or demand, whether or not involving a Proceeding, by another Person not a party to this Agreement (a "Third Party Claim"), then the Indemnified Party will include in the Claim Notice (i) notice of the commencement or threat of any Proceeding relating to such Third Party Claim, which notice shall be given to the Indemnifying Party within thirty (30) days after the Indemnified Party has received written notice of the commencement of the Third Party Claim and (ii) the facts constituting the basis for such Third Party Claim and the amount of the damages claimed by the other Person, in each case to the extent known to the Indemnified Party. Notwithstanding the foregoing, no delay or deficiency on the part of the Indemnified Party in so notifying the Indemnifying Party will relieve the Indemnifying Party of any Liability or obligation under this Agreement except to the extent the Indemnifying Party has suffered actual Losses directly caused by the delay or other deficiency.

(b) The Indemnified Party shall have the right to control all Third Party Claims. To the extent that the Third Party Claim is not a Third Party Claim (A) involving any criminal Proceeding or Liability or any Proceeding by any Governmental Authority, (B) that relates to Taxes, or (C) in which the outcome of any Judgment or settlement in the matter could reasonably be expected to adversely affect the ability of the Indemnified Party to conduct its business (collectively, clauses (A) – (C), the "Special Claims"), the Party not controlling the defense (the "Noncontrolling Party") may participate therein at its own expense. The Party controlling the defense (the "Controlling Party") will reasonably advise the Noncontrolling Party of the status of the Third Party Claim and the defense thereof and, with respect to any Third Party Claim that does not constitute a Special Claim, the Controlling Party will consider in good faith recommendations made by the Noncontrolling Party. The Noncontrolling Party will (i) furnish the Controlling Party with such information as the Noncontrolling Party may have with respect to such Third Party Claim and related Proceedings (including copies of any summons, complaint or other pleading which may have been served on the Noncontrolling Party and any written claim, demand, invoice, billing or other document evidencing or asserting the same) and (ii) otherwise cooperate with and assist in the defense of the Third Party Claim.

(c) The Indemnified Party has the right to agree in good faith to any compromise or settlement of, or the entry of any Judgment arising from, such Third Party Claim without prior notice to or the consent of the Indemnifying Party, as long as such compromise or settlement provides solely for monetary relief and does not involve any finding or admission of any violation of Law or admission of any wrongdoing by the Indemnifying Party. Any compromise or settlement of any Third Party Claim without the Indemnifying Party's consent shall serve as rebuttal evidence of the amount of Losses owed under this Article 10.

(d) Notwithstanding the provisions of Section 11.10, each of the Seller and the Purchaser consents to the non-exclusive jurisdiction of any court in which a Proceeding is brought by another Person against any Purchaser Indemnified Party or Seller Indemnified Party, as applicable, for purposes of any claim that a Purchaser Indemnified Party or a Seller Indemnified Party, as applicable, may have under this Agreement with respect to the Proceeding or the matters alleged therein. Each of the Seller and the Purchaser agrees that process may be served on them with respect to such a claim anywhere in the world.

Section 10.5 Survival.

(a) The representations and warranties of the Seller and the Purchaser contained in this Agreement shall survive until the expiration of 24 months after the Closing Date, except that the Fundamental Representations will survive indefinitely or to the maximum duration permissible by Law (except for those under Section 4.14 (*Tax Matters*) which shall survive until the statute of limitation plus sixty (60) days).

(b) None of the covenants or agreements of the Parties which in accordance with their terms shall be performed prior to or at the Closing survive the Closing, and no claim for indemnification for a breach of any such covenant may be made hereunder after the Closing Date. All of the covenants and agreements of the Parties contained in this Agreement which in accordance with their terms shall be performed after the Closing will survive until the terms provided therein, *provided* that any such covenants and agreements that relate to Taxes shall survive the Closing for a period of four (4) years following the Closing Date.

(c) (i) The Seller's indemnification obligations under Section 10.1(c), Section 10.1(d), Section 10.1(e), and Section 10.1(g) shall survive the Closing for a period of four (4) years following the Closing Date, and shall become invalid and ineffective immediately following the expiration of such four (4)-year period; (ii) the Seller's indemnification obligations under Schedule 10.1(f)(1) shall survive for a period of six (6) months after the execution of an agreement regarding the subject matter thereof; *provided* that, in no event shall such period exceed twelve (12) months following the Closing Date, and such indemnification obligations shall become invalid and ineffective immediately following the expiration of such period; (iii) the Seller's indemnification obligations under Schedule 10.1(f)(2) shall survive the Closing for a period of one (1) year following the Closing Date, and shall become invalid and ineffective immediately following the expiration of such one (1)-year period; and (iv) the Seller's indemnification obligations for the Certain R&W Insurance Exclusions shall survive the Closing for a period of two (2) years following the Closing Date, and shall become invalid and ineffective immediately following the expiration of such two (2)-year period.

(d) (i) The Purchaser's indemnification obligations under Section 10.2(a) or Section 10.2(b) shall survive the Closing for a period of two (2) years following the Closing Date, and shall become invalid and ineffective immediately following the expiration of such two (2)-year period; and (ii) the Purchaser's indemnification obligations under Section 10.2(c) shall survive the Closing until the earlier of (A) four (4) years following the Closing Date and (B) one (1) year following the completion of such "squeeze-out" process referred to in Section 10.2(c), and shall become invalid and ineffective immediately following the expiration of such period.

(e) Following the expirations of the survival periods provided in this Section 10.5, any corresponding claim for indemnification against the Seller under Section 10.1 or the Purchaser under Section 10.2 shall be barred, and no such claim shall be valid unless written notice of such claim has been duly delivered to the applicable Indemnifying Party within the applicable survival period in accordance with Section 10.3.

Section 10.6 R&W Insurance Policy. Notwithstanding any other provision in this Agreement to the contrary:

(a) The Parties acknowledge that Purchaser has the benefit of the R&W Insurance Policy which provides, conditional on the Closing, insurance cover in respect of certain claims.

(b) Except in respect of claims arising out of (i) breaches of or inaccuracies in the representations or warranties set forth in Section 4.5 (*Financial Statements*), Section 4.15(c) (*Employee Benefit Matters*), Section 4.17 (*Environmental, Health and Safety Matters*), Section 4.18 (*Compliance with Laws and Governmental Authorizations*) or Section 4.25 (*Corruption and Trade Regulation*); *provided*, *however*, that, in each and all cases, only to the extent the coverage of any such representation or warranty is excluded on the face of the R&W Insurance Policy (all such representations and warranties under Section 4.5, Section 4.15(c), Section 4.17, Section 4.18 or Section 4.25 the coverage of which are excluded on the face of the R&W Insurance Policy, the "Excluded Representations"), (ii) breaches or inaccuracies in the Fundamental Representations or representations and warranties set forth in Section 4.14 (*Tax Matters*), (iii) criminal fines or penalties excluded from the coverage of the R&W Insurance Policy (together with the Excluded Representations, the "Certain R&W Insurance Exclusions"), or (iv) Fraud or Willful Misconduct, neither the Purchaser nor any Purchaser Indemnified Party shall be entitled to make, and the Purchaser waives and releases on behalf of itself and all Purchaser Indemnified Parties any right such Person may have to make, any claim against the Seller or any of its Affiliates, and the Seller and its Affiliates shall have no liability under, Section 10.1(a), and any and all claims under Section 10.1(a), whether or not covered on the face of the R&W Insurance Policy, shall be made by any Purchaser Indemnified Party exclusively against the insurer under the R&W Insurance Policy (the "Warranty Insurer") (and not against the Seller or any of its Affiliates).

(c) The Purchaser shall include in the terms of the R&W Insurance Policy an express waiver and release of all of the Warranty Insurer's rights of subrogation, contribution, and rights acquired by assignment (or any similar or equivalent rights) against the Seller, its Affiliates and their respective directors, officers, employees, representatives and agents (collectively, the "Released Parties"), save in relation to Fraud or Willful Misconduct, and an acknowledgement by the Warranty Insurer that each of the Released Parties is entitled to directly enforce such waiver and release (and in respect of the waivers and releases, the Purchaser contracts with the Warranty Insurer in its own right and for the benefit of each of the Released Parties). If there is any conflict or inconsistency between this Section 10.6, on the one hand, and any other provisions of this Agreement, on the other hand, this Section 10.6 shall prevail.

Section 10.7 Limitations on Liability.

(a) The Seller shall not be required to indemnify or hold harmless the Purchaser Indemnified Parties for any claim for indemnification for any Loss (or series of Losses related to the same underlying facts, events or circumstances) under Section 10.1 (other than Section 10.1(b) and Section 10.1(e), and with respect to breaches or inaccuracies in the Fundamental Representations) to the extent the aggregate liability of the Seller to the Purchaser Indemnified Parties thereunder exceeds USD [***]; *furthermore*, the Seller shall not be required to indemnify or hold harmless the Purchaser Indemnified Parties for any claim for indemnification for any Loss (or series of Losses related to the same underlying facts, events or circumstances) under Section 10.1(g) unless and until the Purchaser Indemnified Parties, as a group, shall have paid, incurred, suffered or sustained at least USD [***] in Losses in the aggregate, in which case, subject to the other applicable limitations herein, the Purchaser Indemnified Parties shall be entitled to recover all such Losses paid, incurred, suffered or sustained thereby from "dollar one;" and the Seller shall not be required to indemnify or hold harmless the Purchaser Indemnified Parties for any claim for indemnification for any Loss (or series of Losses related to the same underlying facts, events or circumstances) in respect of breaches of or inaccuracies in representations and warranties set forth in Section 4.5 (*Financial Statements*), to the extent the aggregate liability of the Seller to the Purchaser Indemnified Parties

therefor or thereunder exceeds USD [***]. The Purchaser shall not be required to indemnify or hold harmless the Seller Indemnified Parties for any claim for indemnification under this Agreement for Losses in excess of the Purchase Price. Notwithstanding anything to the contrary herein, no Party shall be required to indemnify or hold harmless the Purchaser Indemnified Parties or the Seller Indemnified Parties, as applicable, for any claim for indemnification for any Loss (or series of Losses related to the same underlying facts, events or circumstances) arising under this Agreement (other than in the event of Fraud or Willful Misconduct) to the extent the aggregate liability of such Party to the Purchaser Indemnified Parties or the Seller Indemnified Parties, as applicable, hereunder exceeds the Purchase Price.

(b) Notwithstanding anything in this Agreement to the contrary, for purposes of determining the amount of Losses arising from a breach of or inaccuracy in any representation or warranty in this Agreement, each representation and warranty in this Agreement (and Schedules and Exhibits hereto) will be read without regard and without giving effect to the terms or phrases "material," "in all material respects," "in any material respect," "material adverse change," "material adverse effect," "Material Adverse Effect," "which would not reasonably be expected to be material to the Company," "except where the failure to so qualify has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect" or similar words or phrases contained in such representation or warranty (as if such words or phrases were deleted from such representation and warranty).

(c) The Purchaser shall be deemed to have waived on behalf of itself and all Purchaser Indemnified Parties their respective rights, and the Purchaser Indemnified Parties shall have no recourse, under this Agreement (including under Article 7 and Section 8.1) against the Seller or its Affiliates with respect to any Known Breach except as set forth under Section 10.1(c), (d) or (f). Notwithstanding the foregoing, the Purchaser shall continue to be entitled to any and all rights under the R&W Insurance Policy and its sole recourse with respect to any Known Breach shall be against the R&W Insurance Policy.

(d) Notwithstanding anything to contrary in this Agreement, nothing in this Agreement will limit the Liability of a Party to another Party for Fraud or Willful Misconduct.

(e) All indemnification payments made hereunder shall be treated by all parties as adjustments to the Purchase Price for Tax purposes unless otherwise required by Law.

(f) If an Indemnified Party's claim under Section 10.1 may be brought under different sections of Section 10.1, then such Indemnified Party shall have the right to bring such claim under any applicable section it chooses in accordance with Section 10.1; *provided*, *however*, that in no event shall any Indemnified Party be entitled to double recovery of the same amount and type of Losses with respect to any particular incident, fact or event which resulted in Losses that are recoverable under Section 10.1 regardless of whether there were breaches of more than one representation, warranty, covenant or agreement.

Section 10.8 Reduction. The amount of any claim by any Purchaser Indemnified Party against the Seller under this Agreement shall be reduced in an amount equal to any payment received by any Purchaser Indemnified Party from third parties, including insurance policy providers (including the Warranty Insurer under the R&W Insurance Policy) and any Person responsible for such claim, in relation to the same facts, events or circumstances underlying such claim. If any Purchaser Indemnified Party receives any such payment from third parties subsequent to a payment by the Seller to such Purchaser Indemnified Party in relation to the same facts,

events or circumstances underlying the relevant claim, the Purchaser shall, and shall cause the Purchaser Indemnified Parties to, promptly reimburse the Seller in an amount equal to the lesser of such payment received from such third party or the full amount of the payment received from the Seller.

Section 10.9 Exercise of Remedies by Purchaser Indemnified Parties other than the Purchaser. No Purchaser Indemnified Party (other than the Purchaser or any successor, subrogated person or assignee of the Purchaser) is entitled to assert any indemnification claim or exercise any other remedy under this Agreement unless the Purchaser (or any successor or assignee of the Purchaser) consents to the assertion of the indemnification claim or the exercise of such other remedy.

Article 11
GENERAL PROVISIONS

Section 11.1 Notices. All notices and other communications under this Agreement must be in writing and are deemed duly delivered when (a) delivered if delivered personally, (b) sent by electronic mail (to the extent no bounce-back confirmation is received) or (c) received by the addressee, if sent by a reputable over-night or international courier, in each case to the following addresses, e-mail addresses and marked to the attention of the individual (by name or title) designated below (or to such other address, e-mail address, or individual as a party may designate by notice to the other parties):

If to the Seller:

Rene Limited
31, Nonhyeon-ro 36-gil, Gangnam-gu, Seoul, 06296, Korea
Attn: David Ko; Seungro Choe
Email: [***]; [***]

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

Kim & Chang
Seyang Building
39, Sajik-ro 8-gil, Jongno-gu, Seoul, Korea
Attn: Yong-Seung Sun
Email: [***]

Paul Hastings LLP
33/F West Tower Mirae Asset Center1,
26 Eulji-ro 5-gil, Jung-gu, Seoul, Korea
Attn: Dong Chul Kim
Email: [***]

If to the Purchaser:

Enovix Corporation
3501 W Warren Ave
Fremont, CA 94538

Attn: Arthi Chakravarthy
Email: [***]

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

Baker & McKenzie LLP
600 Hansen Way
Palo Alto, CA 9430
Attention: Aarthi Belani and Lawrence C. Lee
Email: [***];
[***]

Section 11.2 Amendment. This Agreement may not be amended, supplemented or otherwise modified except in a written document signed by the Purchaser and the Seller and that identifies itself as an amendment to this Agreement.

Section 11.3 Waiver and Remedies. Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in a written document signed by the other Parties, (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement. Any enumeration of a Party's rights and remedies in this Agreement is not intended to be exclusive, and a Party's rights and remedies are intended to be cumulative to the extent permitted by law and include any rights and remedies authorized in law or in equity.

Section 11.4 Entire Agreement. This Agreement (including the Schedules and Exhibits hereto and the documents and instruments referred herein that are to be delivered at the Closing) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, or any of them, written or oral, with respect to the subject matter of this Agreement.

Section 11.5 Assignment and Successors and No Third Party Rights. This Agreement binds and benefits the Parties and their respective heirs, executors, administrators, successors and assigns and either Party may assign any rights or obligations under this Agreement, whether by operation of Law or otherwise, without the prior written consent of the other Party. Notwithstanding the foregoing, the Purchaser may, without the Seller's consent, assign this Agreement and its rights and obligations hereunder to any Affiliate of the Purchaser, any successor-in-interest to the Purchaser or the Purchaser's business by way of merger, acquisition, consolidation, amalgamation, or any similar transaction; *provided* that, despite such assignment, the Purchaser shall remain liable as a primary obligor under this Agreement to observe and perform all of its obligations in this Agreement. Except for the rights of any Indemnified Parties under the provisions of Article 10, no provision of this Agreement is intended or will be construed to confer upon any Person other than the Parties to this Agreement

and their respective heirs, successors and permitted assigns any right, remedy or claim under or by reason of this Agreement.

Section 11.6 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way and the Parties agree to negotiate in good faith to replace such invalid, illegal and unenforceable provision with a valid, legal and enforceable provision that achieves, to the greatest lawful extent, the economic, business and other purposes of such invalid, illegal or unenforceable provision.

Section 11.7 Exhibits and Schedules. The Exhibits and Schedules to this Agreement are incorporated herein by reference and made a part of this Agreement. The Seller Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article 3 and Article 4, as applicable. The disclosure in any section or paragraph of the Seller Disclosure Schedule qualifies other sections and paragraphs in this Agreement only to the extent it is reasonable apparent on its face that such disclosure is applicable to such other sections and paragraphs. The listing or inclusion of a copy of a document or other item is not adequate to disclose an exception to any representation or warranty in this Agreement unless the representation or warranty relates to the existence of the document or item itself.

Section 11.8 Interpretation. In the negotiation of this Agreement, each Party has received advice from its own attorney. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no provision of this Agreement will be interpreted for or against any Party because that Party or its attorney drafted the provision.

Section 11.9 Specific Performance. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. The Parties accordingly agree that, in addition to any other remedy to which they are entitled at law or in equity, the Parties are entitled to injunctive relief to prevent breaches of this Agreement and otherwise to enforce specifically the provisions of this Agreement. Each Party expressly waives (a) any defenses in any action for specific performance, including the defense that a remedy at law would be adequate, and (b) any requirement that any other Party obtain any bond or provide any security or indemnity in connection with any action seeking injunctive relief or specific enforcement of the provisions of this Agreement.

Section 11.10 Dispute Resolution; Governing Law.

(a) This Agreement will be deemed to be made in and in all respects will be interpreted, construed and governed by and in accordance with the law of the State of Delaware without regard to the conflicts of law principles thereof.

(b) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The place of arbitration shall be Singapore. The language of the arbitration shall be English. The arbitration award shall be final and binding on the Parties, and the parties undertake to carry out any award without delay. The Parties agree to keep confidential the existence of the arbitration, the arbitration proceedings, the submissions made by the Parties and the decisions made by the arbitral tribunal, including its awards, except as required by applicable law, or to enforce any such award, or to the extent not already in the public domain.

(c) The arbitrator may grant interim measures including injunctions, attachments and conservation orders in appropriate circumstances, which measures the parties agree may be immediately enforced by the arbitrators or by court order. Hearings on request for interim measures may be held in person, by telephone or by video conference, and requests for relief, responses, briefs, or memorials may be sent to, and orders or awards received from, the arbitrators by email. Notwithstanding the foregoing, any Party may apply to any court of competent jurisdiction for interim measures, and the Parties agree that seeking and obtaining such measures will not waive the right to arbitration or otherwise relieve the Parties of their obligations to arbitrate disputes in accordance with this Agreement.

Section 11.11 Waiver of Jury Trial. **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE ACTIONS OF ANY PARTY TO THIS AGREEMENT IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT.**

Section 11.12 Expenses. Except as otherwise provided in this Agreement, each Party will pay its respective direct and indirect expenses incurred by it in connection with the preparation and negotiation of this Agreement and the consummation of the Proposed Transactions, including all fees and expenses of its advisors and representatives. All amounts relating to any financial, legal, accounting or other advisor, and all other transaction fees and expenses incurred by the Company in connection with this Agreement and the Proposed Transactions, will be paid by the Seller in full on or prior to the Closing Date or will be addressed as Company Transaction Expenses under the terms of this Agreement. If this Agreement is terminated, the obligation of each Party to pay its own expenses will be subject to any rights of such Party arising from any breach of this Agreement by another Party.

Section 11.13 No Joint Venture. Nothing in this Agreement creates a joint venture or partnership between the Parties. This Agreement does not authorize any Party (a) to bind or commit, or to act as an agent, employee or legal representative of, the other Party, except as may be specifically set forth in other provisions of this Agreement or (b) to have the power to control the activities and operations of the other Party. The Parties are independent contractors with respect to each other under this Agreement. Each Party agrees not to hold itself out as having any authority or relationship contrary to this Section 11.13.

Section 11.14 Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original as against the Party that signed it, and all of which together constitute one agreement. This Agreement is effective upon delivery of one executed counterpart from each Party to the other Parties. The signatures of all Parties need not appear on the same counterpart. The delivery of signed counterparts by email transmission that includes a copy of the sending Party's signature(s) is as effective as signing and delivering the counterpart in person.

[*Signature pages follow*]

The Parties have executed and delivered this Agreement as of the date indicated in the first sentence of this Agreement.

PURCHASER:

ENOVIX CORPORATION

By: _______________________________

Name:
Title:

[Signature Page to Stock Purchase Agreement]

The Parties have executed and delivered this Agreement as of the date indicated in the first sentence of this Agreement.

SELLER:

RENE LIMITED

By: __
Name: Seungro Choe
Title: Chief Executive Officer

[Signature Page to Stock Purchase Agreement]

Schedule I
Illustration of Division of Purchase Price
(Cash and Stock Payment Scenarios Based on Acquired Shares)

[***]

Schedule II
Key Employees

[***]

Schedule 10.1(d)
Special Tax Indemnities

[***]

Schedule 10.1(f)
Other Special Indemnities

[***]

EXHIBIT 31.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Raj Talluri, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Enovix Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023

By: /s/ Raj Talluri
Raj Talluri
President and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Farhan Ahmad, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Enovix Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023

By: /s/ Farhan Ahmad
Farhan Ahmad
Chief Financial Officer
(*Principal Financial Officer and Principal Accounting Officer*)

EXHIBIT 32.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Enovix Corporation (the "Company") on Form 10-Q for the quarterly period ended October 1, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Raj Talluri, President and 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, to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2023

/s/ Raj Talluri

Raj Talluri

President and Chief Executive Officer
(*Principal Executive Officer*)

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

EXHIBIT 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Enovix Corporation (the "Company") on Form 10-Q for the quarterly period ended October 1, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Farhan Ahmad, 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, to which this Certification is attached as Exhibit 32.2, fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2023

/s/ Farhan Ahmad
Farhan Ahmad
Chief Financial Officer
(*Principal Financial Officer and Principal Accounting Officer*)

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.