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

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2023

OR

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

COMMISSION FILE NUMBER 001-36379

ENERGOUS CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**46-1318953**
(State of incorporation)	*(I.R.S. Employer Identification No.)*

3590 North First Street, Suite 210, San Jose, CA 95134
(Address of principal executive office) (Zip code)

(408) 963-0200
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.00001 par value	WATT	The Nasdaq Stock 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, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	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 9, 2023, there were 5,210,361 shares of our Common Stock, par value $0.00001 per share, outstanding.

ENERGOUS CORPORATION
FORM 10-Q
FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2023

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

Energous Corporation
CONDENSED BALANCE SHEETS

	As of	
	September 30, 2023 (unaudited)	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 16,578,659	$ 26,287,293
Accounts receivable, net	120,198	143,353
Inventory	199,616	105,821
Prepaid expenses and other current assets	896,253	827,551
Total current assets	17,794,726	27,364,018
Property and equipment, net	388,505	429,035
Operating lease right-of-use assets	1,411,930	1,959,869
Total assets	$ 19,595,161	$ 29,752,922
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 768,941	$ 900,765
Accrued expenses	1,672,936	1,790,414
Accrued severance expense	202,946	416,516
Warrant liability	450,000	–
Operating lease liabilities, current portion	696,573	705,894
Deferred revenue	24,341	29,727
Total current liabilities	3,815,737	3,843,316
Operating lease liabilities, long-term portion	739,767	1,264,131
Total liabilities	4,555,504	5,107,447
Commitments and contingencies		
Stockholders' equity:		
Preferred Stock, $0.00001 par value, 10,000,000 shares authorized at September 30, 2023 and December 31, 2022; no shares issued or outstanding at September 30, 2023 and December 31, 2022.	–	–
Common Stock, $0.00001 par value, 200,000,000 shares authorized at September 30, 2023 and December 31, 2022; 5,046,994 and 3,947,267 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively.	925	789
Additional paid-in capital	392,476,298	387,319,985
Accumulated deficit	(377,437,566)	(362,675,299)
Total stockholders' equity	15,039,657	24,645,475
Total liabilities and stockholders' equity	$ 19,595,161	$ 29,752,922

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

Energous Corporation
CONDENSED STATEMENTS OF OPERATIONS
(Unaudited)

	For the Three Months Ended September 30, 2023	For the Three Months Ended September 30, 2022	For the Nine Months Ended September 30, 2023	For the Nine Months Ended September 30, 2022
Revenue	$ 168,708	$ 223,201	$ 382,517	$ 672,133
Costs and expenses:				
Cost of revenue	48,394	420,060	270,025	894,693
Research and development	2,460,123	2,885,830	8,418,779	9,622,886
Sales and marketing	774,141	1,093,640	3,074,163	3,865,322
General and administrative	1,698,380	1,931,386	5,763,811	5,983,845
Severance expense	269,109	–	359,419	633,444
Total costs and expenses	5,250,147	6,330,916	17,886,197	21,000,190
Loss from operations	(5,081,439)	(6,107,715)	(17,503,680)	(20,328,057)
Other (expense) income:				
Offering costs related to warrant liability	–	–	(591,670)	–
Change in fair value of warrant liability	788,000	–	2,685,000	–
Interest income	178,845	142,840	648,083	192,715
Total other income	966,845	142,840	2,741,413	192,715
Net loss	$ (4,114,594)	$ (5,964,875)	$ (14,762,267)	$ (20,135,342)
Basic and diluted loss per common share	$ (0.86)	$ (1.54)	$ (3.30)	$ (5.21)
Weighted average shares outstanding, basic and diluted	4,762,187	3,879,804	4,467,436	3,867,330

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

Energous Corporation
CONDENSED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY
(Unaudited)

	Common Stock Shares	Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
Balance at January 1, 2023	3,947,267	$ 789	$ 387,319,985	$ (362,675,299)	$ 24,645,475
Stock-based compensation - options	–	–	21,095	–	21,095
Stock-based compensation - restricted stock units ("RSUs")	–	–	476,242	–	476,242
Stock-based compensation - employee stock purchase plan ("ESPP")	–	–	24,740	–	24,740
Issuance of shares for RSUs	9,347	2	(2)	–	–
Proceeds from contributions to the ESPP	–	–	65,134	–	65,134
Issuance of shares in an at-the-market ("ATM") placement, net of $68,637 in issuance costs	182,511	37	2,674,660	–	2,674,697
Issuance of shares in a sale of common stock, net of $3,166,139 in issuance costs and fair value of liability warrant	412,500	83	133,778	–	133,861
Net loss	–	–	–	(6,652,507)	(6,652,507)
Balance at March 31, 2023 (unaudited)	4,551,625	$ 911	$ 390,715,632	$ (369,327,806)	$ 21,388,737
Stock-based compensation - options	–	–	21,330	–	21,330
Stock-based compensation - RSUs	–	–	455,695	–	455,695
Stock-based compensation - performance share units ("PSUs")	–	–	10,601	–	10,601
Stock-based compensation - ESPP	–	–	16,267	–	16,267
Issuance of shares for RSUs	34,075	7	(7)	–	–
Proceeds from contributions to the ESPP	16,341	3	1,532	–	1,535
Net loss	–	–	–	(3,995,166)	(3,995,166)
Balance at June 30, 2023 (unaudited)	4,602,041	$ 921	$ 391,221,050	$ (373,322,972)	$ 17,898,999
Stock-based compensation - options	–	–	21,564	–	21,564
Stock-based compensation - RSUs	–	–	341,443	–	341,443
Stock-based compensation - PSUs	–	–	4,488	–	4,488
Stock-based compensation - ESPP	–	–	1,412	–	1,412
Issuance of shares for RSUs	11,249	–	–	–	–
Proceeds from contributions to the ESPP	–	–	3,493	–	3,493
Cash in lieu of fractional shares from reverse stock split	(1,857)	–	–	–	–
Issuance of shares in an ATM placement, net of $94,218 in issuance costs	435,561	4	882,848	–	882,852
Net loss	–	–	–	(4,114,594)	(4,114,594)
Balance at September 30, 2023 (unaudited)	5,046,994	$ 925	$ 392,476,298	$ (377,437,566)	$ 15,039,657

	Common Stock Shares	Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
Balance at January 1, 2022	3,833,360	$ 767	$ 383,383,550	$ (336,400,039)	$ 46,984,278
Stock-based compensation - options	–	–	10,313	–	10,313
Stock-based compensation - RSUs	–	–	745,620	–	745,620
Stock-based compensation - ESPP	–	–	40,973	–	40,973
Issuance of shares for RSUs	19,396	4	(4)	–	–
Proceeds from contributions to the ESPP	–	–	104,217	–	104,217
Net loss	–	–	–	(7,152,718)	(7,152,718)
Balance at March 31, 2022 (unaudited)	3,852,756	$ 771	$ 384,284,669	$ (343,552,757)	$ 40,732,683
Stock-based compensation - options	–	–	21,330	–	21,330
Stock-based compensation - RSUs	–	–	601,029	–	601,029
Stock-based compensation - ESPP	–	–	41,428	–	41,428
Issuance of shares for RSUs	10,791	2	(2)	–	–
Proceeds from contributions to the ESPP	9,690	2	60,509	–	60,511
Net loss	–	–	–	(7,017,749)	(7,017,749)
Balance at June 30, 2022 (unaudited)	3,873,237	$ 775	$ 385,008,963	$ (350,570,506)	$ 34,439,232
Stock-based compensation - options	–	–	21,564	–	21,564
Stock-based compensation - RSUs	–	–	586,652	–	586,652
Stock-based compensation - PSUs	–	–	67,922	–	67,922
Stock-based compensation - ESPP	–	–	22,084	–	22,084
Issuance of shares for RSUs	12,895	3	(3)	–	–
Proceeds from contributions to the ESPP	–	–	84,977	–	84,977
Net loss	–	–	–	(5,964,875)	(5,964,875)
Balance at September 30, 2022 (unaudited)	3,886,132	$ 778	$ 385,792,159	$ (356,535,381)	$ 29,257,556

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

Energous Corporation
CONDENSED STATEMENTS OF CASH FLOWS
(Unaudited)

	For the Nine Months Ended September 30,	
	2023	**2022**
Cash flows from operating activities:		
Net loss	$ (14,762,267)	$ (20,135,342)
Adjustments to reconcile net loss to:		
Net cash used in operating activities:		
Depreciation and amortization	137,772	200,995
Stock based compensation	1,394,877	2,158,915
Changes in operating lease right-of-use assets	547,939	550,372
Inventory net realizable value adjustment	166,086	–
Bad debt expense	(12,500)	30,000
Change in fair value of warrant liability	(2,685,000)	–
Offering costs allocated to warrants	591,670	–
Changes in operating assets and liabilities:		
Accounts receivable	35,655	10,282
Inventory	(259,881)	(164,426)
Prepaid expenses and other current assets	(68,702)	(230,368)
Accounts payable	(131,824)	(312,174)
Accrued expenses	(117,478)	924
Accrued severance expense	(213,570)	(395,405)
Operating lease liabilities	(533,685)	(594,703)
Deferred revenue	(5,386)	42,477
Net cash used in operating activities	(15,916,294)	(18,838,453)
Cash flows from investing activities:		
Purchases of property and equipment	(97,242)	(127,198)
Net cash used in investing activities	(97,242)	(127,198)
Cash flows from financing activities:		
Net proceeds from an ATM offering	3,557,549	–
Net proceeds from a sale of common stock and warrant issuance	2,677,191	–
Proceeds from contributions to employee stock purchase plan	70,162	249,705
Net cash provided by financing activities	6,304,902	249,705
Net decrease in cash and cash equivalents	(9,708,634)	(18,715,946)
Cash and cash equivalents - beginning	26,287,293	49,071,414
Cash and cash equivalents - ending	$ 16,578,659	$ 30,355,468
Supplemental disclosure of non-cash investing and financing activities:		
Increase in operating lease right-of-use assets and operating lease liabilities	$ –	$ 2,071,336
Common stock issued for RSUs	$ 9	$ 9

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

Note 1 - Business Organization, Nature of Operations

Description of Business

Energous Corporation (the "Company") was incorporated in Delaware on October 30, 2012. The Company has developed its WattUp® wireless power technology, consisting of proprietary semiconductor chipsets, software controls, hardware designs and antennas, that enables radio frequency ("RF") based charging for electronic devices. The WattUp technology has a broad spectrum of capabilities, including near-field wireless charging and at-a-distance wireless charging at various distances. The Company believes its proprietary WattUp technology is well suited for many applications, including building and home automation, electronic shelf labels, industrial IoT sensors, surface and implanted medical devices, tracking devices, hearables, wearables, consumer electronics and public safety applications. Potential future applications include smartphones, commercial and industrial robotics, as well as automotive solutions and other devices with charging requirements that would otherwise require battery replacement or a wired power connection.

Reverse Stock Split

On June 14, 2023, at the Company's 2023 annual meeting of stockholders, the Company's stockholders approved a proposal to effect a reverse stock split of the Company's common stock by a ratio not to exceed 1-for-20.

On August 15, 2023, the Company announced that its Board of Directors had determined to set the reverse stock split ratio at 1-for-20 and that the Company's common stock would begin trading at the split-adjusted price beginning August 16, 2023. Upon effectiveness of the reverse stock split, every twenty shares of issued and outstanding common stock held were converted into one share of common stock. No fractional shares were distributed as a result of the reverse stock split and stockholders were entitled to a cash payment in lieu of fractional shares. Additionally, the par value of the Company's common stock did not change.

All information presented herein, unless otherwise indicated herein, reflects the 1-for-20 reverse stock split of the Company's outstanding shares of common stock, and unless otherwise indicated, all such amounts and corresponding conversion price or exercise price data set forth herein have been adjusted to give effect to such reverse stock split.

Note 2 – Liquidity and Management Plans

During the three and nine months ended September 30, 2023, the Company recorded revenue of $168,708 and $382,517, respectively. During the three and nine months ended September 30, 2023, the Company recorded net losses of $4,114,594 and $14,762,267, respectively. Net cash used in operating activities was $15,916,294 and $18,838,453 for the nine months ended September 30, 2023 and 2022, respectively. The Company is currently meeting its liquidity requirements through the proceeds of securities offerings that raised net proceeds of $27,043,751 during 2021, $744,787 during 2022 and $6,234,740 during the first three quarters of 2023, along with proceeds from contributions to the Company's employee stock purchase plan (the "ESPP") and payments received from customers.

As of September 30, 2023, the Company had cash and cash equivalents of $16,578,659. The Company expects that cash and cash equivalents as of September 30, 2023, together with expected additional ATM financing during the fourth quarter of 2023, implementation of cost and expense reductions and anticipated revenues, will be sufficient to fund the Company's operations through November 2024.

Research and development of new technologies is by its nature unpredictable. Although the Company intends to continue its research and development activities, there can be no assurance that its available resources and revenue generated from its business operations will be sufficient to sustain its operations. Accordingly, the Company expects to pursue additional cost and expense reductions in addition to financing, which could include offerings of equity or debt securities, bank financings, commercial agreements with customers or strategic partners, and other alternatives, depending upon market conditions. There is no assurance that such cost and expense reductions and financing will be available on terms that the Company would find acceptable, or at all. If the Company is unsuccessful in implementing this plan, the Company will be required to make further cost and expense reductions or modifications to its on-going and strategic plans.

The market for products using the Company's technology is broad and evolving, but remains nascent and unproven, so the Company's success is dependent upon many factors, including customer acceptance of its existing products, technical feasibility of future products, regulatory approvals, the development of complementary technologies, competition and global market fluctuations.

Note 3 – Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements are presented in U.S. dollars and have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP"), and pursuant to the accounting and disclosure rules and regulations of the U.S. Securities and Exchange Commission (the "SEC").

These unaudited condensed interim financial statements should be read in conjunction with the audited financial statements and notes thereto for the fiscal year ended December 31, 2022 included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 30, 2023. The accounting policies used in preparing these unaudited condensed interim financial statements are consistent with those described in the Company's December 31, 2022 audited financial statements.

Use of Estimates

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent liabilities at the date of the financial statements as well as the reported expenses during the reporting periods.

The Company's significant estimates and assumptions include the valuation of stock-based compensation instruments, recognition of revenue, inventory valuation, fair value of warrant liabilities and the valuation allowance on deferred tax assets. Some of these judgments can be subjective and complex, and, consequently, actual results may differ from these estimates. Although the Company believes that its estimates and assumptions are reasonable, they are based upon information available at the time the estimates and assumptions were made. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all short-term, highly liquid investments with an original maturity at the date of purchase of three months or less to be cash equivalents. The Company maintains cash balances that may be uninsured or in deposit accounts that exceed Federal Deposit Insurance Corporation limits. The Company maintains its cash deposits with major financial institutions.

Warrants

The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 480, "Distinguishing Liabilities from Equity" ("ASC 480"), and ASC 815, "Derivatives and Hedging" ("ASC 815"). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company's common stock, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding.

For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded as a liability at their initial fair value on the date of issuance, and each balance sheet date thereafter. Changes in the estimated fair value of the warrants are recognized as a non-cash gain or loss on the statements of operations. The fair value of the warrants is estimated using an appropriate valuation model. Such warrant classification is also subject to re-evaluation at each reporting period.

Offering costs associated with warrants classified as liabilities are expensed as incurred and are presented as offering cost related to warrant liability in the statement of operations. Offering costs associated with the sale of warrants classified as equity are charged against proceeds.

Fair Value

The Company follows ASC 820, Fair Value Measurements ("ASC 820"), which establishes a common definition of fair value to be applied when US GAAP requires the use of fair value, establishes a framework for measuring fair value, and requires certain disclosure about such fair value measurements.

Note 3 – Summary of Significant Accounting Policies, continued

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

- Level 1: Observable inputs such as quoted prices in active markets for identical assets or liabilities to which the Company has access at a measurement date.
- Level 2: Observable inputs other than Level 1 quoted prices that are observable for the asset or liability, either directly or indirectly; these include quoted prices for similar assets or liabilities in an active market, quoted prices for identical assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3: Unobservable inputs for which little or no market data exists and for which the Company must develop its own assumptions regarding the assumptions that market participants would use in pricing the asset or liability, including assumptions regarding risk.

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

The carrying amounts of the Company's financial assets and liabilities, such as cash, cash equivalents, prepaid expenses, other current assets, and accounts payable & accrued expenses, are an approximate of their fair values because of the short maturity of these instruments. The Company's derivative liabilities recognized at fair value on a recurring basis are a level 3 measurement (see Note 8 – Fair Value Measurement).

Revenue Recognition

The Company follows Accounting Standards Codification ("ASC") 606, "Revenue from Contracts with Customers" ("Topic 606").

In accordance with Topic 606, the Company recognizes revenue using the following five-step approach:

1. Identify the contract with a customer.
2. Identify the performance obligations in the contract.
3. Determine the transaction price of the contract.
4. Allocate the transaction price to the performance obligations in the contract.
5. Recognize revenue when or as the performance obligations are satisfied.

The Company's revenue consists of its single segment of wireless charging system solutions. The wireless charging system revenue consists of revenue from product development projects and production-level systems. During the three and nine months ended September 30, 2023, the Company recognized $168,708 and $382,517, respectively, in revenue. During the three and nine months ended September 30, 2022, the Company recognized $223,201 and $672,133, respectively, in revenue.

The Company records revenue associated with product development projects that it enters into with certain customers. In general, these product development projects are complex, and the Company does not have certainty about its ability to achieve the project milestones. The achievement of a milestone is dependent on the Company's performance obligation and requires acceptance by the customer. The Company recognizes this revenue at the point in time at which the performance obligation is met. The payment associated with achieving the performance obligation is generally commensurate with the Company's effort or the value of the deliverable and is nonrefundable. The Company records the expenses related to these product development projects in research and development expense, in the periods such expenses were incurred.

Note 3 – Summary of Significant Accounting Policies, continued

Inventory

The Company follows ASC 330, *Inventory* (“Topic 330”) to account for its inventory, which includes finished goods ready for sale, work in process and raw materials, at the lower of cost or net realizable value. Net realizable value is calculated at the end of each reporting period and adjustment, if needed, is made.

Research and Development

Research and development expenses are charged to operations as incurred. For internally developed patents, all patent costs are expensed as incurred as research and development expense. Patent application costs, which are generally legal costs, are expensed as research and development costs until such time as the future economic benefits of such patents become more certain. The Company incurred research and development costs of $2,460,123 and $8,418,779 for the three and nine months ended September 30, 2023, respectively. The Company incurred research and development costs of $2,885,830 and $9,622,886 for the three and nine months ended September 30, 2022, respectively.

Stock-Based Compensation

The Company accounts for equity instruments issued to employees, board members and contractors in accordance with accounting guidance that requires awards to be recorded at their fair value on the date of grant and amortized over the vesting period of the award. The Company amortizes compensation costs on a straight-line basis over the requisite service period of the award, which is typically the vesting term of the equity instrument issued.

Under the ESPP, employees may purchase a limited number of shares of the Company’s common stock at a 15% discount from the lower of the closing market prices measured on the first and last days of each half-year period. The Company recognizes stock-based compensation expense for the fair value of the purchase options, as measured on the grant date.

Income Taxes

Tax benefits are recognized only for tax positions that are more likely than not to be sustained upon examination by tax authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely to be realized upon settlement. A liability for “unrecognized tax benefits” is recorded for any tax benefits claimed in the Company’s tax returns that do not meet these recognition and measurement standards. As of September 30, 2023, no liability for unrecognized tax benefits was required to be reported. The guidance from ASC 740, *Income Taxes,* also discusses the classification of related interest and penalties on income taxes. The Company’s policy is to record interest and penalties on uncertain tax positions as a component of income tax expense. No interest or penalties were recorded during the three or nine months ended September 30, 2023 and 2022. The Company files income tax returns with the United States and California governments.

Accounting for Reverse Stock Split

During the three months ended September 30, 2023, the Company effected a reverse stock split of its common stock at a ratio of 1-for-20 (See Note 1 - Business Organization, Nature of Operations, Reverse Stock Split). On August 15, 2023, the Company had 92,069,632 shares of common stock issued and outstanding prior to the reverse stock split taking effect. On August 16, 2023, the Company had 4,601,654 shares of outstanding common stock after the reverse stock split became effective. No fractional shares were issued in connection with the reverse stock split, and stockholders of record who would have otherwise been entitled to receive a fractional share received a cash payment in lieu thereof. The Company paid approximately $6,250 for cash in lieu of fractional shares. The par value of the Company's common stock did not change and no adjustments to historical par value were made. All information presented in the accompanying financial statements, unless otherwise indicated herein, reflects the 1-for-20 reverse stock split of the Company’s outstanding shares of common stock, and unless otherwise indicated, all such amounts and corresponding conversion price or exercise price data set forth herein have been adjusted to give effect to such reverse stock split.

Note 3 – Summary of Significant Accounting Policies, continued

Net Loss Per Common Share

Basic net loss per share is computed by dividing net loss available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is computed using the weighted average number of common shares and, if dilutive, potential common shares outstanding during the period. Potential common shares consist of the incremental common shares issuable upon the exercise of stock options and warrants (using the treasury stock method), the vesting of restricted stock units ("RSUs") and performance stock units ("PSUs") and the enrollment of employees in the ESPP. The computation of diluted loss per share excludes potentially dilutive securities of 597,020 for both the three and nine months ended September 30, 2023 and 312,319 for both the three and nine months ended September 30, 2022, as outlined in the table below, because their inclusion would be anti-dilutive.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Warrants issued to investors	495,833	164,239	495,833	164,239
Options to purchase common stock	15,000	15,013	15,000	15,013
RSUs	83,687	123,717	83,687	123,717
PSUs	2,500	9,350	2,500	9,350
Total potentially dilutive securities	597,020	312,319	597,020	312,319

The table above includes 83,333 warrants expiring on March 1, 2024, which have an exercise price of $200.00 and 412,500 warrants expiring on March 28, 2029, which have an exercise price of $1.66.

Leases

The Company determines if an arrangement is a lease at the inception of the arrangement. The Company applies the short-term lease recognition exemption and recognizes lease payments in profit or loss at lease commencement for facility or equipment leases that have a lease term of 12 months or less and do not include a purchase option whose exercise is reasonably certain. Operating leases are included in operating lease right-of-use ("ROU") assets and operating lease liabilities.

ROU assets represent the right to use an underlying asset for the lease term, and lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are measured and recorded at the later of the adoption date, January 1, 2019, or the service commencement date based on the present value of lease payments over the lease term. The Company uses the implicit interest rate when readily determinable; however, most leases do not establish an implicit rate, so the Company uses an estimate of the incremental borrowing rate based on the information available at the time of measurement. Lease expense for lease payments is recognized on a straight-line basis over the lease term. See Note 4 – Commitments and Contingencies, *Operating Leases* for further discussion of the Company's operating leases.

Management's Evaluation of Subsequent Events

The Company evaluates events that have occurred after the balance sheet date of September 30, 2023, through the date which the financial statements are available to be issued.

Note 4 – Commitments and Contingencies

Operating Leases

San Jose Lease

On May 20, 2022, the Company signed a lease amendment to the existing lease for its office space at its corporate headquarters in San Jose, California, extending the term of the lease for an additional three years. Upon signing the lease amendment, the Company recorded a new ROU lease asset of $2,071,336 and operating lease liability of $2,071,336, using a present value discount rate of 3.0%. Upon expiration of the original lease on September 30, 2022, the new monthly lease payment starting October 1, 2022 is $58,903, subject to annual escalations up to a maximum monthly lease payment of $62,490.

Note 4 – Commitments and Contingencies, continued

Costa Mesa Lease

On September 22, 2021, the Company signed a new lease for office space for its engineers based in Costa Mesa, California. Per the lease, the lease commencement date was October 1, 2021 and the expiration date was September 30, 2023. The Company did not have control of the new office space until October 2021, at which time the Company recorded a new ROU lease asset of $104,563 and operating lease liability of $104,563. The new Costa Mesa lease had an initial monthly lease payment of $4,369 starting October 1, 2021 and was subject to an annual escalation up to a maximum monthly lease payment of $4,522. The lease expired on September 30, 2023 and was not renewed.

Operating Lease Commitments

The Company follows ASC 842, *Leases,* ("Topic 842") and recognizes the required ROU assets and operating lease liabilities on its balance sheet. The Company anticipates having future total lease payments of $1,477,914 during the period from the fourth quarter of 2023 to the third quarter of 2025. As of September 30, 2023, the Company has total operating lease ROU assets of $1,411,930, current portion of operating lease liabilities of $696,573 and long-term portion of operating lease liabilities of $739,767. The weighted average remaining lease term is 2.0 years as of September 30, 2023.

A reconciliation of undiscounted cash flows to lease liabilities recognized as of September 30, 2023 is as follows:

		Amount (unaudited)
2023		182,009
2024		733,497
2025		562,408
Total future lease payments		1,477,914
Present value discount (3.0% weighted average)		(41,574)
Total operating lease liabilities	$	1,436,340

Hosted Design Software Agreement

In June 2021, the Company entered into an electronic design automation software in a hosted environment license agreement with a term of three-years under which the Company is required to remit quarterly payments of approximately $233,000 through the second quarter of 2024.

Litigations, Claims, and Assessments

The Company is from time to time involved in various disputes, claims, liens and litigation matters arising in the normal course of business. While the outcome of these disputes, claims, liens and litigation matters cannot be predicted with certainty, after consulting with legal counsel, management does not believe that the outcome of these matters will have a material adverse effect on the Company's combined financial position, results of operations or cash flows.

MBO Bonus Plan

On March 15, 2018, the Company's Board of Directors ("Board"), on the recommendation of the Board's Compensation Committee ("Compensation Committee"), approved the Energous Corporation MBO Bonus Plan ("Bonus Plan") for executive officers of the Company. To be eligible to receive a bonus under the Bonus Plan, an executive officer must be continuously employed throughout the applicable performance period, and in good standing, and achieve the performance objectives selected by the Compensation Committee.

Under the Bonus Plan, the Compensation Committee is responsible for selecting the amounts of potential bonuses for executive officers, the performance metrics used to determine whether any such bonuses will be paid and determining whether those performance metrics have been achieved.

During the three and nine months ended September 30, 2023, the Company recorded $146,758 and $445,394 in expense, respectively, under the Bonus Plan. As of September 30, 2023, the Company had an unpaid total of $187,798 under the Bonus Plan which is expected to be paid during the first quarter of 2024.

Note 4 – Commitments and Contingencies, continued

Severance and Change in Control Agreement

On March 15, 2018, the Compensation Committee approved a form of Severance and Change in Control Agreement ("Severance Agreement") that the Company may enter into with executive officers (each, an "Executive").

Under the Severance Agreement, if an Executive is terminated in a qualifying change in control termination, the Company agrees to pay the Executive six to 12 months of that Executive's monthly base salary. If an Executive elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") the Company agrees to pay the full amount of the Executive's premiums under the Company's health, dental and vision plans, including coverage for the Executive's eligible dependents, for the six to 12 month period following the Executive's termination.

Executive Employee Agreement – Cesar Johnston

On December 9, 2021, the Company announced that Cesar Johnston had been appointed as the Company's Chief Executive Officer. In connection with Mr. Johnston's appointment as Chief Executive Officer, the Company and Mr. Johnston executed an offer letter dated as of December 6, 2021.

Under the terms of his offer letter, Mr. Johnston will receive an annual base salary of $400,000 per year. Beginning in 2022, he is eligible to receive a discretionary annual bonus of up to 100% of his base salary, at the recommendation of the Compensation Committee, with the approval of the Board. In addition, as an inducement to accept his appointment as Chief Executive Officer, Mr. Johnston received, subject to continued employment, (a) a special one-time sign-on bonus in the amount of $120,000, payable in two equal installments of $60,000 each on the first payroll date in 2022 and the first payroll date after December 6, 2022, (b) a grant of 7,500 RSUs to acquire shares of the Company's common stock, one third of which vested on December 6, 2022 and the remaining two thirds of which vest in eight equal installments of 625 each on each quarterly anniversary thereafter and (c) a grant of an option to purchase 15,000 shares of the Company's common stock at an exercise price equal to the fair market value of the Company's common stock on the grant date, half of which shall vest on December 31, 2023, a quarter of which shall vest on December 31, 2024 and the remainder of which shall vest on December 31, 2025.

Also pursuant to the terms of his offer letter, Mr. Johnston is eligible for (a) an additional equity award in the amount of 14,350 PSUs to acquire shares of the Company's common stock, to vest at various amounts to be agreed upon each year by the Board over a three year period commencing January 1, 2022 and ending December 31, 2024, upon the achievement of performance criteria to be mutually established by Mr. Johnston and the Compensation Committee, and (b) an additional equity award of up to 1,250 PSUs per calendar year for each of 2022, 2023 and 2024, based on outperformance of agreed upon goals per calendar year, as determined by the Compensation Committee with approval of the Board. On July 20, 2022, the Board approved, by unanimous written consent, the grant to Mr. Johnston of up to 14,350 PSUs pursuant to the terms of Mr. Johnston's offer letter. The 14,350 PSUs that have been approved shall vest as follows: (a) up to 9,350 PSU shares shall vest on December 31, 2022, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics previously determined by the Compensation Committee and approved by the Board, (b) up to an additional 2,500 PSU shares shall vest on December 31, 2023, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics determined by the Board on May 17, 2023, and (c) up to an additional 2,500 PSU shares shall vest on December 31, 2024, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined and granted in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics to be recommended by the Compensation Committee and approved by the Board at a subsequent date. As of September 30, 2023, the Board had not yet approved the performance criteria applicable to the up to 2,500 PSU shares that will vest on December 31, 2024; therefore, these 2,500 PSUs have not been considered granted.

In connection with Mr. Johnston's appointment as Chief Executive Officer, the Company and Mr. Johnston additionally entered into an amended and restated severance and change in control agreement, dated as of December 6, 2021. In the event of a termination that is not a change-in-control qualifying termination, Mr. Johnston is entitled to (a) a one-time lump sum payment by the Company in an amount equal to 18 months of his monthly base salary plus an amount equal to 100% of his target bonus plus, if agreed by the Compensation Committee, a discretionary bonus for the year in which the termination occurs, (b) any outstanding unvested equity awards held by Mr. Johnston that would vest in the next 18 months of continuing employment (other than any equity awards that vest upon satisfaction of performance criteria) will accelerate and become vested and (c) if Mr. Johnston timely elects continued coverage under COBRA, the Company or its successor will pay the full amount of Mr. Johnston's COBRA premiums on his behalf for 18 months.

Note 4 – Commitments and Contingencies, continued

Mr. Johnston's agreement additionally provides that, in the event of a change-in-control qualifying termination, Mr. Johnston is entitled to (a) a one-time lump sum payment by the Company in an amount equal to 18 months of his monthly base salary plus an amount equal to 150% of his target bonus plus a prorated bonus for the year in which the termination occurs, (b) any outstanding unvested equity awards held by Mr. Johnston (including any equity awards that vest upon satisfaction of performance criteria) will accelerate in full and become vested and (c) if Mr. Johnston timely elects continued coverage under COBRA, the Company or its successor will pay the full amount of Mr. Johnston's COBRA premiums on his behalf for 18 months.

Mr. Johnston is also eligible to receive all customary and usual benefits generally available to senior executives of the Company.

Executive Transition Agreement – Stephen Rizzone

On April 3, 2015, the Company entered into an Amended and Restated Executive Employment Agreement with Stephen R. Rizzone, the Company's former President and Chief Executive Officer ("Employment Agreement").

The Employment Agreement, effective as of January 1, 2015, had an initial term of four years and automatically renewed each year after the initial term. The Employment Agreement provided for an annual base salary of $365,000, and Mr. Rizzone was eligible to receive quarterly cash bonuses from the MBO Bonus Plan with a total target amount equal to 100% of his base salary based upon achievement of performance-based objectives established by the Board.

On July 9, 2021, the Company announced that Stephen R. Rizzone had retired from his position as the Company's President and Chief Executive Officer and as a member of the Board.

In connection with Mr. Rizzone's retirement, the Company and Mr. Rizzone entered into an Executive Transition Agreement (the "Separation Agreement"), providing for continued employment through August 31, 2021. Upon his termination of employment, the Separation Agreement provides severance payments and benefits to Mr. Rizzone consistent with the terms of his existing employment agreement with the Company, including without limitation: compensation-based payments of $1,460,000 in the aggregate, payable under a certain payment scheme as set forth therein, an additional lump sum cash payment of $2,000,000, a pro-rated bonus payment for the two months of employment during the then current quarterly bonus period payable at the same time bonus payments were made to other executives of the Company, settlement of deferred vested RSUs and an extension of the exercise periods of all stock options held by Mr. Rizzone until the one year anniversary of his termination date, and additional benefits related to Mr. Rizzone's medical insurance. In addition, the Company agreed to pay-off all amounts owed under a lease agreement relating to a company car and that Mr. Rizzone would receive the title to the vehicle. All compensation under the Separation Agreement has been or will be subject to applicable withholding.

As of September 30, 2023, the Company had no accrued expense pertaining to Mr. Rizzone's Separation Agreement.

Executive Transition Agreement – Neeraj Sahejpal

On April 29, 2022, the Company announced the departure of Neeraj Sahejpal, former Senior Vice President of Marketing and Business Development, effective April 30, 2022. Pursuant to the terms of Mr. Sahejpal's severance and change of control agreement with the Company, Mr. Sahejpal received payments and benefits including compensation equal to twelve months of Mr. Sahejpal's then-current salary of $261,250, twelve months of maximum potential bonus of $261,250, and twelve months of COBRA reimbursements. In addition, all RSUs held by Mr. Sahejpal that were due to vest in the twelve months after his departure, totaling RSUs covering 4,297 shares, were accelerated.

As of September 30, 2023, the Company had no unpaid accrued severance expense pertaining to Mr. Sahejpal's agreement.

Note 4 – Commitments and Contingencies, continued

Executive Transition Agreement – William Mannina

On July 20, 2023, the Company announced the departure of William Mannina, former Acting Chief Financial Officer, effective August 16, 2023. Pursuant to the terms of a letter agreement between Mr. Mannina and the Company, Mr. Mannina will receive payments and benefits including cash severance payments equivalent to nine months of his then-current salary of $265,825 and premium payments for continued healthcare coverage for nine months following his resignation effective date. Mr. Mannina's restricted stock units continued to vest through August 16, 2023.

As of September 30, 2023, the Company had accrued unpaid severance expense of $196,941 pertaining to Mr. Mannina's agreement.

Strategic Alliance Agreement

In November 2016, the Company and Dialog Semiconductor plc ("Dialog"), a related party (see Note 9—Related Party Transactions), entered into a Strategic Alliance Agreement ("Alliance Agreement") for the manufacture, distribution and commercialization of products incorporating the Company's wire-free charging technology ("Licensed Products"). Pursuant to the terms of the Alliance Agreement, the Company agreed to engage Dialog as the exclusive supplier of the Licensed Products for specified fields of use, subject to certain exceptions (the "Company Exclusivity Requirement"). Dialog agreed to not distribute, sell or work with any third party to develop any competing products without the Company's approval. In addition, both parties agreed on a revenue sharing arrangement and will collaborate on the commercialization of Licensed Products based on a mutually-agreed upon plan. Each party will retain all of its intellectual property.

The Alliance Agreement has an initial term of seven years, with automatic renewal annually thereafter unless terminated by either party upon 180 days' prior written notice. The Company may terminate the Alliance Agreement at any time after the third anniversary of the Alliance Agreement upon 180 days' prior written notice to Dialog, or if Dialog breaches certain exclusivity obligations. Dialog may terminate the Alliance Agreement if sales of Licensed Products do not meet specified targets. The Company Exclusivity Requirement had a termination date of the earlier of January 1, 2021 or the occurrence of certain events relating to the Company's pre-existing exclusivity obligations. The Company Exclusivity Requirement renewed automatically on an annual basis unless the Company and Dialog agree to terminate the requirement.

On September 20, 2021, the Company was notified by Dialog, then recently acquired by Renesas Electronics Corporation, that it was terminating the Alliance Agreement between the Company and Dialog. There is a wind down period included in the Alliance Agreement which will conclude in September 2024. During the wind down period, the Alliance Agreement's terms will continue to apply to the Company's products that are covered by certain existing customer relationships, except that the parties' respective exclusivity rights have terminated (see Note 9 – Related Party Transactions for expenses incurred by the Company from Renesas Electronics Corporation).

Note 5 – Stockholders' Equity

Authorized Capital

The holders of the Company's common stock are entitled to one vote per share. Holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the Board out of legally available funds. Upon the liquidation, dissolution or winding up of the Company, holders of common stock are entitled to share ratably in all assets of the Company that are legally available for distribution.

Note 5 – Stockholders’ Equity, continued

Financing

On September 15, 2020, the Company filed a shelf registration statement on Form S-3 with the SEC, which became effective on September 24, 2020 (the "Prior Shelf"), and contains two prospectuses: a base prospectus, which covered the offering, issuance and sale by the Company of up to $75,000,000 of its common stock, preferred stock, debt securities, warrants to purchase our common stock, preferred stock or debt securities, subscription rights to purchase its common stock, preferred stock or debt securities and/or units consisting of some or all of these securities; and an at-the-market sales agreement prospectus supplement covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of $40,000,000 of its common stock that may be issued and sold under the At Market Issuance Sales Agreement, as amended, between the Company and B. Riley Securities, Inc. (the “ATM Program”). The $40,000,000 of common stock to be offered, issued and sold under the ATM Program was included in the $75,000,000 of securities that could have been offered, issued and sold by the Company under the base prospectus. On September 24, 2023, the Prior Shelf expired and no further securities were issued under it. Pursuant to the Prior Shelf, the Company sold shares which raised net proceeds of $38,832,711 (net of $1,167,289 in issuance costs) during the third and fourth quarters of 2020 under the ATM Program.

On October 4, 2021, the Company filed a prospectus supplement to the Prior Shelf covering the offering, issuance and sale of up to an additional $35,000,000 of shares of the Company’s common stock pursuant to the ATM Program. The Company raised net proceeds of $27,043,751 (net of $868,122 in issuance costs) during 2021 under the ATM Program. During 2022, the Company raised an additional $744,787 (net of $73,403 in issuance costs) under the ATM Program. During the first quarter of 2023, the Company raised $2,674,697 (net of $68,637 in issuance costs) under the ATM Program. During the third quarter of 2023, the Company raised $880,866 (net of $94,162 in issuance costs) under the ATM Program. As of September 30, 2023, there is no amount left remaining on the Prior Shelf due to its expiration on September 24, 2023.

On November 15, 2021, the Company filed a shelf registration statement on Form S-3 with the SEC, which became effective on December 16, 2021 (the "Current Shelf"). This shelf registration statement allows the Company to sell, from time to time, any combination of debt or equity securities described in the registration statement up to aggregate proceeds of $100,000,000. Pursuant to this registration statement, on March 28, 2023, the Company completed an underwritten offering pursuant to which it issued and sold an aggregate of (i) 412,500 shares of its common stock (the “Shares”) and (ii) warrants to purchase up to 412,500 shares of its common stock (the “2023 Warrants”), for net proceeds of $2,677,191, after deducting underwriting discounts, commission and expenses payable by the Company. The 2023 Warrants were immediately exercisable upon issuance and have a term of six years and an exercise price of $8.00. The Company allocated the proceeds received first to the 2023 Warrants based on the fair value of the 2023 Warrants as determined at initial measurement, with the remaining proceeds allocated to the Shares (see Note 7 – Warrant Liability and Note 8 – Fair Value Measurements). Pursuant to the terms of the 2023 Warrants, the exercise price was adjusted to $1.66 as of September 30, 2023.

On August 30, 2023, the Company filed a prospectus supplement to the Current Shelf covering the offering, issuance and sale of up to an additional $25,000,000 of shares of the Company’s common stock pursuant to the ATM Program. During the third quarter of 2023, the Company raised $1,986 (net of $56 in issuance costs) under the ATM Program. As of September 30, 2023, the Company has $24,997,958 remaining available under the ATM Program.

Common Stock Outstanding

Our outstanding shares of common stock typically include shares that are deemed delivered under US GAAP. Shares that are deemed delivered currently include shares that have vested, but have not yet been delivered, under tax-deferred equity awards, as well as shares purchased under the ESPP where actual transfer of shares normally occurs a few days after the completion of the purchase periods. There are no voting rights for shares that are deemed delivered under US GAAP until the actual delivery of shares takes place. There are currently 200,000,000 shares of common stock authorized for issuance.

Note 6 – Stock-Based Compensation

Equity Incentive Plans

2013 Equity Incentive Plan

Effective on June 14, 2023, the Company's stockholders approved the amendment and restatement of the 2013 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 50,000 shares, bringing to 489,298 the total number of shares approved for issuance under that plan.

As of September 30, 2023, 118,565 shares of common stock remain eligible to be issued through equity-based instruments under the 2013 Equity Incentive Plan.

2014 Non-Employee Equity Compensation Plan

Effective on May 26, 2020, the Company's stockholders approved the amendment and restatement of the 2014 Non-Employee Equity Compensation Plan to increase the number of shares reserved for issuance through equity-based instruments thereunder by 40,000 shares, bringing to 82,500 the total number of shares approved for issuance under that plan.

As of September 30, 2023, 29,137 shares of common stock remain eligible to be issued through equity-based instruments under the 2014 Non-Employee Equity Compensation Plan.

2015 Performance Share Unit Plan

Effective on June 16, 2021, the Company's stockholders approved the amendment and restatement of the 2015 Performance Share Unit Plan to increase the number of shares reserved for issuance through equity-based instruments thereunder by 85,000 shares, bringing to 255,505 the total number of shares approved for issuance under that plan.

As of September 30, 2023, 106,272 shares of common stock remain eligible to be issued through equity-based instruments under the 2015 Performance Share Unit Plan.

2017 Equity Inducement Plan

On December 28, 2017, the Board approved the 2017 Equity Inducement Plan. Under the 2017 Equity Inducement Plan, the Board reserved 30,000 shares for the grant of RSUs. These grants will be administered by the Board or a committee of the Board. These awards will be granted to individuals who (a) are being hired as an employee by the Company or any subsidiary and such award is a material inducement to such person being hired; (b) are being rehired as an employee following a bona fide period of interruption of employment with the Company or any subsidiary; or (c) will become an employee of the Company or any subsidiary in connection with a merger or acquisition.

On July 20, 2022, the Board increased the number of shares of common stock reserved and available for issuance under the 2017 Equity Inducement Plan by 100,000 shares. As of September 30, 2023, 48,834 shares of common stock remain available to be issued through equity-based instruments under the 2017 Equity Inducement Plan.

Employee Stock Purchase Plan

In April 2015, the Company's Board approved the ESPP, under which 30,000 shares of common stock have been reserved for purchase by the Company's employees, subject to the approval by the Company's stockholders. On May 21, 2015, the Company's stockholders approved the ESPP. Effective on June 14, 2023, the Company's stockholders approved the amendment and restatement of the ESPP to increase the number of shares reserved for issuance through equity-based instruments thereunder by 25,000 shares, bringing to 102,500 the total number of shares approved for issuance under that plan. Under the ESPP, employees may designate an amount not less than 1% but not more than 10% of their annual compensation for the purchase of Company shares. An offering period shall be six months in duration commencing on or about January 1 and July 1 of each year. The exercise price of the option will be the lesser of 85% of the fair market of the common stock on the first business day of the offering period and 85% of the fair market value of the common stock on the applicable exercise date.

Note 6 – Stock-Based Compensation, continued

As of September 30, 2023, 18,741 shares of common stock remain eligible to be issued under the ESPP. Employees contributed $3,493 through payroll withholdings to the ESPP as of September 30, 2023 for the current offering period which ends on December 31, 2023 with shares deemed delivered on that date.

Stock Option Activity

In February 2022, the Board granted our Chief Executive Officer 15,000 stock options under the 2013 Equity Incentive Plan at an exercise price of $25.40 per share with half of the options vesting on the second anniversary of the vesting start date and a quarter of the options vesting on each of the two following anniversaries.

The Company estimated the fair value of stock options granted during the second quarter of 2022 using the Black-Scholes option pricing model. No stock options were granted during the nine months ended September 30, 2023. The fair values of stock options granted during the second quarter of 2022 were estimated using the following assumptions:

	Three Months Ended June 30, 2022
Stock price	$ 25.40
Dividend yield	0 %
Expected volatility	108 %
Risk-free interest rate	1.92 %
Expected life	5.6 years

The following is a summary of the Company's stock option activity during the nine months ended September 30, 2023:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Life In Years	Intrinsic Value
Outstanding at January 1, 2023	15,013	$ 25.42	8.9	$ –
Granted	–	–	–	–
Exercised	–	–	–	–
Forfeited	(13)	49.80	–	–
Outstanding at September 30, 2023	15,000	$ 25.40	8.2	$ –
Exercisable at January 1, 2023	13	$ 49.80	0.3	$ –
Vested	–	–	–	–
Exercised	–	–	–	–
Forfeited	(13)	49.80	–	–
Exercisable at September 30, 2023	–	$ –	–	$ –

As of September 30, 2023, the unamortized fair value of options was $169,700. The unamortized amount will be expensed over a weighted average period of 2.1 years.

PSUs

PSUs are grants that vest upon the achievement of certain performance goals. The goals are commonly related to the Company's revenue and achievement of sales and marketing goals.

Note 6 – Stock-Based Compensation, continued

On July 20, 2022, the Board granted the Company's Chief Executive Officer, Cesar Johnston, up to 14,350 PSUs under the Company's 2015 Performance Share Unit Plan pursuant to the terms of Mr. Johnston's offer letter with the Company (See Note 4 – Commitments and Contingencies). The up to 14,350 PSUs that have been approved shall vest as follows: (a) up to 9,350 PSU shares shall vest on December 31, 2022, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics previously determined by the Compensation Committee and approved by the Board, (b) up to an additional 2,500 PSU shares shall vest on December 31, 2023, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics determined and granted by the Board on May 17, 2023, and (c) up to an additional 2,500 PSU shares shall vest on December 31, 2024, subject to Mr. Johnston's continued service as Chief Executive Officer and the achievement, to be determined in the Compensation Committee's sole discretion, by Mr. Johnston of certain performance metrics to be recommended by the Compensation Committee and approved by the Board at a subsequent date. On December 31, 2022, 6,779 PSUs were achieved, vested and deemed delivered on that date. As of September 30, 2023, the performance criteria for the additional up to 2,500 PSUs that shall vest on December 31, 2024 had not been approved by the Board.

As of September 30, 2023, the unamortized value of outstanding PSUs was $9,848. The unamortized amount will be expensed over a period of 0.3 years. A summary of the activity related to PSUs for the nine months ended September 30, 2023 is presented below:

	Total	Weighted Average Grant Date Fair Value
Outstanding at January 1, 2023	–	$ –
PSUs granted	2,500	6.20
PSUs forfeited	–	–
PSUs vested	–	–
Outstanding at September 30, 2023	2,500	$ 6.20

RSUs

During the nine months ended September 30, 2023, the Compensation Committee granted various employees RSUs covering 3,439 shares of common stock under the 2013 Equity Incentive Plan. The awards vest over five years.

During the nine months ended September 30, 2023, the Compensation Committee granted various non-employees RSUs covering 6,223 shares of common stock under the 2014 Non-Employee Equity Compensation Plan. The awards vest over terms ranging from one to four years.

During the nine months ended September 30, 2023, the Compensation Committee granted various employees RSUs covering 30,750 shares of common stock under the 2017 Equity Inducement Plan. The awards vest over four years.

As of September 30, 2023, the unamortized fair value of the outstanding RSUs was $1,428,206. The unamortized amount will be expensed over a weighted average period of 1.9 years. A summary of the activity related to RSUs for the nine months ended September 30, 2023 is presented below:

	Total	Weighted Average Grant Date Fair Value
Outstanding at January 1, 2023	108,251	$ 32.67
RSUs granted	40,412	12.81
RSUs forfeited	(10,340)	28.02
RSUs vested	(54,636)	32.26
Outstanding at September 30, 2023	83,687	$ 23.92

Note 6 – Stock-Based Compensation, continued

Employee Stock Purchase Plan ("ESPP")

The current offering period under the ESPP began on July 1, 2023 and will conclude on December 31, 2023. The recently completed offering period under the ESPP started on January 1, 2023 and concluded on June 30, 2023. During the year ended December 31, 2022, there were two offering periods. The first offering period began on January 1, 2022 and concluded on June 30, 2022. The second offering period began on July 1, 2022 and concluded on December 31, 2022.

The weighted-average grant-date fair value of the purchase option for each designated share purchased under the ESPP was approximately $4.05 and $7.29 for the nine months ended September 30, 2023 and 2022, respectively, which represents the fair value of the option, consisting of three main components: (i) the value of the discount on the enrollment date, (ii) the proportionate value of the call option for 85% of the stock and (iii) the proportionate value of the put option for 15% of the stock. The Company recognized compensation expense for the ESPP of $1,412 and $22,084 for the three months ended September 30, 2023 and 2022, respectively. The Company recognized compensation expense for the ESPP of $42,419 and $104,485 for the nine months ended September 30, 2023 and 2022, respectively.

The Company estimated the fair value of ESPP purchase options granted during the nine months ended September 30, 2023 and 2022 using the Black-Scholes option pricing model. The fair values of ESPP purchase options granted were estimated using the following assumptions:

	Nine Months Ended September 30,	
	2023	2022
Stock price	$4.80-16.72	$19.20-$25.00
Dividend yield	0 %	0 %
Expected volatility	59% - 67%	61% - 68%
Risk-free interest rate	4.42% - 5.47%	0.19% - 2.52%
Expected life	6 months	6 months

Stock-Based Compensation Expense

The following tables summarize total stock-based compensation costs recognized for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Stock options	$ 21,564	$ 21,564	$ 63,989	$ 53,207
RSUs	341,443	586,652	1,273,380	1,933,301
PSUs	4,488	67,922	15,089	67,922
ESPP	1,412	22,084	42,419	104,485
Total	$ 368,907	$ 698,222	$ 1,394,877	$ 2,158,915

The total amount of stock-based compensation was reflected within the statements of operations as:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Research and development	$ 138,976	$ 273,923	$ 557,767	$ 922,447
Sales and marketing	84,491	109,702	292,850	344,478
General and administrative	145,440	314,597	544,260	804,328
Severance expense	–	–	–	87,662
Total	$ 368,907	$ 698,222	$ 1,394,877	$ 2,158,915

Note 7 – Warrant Liability

2023 Warrants

In March 2023, the Company issued 412,500 warrants to purchase up to 412,500 shares of its common stock. The 2023 Warrants have a six-year term and were exercisable upon issuance on March 28, 2023. At issuance, each 2023 Warrant was exercisable for one share of the Company's common stock at a price of $8.00 per share. As of September 30, 2023, the exercise price of the 2023 Warrants was adjusted to $1.66 per share (subject to further adjustment in certain circumstances, including in the event of stock dividends and splits; recapitalizations; change of control transactions; and issuances or sales of, or agreements to issue or sell, shares of common stock or common stock equivalents at a price per share less than the then-applicable exercise price for the 2023 Warrants, including sales under the ATM, the "Exercise Price").

In the event of certain transactions such as a merger, consolidation, tender offer, reorganization, or other change in control, if holders of common stock are given any choice as to the consideration to be received, the holder of each 2023 Warrant shall be given the same choice of alternate consideration. In the event of certain transactions that are not within the Company's control, such as a merger, consolidation, tender offer, reorganization, or other change in control of the Company, each holder of a 2023 Warrant shall be entitled to receive the same form of consideration at the Black Scholes value of the unexercised portion of the 2023 Warrant that is being offered and paid to holders of common stock, including the option to exercise the 2023 Warrants on a "cashless basis".

If the Company issues additional shares of common stock or equity-linked securities for a consideration per share less than the Exercise Price, then such Exercise Price will be reduced to a new lower price pursuant to the terms of the 2023 Warrants. Additionally, if the Exercise Price of any outstanding derivative securities is modified by the Company such that such security's modified exercise price is below the Exercise Price, the Exercise Price will adjust downward pursuant to the terms of the 2023 Warrant. This provision would not apply for stock or stock equivalents which fall under shares that qualify for exempt issuance, such as if the Company adjusted the option exercise price for an option granted to an employee, officer, or director.

The Company accounted for the 2023 Warrants in accordance with the derivative guidance contained in ASC 815-40, as the warrants did not meet the criteria for equity treatment. The Company believes that the adjustments to the Exercise Price is based on a variable that is not an input to the fair value of a "fixed-for-fixed" option as defined under ASC 815-40, and thus the 2023 Warrants are not eligible for an exception from derivative accounting. As such, the 2023 Warrants were initially measured at fair value and recorded as a liability in the amount of $3,135,000. As of September 30, 2023, all 2023 Warrants were outstanding. As of September 30, 2023, the fair value of the warrant liability was $450,000. The Company recorded a change in fair value of the warrant liability of $788,000 and $2,685,000 for the three and nine months ended September 30, 2023, respectively.

Note 8 – Fair Value Measurements

The following tables present information about the Company's assets and liabilities that are measured at fair value on a recurring basis as of September 30, 2023 and December 31, 2022 and indicate the fair value hierarchy of the valuation inputs utilized to determine such fair value:

	Balance as of September 30, 2023			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash and cash equivalents	$ 16,578,659	$ –	$ –	$ 16,578,659
Liabilities:				
Warrant liability	$ –	$ –	$ 450,000	$ 450,000

	Balance as of December 31, 2022			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash and cash equivalents	$ 26,287,293	$ –	$ –	$ 26,287,293
Liabilities:				
Warrant liability	$ –	$ –	$ –	$ –

Note 8 – Fair Value Measurements, continued

There were no transfers among Level 1, Level 2, or Level 3 categories during the periods presented.

2023 Warrants

The Company utilizes a Monte Carlo simulation model for the 2023 Warrants at each reporting period, with changes in fair value recognized in the statements of operations. The estimated fair value of the 2023 Warrant liability is determined using Level 3 inputs. Inherent in a Monte Carlo simulation model are assumptions related to expected share-price volatility, expected life, risk-free interest rate, and dividend yield.

The key inputs into the Monte Carlo simulation model for the 2023 Warrants are as follows:

	At March 31, 2023	At June 30, 2023	At September 30, 2023
Share price	$ 10.80	$ 4.80	$ 1.60
Exercise price	$ 8.00	$ 8.00	$ 1.66
Term (in years)	6.0	5.7	5.5
Volatility	65 %	65 %	75 %
Risk-free rate	3.6 %	4.1 %	4.6 %
Dividend yield	0 %	0 %	0 %

The decrease in the fair value of the 2023 Warrant liability was determined to be $788,000 and $2,685,000 during the three and nine months ended September 30, 2023, respectively (see Note 7 – Warrant Liability).

Note 9 – Related Party Transactions

In November 2016, the Company and Dialog entered into the Alliance Agreement for the manufacture, distribution and commercialization of products incorporating the Company's wire-free charging technology (See Note 4 – Commitments and Contingencies, *Strategic Alliance Agreement*). On November 7, 2016 and June 28, 2017, the Company and Dialog entered into securities purchase agreements under which Dialog acquired a total of 86,985 shares and received warrants to purchase up to 70,878 shares. As of September 30, 2023, none of the warrants remain outstanding. As of September 30, 2023, Dialog owns approximately 1.7% of the Company's outstanding common shares. The Company did not record any revenue under the Alliance Agreement during the three or nine months ended September 30, 2023 and 2022. The Company incurred $0 and $124,055 in chip test development expense from Renesas Electronics Corporation, which acquired Dialog in August 2021 ("Renesas"), during the three and nine months ended September 30, 2023, respectively. The Company did not incur any expense from Renesas during the three and nine months ended September 30, 2022.

On September 20, 2021, the Company was notified by Dialog that it was terminating the Alliance Agreement between the Company and Dialog.

Note 10 – Customer Concentrations

Three customers accounted for approximately 75% of the Company's revenue for the three months ended September 30, 2023, and two customers accounted for approximately 87% of the Company's revenue for the three months ended September 30, 2022. Three customers accounted for approximately 67% of the Company's revenue for the nine months ended September 30, 2023, and one customer accounted for approximately 46% of the Company's revenue for the nine months ended September 30, 2022. Three customers accounted for approximately 93% of the Company's accounts receivable balance as of September 30, 2023. One customer accounted for approximately 87% of the Company's accounts receivable balance as of December 31, 2022.

Note 11 - Subsequent Event

On November 13, 2023, Cesar Johnston, the Company's President and Chief Executive Officer, purchased 52,000 shares of the Company's common stock at a purchase price of $1.82 per share pursuant to the Common Stock Purchase Agreement dated as of November 13, 2023 between the Company and Mr. Johnston.

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

Forward-Looking Statements

As used in this Quarterly Report on Form 10-Q, unless the context otherwise requires the terms "we," "us," "our," and "Energous" refer to Energous Corporation, a Delaware corporation. This report 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"), that are intended to be covered by the "safe harbor" created by those sections. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, can generally be identified by the use of forward-looking terms such as "believe," "expect," "may," "will," "would," "should," "could," "seek," "intend," "plan," "continue," "estimate," "anticipate" or other comparable terms. All statements other than statements of historical facts included in this report regarding our strategies, prospects, financial condition, operations, costs, plans and objectives are forward-looking statements. Examples of forward-looking statements include, among others, statements we make regarding proposed business strategy; market opportunities; regulatory approval; expectations for current and potential business relationships; and expectations for revenues, liquidity cash flows and financial performance, the anticipated results of our research and development efforts, the timing for receipt of required regulatory approvals and product launches; and the impact of geopolitical, macroeconomic, health and other world events. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Forward-looking statements relate to the future and are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and generally outside of our control, so actual results and financial condition may differ materially from those indicated in the forward-looking statements. Important factors that could cause our actual results and financial condition to differ materially from those indicated in the forward-looking statements include, among others: our ability to develop commercially feasible technology; timing of customer implementations of our technology in consumer products; timing and receipt of regulatory approvals in the United States and internationally; our ability to find and maintain development partners; market acceptance of our technology; competition in our industry; our ability to protect our intellectual property; competition; and other risks and uncertainties described in the Risk Factors and in Management's Discussion and Analysis sections of our most recently filed Annual Report on Form 10-K and subsequently filed Quarterly Reports on Form 10-Q, including this Quarterly Report on Form 10-Q. We undertake no obligation to publicly update any of our forward-looking statements, whether as a result of new information, future developments or otherwise.

Overview

We have developed our WattUp® wireless power technology, consisting of semiconductor chipsets, software controls, hardware designs and antennas, that enables RF based charging for electronic devices. The WattUp technology has a broad spectrum of capabilities to enable the next generation of wireless power networks, delivering power and data in a seamless device portfolio. This includes near field and at-a-distance wireless charging with multiple power levels at various distances. We believe our WattUp technologies will help facilitate the deployment of the growing IoT applications. According to the International Data Corporation (IDC) August 2022 Market Forecast, the IoT market is forecasted to grow to approximately $1.1 trillion in spending by 2026. The initial IoT applications that we are targeting are in the area of RF tags, ESL and IoT sensors for the retail, industrial, healthcare and smart home/office markets.

We believe our technology is innovative in its approach, in that we are developing solutions that charge electronic devices using RF. To-date, we have developed multiple transmitters and receivers, including prototypes as well as partner production designs. The transmitters vary based on form factor, power specifications and frequencies, while the receivers are designed to support a myriad of wireless charging applications including Bluetooth tracking tags, IoT sensors, ESLs, beacons, stock management devices, security cameras, handheld devices, smart automation, wearables and hearables.

The first end product featuring our technology entered the market in 2019. We started shipping our first at-a-distance WattUp PowerBridge enabled transmitters for commercial IoT applications in the fourth quarter of 2021, and we expect additional WattUp-enabled products to be announced as we move our business forward.

Critical Accounting Policies and Estimates

Warrants

We account for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant’s specific terms and applicable authoritative guidance in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 480, “Distinguishing Liabilities from Equity” (“ASC 480”), and ASC 815, “Derivatives and Hedging” (“ASC 815”). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to our common stock, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding.

For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded as a liability at their initial fair value on the date of issuance, and each balance sheet date thereafter. The liability will be re-measured at each balance sheet date until the warrants are exercised or expire. Changes in the estimated fair value of the warrants are recognized as a non-cash gain or loss on the statements of operations. The fair value of the warrants is estimated using an appropriate valuation model. Such warrant classification is also subject to re-evaluation at each reporting period.

Offering costs associated with warrants classified as liabilities are expensed as incurred and are presented as offering cost related to warrant liability in the statement of operations. Offering costs associated with the sale of warrants classified as equity are charged against proceeds.

Revenue Recognition

We follow Accounting Standards Codification (“ASC”) 606, "Revenue from Contracts with Customers" (Topic 606).

In accordance with Topic 606, we recognize revenue using the following five-step approach:

1. Identify the contract with a customer.
2. Identify the performance obligations in the contract.
3. Determine the transaction price of the contract.
4. Allocate the transaction price to the performance obligations in the contract.
5. Recognize revenue when or as performance obligations are satisfied.

We record revenue associated with product development projects that we enter into with certain customers. In general, these product development projects are complex, and we do not have certainty about our ability to achieve the project milestones. The achievement of a milestone is dependent on our performance obligation and requires acceptance by the customer. We recognize this revenue at a point in time based on when the performance obligation is met. The payment associated with achieving the performance obligation is generally commensurate with our effort or the value of the deliverable and is nonrefundable. We record the expenses related to these product development projects in research and development expense, in the periods such expenses were incurred.

We record revenue associated with the sale of production-level systems once control over the product is transferred to the customer. We record the expense related to the sales of these systems as cost of revenue during the period delivered.

Results of Operations

Costs and Expenses

Cost of revenue consists of direct materials, direct labor and overhead for our production-level wireless charging systems. Research and development expenses include costs associated with our efforts to develop our technology, including personnel compensation, consulting, engineering supplies and components, intellectual property costs, regulatory expense and general office expenses specifically related to the research and development department. Sales and marketing expenses include costs associated with selling and marketing our technology to our customers, including personnel compensation, public relations, graphic design, tradeshow, engineering supplies utilized by the sales team and general office expenses specifically related to the sale and marketing department. General and administrative expenses include costs for general and corporate functions, including personnel compensation, facility fees, travel, telecommunications, insurance, professional fees, consulting fees, general office expenses, and other overhead.

Three Months Ended September 30, 2023 and 2022

Revenue. During the three months ended September 30, 2023 and 2022, we recorded revenue of $168,708 and $223,201, respectively. The decrease of $54,493 is primarily due to a decrease in production-level systems sales volume.

Costs and Expenses and Loss from Operations. Costs and expenses are made up of cost of revenue, research and development, sales and marketing, general and administrative and severance expense. Losses from operations for the three months ended September 30, 2023 and 2022 were $5,081,439 and $6,107,715, respectively.

Cost of Revenue. Cost of revenue was $48,394 and $420,060, respectively, for the three months ended September 30, 2023 and 2022. The decrease of $371,666 is primarily due to a decrease in sales volume of higher cost products and a decrease in lower of cost or net realizable value adjustment.

Research and Development Costs. Research and development costs were $2,460,123 and $2,885,830, respectively, for the three months ended September 30, 2023 and 2022. The decrease of $425,707 is primarily due to a $181,084 decrease in compensation, consisting of a $46,137 decrease in payroll costs and a $134,947 decrease in stock-based compensation, a $72,213 decrease in patent legal fees, a $41,627 decrease in chip design, engineering supplies and components, a $34,536 decrease in consulting and third party services expenses, a $25,229 decrease in shipping costs, a $22,275 decrease in recruiting fees, a $16,272 decrease in regulatory legal fees and a $13,835 decrease in computer software and support.

Sales and Marketing Costs. Sales and marketing costs for the three months ended September 30, 2023 and 2022 were $774,141 and $1,093,640, respectively. The decrease of $319,499 is primarily due to a $177,381 decrease in compensation, consisting of a $152,170 decrease in payroll costs and a $25,211 decrease in stock-based compensation, a $38,293 decrease in legal fees related to trademarks and customer contracts, a $28,223 decrease in engineering supplies used by the sales and marketing staff, a $25,925 decrease in travel costs, a $19,454 decrease in tradeshow expense, a $16,500 decrease in warranty expense, a $15,471 decrease in depreciation and a $12,500 decrease in bad debt expense, partially offset by a $37,395 increase in public relations, consulting and third party expenses.

General and Administrative Expenses. General and administrative costs for the three months ended September 30, 2023 and 2022 were $1,698,380 and $1,931,386, respectively. The decrease of $233,006 is primarily due to a $317,604 decrease in compensation, consisting of a $148,447 decrease in payroll costs and $169,157 decrease in stock-based compensation, a $54,567 decrease in insurance premiums, a $40,816 decrease in travel costs, a $27,712 decrease in supplies and general office expenses and a $15,311 decrease in training and subscriptions, partially offset by a $57,299 increase in general corporate legal fees, a $26,707 increase in stock registration and annual meeting costs and a $20,249 increase in accounting and audit fees.

Severance expense. Severance expense for the three months ended September 30, 2023 was $269,109, primarily relating to the termination of the former Acting Chief Financial Officer. Severance expense for the three months ended September 30, 2022 was $0.

Change in fair value of warrant liability. Other income resulting from the change in fair value of the warrant liability was $788,000 for the three months ended September 30, 2023. We did not have a warrant liability as of September 30, 2022.

Interest Income. Interest income for the three months ended September 30, 2023 was $178,845 as compared to interest income of $142,840 for the three months ended September 30, 2022. The increase of $36,005 is primarily due to higher savings interest rates.

Net Loss. As a result of the above, net loss for the three months ended September 30, 2023 was $4,114,594 as compared to $5,964,875 for the three months ended September 30, 2022.

Nine Months Ended September 30, 2023 and 2022

Revenue. During the nine months ended September 30, 2023 and 2022, we recorded revenue of $382,517 and $672,133, respectively. The decrease of $289,616 is primarily due to a decrease in production-level systems sales volume.

Costs and Expenses and Loss from Operations. Costs and expenses are made up of cost of revenue, research and development, sales and marketing, general and administrative and severance expense. Losses from operations for the nine months ended September 30, 2023 and 2022 were $17,503,680 and $20,328,057, respectively.

Cost of Revenue. Cost of revenue was $270,025 and $894,693, respectively, for the nine months ended September 30, 2023 and 2022. The decrease of $624,668 is primarily due to a decrease in sales volume and a decrease in adjustments to inventory to net realizable value.

Research and Development Costs. Research and development costs were $8,418,779 and $9,622,886, respectively, for the nine months ended September 30, 2023 and 2022. The decrease of $1,204,107 is primarily due to a $365,193 decrease in compensation, consisting primarily of a $364,680 decrease in stock-based compensation from older awards becoming fully expensed prior to the current year, a $190,884 decrease in consulting and third party services expenses, a $171,425 decrease in recruiting fees, a $136,800 decrease in chip design, engineering supplies and components, a $97,139 decrease in patent legal fees, a $93,793 decrease in postage, a $69,761 decrease in regulatory testing and a $58,483 decrease in regulatory legal fees.

Sales and Marketing Costs. Sales and marketing costs for the nine months ended September 30, 2023 and 2022 were $3,074,163 and $3,865,322, respectively. The decrease of $791,159 is primarily due to a $268,274 decrease in compensation, consisting of a $216,646 decrease in payroll costs and a $51,628 decrease in stock-based compensation, a $179,563 decrease in the cost of engineering supplies utilized by the sales and marketing staff, a $75,720 decrease in recruiting fees, a $66,432 decrease in depreciation, a $62,306 decrease in tradeshow expense, a $39,007 decrease in supplies and general office expenses, a $38,553 decrease in trademark and customer contract legal fees and a $23,452 decrease in public relations, consulting and third party services expenses, partially offset by a $24,514 increase in marketing and promotional costs.

General and Administrative Expenses. General and administrative costs for the nine months ended September 30, 2023 and 2022 were $5,763,811 and $5,983,845, respectively. The decrease of $220,034 is primarily due to a $465,678 decrease in compensation, consisting of a $205,610 decrease in payroll costs from lower executive bonus expense and a $260,068 decrease in stock-based compensation from older grants becoming fully expensed prior to the current year and the cancellation of grants in connection with the resignation of our former Acting Chief Financial Officer, a $151,444 decrease in recruiting fees, a $90,162 decrease in insurance premiums and a $53,776 decrease in training, dues and subscriptions, partially offset by a $337,103 increase in general corporate legal fees, a $100,402 increase in accounting and auditing fees, a $76,501 increase in investor relations, consulting and third party services expenses and a $44,330 increase in annual meeting expense.

Severance expense. Severance expense for the nine months ended September 30, 2023 was $359,419 relating to the resignation of our former Acting Chief Financial Officer, as well as the departure of six other employees. Severance expense for the nine months ended September 30, 2022 was $633,444 from the termination of the former Senior Vice President of Marketing and Business Development.

Offering costs related to warrant liability. Offering costs related to warrant liability were $591,670 for the nine months ended September 30, 2023. We did not have a warrant liability as of September 30, 2022.

Change in fair value of warrant liability. Other income resulting from the change in fair value of the warrant liability was $2,685,000 for the nine months ended September 30, 2023. We did not have a warrant liability as of September 30, 2022.

Interest Income. Interest income for the nine months ended September 30, 2023 was $648,083 as compared to interest income of $192,715 for the nine months ended September 30, 2022. The increase of $455,368 is primarily due to higher savings interest rates.

Net Loss. As a result of the above, net loss for the nine months ended September 30, 2023 was $14,762,267 as compared to $20,135,342 for the nine months ended September 30, 2022.

Liquidity and Capital Resources

During the nine months ended September 30, 2023 and 2022, we recorded revenue of $382,517 and $672,133, respectively. We incurred net losses of $14,762,267 and $20,135,342 for the nine months ended September 30, 2023 and 2022, respectively. Net cash used in operating activities was $15,916,294 and $18,838,453 for the nine months ended September 30, 2023 and 2022, respectively. We are currently meeting our liquidity requirements through the proceeds of securities offerings that raised net proceeds of $27,043,751 during 2021, $744,787 during 2022 and $6,234,740 during the first nine months of 2023, along with proceeds from contributions to the ESPP and payments received from customers.

We believe our cash on hand as of September 30, 2023, together with expected additional ATM financing during the fourth quarter of 2023, implementation of cost and expense reductions and anticipated revenues, will be sufficient to fund our operations through November 2024. Although we intend to continue our research and development activities, there can be no assurance that our available resources will be sufficient to enable us to generate revenues sufficient to sustain operations. Accordingly, we will likely continue to pursue additional financing, which could include offerings of equity or debt securities, bank financings, commercial agreements with customers or strategic partners, and other alternatives, depending upon market conditions. There is no assurance that such financing will be available on terms that we would find acceptable, or at all. If we are unsuccessful in implementing this plan, the Company will be required to make further cost and expense reductions or modifications to its on-going and strategic plans.

During the nine months ended September 30, 2023, cash flows used in operating activities were $15,916,294, consisting of a net loss of $14,762,267, less adjustments to reconcile net loss to net cash used in operating activities aggregating $140,084 (principally stock-based compensation of $1,394,877, issuance costs allocated to warrant liability of $591,670, amortization of operating lease ROU assets of $547,939, inventory net realizable adjustment of $166,086 and depreciation and amortization expense of $137,772, partially offset by a decrease in fair value of the warrant liability of $2,685,000), a $533,685 decrease in operating lease liabilities, a $259,881 increase in net inventory, a $213,570 decrease in accrued severance expense, a $131,824 decrease in accounts payable, a $117,478 decrease in accrued expenses and a $68,702 increase in prepaid expenses and other current assets, partially offset by a $35,655 decrease in accounts receivable.

During the nine months ended September 30, 2022, cash flows used in operating activities were $18,838,453, consisting of a net loss of $20,135,342, less non-cash expenses aggregating $2,940,282 (principally stock-based compensation of $2,158,915, amortization of operating lease ROU assets of $550,372 and depreciation and amortization expense of $200,995), a $594,703 decrease in operating lease liabilities, a $395,405 decrease in accrued severance expense, a $312,174 decrease in accounts payable, a $230,368 increase in prepaid expenses and other current assets and a $164,426 increase in inventory, partially offset by a $42,477 increase in deferred revenue.

During the nine months ended September 30, 2023 and 2022, cash flows used in investing activities were $97,242 and $127,198, respectively. The cash used in investing activities for the nine months ended September 30, 2023 consisted primarily of the purchase of new testing equipment and website redesign. The cash used in investing activities for the nine months ended September 30, 2022 consisted of the purchase of new testing equipment and engineering software.

During the nine months ended September 30, 2023, cash flows provided by financing activities were $6,304,902, which consisted of $3,557,549 in net proceeds from the sale of shares of our common stock in an at-the-market (“ATM”) offering, $2,677,191 in net proceeds from the issuance and sale of common stock and warrants, and $70,162 in proceeds from the ESPP. During the nine months ended September 30, 2022, cash flows provided by financing activities were $249,705, which consisted of entirely of proceeds from contributions to the ESPP.

Research and development of new technologies is, by its nature, unpredictable. Although we intend to continue our research and undertake development activities, there can be no assurance that our available resources will be sufficient to enable us to generate revenues sufficient to sustain operations.

Furthermore, since we have no committed source of financing, there can be no assurance that we will be able to raise capital as and when we need it to continue our operations.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

There has been no material change in our exposure to market risk during the three months ended September 30, 2023. See "Quantitative and Qualitative Disclosures about Market Risk" in Part II, Item 7A of our Form 10-K for the year ended December 31, 2022 for a discussion of our exposure to market risk.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We have established disclosure controls and procedures to ensure that material information relating to us is made known to the officers who certify our financial reports and the Board.

Based on their evaluation as of September 30, 2023, our principal executive and principal financial officers have concluded that these disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were effective as of September 30, 2023 to provide reasonable assurance that information required to be disclosed by us in reports that we file under the Exchange Act is recorded, processed, summarized, and reported, within the time periods specified in the SEC's rules and forms and that information required to be disclosed by us in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our principal executive officer and our principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

Changes in Internal Control over Financial Reporting

For the quarter ended September 30, 2023, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings

We are not currently a party to any pending legal proceedings that we believe will have a material adverse effect on our business or financial condition. We may, however, be subject to various claims and legal actions arising in the ordinary course of business from time to time.

Item 1A. Risk Factors

We are subject to many risks that may harm our business, prospects, results of operations and financial condition. This discussion highlights some of the risks that might adversely affect our future operating results in material ways. We believe these are the risks and uncertainties that are the most important ones we face. We cannot be certain that we will successfully address these risks, and if we are unable to address them, our business may not grow, our stock price may suffer and you could lose the value of your investment in the Company. Other risks and uncertainties that we do not currently recognize as material risks, or that are similar to risks faced by other companies in our industry, may also impair our business, prospects, results of operations and financial condition. The risks discussed below include forward-looking statements, and our actual results may differ substantially from what is in these forward-looking statements.

Risks Related to Our Financial Condition

We have no history of generating meaningful product revenue, and we may never achieve or maintain profitability.

We have a limited operating history upon which investors may rely in evaluating our business and prospects. We have generated limited revenues to date, and as of September 30, 2023, we had an accumulated deficit of approximately $377 million. Our ability to generate revenues and achieve profitability will depend on our ability to execute our business plan, complete the development and approval of our technology, incorporate the technology into products that customers wish to buy, and, if necessary, secure additional financing. There can be no assurance that our technology will be adopted widely, that we will ever earn revenues sufficient to support our operations, or that we will ever be profitable. Furthermore, there can be no assurance that we will be able to raise capital as and when we need it to continue our operations. If we are unable to raise sufficient additional capital, we may be required to delay, reduce or severely curtail our research and development or other operations, which could have a material adverse effect on our business, operating results, financial condition, long-term prospects and ability to continue as a viable business. If we are unable to generate revenues of sufficient scale to cover our costs of doing business, our losses will continue and we may not achieve profitability, which could negatively impact the value of your investment in our securities.

We will need additional financings to achieve our long-term business plans, and there is no guarantee that it will be available on acceptable terms, or at all.

We may not have sufficient funds to fully implement our long-term business plans. We will need to raise additional capital through new financings, even if we begin to generate meaningful commercial revenue. For example, new product development for business partners may require considerable expense in advance of any substantial revenue being earned for such products. Such financings could include equity financing, which may be dilutive to our current stockholders, and debt financing, which could restrict our operations and ability to borrow from other sources. In addition, such securities may contain rights, preferences or privileges senior to those of current stockholders. As a result of current macroeconomic conditions and general global economic uncertainty (including as a result of the remaining effects of COVID-19, regional conflicts around the world, increases in inflation, fluctuating interest rates, disruptions to global supply chains, recent turmoil in the global banking sector, volatile global financial markets, the potential for government shutdowns and uncertainty regarding the federal budget and debt ceiling), political change, and other factors, we do not know whether additional capital will be available when needed, or that, if available, we will be able to obtain additional capital on reasonable terms. If we are unable to raise additional capital due to the volatile global financial markets, recent turmoil in the global banking sector, general economic uncertainty or any other factor, we may be required to curtail development of our technology or reduce operations as a result, or to sell or dispose of assets. Any inability to raise adequate funds on commercially reasonable terms or at all could have a material adverse effect on our business, results of operations and financial condition, including the possibility that a lack of funds could cause our business to fail and liquidate with little or no return to investors.

We may be adversely affected by the effects of inflation.

Inflation has the potential to adversely affect our liquidity, business, financial condition and results of operations by increasing our overall cost structure. The U.S. capital markets have experienced and continue to experience extreme volatility and disruption. Inflation rates in the U.S. significantly increased in 2022 resulting in federal action to increase interest rates, adversely affecting capital markets activity. The existence of inflation in the economy has resulted in, and may continue to result in, higher interest rates and capital costs, shipping costs, supply shortages, increased costs of labor, labor shortages, weakening exchange rates and other similar effects. As a result of inflation, we have and may continue to experience cost increases, including increases in our supply chain costs. Although we may take measures to mitigate the impact of this inflation, if these measures are not effective, our business, financial condition, results of operations and liquidity could be materially adversely affected. Even if such measures are effective, there could be a difference between the timing of when these beneficial actions impact our results of operations and when the cost of inflation is incurred. Additionally, because we purchase component parts from our suppliers, we may be adversely impacted by their inability to adequately mitigate inflationary, industry, or economic pressures.

Risks Related to Our Technology and Products

We may not be able to develop all the features we seek to include in our technology.

We have developed commercial products, as well as working prototypes, that utilize our technology. Additional features and performance specifications we seek to include in our technology have not yet been developed. For example, some customer applications may require specific combinations of cost, footprint, efficiencies and capabilities at various frequencies, charging power levels and distances. We believe our research and development efforts will yield additional functionality and capabilities for our products over time. However, there can be no assurance that we will be successful in achieving all the features we are targeting, and our inability to do so may limit the appeal of our technology to consumers.

We may be unable to demonstrate the commercial feasibility of the full capability of our technology.

We have developed both commercial products and working prototypes that use our technology at differing power levels and charging distances, but additional research and development is required to realize the potential of our technology for applications at increasing power levels and distances that can be successfully integrated into commercial products. Research and development of new technologies is, by its nature, unpredictable. We could encounter unanticipated technical problems, the inability to identify products utilizing our technology that will be in demand with customers, getting our technology designed into those products, designing new products for manufacturability, regulatory hurdles and achieving acceptable price points for final products. Although we intend to undertake development efforts with commercially reasonable diligence, there can be no assurance that our available resources will be sufficient to enable us to develop our technology to the extent needed to create future revenues to sustain our operations.

Our technology must satisfy customer expectations and be suitable for use in consumer applications. Any delays in developing our technology that arise from factors of this sort would aggravate our exposure to the risk of having inadequate capital to fund the research and development needed to complete development of these products. Technical problems leading to delays would cause us to incur additional expenses that would increase our operating losses. If we experience significant delays in developing our technology and products based on it for use in potential commercial applications, particularly after incurring significant expenditures, our business may fail, and you could lose all or part of the value of your investment in the Company. If we fail to develop practical and economical commercial products based on our technology, our business may fail and you could lose all or part of the value of your investment in our stock.

Expanding our business operations as we intend will impose new demands on our financial, technical, operational and management resources.

To date we have operated primarily in the research and development phase of our business. If we are successful in commercializing our product offerings, we will need to expand our business operations, which will impose new demands on our financial, technical, operational and management resources. If we do not upgrade our technical, administrative, operating and financial control systems, or if unexpected expansion difficulties arise, including issues relating to our research and development activities, then retention of experienced scientists,

managers and engineers could become more challenging and have a material adverse effect on our business, results of operations and financial condition.

If products incorporating our technology are launched commercially but do not achieve widespread market acceptance, we will not be able to generate the revenue necessary to support our business.

Market acceptance of an RF-based charging system as a preferred method for charging electronic devices will be crucial to our success. The following factors, among others, may affect the level of market acceptance of our products:

- the price of products incorporating our technology relative to other products or competing technologies;
- user perceptions of the convenience, safety, efficiency and benefits of our technology;
- the effectiveness of sales and marketing efforts of our commercialization partners;
- the support and rate of acceptance of our technology and solutions with our development partners;
- press and blog coverage, social media coverage, and other publicity factors that are not within our control; and
- regulatory developments.

If we are unable to achieve or maintain market acceptance of our technology, and if related products do not win widespread market acceptance, our business will be significantly harmed.

As products incorporating our technology are launched commercially, we may experience seasonality or other unevenness in our financial results in consumer markets or a long and variable sales cycle in enterprise markets.

Our strategy depends on our customers developing successful commercial products using our technology and selling them into the retail, industrial, healthcare and smart/home office markets. We need to understand procurement and buying cycles to be successful in licensing our technology. We anticipate it is possible that demand for our technology may vary in different segments of the consumer electronics market, such as hearing aids, wearables, toys, watches, accessories, laptops, tablet, mobile phones and gaming systems. Such consumer markets are often seasonal, with peaks in and around the December holiday season and the August-September back-to-school season. Enterprises and commercial customers may have annual or other budgeting and buying cycles that could affect us, and, particularly if we are designated as a capital improvement project, we may have a long or unpredictable sales cycle.

Future products based on our technology may require the user to purchase additional products to use with existing devices. To the extent these additional purchases are inconvenient or costly, the adoption of our technology under development or other future products could be slowed, which would harm our business.

For rechargeable devices that utilize our receiver technology, the technology may be embedded in a sleeve, case or other enclosure. For example, products such as remote controls or toys equipped with replaceable AA size or other batteries would need to be outfitted with enhanced batteries and other hardware enabling the devices to be rechargeable by our system. In each case, an end user would be required to retrofit the device with a receiver and may be required to upgrade the battery technology used with the device (unless, for example, compatible battery technology and a receiver are built into the device). These additional steps and expenses may offset the convenience of our products for users and discourage customers from licensing our technology. Such factors may inhibit adoption of our technology, which could harm our business. We have not developed an enhanced battery for use in devices with our technology, and our ability to enable use of our technology with devices that require an enhanced battery will depend on our ability to develop a commercial version of such a battery that could be manufactured at a reasonable cost. If a commercially practicable enhanced battery of this nature is not developed, our business could be harmed, and we may need to change our strategy and target markets.

Laboratory conditions differ from field conditions, which could reduce the effectiveness of our technology under development or other future products. Failures to move from laboratory to the field effectively would harm our business.

When used in the field, our technology may not perform as expected based on performance under controlled laboratory conditions. For example, in the case of distance charging, a laboratory configuration of transmission obstructions will be arranged for testing, but in consumer use receivers may be obstructed in many different and

unpredictable ways. These conditions may significantly diminish the power received at the receiver or the effective range of the transmitter. The failure of products using our technology to meet the expectations of users in the field could harm our business.

Safety concerns and legal action by private parties may affect our business.

We believe that our technology is safe. However, it is possible that we could discover safety issues with our technology or that third-parties may raise concerns relating to RF-based charging in a similar manner as has occurred with some other wireless technologies as they were put into residential and commercial use, such as the safety concerns that were raised by some regarding the use of cellular telephones and other devices to transmit data wirelessly in close proximity to the human body. In addition, while we believe our technology is safe, users of our technology under development or other future products who suffer from medical ailments may blame the use of products incorporating our technology for the triggering or worsening of those ailments, as occurred with a small number of users of cellular telephones. A discovery of safety issues relating to our technology could have a material adverse effect on our business and any legal action against us claiming that our technology caused harm could be expensive, divert management attention and adversely affect us or cause our business to fail, whether or not such legal actions were ultimately successful.

Our industry is subject to intense competition and rapid technological change, which may result in technology that is superior to ours. If we do not keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our technology and products may become less useful or obsolete and our operating results will suffer.

The consumer electronics industry in general, and the charging segments in particular, are subject to intense competition and rapidly evolving technologies. Because products incorporating our technology are expected to have long development cycles, we must anticipate changes in the marketplace and the direction of technological innovation and customer demands. To compete successfully, we will need to demonstrate the advantages of our products and technologies over established alternatives and other emerging methods of power delivery. Traditional wall plug-in recharging remains an inexpensive alternative to our technology. Directly competing technologies such as inductive charging, magnetic resonance charging, conductive charging, ultrasound and other yet unidentified solutions may have greater consumer acceptance than the technology we have developed. Furthermore, some competitors may have greater resources than we have and may be better established in the market than we are. We cannot be certain which other companies may have already decided to or may in the future choose to enter our markets. For example, consumer electronics products companies may invest substantial resources in wireless power or other recharging technologies and may decide to enter our target markets. Successful developments of competitors that result in new approaches for recharging could reduce the attractiveness of our products and technologies or render them obsolete.

Our future success will depend in large part on our ability to establish and maintain a competitive position in current and future technologies. Rapid technological development may render our technology or future products based on our technology obsolete. Many of our competitors have more corporate, financial, operational, sales and marketing resources than we have, as well as more experience in research and development. We cannot assure you that our competitors will not develop or market technologies that are more effective or commercially attractive than our products or that would render our technologies and products obsolete. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our success will depend in large part on our ability to maintain a competitive position with our technologies.

Our competitive position also depends on our ability to:

- generate widespread awareness, acceptance and adoption by the consumer and enterprise markets of our technology under development and future products;
- design a product that may be sold at an acceptable price point;
- develop new or enhanced technologies or features that improve the convenience, efficiency, safety or perceived safety, and productivity of our technology under development and future products;
- properly identify customer needs and deliver new products or product enhancements to address those needs;
- limit the time required from proof of feasibility to routine production;

- limit the timing and cost of regulatory approvals;
- attract and retain qualified personnel;
- protect our inventions with patents or otherwise develop proprietary products and processes; and
- secure sufficient capital resources to expand both our continued research and development, and sales and marketing efforts.

If our technology does not compete well based on these or other factors, our business could be materially and adversely harmed.

Risks Related to Our Intellectual Property and Other Legal Risks

It is difficult and costly to protect our intellectual property and our proprietary technologies, and we may not be able to ensure their protection.

Our success depends significantly on our ability to obtain, maintain and protect our proprietary rights to the technologies used in products incorporating our technologies. Patents and other proprietary rights provide uncertain protections, and we may be unable to protect our intellectual property. For example, we may be unsuccessful in defending our patents and other proprietary rights against third party challenges. If we do not have the resources to defend our intellectual property, the value of our intellectual property and our licensed technology will decline. In addition, some companies that integrate our technology into their products may acquire rights in the technology that limit our business or increase our costs. If we are not successful in protecting our intellectual property effectively, our financial results may be adversely affected and the price of our common stock could decline.

We depend upon a combination of patent, trade secrets, copyright and trademark laws to protect our intellectual property and technology.

We rely on a combination of patents, trade secrets, copyright and trademark laws, nondisclosure agreements and other contractual provisions and technical security measures to protect our intellectual property rights. These measures may not be adequate to safeguard our technology. If they do not protect our rights adequately, third parties could use our technology, and our ability to compete in the market would be reduced. Although we are attempting to obtain patent coverage for our technology where available and where we believe appropriate, there are aspects of the technology for which patent coverage may never be sought or received. We may not possess the resources to or may not choose to pursue patent protection outside the United States or any or every country other than the United States where we may eventually decide to sell our future products. Our ability to prevent others from making or selling duplicate or similar technologies will be impaired in those countries in which we would have no patent protection. Although we have patent applications on file in the United States and elsewhere, the patents might not issue, might issue only with limited coverage, or might issue and be subsequently successfully challenged by others and held invalid or unenforceable.

Similarly, even if patents are issued based on our applications or future applications, any issued patents may not provide us with any competitive advantages. Competitors may be able to design around our patents or develop products that provide outcomes comparable or superior to ours. Our patents may be held invalid or unenforceable as a result of legal challenges or claims of prior art by third parties, and others may challenge the inventorship or ownership of our patents and pending patent applications. In addition, if we secure protection in countries outside the United States, the laws of some foreign countries may not protect our intellectual property rights to the same extent as do the laws of the United States. In the event a competitor infringes upon our patent or other intellectual property rights, enforcing those rights may be difficult and time consuming. Even if successful, litigation to enforce our intellectual property rights or to defend our patents against challenge could be expensive and time consuming and could divert our management’s attention. We may not have sufficient resources to enforce our intellectual property rights or to defend our patents against a challenge.

Our strategy is to deploy our technology into the market by licensing patent and other proprietary rights to third parties and customers. Disputes with our licensees may arise regarding the scope and content of these licenses. Further, our ability to expand into additional fields with our technologies may be restricted by existing licenses or licenses we may grant to third parties in the future.

The policies we use to protect our trade secrets might not be effective in preventing misappropriation of our trade secrets by others. In addition, confidentiality agreements executed by our customers, employees, consultants and advisors might not be enforceable or might not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. Litigating a trade secret claim is expensive and time consuming, and the outcome is unpredictable. Moreover, our competitors may independently develop equivalent knowledge methods and know-how. If we are unable to protect our intellectual property rights, we may be unable to prevent competitors from using our own inventions and intellectual property to compete against us, and our business may be harmed.

We may be subject to patent infringement or other intellectual property lawsuits that could be costly to defend.

Because our industry is characterized by competing intellectual property, we may become involved in litigation based on claims that we have violated the intellectual property rights of others. Determining whether a product infringes a patent involves complex legal and factual issues, and the outcome of patent litigation actions is often uncertain. No assurance can be given that third party patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been filed, or could not be filed or issued. Because of the number of patents issued and patent applications filed in our technical areas or fields (including some pertaining specifically to wireless charging technologies), our competitors or other third parties have currently and may in the future assert that our products and technology and the methods we employ in the use of our products and technology are covered by United States or foreign patents held by them. In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending which may result in issued patents that our technology under development or other future products would infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There could also be existing patents that one or more of our technologies, products or parts may infringe and of which we are unaware. As the number of competitors in the market for wire-free power and alternative recharging solutions increases, and as the number of patents issued in this area grows, the possibility of patent infringement claims against us increases. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

If we become subject to a patent infringement or other intellectual property lawsuit and if the relevant patents or other intellectual property are upheld as valid and enforceable and we are found to have infringed or violated the terms of a license to which we are a party, we could be prevented from selling any infringing products of ours unless we could obtain a license or were able to redesign the product to avoid infringement. If we are unable to obtain a license or successfully redesign, we might be prevented from selling our technology under development or other future products. If there is a determination that we have infringed the intellectual property rights of a competitor or other person, we may be required to pay damages, pay a settlement, or pay ongoing royalties, or be enjoined. In these circumstances, we may be unable to sell our products or license our technology at competitive prices or at all, and our business and operating results could be harmed.

We could become subject to product liability claims, product recalls, and warranty claims that could be expensive, divert management's attention and harm our business.

Our business exposes us to potential liability risks that are inherent in the marketing and sale of products used by consumers. We may be held liable if our technology causes injury or death or is found otherwise unsuitable. While we believe our technology is safe, users could allege and possibly prove defects (some of which could be alleged or proved to cause harm to users or others) because we design our technology to perform complex functions involving RF energy in close proximity to users. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. The coverage limits of the insurance policies we may choose to purchase to cover related risks may not be adequate to cover future claims. If sales of products incorporating our technology increase or we suffer future product liability claims, we may be unable to maintain product liability insurance in the future at satisfactory rates or with adequate amounts. A product liability claim, any product recalls or excessive warranty claims, whether arising from defects in design or manufacture or otherwise, could negatively affect our sales or require a change in the design or manufacturing process, any of which could harm our reputation, harm our relationship with licensors of our products, result in a decline in revenue and harm our business.

In addition, if a product that we or a strategic partner design is defective, whether due to design or manufacturing defects, improper use of the product or other reasons, we or our strategic partner may be required to notify regulatory authorities and/or to recall the product. A required notification to a regulatory authority or recall could result in an investigation by regulatory authorities into the products incorporating our technology, which could in turn result in required recalls, restrictions on the sale of such products or other penalties. The adverse publicity resulting from any of these actions could adversely affect the perceptions of our customers and potential customers. These investigations or recalls, especially if accompanied by unfavorable publicity, could result in our incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

Our business is subject to data security risks, including security breaches.

We collect, process, store and transmit substantial amounts of information, including information about our customers. We take steps to protect the security and integrity of the information we collect, process, store and transmit, but there is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third parties will not gain unauthorized access to this information despite such efforts. Security breaches, computer malware, computer hacking attacks and other compromises of information security measures have become more prevalent in the business world and may occur on our systems or those of our vendors in the future. Large Internet companies and websites have from time to time disclosed sophisticated and targeted attacks on portions of their websites, and an increasing number have reported such attacks resulting in breaches of their information security. We and our third-party vendors are at risk of suffering from similar attacks and breaches. Although we take steps to maintain confidential and proprietary information on our information systems, these measures and technology may not adequately prevent security breaches and we rely on our third-party vendors to take appropriate measures to protect the security and integrity of the information on those information systems. Because techniques used to obtain unauthorized access to or to sabotage information systems change frequently and may not be known until launched against us, we may be unable to anticipate or prevent these attacks. In addition, a party that is able to illicitly obtain a customer's identification and password credentials may be able to access our customer's accounts and certain account data.

We rely on email and other electronic means of communication to connect with our existing and potential customers. Our customers may be targeted by parties using fraudulent spoofing and phishing emails to misappropriate passwords, payment information or other personal information or to introduce viruses through Trojan horse programs or otherwise through our customers' computers, smartphones, tablets or other devices. Despite our efforts to mitigate the effectiveness of such malicious email campaigns through product improvements, spoofing and phishing may damage our brand and increase our costs.

Any actual, perceived or suspected security breach or other compromise of our security measures or those of our third-party vendors, whether as a result of hacking efforts, denial-of-service attacks, viruses, malicious software, break-ins, phishing attacks, social engineering or otherwise, could harm our reputation and business, damage our brand and make it harder to retain existing customers or acquire new ones, require us to expend significant capital and other resources to address the breach, and result in a violation of applicable laws, regulations or other legal obligations. We could also be exposed to a risk of loss or litigation and potential liability under laws, regulations and contracts that protect the privacy and security of personal information. Our insurance policies may not be adequate to reimburse us for direct losses caused by any such security breach or indirect losses due to resulting customer attrition. Any of these events or circumstances could materially adversely affect our business, financial condition and operating results.

If we are not able to secure advantageous license agreements for our technology, our business and results of operations will be adversely affected.

We pursue the licensing of our technology as a primary means of revenue generation. Creating a licensing business relationship often takes substantial effort, as we expect to have to convince the counterparty of the efficacy of our technology, meet design and manufacturing requirements, satisfy marketing and product needs, and comply with selection, review, and contracting requirements. There can be no assurance that we will be able to gain access to potential licensing partners, or that they will ultimately decide to integrate our technology with their products. We may not be able to secure license agreements with customers on advantageous terms, and the timing and volume of revenue earned from license agreements will be outside of our control. If the license agreements we enter into do not prove to be advantageous to us, our business and results of operations will be adversely affected.

Risks Related to Regulation of Our Business

Domestic and international regulators may deny approval for our technology, and future legislative or regulatory changes may impair our business.

Our charging technology involves power transmission using RF energy, which is subject to regulation by the Federal Communications Commission (the "FCC") in the United States and by comparable regulatory agencies worldwide. It may also be subject to regulation by other agencies. Regulatory concerns include whether human exposure to RF emissions falls below specified thresholds. Higher levels of exposure require separate approval. For example, transmitting more power over a certain distance or transmitting power over a greater distance may require separate regulatory approvals. In addition, we design our technology to operate in a RF band that is also used for Wi-Fi routers and other wireless consumer electronics, and we also design it to operate at different frequencies as demanded for some customer applications. Applications at different frequencies may require separate regulatory approvals. Efforts to obtain regulatory approval for devices using our technology are costly and time consuming, and there can be no assurance that requisite regulatory approvals will be forthcoming. If approvals are not obtained in a timely and cost-efficient manner, our business and operating results could be materially adversely affected. In addition, legal or regulatory developments could impose additional restrictions or costs on us that could require us to redesign our technology or future products, or that are difficult or impracticable to comply with, all of which would adversely affect our revenues and financial results.

Risks Related to Personnel

We are highly dependent on key members of our executive management team. Our inability to retain these individuals could impede our business plan and growth strategies, which could have a negative impact on our business and the value of your investment.

Our ability to implement our business plan depends, to a critical extent, on the continued efforts and services of a very small number of key executives. If we lose the services of any of the key members of our executive management team, we could be required to expend significant time and money in the pursuit of replacements, which may result in a delay in the implementation of our business plan and plan of operations. If necessary, we can give no assurance that we could find satisfactory permanent replacements for these individuals at all or on terms that would not be unduly expensive or burdensome to us. We do not currently carry any key-person life insurance that would help us recoup our costs in the event of the death or disability of any of these executives.

Our success and growth depend on our ability to attract, integrate and retain high-level engineering talent.

Because of the highly specialized and complex nature of our business, our success depends on our ability to attract, hire, train, integrate and retain high-level engineering talent. Competition for such personnel is intense because we compete for talent against many large profitable companies and our inability to adequately staff our operations with highly qualified and well-trained engineers could render us less efficient and impede our ability to develop and deliver a commercial product. Further, in recent years, the increased availability of hybrid or remote working arrangements has expanded the pool of companies that can compete for our employees and employment candidates. Such a competitive market could put upward pressure on labor costs for engineering talent. We may incur significant costs to attract and retain highly qualified talent, and we may lose new employees to our competitors or other technology companies before we realize the benefit of our investment in recruiting and training them. Volatility or lack of performance in our stock price may also affect our ability to attract and retain qualified personnel.

We are subject to risks associated with our utilization of engineering consultants.

To improve productivity and accelerate our development efforts while we build out our own engineering team, we use experienced consultants to assist in selected development projects. We take steps to monitor and regulate the performance of these independent third parties. However, arrangements with third party service providers may make our operations vulnerable if these consultants fail to satisfy their obligations to us as a result of their performance, changes in their own operations, financial condition, or other matters outside of our control. Effective management of our consultants is important to our business and strategy. The failure of our consultants to perform as anticipated could result in substantial costs, divert management's attention from other strategic activities, or create other operational or financial problems for us. Terminating or transitioning arrangements with key consultants could result in additional costs and a risk of operational delays, potential errors and possible control issues as a result of the termination or during the transition.

Risks Related to Ownership of Our Common Stock

We are a "smaller reporting company," and the reduced disclosure requirements applicable to smaller reporting companies could make our common stock less attractive to investors.

We are a "smaller reporting company," meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a "smaller reporting company," and have either: (i) a public float of less than $250 million or (ii) annual revenues of less than $100 million during the most recently completed fiscal year and a public float of less than $700 million. As a "smaller reporting company," we are subject to reduced disclosure obligations in our SEC filings compared to other issuers, including with respect to disclosure obligations regarding executive compensation in our periodic reports and proxy statements. Until such time as we cease to be a "smaller reporting company," such reduced disclosure in our SEC filings may make it harder for investors to analyze our operating results and financial prospects.

If some investors find our common stock less attractive as a result of any choices to reduce future disclosure we may make, there may be a less active trading market for our common stock and our stock price may be more volatile.

If we are unable to maintain effective internal control over financial reporting, investors may lose confidence in the accuracy of our financial reports.

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Although our management has determined that our internal control over financial reporting was effective as of September 30, 2023, we cannot assure you that we will not identify any material weakness in our internal control in the future.

We qualify as a "smaller reporting company" and are therefore not required to file an auditor attestation report. If we experience a material weakness in our internal controls, we may fail to detect errors in our financial accounting, which may require a financial statement restatement or otherwise harm our operating results, cause us to fail to meet our SEC reporting obligations or listing requirements of The Nasdaq Stock Market, or Nasdaq, adversely affect our reputation, cause our stock price to decline or result in inaccurate financial reporting or material misstatements in our annual or interim financial statements. Further, if there are material weaknesses or failures in our ability to meet any of the requirements related to the maintenance and reporting of our internal controls over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports and that could cause the price of our common stock to decline. We could become subject to investigations by Nasdaq, the SEC or other regulatory authorities, which could require additional management attention and which could adversely affect our business.

In addition, our internal control over financial reporting will not prevent or detect all errors and fraud. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

You might lose all or part of your investment.

Investing in our common stock involves a high degree of risk. As an investor, you might never recoup all, or even part of, your investment and you may never realize any return on your investment. You must be prepared to lose all your investment.

Our stock price is likely to continue to be volatile.

The market price of our common stock has fluctuated significantly since our initial public offering in 2014. The price of our common stock is likely to continue to fluctuate significantly in response to many factors that are beyond our control, including:

- regulatory announcements;
- actual or anticipated variations in our operating results;
- general macroeconomic, political, industry and market conditions, including increases in inflation, fluctuating interest rates, volatile global financial markets, the potential of government shutdowns and

uncertainty regarding the federal budget and debt ceiling, disruptions to global supply chains, and perceptions of future economic growth prospects in the economy at large;

- recent turmoil in the global banking sector;
- regional conflicts around the world, terrorist acts, acts of war or periods of widespread civil unrest;
- natural disasters and other calamities, including global pandemics such as the COVID-19 pandemic;
- changes in the economic performance and/or market valuations of other technology companies;
- our announcements of significant strategic partnerships, regulatory developments and other events;
- announcements by other companies in our industry;
- articles published or rumors circulated by third parties regarding our business, technology or development partners;
- additions or departures of key personnel; and
- sales or other transactions involving our capital stock.

We have not paid dividends in the past and have no immediate plans to pay dividends.

We plan to reinvest all of our earnings, to the extent we have earnings, in order to market our products and technology and to cover operating costs and to otherwise become and remain competitive. We do not plan to pay any cash dividends with respect to our securities in the foreseeable future. We cannot assure you that we would, at any time, generate sufficient surplus cash that would be available for distribution to the holders of our common stock as a dividend.

We expect to continue to incur significant costs as a result of being a public reporting company and our management will be required to devote substantial time to meet our compliance obligations.

As a public reporting company, we incur significant legal, accounting and other expenses. We are subject to reporting requirements of the Exchange Act and rules subsequently implemented by the SEC that require us to establish and maintain effective disclosure controls and internal controls over financial reporting, as well as some specific corporate governance practices. Our management and other personnel are expected to devote a substantial amount of time to compliance initiatives associated with our public reporting company status. Those costs will increase significantly if we cease to qualify as a smaller reporting company.

We may be subject to securities litigation, which is expensive and could divert management attention.

Our stock price has fluctuated in the past, reacting to news such as our past announcements of FCC approvals and it may be volatile in the future. In the past, companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation, and we may be the target of litigation of this sort in the future. Securities litigation is costly and can divert management attention from other business concerns, which could seriously harm our business and the value of your investment in our company.

Our ability to use Federal net operating loss carry forwards to reduce future tax payments may be limited if our taxable income does not reach sufficient levels.

As of December 31, 2022, we had Federal net operating loss (“NOL”) carry forwards of approximately $273,056,000. Under the Internal Revenue Code of 1986, as amended, NOLs arising in tax years ending on or before December 31, 2017 can generally be carried forward to offset future taxable income for a period of 20 years, and NOLs arising in tax years ending after December 31, 2017 can generally be carried forward indefinitely. Our ability to use our NOLs will be dependent on our ability to generate taxable income, and the NOLs that arose in tax years ending on or before December 31, 2017 could expire before we generate sufficient taxable income to take advantage of the NOLs. As of September 30, 2023, based on our history of operating losses it is possible that a portion of our NOLs will not be fully realizable.

Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable.

Provisions of our certificate of incorporation and bylaws, and applicable Delaware law, may delay or discourage transactions involving an actual or potential change in control or change in our management, including

transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. The provisions in our certificate of incorporation and bylaws:

- authorize our Board to issue preferred stock without stockholder approval and to designate the rights, preferences and privileges of each class; if issued, such preferred stock would increase the number of outstanding shares of our capital stock and could include terms that may deter an acquisition of us;
- limit who may call stockholder meetings;
- do not permit stockholders to act by written consent;
- do not provide for cumulative voting rights; and
- provide that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

In addition, Section 203 of the Delaware General Corporation Law may limit our ability to engage in any business combination with a person who beneficially owns 15% or more of our outstanding voting stock unless certain conditions are satisfied. This restriction lasts for a period of three years following the share acquisition. These provisions may have the effect of entrenching our management team and may deprive you of the opportunity to sell your shares to potential acquirers at a premium over prevailing prices. This potential inability to obtain a control premium could reduce the price of our common stock.

Our warrants that are accounted for as liabilities and the changes in value of our warrants could have a material effect on the market price of our common stock or our financial results.

We account for the 2023 Warrants in accordance with the guidance contained in Accounting Standards Codification ("ASC") 815, Derivatives and Hedging. Such guidance provides that, because the 2023 Warrants do not meet the criteria for equity treatment thereunder, each 2023 Warrants must be recorded as a liability. Accordingly, we classify each 2023 Warrants as a liability at its fair value. This liability is subject to re-measurement at each balance sheet date, with a resulting non-cash gain or loss related to the change in the fair value being recognized in earnings in the statements of operations. With each such remeasurement, the warrant liability is adjusted to fair value, with the change in fair value recognized in our statement of operations and therefore our reported earnings. As a result of the recurring fair value measurement, our consolidated financial statements and results of operations may fluctuate quarterly based on factors which are outside of our control. Due to the recurring fair value measurement, we expect that we will recognize non-cash gains or losses on the 2023 Warrants each reporting period and that the amount of such gains or losses could be material. The impact of changes in fair value on earnings may have an adverse effect on the market price of our common stock.

General Risk Factors

If we fail to comply with the requirements for continued listing on Nasdaq, our common stock will be subject to delisting. Our ability to publicly or privately sell equity securities and the liquidity of our common stock could be adversely affected if our common stock is delisted.

The continued listing standards of Nasdaq require, among other things, that the minimum bid price of a listed company's stock be at or above $1.00. If the closing minimum bid price is below $1.00 for a period of more than 30 consecutive trading days, the listed company will fail to be in compliance with Nasdaq's listing rules and, if it does not regain compliance within the grace period, will be subject to delisting. As previously reported, on January 20, 2023, we received a notice from the Nasdaq Listing Qualifications Department notifying us that for 30 consecutive trading days, the bid price of our common stock had closed below the minimum $1.00 per share requirement. In accordance with Nasdaq's listing rules, we were afforded a grace period of 180 calendar days, or until July 19, 2023, to regain compliance with the bid price requirement. In order to regain compliance, the bid price of our common stock must close at a price of at least $1.00 per share for a minimum of 10 consecutive trading days.
On July 20, 2023, Nasdaq notified us that we did not regain compliance by July 19, 2023, but that Nasdaq had granted us an additional 180-day period to regain compliance because we met the continued listing requirement for market value of publicly held shares and all other applicable Nasdaq listing requirements (other than the minimum closing bid price requirement) and we provided written notice to Nasdaq of our intention to cure the deficiency during the second compliance period by effecting a reverse stock split. On August 15, 2023, we executed a reverse stock split of our common stock at a ratio of 1-for-20. As a result of the reverse stock split, on August 30, 2023 we received notification from the Nasdaq Listing Qualifications Staff that we were in compliance with its minimum bid price requirement and the matter was closed.

If our common stock is delisted from Nasdaq and is not eligible for quotation or listing on another market or exchange, our common stock will be subject to "penny stock" rules and trading of our shares of common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities. Delisting from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our common stock. Delisting could also have other negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities.

Adverse macroeconomic conditions, natural disasters or reduced technology spending could adversely affect our business, operating results, and financial condition.

Our business depends on the overall demand for our technology and on the economic health of our current and prospective customers. In addition, the purchase of our products is often discretionary and may involve a significant commitment of capital and other resources. Weak global and regional macroeconomic conditions, including labor shortages, supply chain disruptions, rising interest rates and inflation, low spending environments, geopolitical instability, warfare and uncertainty, weak economic conditions in certain regions or a reduction in technology spending regardless of macroeconomic conditions, including as a result of the remaining effects of COVID-19 and the ongoing conflict between Russia and the Ukraine and the global response thereto, could adversely affect our business, operating results, and financial condition, including resulting in longer sales cycles, a negative impact on our ability to attract and retain new customers or expand our platform or sell additional products and services to our existing customers, lower prices for our products, higher default rates among our current suppliers and customers and reduced sales to new or existing customers.

There has been recent turmoil in the global banking system. For example, on March 10, 2023, Silicon Valley Bank ("SVB"), was closed by the California Department of Financial Protection and Innovation, which appointed the Federal Deposit Insurance Corporation ("FDIC"), as receiver for SVB. Additionally, in May 2023, the FDIC took control of First Republic Bank ("First Republic"). While the FDIC has since stated that all depositors of SVB will be made whole and JPMorgan Chase & Co. ("JPMorgan") has since acquired a substantial amount of assets and certain liabilities of First Republic, there is no guarantee that the federal government would similarly guarantee all depositors in the event of future bank closures. While the Company does not have a banking relationship with SVB or First Republic, continued instability and turmoil in the global banking system may negatively impact us or our customers, including our customers' ability to pay for our products, and adversely impact our business and financial condition. Moreover, such events, in addition to the global macroeconomic conditions discussed above, may cause further turbulence and uncertainty in the capital markets. Further deterioration of the global macroeconomic environment and any regulatory action taken in response thereto may adversely affect our business, operating results, and financial condition.

Further, natural disasters or other catastrophic events may cause damage or disruption to our operations, international commerce, and the global economy, and thus could have an adverse effect on us. Our business operations are also subject to interruption by fire, power shortages, flooding, and other events beyond our control. In the event of a natural disaster, including a major earthquake, blizzard, or hurricane, or a catastrophic event such as a fire, power loss, cyberattack, or telecommunications failure, we may be unable to continue our operations and may endure system interruptions, reputational harm, delays in development of our platform, lengthy interruptions in service, breaches of data security, and loss of critical data, all of which could have an adverse effect on our future operating results. Climate change could result in an increase in the frequency or severity of such natural disasters. For example, our corporate offices are located in California, a state that frequently experiences earthquakes, wildfires, heatwaves and droughts.

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

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. There can be no assurance that analysts will continue to cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock, our stock price would likely decline. If one or more of these analysts cease coverage of our company 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.

Item 2. Sales of Unregistered Securities; Use of Proceeds; and Issuer Purchases of Equity Securities

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

The exhibits required to be filed as a part of this report are listed in the Exhibit Index.

EXHIBIT INDEX

Exhibit Number	Description
10.1	Letter Agreement by and between Energous Corporation and William Mannina, dated July 28, 2023, as amended as of August 14, 2023 (filed herewith)
31.1	Certification of Periodic Report by Chief Executive Officer (principal executive officer) pursuant to Rule 13a-14(a)/15d-14a
31.2	Certification of Periodic Report by the Interim Chief Financial Officer (principal financial officer) pursuant to Rule 13a-14(a)/15d-14a
32.1+	Certification of Periodic Report by Chief Executive Officer (principal executive officer) and the Acting Chief Financial Officer (principal financial officer) pursuant to U.S.C. Section 1350
101.INS	Inline XBRL Instance Document (filed herewith)
101.SCH	Inline XBRL Taxonomy Extension Schema Document (filed herewith)
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document (filed herewith)
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document (filed herewith)
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document (filed herewith)
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document (filed herewith)
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101)

+ This certification shall not be deemed “filed” for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that Section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ENERGOUS CORPORATION
(Registrant)

Date: November 13, 2023	By:	/s/ Cesar Johnston
	Name:	Cesar Johnston
	Title:	President and Chief Executive Officer (Principal Executive Officer)
Date: November 13, 2023	By:	/s/ Susan Kim-van Dongen
	Name:	Susan Kim-van Dongen
	Title:	Interim Chief Financial Officer (Principal Financial and Accounting Officer)

EXHIBIT 10.1

July 27, 2023

Via Email

William (Bill) Mannina

Re: Terms of Transition and Separation

Dear Bill:

This letter confirms the agreement ("***Agreement***") between you and Energous Corporation (the "***Company***") concerning the terms of your transition and separation from employment and offers you certain benefits to which you would not otherwise be entitled, conditioned upon your provision of a general release of claims and covenant not to sue now and upon the Separation Date (defined below) as provided herein. If you agree to the terms outlined herein, please sign and return this Agreement to me in the timeframe outlined below.

1. Continued Employment; Other Release Consideration: In exchange for your agreement to the general release and waiver of claims and covenant not to sue set forth below and your other promises herein, the Company agrees to continue your employment on the following terms:

a. Separation Date; Transition Period and Services: Your last day of employment with the Company will be August 16, 2023 (the "***Separation Date***"). Between now and the Separation Date (the "***Transition Period***"), you agree to carry out the duties and responsibilities of your position as directed principally by the Company's executive leadership, including its interim CFO, and to provide other transition services as may reasonably be requested by the Company, including, without limitation, (i) transition of the responsibilities, duties, and knowledge relative to your position, and (ii) if requested by the Company, execution of the Company's August 2023 10-Q financial statement, providing you shall not be required to sign the 2023 10-Q unless you believe the 10-Q and the required attestations are accurate (the "***Transition Services***"). During the Transition Period, you will primarily work remotely and come into the Company's San Jose, California headquarters only when and as requested by the new interim CFO. By signing below, you hereby resign, effective as of the Separation Date, from all officer positions of the Company that you may hold, including, without limitation, the position of Acting Chief Financial Officer of the Company.

b. Compensation and Benefits: During the Transition Period, the Company will continue to pay you your current base salary and you will continue to be eligible to participate in benefits customarily afforded to other employees, including participation in the Company- sponsored health benefits plan and continued vesting of options, to the fullest extent allowed by the governing plans, agreements, or policies.

c. Separation Compensation: Provided that you adequately provide the

Transition Services, then in exchange for your agreement to the general release and waiver of claims and covenant not to sue in this Agreement and as set forth in Exhibit A (the "***Second Release***"), to be signed no earlier than the Separation Date, and your other promises herein, the Company agrees as follows:

i. Severance: The Company agrees to pay you, in regular bi-weekly installments consistent with the Company's regular payroll schedule, your regular base salary (as of the Separation Date, which base salary shall not be reduced from the base salary you are receiving on the date you sign this Agreement) for nine (9) months following the Separation Date. The first severance payment will commence on the Company's first regularly payroll schedule following the Effective Date of the Second Release (as provided therein) (the "***First Severance Payment***"), provided that, the First Severance Payment shall include any amounts that would otherwise have been payable to you during such time period between the Separation Date and First Severance Payment.

ii. COBRA: Upon your timely election to continue your existing health benefits under COBRA, and consistent with the terms of COBRA and the Company's health insurance plan, the Company will pay the insurance premiums to continue your existing health benefits for nine (9) months following the Separation Date. You will remain responsible for, and must continue to pay, the portion of premiums, co-payments, etc. that you would have paid had your employment continued.

iii. Restricted Stock Unit Vesting Credit: The Company will provide, and you will receive, additional restricted stock unit vesting credit, as described in Paragraph 5, below.

iv. Reimbursement of Attorneys' Fees: The Company will reimburse you up to Twenty-Five Thousand Dollars ($25,000) for reasonable legal fees incurred by you directly in connection with the negotiation and execution of this Agreement, through a payment to the Law Offices of Jotham S. Stein, P.C. ("***Stein***") and for which the Company will issue to you and to Stein an IRS form 1099-MISC in that amount. You agree to submit no later than ten (10) business days following the Effective Date of the Second Release (as defined therein) reasonable written proof of having incurred such fees, and the Company shall issue payment to Stein for such documented legal fees no later than ten (10) business days following receipt of such documentation.

By signing below, you acknowledge that you are receiving the release consideration outlined in this paragraph in consideration for waiving your rights to claims referred to in this Agreement (and the Second Release) and that you would not otherwise be entitled to the release consideration.

During the Transition Period, the Company shall not terminate your employment for any reason other than Cause. For purposes of this Agreement, "Cause" shall mean only (i) your conviction of a felony crime, (ii) your material breach of your Confidential Information and Inventions Assignment Agreement which causes material economic harm to the Company, or (iii)

your repeated and willful refusal to provide reasonable and legal Transition Services to the Company, providing that your employment may not be terminated for Cause under (ii) and (iii) above unless the Company first gives you written notice of all the facts why Cause exists and provides you at least fifteen (15) business days to cure the alleged facts giving rise to Cause, and further providing that if you cure, Cause shall not exist under the applicable subsection.

2.Final Pay: On or before the Separation Date, the Company will pay you for all wages, salary, bonuses, commissions, reimbursable expenses previously submitted by you, accrued vacation (if applicable) and any similar payments due you from the Company as of your separation from employment. By signing below, you acknowledge and agree that (a) you have received your H1 2023 management performance bonus in the amount approved by the Board, and
(b) the Company does not now, and will not in the future, owe you any other bonus payment or other variable compensation.

3.Return of Company Property: You hereby warrant to the Company that, no later than the Separation Date, you will return to the Company all property or data of the Company of any type whatsoever that has been in your possession or control.

4.Post-Employment Obligations: You hereby acknowledge that: (a) you continue to be bound by the attached Confidential Information and Inventions Assignment Agreement (Exhibit B hereto); (b) as a result of your employment with the Company, you have had access to the Company's proprietary and/or confidential information, and you will continue to hold all such information in strictest confidence and not make use of it on behalf of anyone; and (c) you must, and by your signature below confirm that you shall, deliver to the Company, no later than the Separation Date, all documents and data of any nature containing or pertaining to such information, and not take with you, or otherwise retain in any respect, any such documents or data or any reproduction thereof.

5.Restricted Stock Units:

a.Pursuant to the Company's 2013 Equity Incentive Plan (as amended from time to time, the "***Plan***"), you were granted (a) a restricted stock unit award settleable for 30,000 shares of Common Stock on March 21, 2021 (the "***First RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated March 21, 2021 (the "***First RSU Agreement***"), of which 27,500 shares have vested, and 2,500 shares remain unvested as of the date of this Agreement; (b) a restricted stock unit award settleable for 60,000 shares of Common Stock on October 17, 2021 (the "***Second RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated October 17, 2021 (the "***Second RSU Agreement***"), of which 35,000 shares have vested, and 25,000 shares remain unvested as of the date of this Agreement; (c) a restricted stock unit award settleable for 25,000 shares of Common Stock on October 17, 2021 (the "***Third RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated October 17, 2021 (the "***Third RSU Agreement***"), of which no shares have vested, and 25,000 shares remain unvested as of the date of this Agreement; and (d) a restricted stock unit award settleable for 90,000 shares of Common Stock on

May 31, 2022 (the “***Fourth RSU***”, and together with the First RSU, the Second RSU, and the Third RSU, the “***RSU***”), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated May 31, 2022 (the “***Fourth RSU Agreement***”, and together with the First RSU Agreement, the Second RSU Agreement, and the Third RSU Agreement, the “***RSU Agreements***”), of which 45,000 have vested, and 45,000 shares remain unvested as of the date of this Agreement. As of the date of this Agreement, a total of 107,500 shares underlying the RSU have vested, and a total of 205,000 shares remain unvested (the “***Unvested RSU***”).

b.If you execute this Agreement and it becomes effective on its terms, you will receive vesting credit such that, as of the Separation Date, an additional (i) 2,500 unvested shares subject to the First RSU will vest, (ii) 5,000 unvested shares subject to the Second RSU will vest, and (iii) 25,000 unvested shares subject to the Third RSU will vest. Your rights concerning the RSU will continue to be governed by the RSU Agreements.

6.<u>General Release and Waiver of Claims</u>:

a.The payments and promises set forth in this Agreement are in full satisfaction of all accrued salary, vacation pay, bonus and commission pay, other variable compensation, profit-sharing, stock, stock options or other ownership interest in the Company, termination benefits or other compensation to which you may be entitled by virtue of your employment with the Company or your separation from the Company. To the fullest extent permitted by law, you hereby release and waive any other claims you may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively “***Releasees***”), whether known or not known, including, without limitation, claims under any employment laws, including, but not limited to, claims of unlawful discharge, retaliation, claims arising out of or related in any way to your May 10, 2023 letter to Mark Leahy, and all related communications from you or on your behalf directed to the Company regarding alleged wrongdoing, breach of contract, breach of the covenant of good faith and fair dealing, fraud, violation of public policy, defamation, physical injury, emotional distress, claims for additional compensation or benefits arising out of your employment or your separation of employment, claims under Title VII of the 1964 Civil Rights Act, as amended, and any other laws and/or regulations relating to employment or employment discrimination, including, without limitation, claims based on disability or under the Americans with Disabilities Act. By signing this Agreement, you are not releasing or waiving any claims under the California Fair Employment and Housing Act; however, for the avoidance of doubt, you will release and waive such claims once you sign the Second Release.

b.By signing below, you expressly waive any benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND

THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

c.You and the Company do not intend to release claims: (i) that you may not release as a matter of law, (ii) for indemnification, whether pursuant to California Labor Code Section 2802 or any applicable right of indemnification set forth in the Company's Bylaws or other governing documents, (iii) for enforcement of this Agreement and/or arising out of this Agreement, or (iv) your rights in and to your Company equity, including, without limitation, your rights to delivery of, to hold and/or to sell your Company equity. Nor does this Agreement waive or relinquish any rights you may have pursuant to any applicable directors and officers liability insurance policy or other insurance policies held by the Company. To the fullest extent permitted by law, any dispute regarding the scope of this general release shall be determined by an arbitrator under the procedures set forth in the arbitration clause below.

7.Covenant Not to Sue:

a.To the fullest extent permitted by law, at no time subsequent to the execution of this Agreement will you pursue, or cause or knowingly permit the prosecution, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, of any charge, claim or action of any kind, nature and character whatsoever, known or unknown, which you may now have, have ever had, or may in the future have against Releasees, which is based in whole or in part on any matter released by this Agreement.

b.Nothing in this paragraph shall prohibit or impair you or the Company from complying with all applicable laws, nor shall this Agreement be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

8.Protected Rights: You understand that nothing in the General Release and Waiver of Claims and Covenant Not to Sue paragraphs above, or otherwise in this Agreement, limits your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local government agency or commission ("***Government Agencies***"). You further understand that this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Agreement does not limit your right to receive an award for information provided to any Government Agencies.

9.Arbitration: Except for any claim for injunctive relief arising out of a breach of a party's obligations to protect the other's proprietary information, the parties agree to arbitrate, in San Jose, California through JAMS, any and all disputes or claims arising out of or related to the validity, enforceability, interpretation, performance or breach of this Agreement, whether sounding in tort, contract, statutory violation or otherwise, or involving the construction or application or any of the

terms, provisions, or conditions of this Agreement. Any arbitration may be initiated by a written demand to the other party. The arbitrator's decision shall be final, binding, and conclusive. The parties further agree that this Agreement is intended to be strictly construed to provide for arbitration as the sole and exclusive means for resolution of all disputes hereunder to the fullest extent permitted by law. The parties expressly waive any entitlement to have such controversies decided by a court or a jury.

10.Attorneys’ Fees: If any action is brought to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys’ fees, costs and expenses from the other party, in addition to any other relief to which the prevailing party may be entitled.

11.No Admission of Liability: This Agreement is not and shall not be construed or contended by you to be an admission or evidence of any wrongdoing or liability on the part of Releasees, their representatives, heirs, executors, attorneys, agents, partners, officers, shareholders, directors, employees, subsidiaries, affiliates, divisions, successors or assigns. This Agreement shall be afforded the maximum protection allowable under California Evidence Code Section 1152 and/or any other state or federal provisions of similar effect.

12.Complete and Voluntary Agreement: This Agreement, together with Exhibits A and B hereto and the Restricted Stock Unit Agreements, constitute the entire agreement between you and Releasees with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral, relating to such subject matter. You acknowledge that neither Releasees nor their agents or attorneys have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this Agreement for the purpose of inducing you to execute the Agreement, and you acknowledge that you have executed this Agreement in reliance only upon such promises, representations and warranties as are contained herein, and that you are executing this Agreement voluntarily, free of any duress or coercion.

13.Severability: The provisions of this Agreement are severable, and if any part of it is found to be invalid or unenforceable, including, without limitation, any part of the General Release, Covenant Not to Sue, Non-disparagement and/or Confidentiality sections above, or in the Second Release, below, the other parts shall remain fully valid and enforceable. Specifically, should a court, arbitrator, or government agency conclude that a particular claim may not be released as a matter of law, it is the intention of the parties that the general release, the waiver of unknown claims and the covenant not to sue above shall otherwise remain effective to release any and all other claims.

14.Modification; Counterparts; Electronic/PDF Signatures: It is expressly agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement that specifically refers to this Agreement, executed by authorized representatives of each of the parties to this Agreement. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Execution of an electronic or PDF copy shall have the same force and effect as execution of an original, and a copy of a signature will be equally admissible in any legal proceeding as if an original.

15.Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16.Expiration of Offer: You understand that you may take up to three (3) business days to consider this Agreement (the "***Consideration Period***"). The offer set forth in this Agreement, if not accepted by you before the end of the Consideration Period, *i.e.*, on or before July 26, 2023, will automatically expire.

17.All payments under this Agreement shall be made in full without regard to payments you may receive from future employment or consulting work.

18.Effective Date: This Agreement is effective on the date it is signed by both parties (the "***Effective Date***").

If you agree to abide by the terms outlined in this Agreement, please sign and return it to me. I wish you the best in your future endeavors.

Sincerely,

Energous Corporation

By: /s/ J. Michael Dodson

J Michael Dodson,
Member, Board of Directors

READ, UNDERSTOOD AND AGREED

/s/ William (Bill) Mannina Date: 7/28/2023

William (Bill) Mannina

<u>**EXHIBIT A**</u>

SECOND RELEASE

This General Release of All Claims and Covenant Not to Sue (the "***Second Release***") is entered into between William (Bill) Mannina ("***Employee***") and Energous Corporation (the "***Company***") (collectively, "***the parties***").

WHEREAS, Employee and the Company entered into an agreement regarding Employee's transition and separation from employment with the Company (the "***Separation Agreement***," to which this Second Release is attached as Exhibit A);

WHEREAS, on August 16, 2023, Employee's employment with the Company terminated (the "***Separation Date***");

WHEREAS, Employee has adequately provided the Transition Services (as defined in the Separation Agreement);

WHEREAS, this agreement serves as the Second Release, pursuant to the Separation Agreement; and

WHEREAS, Employee and the Company desire to mutually, amicably and finally resolve and compromise all issues and claims surrounding Employee's employment and separation from employment with the Company;

NOW THEREFORE, in consideration for the mutual promises and undertakings of the parties as set forth below, Employee and the Company hereby enter into this Second Release.

1.<u>Acknowledgment of Payment of Wages</u>: Providing that the Company has paid
Employee all accrued salary and accrued vacation through and as of the Separation Date, by Employe's signature below Employee acknowledges that, on the Separation Date, the Company paid Employee for all wages, salary, accrued vacation (if applicable), bonuses, reimbursable expenses previously submitted by Employee, and any similar payments due Employee from the Company as of the Separation Date.

2.<u>Return of Company Property</u>: Employee hereby warrants to the Company that Employee has returned to the Company all property or data of the Company of any type whatsoever that has been in Employee's possession, custody or control.

3.<u>Consideration</u>: In exchange for Employee's agreement to this Second Release and Employee's other promises in the Separation Agreement and herein, the Company agrees to provide Employee with the consideration set forth in Paragraph 1(c) of the Separation Agreement. By signing below, Employee acknowledges that Employee is receiving the consideration in exchange for waiving Employee's rights to claims referred to in this Second Release and Employee would not otherwise be entitled to the consideration.

4.<u>General Release and Waiver of Claims</u>:

a.The payments and promises set forth in this Second Release are in full

satisfaction of all accrued salary, vacation pay, bonus and commission pay, other variable compensation, profit-sharing, stock, stock options or other ownership interest in the Company, termination benefits or other compensation to which Employee may be entitled by virtue of

Employee's employment with the Company or Employee's separation from the Company, including pursuant to the Separation Agreement. To the fullest extent permitted by law, Employee hereby releases and waives any other claims Employee may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "***Releasees***"), whether known or not known, including, without limitation, claims under any employment laws, including, but not limited to, claims of unlawful discharge, retaliation, claims arising out of or related in any way to Employee's May 10, 2023 letter to Mark Leahy, and all related communications from Employee or on his behalf directed to the Company regarding alleged wrongdoing, breach of contract, breach of the covenant of good faith and fair dealing, fraud, violation of public policy, defamation, physical injury, emotional distress, claims for additional compensation or benefits arising out of Employee's employment or separation of employment, claims under Title VII of the 1964 Civil Rights Act, as amended, the California Fair Employment and Housing Act and any other laws and/or regulations relating to employment or employment discrimination, including, without limitation, claims based on age or under the Age Discrimination in Employment Act or Older Workers Benefit Protection Act, and/or claims based on disability or under the Americans with Disabilities Act.

b.By signing below, Employee expressly waives any benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

c.Employee and the Company do not intend to release claims (i) that Employee may not release as a matter of law, (ii) for indemnification, whether pursuant to California Labor Code Section 2802 or any applicable right of indemnification set forth in the Company's Bylaws or other governing documents, (iii) for enforcement of this Second Release and/or arising out of this Second Release or the Agreement to which this Second Release is attached, or (iv) your rights in and to your Company equity, including, without limitation, your rights to delivery of, to hold and/or to sell your Company equity. Nor does this Second Release waive or relinquish any rights Employee may have pursuant to any applicable directors and officers liability insurance policy or other insurance policies held by the Company. To the fullest extent permitted by law, any dispute regarding the scope of this general release shall be determined by an arbitrator under the procedures set forth in the arbitration clause set forth in the Separation Agreement.

5.<u>Covenant Not to Sue</u>:

a. To the fullest extent permitted by law, at no time subsequent to the execution of this Second Release will Employee pursue, or cause or knowingly permit the prosecution, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, of any charge, claim or action of any kind, nature and character whatsoever, known or unknown, which Employee may now have, have ever had, or may in the future have against Releasees, which is based in whole or in part on any matter released by this Second Release.

b. Nothing in this paragraph shall prohibit or impair Employee or the Company from complying with all applicable laws, nor shall this Second Release be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

6. Protected Rights: Employee understands that nothing in the General Release and Waiver of Claims and Covenant Not to Sue paragraphs above, or otherwise in this Second Release, limits his ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local government agency or commission ("***Government Agencies***"). Employee further understands that this Second Release does not limit his ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Second Release does not limit Employee's right to receive an award for information provided to any Government Agencies.

7. Mutual Non-disparagement: Employee agrees that he will not, directly or indirectly, disparage or make negative remarks regarding Releasees or their products, services, agents, representatives, directors, officers, shareholders, attorneys, employees, vendors, affiliates, successors or assigns, or any person acting by, through, under or in concert with any of them, with any written or oral statement. The Company agrees that its current officers and directors, for so long as they are employed by or providing board service to the Company, will not disparage Employee with any written or oral statement. Nothing in this section shall prohibit Employee or the Company (including its current officers and directors) from providing truthful information in response to a subpoena or other legal process.

8. Review of Second Release; Expiration of Offer: Employee understands that Employee may take up to twenty-one (21) days to consider this Second Release (the "***Consideration Period***"). The offer set forth in this Second Release, if not accepted by Employee before the end of the Consideration Period, will automatically expire. By signing below, Employee affirms that Employee was advised to consult with an attorney prior to signing this Second Release. Employee also understands that Employee may revoke this Second Release within seven (7) days of signing this document and that the consideration to be provided to Employee pursuant to Paragraph 1(c) of the Separation Agreement will be provided only after the expiration of that seven (7) day revocation period.

9. Effective Date: This Second Release is effective on the eighth (8th) day after Employee signs it, provided Employee has not revoked it as of that time (the "***Effective Date***").

10.Other Terms of Separation Agreement Incorporated Herein: All other terms of the Separation Agreement to the extent not inconsistent with the terms of this Second Release are hereby incorporated in this Second Release as though fully stated herein and apply with equal force to this Second Release, including, without limitation, the provisions on Arbitration, Governing Law, and Attorneys' Fees.

Dated:

Name: J Michael Dodson
Title: Member, Board of Directors
For the Company

Dated:

William (Bill) Mannina

<u>EXHIBIT B</u>

Confidential Information and Inventions Assignment Agreement

August 10, 2023

VIA DOCUSIGN

William (Bill) Mannina

Re: Amendment to Transition and Separation Agreement

Dear Bill:

This letter (the "***Amendment***") serves to partially amend the terms of your July 27, 2023 Transition and Separation Agreement by Energous Corporation (the "***Company***"), which is attached hereto as Exhibit 1 (the "***Separation Agreement***"). Effective as of the Effective Date (defined below), you and the Company hereby agree as follows:

1.**Amendment and Restatement of Section 5(a) of the Separation Agreement**.
Section 5(a) of the Separation Agreement is hereby amended and restated in its entirety to read as follows:

"**Restricted Stock Units**:

(a) Pursuant to the Company's 2013 Equity Incentive Plan (as amended from
time to time, the "***Plan***"), you were granted (a) a restricted stock unit award settleable for 30,000 shares of Common Stock on March 21, 2021 (the "***First RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated March 21, 2021 (the "***First RSU Agreement***"), of which 27,500 shares have vested, and 2,500 shares remain unvested as of the date of this Agreement; (b) a restricted stock unit award settleable for 60,000 shares of Common Stock on October 17, 2021 (the "***Second RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated October 17, 2021 (the "***Second RSU Agreement***"), of which 35,000 shares have vested, and 25,000 shares remain unvested as of the date of this Agreement; (c) a restricted stock unit award settleable for 25,000 shares of Common Stock on October 17, 2021 (the "***Third RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated October 17, 2021 (the "***Third RSU Agreement***"), of which no shares have vested, and 25,000 shares remain unvested as of the date of this Agreement; and (d) a restricted stock unit award settleable for 90,000 shares of Common Stock on May 31, 2022 (the "***Fourth RSU***", and together with the First RSU, the Second RSU, and the Third RSU, the "***RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated May 31, 2022 (the "***Fourth RSU Agreement***", and together with the First RSU Agreement, the Second RSU Agreement, and the Third RSU Agreement, the "***RSU Agreements***"), of which 45,000 have vested, and 45,000 shares remain unvested as of the date of this Agreement. As of the date of this Agreement, a total of 107,500 shares underlying the RSU have vested, and a total of 97,500 shares remain unvested (the "***Unvested RSU***")."

2.**Entire Agreement**. Once accepted, this Amendment, together with the Separation Agreement, constitute the entire agreement between you and the Company with respect to the subject matter hereof and supersedes, in relevant part, all prior negotiations and agreements, if any,

whether written or oral, relating to such subject matter. You acknowledge that neither the Company nor its agents have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this Amendment for the purpose of inducing you to execute this Amendment, and you acknowledge that you have executed this Amendment in reliance only upon such promises, representations and warranties as are contained herein.

3.**Modification**. It is expressly agreed that the terms of this Amendment may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement that specifically refers to this Amendment, executed by you and the Company.

4.**No Other Changes to Separation Agreement**. Except as expressly modified by this Amendment, all other terms and conditions of the Separation Agreement shall remain in full force and effect. In the event of a conflict between this Amendment and the Separation Agreement, the terms and conditions of the Amendment will govern.

5.**Effective Date**. This Amendment and the terms contained herein are effective on the date it is signed by both parties (the "***Effective Date***").

Sincerely,

Energous Corporation

/s/ J. Michael Dodson

J Michael Dodson
Member, Board of Directors

I have read and understand this Amendment and hereby acknowledge, accept and agree to the terms set forth above, and further acknowledge that no other commitments were made to me as part of this Amendment except as specifically set forth herein.

ACCEPTED:

/s/ William (Bill) Mannina
Date: 08/14/2023
William (Bill) Mannina

EXHIBIT 1

SEPARATION AGREEMENT

July 27, 2023

Via Email

William (Bill) Mannina

Re: Terms of Transition and Separation

Dear Bill:

This letter confirms the agreement ("***Agreement***") between you and Energous Corporation (the "***Company***") concerning the terms of your transition and separation from employment and offers you certain benefits to which you would not otherwise be entitled, conditioned upon your provision of a general release of claims and covenant not to sue now and upon the Separation Date (defined below) as provided herein. If you agree to the terms outlined herein, please sign and return this Agreement to me in the timeframe outlined below.

1. Continued Employment; Other Release Consideration: In exchange for your agreement to the general release and waiver of claims and covenant not to sue set forth below and your other promises herein, the Company agrees to continue your employment on the following terms:

a. Separation Date; Transition Period and Services: Your last day of employment with the Company will be August 16, 2023 (the "***Separation Date***"). Between now and the Separation Date (the "***Transition Period***"), you agree to carry out the duties and responsibilities of your position as directed principally by the Company's executive leadership, including its interim CFO, and to provide other transition services as may reasonably be requested by the Company, including, without limitation, (i) transition of the responsibilities, duties, and knowledge relative to your position, and (ii) if requested by the Company, execution of the Company's August 2023 10-Q financial statement, providing you shall not be required to sign the 2023 10-Q unless you believe the 10-Q and the required attestations are accurate (the "***Transition Services***"). During the Transition Period, you will primarily work remotely and come into the Company's San Jose, California headquarters only when and as requested by the new interim CFO. By signing below, you hereby resign, effective as of the Separation Date, from all officer positions of the Company that you may hold, including, without limitation, the position of Acting Chief Financial Officer of the Company.

b. Compensation and Benefits: During the Transition Period, the Company will continue to pay you your current base salary and you will continue to be eligible to participate in benefits customarily afforded to other employees, including participation in the Company-

sponsored health benefits plan and continued vesting of options, to the fullest extent allowed by the governing plans, agreements, or policies.

c. Separation Compensation: Provided that you adequately provide the Transition Services, then in exchange for your agreement to the general release and waiver of claims and covenant not to sue in this Agreement and as set forth in Exhibit A (the "***Second Release***"), to be signed no earlier than the Separation Date, and your other promises herein, the Company agrees as follows:

i. Severance: The Company agrees to pay you, in regular bi-weekly installments consistent with the Company's regular payroll schedule, your regular base salary (as of the Separation Date, which base salary shall not be reduced from the base salary you are receiving on the date you sign this Agreement) for nine (9) months following the Separation Date. The first severance payment will commence on the Company's first regularly payroll schedule following the Effective Date of the Second Release (as provided therein) (the "***First Severance Payment***"), provided that, the First Severance Payment shall include any amounts that would otherwise have been payable to you during such time period between the Separation Date and First Severance Payment.

ii. COBRA: Upon your timely election to continue your existing health benefits under COBRA, and consistent with the terms of COBRA and the Company's health insurance plan, the Company will pay the insurance premiums to continue your existing health benefits for nine (9) months following the Separation Date. You will remain responsible for, and must continue to pay, the portion of premiums, co-payments, etc. that you would have paid had your employment continued.

iii. Restricted Stock Unit Vesting Credit: The Company will provide, and you will receive, additional restricted stock unit vesting credit, as described in Paragraph 5, below.

iv. Reimbursement of Attorneys' Fees: The Company will reimburse you up to Twenty-Five Thousand Dollars ($25,000) for reasonable legal fees incurred by you directly in connection with the negotiation and execution of this Agreement, through a payment to the Law Offices of Jotham S. Stein, P.C. ("***Stein***") and for which the Company will issue to you and to Stein an IRS form 1099-MISC in that amount. You agree to submit no later than ten (10) business days following the Effective Date of the Second Release (as defined therein) reasonable written proof of having incurred such fees, and the Company shall issue payment to Stein for such documented legal fees no later than ten (10) business days following receipt of such documentation.

By signing below, you acknowledge that you are receiving the release consideration outlined in this paragraph in consideration for waiving your rights to claims referred to in this Agreement (and the Second Release) and that you would not otherwise be entitled to the release consideration.

During the Transition Period, the Company shall not terminate your employment for any reason other than Cause. For purposes of this Agreement, "Cause" shall mean only (i) your

conviction of a felony crime, (ii) your material breach of your Confidential Information and Inventions Assignment Agreement which causes material economic harm to the Company, or (iii) your repeated and willful refusal to provide reasonable and legal Transition Services to the Company, providing that your employment may not be terminated for Cause under (ii) and (iii) above unless the Company first gives you written notice of all the facts why Cause exists and provides you at least fifteen (15) business days to cure the alleged facts giving rise to Cause, and further providing that if you cure, Cause shall not exist under the applicable subsection.

2.Final Pay: On or before the Separation Date, the Company will pay you for all wages, salary, bonuses, commissions, reimbursable expenses previously submitted by you, accrued vacation (if applicable) and any similar payments due you from the Company as of your separation from employment. By signing below, you acknowledge and agree that (a) you have received your H1 2023 management performance bonus in the amount approved by the Board, and
(b) the Company does not now, and will not in the future, owe you any other bonus payment or other variable compensation.

3.Return of Company Property: You hereby warrant to the Company that, no later than the Separation Date, you will return to the Company all property or data of the Company of any type whatsoever that has been in your possession or control.

4.Post-Employment Obligations: You hereby acknowledge that: (a) you continue to be bound by the attached Confidential Information and Inventions Assignment Agreement (Exhibit B hereto); (b) as a result of your employment with the Company, you have had access to the Company's proprietary and/or confidential information, and you will continue to hold all such information in strictest confidence and not make use of it on behalf of anyone; and (c) you must, and by your signature below confirm that you shall, deliver to the Company, no later than the Separation Date, all documents and data of any nature containing or pertaining to such information, and not take with you, or otherwise retain in any respect, any such documents or data or any reproduction thereof.

5.Restricted Stock Units:

a.Pursuant to the Company's 2013 Equity Incentive Plan (as amended from time to time, the "***Plan***"), you were granted (a) a restricted stock unit award settleable for 30,000 shares of Common Stock on March 21, 2021 (the "***First RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated March 21, 2021 (the "***First RSU Agreement***"), of which 27,500 shares have vested, and 2,500 shares remain unvested as of the date of this Agreement; (b) a restricted stock unit award settleable for 60,000 shares of Common Stock on October 17, 2021 (the "***Second RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated October 17, 2021 (the "***Second RSU Agreement***"), of which 35,000 shares have vested, and 25,000 shares remain unvested as of the date of this Agreement; (c) a restricted stock unit award settleable for 25,000 shares of Common Stock on October 17, 2021 (the "***Third RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated October 17, 2021 (the "***Third RSU Agreement***"), of which no shares have vested, and 25,000 shares remain unvested as of the date of this Agreement; and (d) a restricted stock unit award settleable for 90,000 shares of Common Stock on

May 31, 2022 (the "***Fourth RSU***", and together with the First RSU, the Second RSU, and the Third RSU, the "***RSU***"), as evidenced by the Restricted Stock Unit Award Agreement between you and the Company dated May 31, 2022 (the "***Fourth RSU Agreement***", and together with the First RSU Agreement, the Second RSU Agreement, and the Third RSU Agreement, the "***RSU Agreements***"), of which 45,000 have vested, and 45,000 shares remain unvested as of the date of this Agreement. As of the date of this Agreement, a total of 107,500 shares underlying the RSU have vested, and a total of 205,000 shares remain unvested (the "***Unvested RSU***").

b.If you execute this Agreement and it becomes effective on its terms, you will receive vesting credit such that, as of the Separation Date, an additional (i) 2,500 unvested shares subject to the First RSU will vest, (ii) 5,000 unvested shares subject to the Second RSU will vest, and (iii) 25,000 unvested shares subject to the Third RSU will vest. Your rights concerning the RSU will continue to be governed by the RSU Agreements.

6.General Release and Waiver of Claims:

a.The payments and promises set forth in this Agreement are in full satisfaction of all accrued salary, vacation pay, bonus and commission pay, other variable compensation, profit-sharing, stock, stock options or other ownership interest in the Company, termination benefits or other compensation to which you may be entitled by virtue of your employment with the Company or your separation from the Company. To the fullest extent permitted by law, you hereby release and waive any other claims you may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "***Releasees***"), whether known or not known, including, without limitation, claims under any employment laws, including, but not limited to, claims of unlawful discharge, retaliation, claims arising out of or related in any way to your May 10, 2023 letter to Mark Leahy, and all related communications from you or on your behalf directed to the Company regarding alleged wrongdoing, breach of contract, breach of the covenant of good faith and fair dealing, fraud, violation of public policy, defamation, physical injury, emotional distress, claims for additional compensation or benefits arising out of your employment or your separation of employment, claims under Title VII of the 1964 Civil Rights Act, as amended, and any other laws and/or regulations relating to employment or employment discrimination, including, without limitation, claims based on disability or under the Americans with Disabilities Act. By signing this Agreement, you are not releasing or waiving any claims under the California Fair Employment and Housing Act; however, for the avoidance of doubt, you will release and waive such claims once you sign the Second Release.

b.By signing below, you expressly waive any benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND

THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

c.You and the Company do not intend to release claims: (i) that you may not release as a matter of law, (ii) for indemnification, whether pursuant to California Labor Code Section 2802 or any applicable right of indemnification set forth in the Company's Bylaws or other governing documents, (iii) for enforcement of this Agreement and/or arising out of this Agreement, or (iv) your rights in and to your Company equity, including, without limitation, your rights to delivery of, to hold and/or to sell your Company equity. Nor does this Agreement waive or relinquish any rights you may have pursuant to any applicable directors and officers liability insurance policy or other insurance policies held by the Company. To the fullest extent permitted by law, any dispute regarding the scope of this general release shall be determined by an arbitrator under the procedures set forth in the arbitration clause below.

7.Covenant Not to Sue:

a.To the fullest extent permitted by law, at no time subsequent to the execution of this Agreement will you pursue, or cause or knowingly permit the prosecution, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, of any charge, claim or action of any kind, nature and character whatsoever, known or unknown, which you may now have, have ever had, or may in the future have against Releasees, which is based in whole or in part on any matter released by this Agreement.

b.Nothing in this paragraph shall prohibit or impair you or the Company from complying with all applicable laws, nor shall this Agreement be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

8.Protected Rights: You understand that nothing in the General Release and Waiver of Claims and Covenant Not to Sue paragraphs above, or otherwise in this Agreement, limits your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local government agency or commission ("***Government Agencies***"). You further understand that this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Agreement does not limit your right to receive an award for information provided to any Government Agencies.

9.Arbitration: Except for any claim for injunctive relief arising out of a breach of a party's obligations to protect the other's proprietary information, the parties agree to arbitrate, in San Jose, California through JAMS, any and all disputes or claims arising out of or related to the validity, enforceability, interpretation, performance or breach of this Agreement, whether sounding in tort, contract, statutory violation or otherwise, or involving the construction or application or any of the terms, provisions, or conditions of this Agreement. Any arbitration may be initiated by a written demand to the other party. The arbitrator's decision shall be final, binding, and conclusive.

The parties further agree that this Agreement is intended to be strictly construed to provide for arbitration as the sole and exclusive means for resolution of all disputes hereunder to the fullest extent permitted by law. The parties expressly waive any entitlement to have such controversies decided by a court or a jury.

10.Attorneys' Fees: If any action is brought to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and expenses from the other party, in addition to any other relief to which the prevailing party may be entitled.

11.No Admission of Liability: This Agreement is not and shall not be construed or contended by you to be an admission or evidence of any wrongdoing or liability on the part of Releasees, their representatives, heirs, executors, attorneys, agents, partners, officers, shareholders, directors, employees, subsidiaries, affiliates, divisions, successors or assigns. This Agreement shall be afforded the maximum protection allowable under California Evidence Code Section 1152 and/or any other state or federal provisions of similar effect.

12.Complete and Voluntary Agreement: This Agreement, together with Exhibits A and B hereto and the Restricted Stock Unit Agreements, constitute the entire agreement between you and Releasees with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral, relating to such subject matter. You acknowledge that neither Releasees nor their agents or attorneys have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this Agreement for the purpose of inducing you to execute the Agreement, and you acknowledge that you have executed this Agreement in reliance only upon such promises, representations and warranties as are contained herein, and that you are executing this Agreement voluntarily, free of any duress or coercion.

13.Severability: The provisions of this Agreement are severable, and if any part of it is found to be invalid or unenforceable, including, without limitation, any part of the General Release, Covenant Not to Sue, Non-disparagement and/or Confidentiality sections above, or in the Second Release, below, the other parts shall remain fully valid and enforceable. Specifically, should a court, arbitrator, or government agency conclude that a particular claim may not be released as a matter of law, it is the intention of the parties that the general release, the waiver of unknown claims and the covenant not to sue above shall otherwise remain effective to release any and all other claims.

14.Modification; Counterparts; Electronic/PDF Signatures: It is expressly agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement that specifically refers to this Agreement, executed by authorized representatives of each of the parties to this Agreement. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Execution of an electronic or PDF copy shall have the same force and effect as execution of an original, and a copy of a signature will be equally admissible in any legal proceeding as if an original.

15. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Expiration of Offer: You understand that you may take up to three (3) business days to consider this Agreement (the "***Consideration Period***"). The offer set forth in this Agreement, if not accepted by you before the end of the Consideration Period, *i.e.*, on or before July 26, 2023, will automatically expire.

17. All payments under this Agreement shall be made in full without regard to payments you may receive from future employment or consulting work.

18. Effective Date: This Agreement is effective on the date it is signed by both parties (the "***Effective Date***").

If you agree to abide by the terms outlined in this Agreement, please sign and return it to me. I wish you the best in your future endeavors.

Sincerely,

Energous Corporation

By:
J Michael Dodson,
Member, Board of Directors

READ, UNDERSTOOD AND AGREED

Date:

William (Bill) Mannina

EXHIBIT A

SECOND RELEASE

This General Release of All Claims and Covenant Not to Sue (the "***Second Release***") is entered into between William (Bill) Mannina ("***Employee***") and Energous Corporation (the "***Company***") (collectively, "***the parties***").

WHEREAS, Employee and the Company entered into an agreement regarding Employee's transition and separation from employment with the Company (the "***Separation Agreement***," to which this Second Release is attached as Exhibit A);

WHEREAS, on August 16, 2023, Employee's employment with the Company terminated (the "***Separation Date***");

WHEREAS, Employee has adequately provided the Transition Services (as defined in the Separation Agreement);

WHEREAS, this agreement serves as the Second Release, pursuant to the Separation Agreement; and

WHEREAS, Employee and the Company desire to mutually, amicably and finally resolve and compromise all issues and claims surrounding Employee's employment and separation from employment with the Company;

NOW THEREFORE, in consideration for the mutual promises and undertakings of the parties as set forth below, Employee and the Company hereby enter into this Second Release.

1.Acknowledgment of Payment of Wages: Providing that the Company has paid Employee all accrued salary and accrued vacation through and as of the Separation Date, by Employe's signature below Employee acknowledges that, on the Separation Date, the Company paid Employee for all wages, salary, accrued vacation (if applicable), bonuses, reimbursable expenses previously submitted by Employee, and any similar payments due Employee from the Company as of the Separation Date.

2.Return of Company Property: Employee hereby warrants to the Company that Employee has returned to the Company all property or data of the Company of any type whatsoever that has been in Employee's possession, custody or control.

3.Consideration: In exchange for Employee's agreement to this Second Release and Employee's other promises in the Separation Agreement and herein, the Company agrees to provide Employee with the consideration set forth in Paragraph 1(c) of the Separation Agreement. By signing below, Employee acknowledges that Employee is receiving the consideration in exchange for waiving Employee's rights to claims referred to in this Second Release and Employee would not otherwise be entitled to the consideration.

4.General Release and Waiver of Claims:

a.The payments and promises set forth in this Second Release are in full

satisfaction of all accrued salary, vacation pay, bonus and commission pay, other variable compensation, profit-sharing, stock, stock options or other ownership interest in the Company, termination benefits or other compensation to which Employee may be entitled by virtue of

Employee's employment with the Company or Employee's separation from the Company, including pursuant to the Separation Agreement. To the fullest extent permitted by law, Employee hereby releases and waives any other claims Employee may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "***Releasees***"), whether known or not known, including, without limitation, claims under any employment laws, including, but not limited to, claims of unlawful discharge, retaliation, claims arising out of or related in any way to Employee's May 10, 2023 letter to Mark Leahy, and all related communications from Employee or on his behalf directed to the Company regarding alleged wrongdoing, breach of contract, breach of the covenant of good faith and fair dealing, fraud, violation of public policy, defamation, physical injury, emotional distress, claims for additional compensation or benefits arising out of Employee's employment or separation of employment, claims under Title VII of the 1964 Civil Rights Act, as amended, the California Fair Employment and Housing Act and any other laws and/or regulations relating to employment or employment discrimination, including, without limitation, claims based on age or under the Age Discrimination in Employment Act or Older Workers Benefit Protection Act, and/or claims based on disability or under the Americans with Disabilities Act.

b.By signing below, Employee expressly waives any benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

c.Employee and the Company do not intend to release claims (i) that Employee may not release as a matter of law, (ii) for indemnification, whether pursuant to California Labor Code Section 2802 or any applicable right of indemnification set forth in the Company's Bylaws or other governing documents, (iii) for enforcement of this Second Release and/or arising out of this Second Release or the Agreement to which this Second Release is attached, or (iv) your rights in and to your Company equity, including, without limitation, your rights to delivery of, to hold and/or to sell your Company equity. Nor does this Second Release waive or relinquish any rights Employee may have pursuant to any applicable directors and officers liability insurance policy or other insurance policies held by the Company. To the fullest extent permitted by law, any dispute regarding the scope of this general release shall be determined by an arbitrator under the procedures set forth in the arbitration clause set forth in the Separation Agreement.

5.Covenant Not to Sue:

a.To the fullest extent permitted by law, at no time subsequent to the execution of this Second Release will Employee pursue, or cause or knowingly permit the prosecution, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, of any charge, claim or action of any kind, nature and character whatsoever, known or unknown, which Employee may now have, have ever had, or may in the future have against Releasees, which is based in whole or in part on any matter released by this Second Release.

b.Nothing in this paragraph shall prohibit or impair Employee or the Company from complying with all applicable laws, nor shall this Second Release be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

6.Protected Rights: Employee understands that nothing in the General Release and Waiver of Claims and Covenant Not to Sue paragraphs above, or otherwise in this Second Release, limits his ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local government agency or commission ("***Government Agencies***"). Employee further understands that this Second Release does not limit his ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Second Release does not limit Employee's right to receive an award for information provided to any Government Agencies.

7.Mutual Non-disparagement: Employee agrees that he will not, directly or indirectly, disparage or make negative remarks regarding Releasees or their products, services, agents, representatives, directors, officers, shareholders, attorneys, employees, vendors, affiliates, successors or assigns, or any person acting by, through, under or in concert with any of them, with any written or oral statement. The Company agrees that its current officers and directors, for so long as they are employed by or providing board service to the Company, will not disparage Employee with any written or oral statement. Nothing in this section shall prohibit Employee or the Company (including its current officers and directors) from providing truthful information in response to a subpoena or other legal process.

8.Review of Second Release; Expiration of Offer: Employee understands that Employee may take up to twenty-one (21) days to consider this Second Release (the "***Consideration Period***"). The offer set forth in this Second Release, if not accepted by Employee before the end of the Consideration Period, will automatically expire. By signing below, Employee affirms that Employee was advised to consult with an attorney prior to signing this Second Release. Employee also understands that Employee may revoke this Second Release within seven (7) days of signing this document and that the consideration to be provided to Employee pursuant to Paragraph 1(c)

of the Separation Agreement will be provided only after the expiration of that seven (7) day revocation period.

9.Effective Date: This Second Release is effective on the eighth (8th) day after Employee signs it, provided Employee has not revoked it as of that time (the "***Effective Date***").

10.Other Terms of Separation Agreement Incorporated Herein: All other terms of the Separation Agreement to the extent not inconsistent with the terms of this Second Release are hereby incorporated in this Second Release as though fully stated herein and apply with equal force to this Second Release, including, without limitation, the provisions on Arbitration, Governing Law, and Attorneys' Fees.

Dated:

Name: J Michael Dodson
Title: Member, Board of Directors
For the Company

Dated:

William (Bill) Mannina

EXHIBIT B

Confidential Information and Inventions Assignment Agreement

EXHIBIT 31.1

CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Cesar Johnston, certify that:

1.I have reviewed this Quarterly Report on Form 10-Q of Energous 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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a)All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b)Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2023

/s/ Cesar Johnston
Name: Cesar Johnston
Title: President and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF THE PRINCIPAL EXECUTIVE AND FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Susan Kim-van Dongen, certify that:

1.I have reviewed this Quarterly Report on Form 10-Q of Energous 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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a)All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b)Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2023

/s/ Susan Kim-van Dongen
Name: Susan Kim-van Dongen
Title: Interim Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION 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 Energous Corporation (the "Company") on Form 10-Q for the period ended September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Cesar Johnston, President and Chief Executive Officer and Susan Kim-van Dongen, Interim Chief Financial Officer, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2)The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

A signed original of this written statement required by Section 906 has been provided to Energous Corporation and will be retained by Energous Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Cesar Johnston		/s/ Susan Kim-van Dongen	
Name:	Cesar Johnston	Name:	Susan Kim-van Dongen
Title:	President and Chief Executive Officer	Title:	Interim Chief Financial Officer
Date:	November 13, 2023	Date:	November 13, 2023